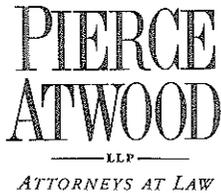


APPLICANTS RESPONSE TO JRLAC APPEAL

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August 30, 2010

Ms. Susan M. Lessard, Chair
Board of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

RE: In the Matter of State of Maine/State Planning Office
DEP Order #S-020700-WU-AJ-N

Dear Madam Chair:

I enclose the Joint Response of the State Planning Office and NEWSME Landfill Operations, LLC to the Appeal of Juniper Ridge Landfill Advisory Committee in the above-referenced matter. The State Planning Office ("SPO") is the licensee and owner, and NEWSME Landfill Operations, LLC ("NEWSME") is the operator, of the Juniper Ridge Landfill ("JRL"). NEWSME is an affiliate of Casella Waste Systems, Inc. Under its Operating Services Agreement with SPO, Casella and its affiliate, NEWSME, have responsibility for permitting with DEP additional solid waste streams, such as treated biomedical waste, to be accepted at JRL.

Please note that this Joint Response raises preliminary questions about the lack of authority and standing of the Landfill Advisory Committee in filing an appeal challenging the DEP's License Order authorizing the disposal of up to 5,000 tons per year of treated biomedical waste at JRL (see pages 6-9 of our Joint Response). Pursuant to DEP Chapter 2.24.B(1), the Chair has authority to decide such questions as scope of authority and standing of a purported appellant to appeal. To save time and resources for all parties, we respectfully suggest that the Chair rule on these issues before this matter reaches the Board.

Very truly yours,


Thomas R. Doyle

cc: Service List

**STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION**

APPEAL IN THE MATTER OF

STATE OF MAINE, ACTING THROUGH THE STATE PLANNING OFFICE OLD TOWN, PENOBSCOT COUNTY, MAINE TREATED BIOMEDICAL WASTE #S-020700-WU-AJ-N (APPROVAL WITH CONDITIONS)

MAINE HAZARDOUS WASTE, SEPTAGE
AND SOLID WASTE MANAGEMENT ACT

NEW LICENSE

**JOINT RESPONSE OF THE STATE PLANNING OFFICE AND
NEWSME LANDFILL OPERATIONS, LLC TO
APPEAL OF JUNIPER RIDGE LANDFILL ADVISORY COMMITTEE**

The State Planning Office (“SPO”), the owner of the Juniper Ridge Landfill (“JRL”), and NEWSME Landfill Operations, LLC (“NEWSME”), the operator of JRL, jointly file this response to the appeal submitted by the Juniper Ridge Landfill Advisory Committee (the “Committee”) challenging the Department permit authorizing the disposal of up to 5,000 tons per year of treated biomedical waste at JRL.

The Committee does not object to the disposal of all treated biomedical waste at JRL, but rather requests that the Board amend Department Order S-020700-WU-AJ-N (the “JRL License”) to allow disposal of only 3,000 tons per year of this solid waste. In its two-page appeal, the Committee identifies two reasons why the Board should amend the JRL License. First, the Committee claims that a portion of the treated biomedical waste permitted for disposal at JRL is “out of state waste” that is prohibited at JRL. Second, the Committee asserts that the approved volume of 5,000 tons per year “appears to be excessive.” As explained by the Department in the JRL License, and as discussed in greater detail below, (1) the solid waste (i.e., the treated biomedical waste) approved for disposal at JRL is in-State waste generated in

Pittsfield, Maine and (2) the annual disposal limit of 5,000 tons of this solid waste is reasonable and appropriate.

I. Background

A. Associated Health Resources, Inc. – Maine’s Biomedical Waste Treatment Facility

In 1992, the Maine Hospital Association, a statewide not-for-profit association in which all 39 Maine hospitals are members, created Associated Health Resources, Inc. (“AHR”). The association is the sole shareholder of AHR. AHR owns and operates a facility in Pittsfield, Maine that sorts and treats biomedical waste. The facility is licensed by the Department. (See O-221-BD-A-N (“AHR License #1”) and O-221-BD-B-M (“AHR License #2”).) Most of Maine’s hospitals use the facility, as do other generators of biomedical waste, including doctors’ and dentists’ offices. (AHR License #2 at 2-3.)

Biomedical waste arriving at AHR’s facility is divided into one of two categories: (1) human pathological, trace chemotherapy, and non-hazardous cytotoxic wastes and animal carcasses, or (2) non-anatomical human wastes from surgery, autopsy and patient care, microbiological laboratory wastes, and sharps. (AHR License #2 at 6.) The first category of biomedical waste is frozen and sent out-of-State for incineration and disposal. (AHR License #2 at 6.) There are no biomedical waste incinerators in Maine licensed to receive and dispose of this category of biomedical waste, so historically the first category of biomedical waste received at AHR’s facility has been shipped to Maryland or North Carolina. The second category of waste is treated at the Pittsfield facility in an autoclave. The autoclave “uses steam, pressure and time to render the waste non-infectious.” (AHR License #2 at 4.) The treated sharps portion of this second category of waste is shredded and rendered unrecognizable. (AHR License #2 at 5.)

The treated biomedical waste is then stored for disposal at a licensed landfill. (AHR License #2 at 8.)

B. The Regulation of Solid Waste and Biomedical Waste in Maine

Maine's solid waste management laws, 38 M.R.S.A. §§ 1301-1316-P, govern the handling and disposal of solid waste within the State. "Solid waste" is defined as:

useless, unwanted or discarded solid materials with insufficient liquid content to be free-flowing, including, but not limited to rubbish, garbage, refuse-derived fuel, scrap materials, junk, refuse, inert fill material and landscape refuse, but does not include hazardous waste, biomedical waste, septage or agricultural wastes.

(38 M.R.S.A. § 1303-C(29).) This definition establishes that solid waste is one of five main categories of waste: (1) solid waste, (2) hazardous waste, (3) biomedical waste, (4) septage, and (5) agricultural wastes. Solid waste and biomedical waste are coequal categories of waste, meaning that neither is a subcategory of the other.

How a waste is categorized is not just a matter of semantics, but reflects the need to handle and dispose of different categories of waste in different ways. This is evident, for example, in the definition of "biomedical waste:"

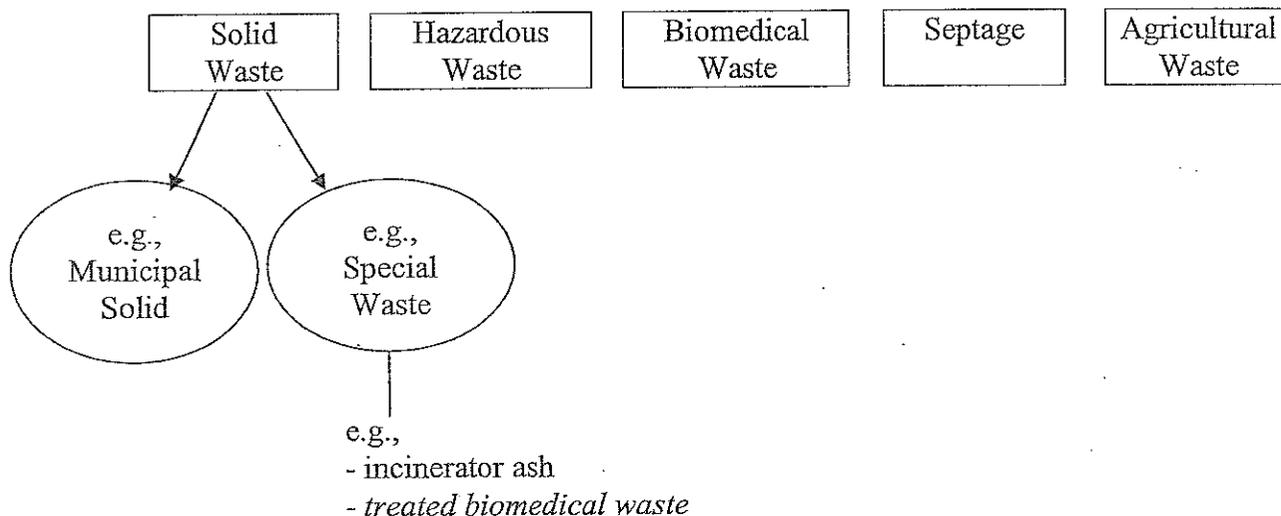
waste that may contain human pathogens of sufficient virulence and in sufficient concentrations that exposure to it by a susceptible human host could result in disease or that may contain cytotoxic chemicals used in medical treatment.

(*Id.* § 1303-C(1-A).)

Treated biomedical waste, despite what its name might suggest, is not a biomedical waste, but rather is a solid waste. Thus, biomedical waste and treated biomedical waste are two different categories of waste. This distinction is established by a Board-adopted rule and reflects the reality that treated biomedical waste no longer presents the exposure risks of *untreated* biomedical waste. As a result, treated biomedical waste, as designated by the Board, is "special

waste.” (DEP Rules, Ch. 900(19)(E) (“Pursuant to its authority under 38 M.R.S.A. §1303-C(34)(K), the Board designates treated biomedical waste that results from non-incineration treatment¹ technologies approved under this rule as special waste.”) Special waste is a sub-category of “solid waste.” (38 M.R.S.A. § 1303-C(34) (““Special waste’ means any solid waste generated by sources other than domestic and typical commercial establishments” that meet certain criteria.)) Figure 1 below helps illustrate the different categories of waste, including solid waste and biomedical waste, and shows that untreated biomedical waste is not solid waste, and that treated biomedical waste is a solid waste, and not a biomedical waste.

Figure 1.



C. Disposal of AHR-Generated Treated Biomedical Waste to Date

The difference between a solid waste and other categories of waste – e.g., the difference between treated biomedical waste and biomedical waste – is critical. Maine law and Department regulations allow the disposal of solid waste, including special waste, at landfills licensed under

¹ The treatment of biomedical waste in an autoclave at AHR’s Pittsfield facility is a type of non-incineration treatment. (See, e.g., DEP Rules, Ch. 900(6)(W) (defining “incineration” as having as its purpose “the efficient thermal oxidation and/or conversion of combustible material into noncombustible residues (ash) and product gases”) and Ch. 900(19)(A) (identifying “steam sterilization,” which is what the autoclave achieves, as a non-incineration treatment technology).)

the Solid Waste Management Rules. Such landfills, however, may only accept solid waste. The result is that treated biomedical waste may be landfilled, while biomedical waste may not.

The solid waste generated at AHR previously was disposed at Pine Tree Landfill in Hampden, Maine until that landfill stopped accepting waste at the end of 2009. Subsequently, the Department approved a onetime disposal of AHR's solid waste at the Crossroads Landfill in Norridgewock, Maine. That approval expired on June 30, 2010. (JRL's License at 1.)

To fill AHR's need for a landfill to dispose of the solid waste generated at AHR's Pittsfield facility, SPO applied to the Department for approval to accept this treated biomedical waste at JRL.

D. The Order Authorizing Disposal of Treated Biomedical Waste at JRL

By order dated June 30, 2010, the Department approved SPO's application to accept AHR's solid waste at JRL. The JRL License authorized the disposal of up to 5,000 tons per year of treated biomedical waste from AHR. Although this 5,000 ton limit represents an increase from the approximately 2,000 tons per year cap that previously applied to Pine Tree Landfill, the Department found this new limit appropriate in light of the quantity of solid waste presently generated by AHR, the facility's capacity to generate 7,000 tons per year, the potential for growth, and the potential for an event such as a pandemic outbreak to trigger a rapid increase in the treated biomedical waste produced by the facility. (JRL License at 4.) Further, the Department concluded that the permitted volume of treated biomedical waste could be safely handled at JRL without adversely impacting human health or the environment. (JRL License at 8.)

The Committee appealed.

II. **The Juniper Ridge Landfill Advisory Committee Lacks the Authority and Standing to Appeal**

A. **The Scope of the Committee's Authority Has Been Defined by the Legislature and Does Not Include the Authority to File this Appeal**

As an initial matter, the Committee lacks the legal authority to appeal the Department's approval of the JRL License. The Committee is a legislative creature, created by resolve in 2003 when the Legislature authorized the State to purchase JRL. (Resolve 2003, ch. 93.) In granting the Committee its authority, the Legislature also defined the scope of that authority, establishing that the Committee may engage in four activities related to the solid waste disposal facility the State was to purchase. Along with listing the four activities in which the Committee may engage, the Legislature identified only one order of business that the Committee must carry out, presumably before engaging in any of the permissive activities – the development of procedures governing the Committee's meetings. Specifically, the Legislature established:

The committee shall establish procedures for the conduct of meetings. The committee may:

- A. Review proposed contracts, site analyses, applications and other documents relating to the construction, permitting, and operation of the disposal facility;
- B. Hold periodic public meetings to solicit the opinions of residents concerning the disposal facility and any permit applications, contracts, or other provisions relating to the disposal facility;
- C. Provide the disposal facility operator and office with any alternative contract provisions, permit conditions, plans or procedures the committee considers appropriate; and
- D. Serve as a liaison between the communities and the disposal facility operator or the office to facilitate communications during the development and operation of the disposal facility and provide residents with updated information about the project, including providing explanations of any technical terms

Resolve 2003, ch. 93, § 1(5)(A)-(D). In 2005, the Legislature amended the 2003 Resolve to allow one member of the Penobscot Nation to be appointed to the Committee and added a fifth activity almost identical to the liaison function in paragraph D:

E. Serve as a liaison between the Penobscot Nation and the disposal facility operator or the office to facilitate communications during the development and operation of the disposal facility and provide members of the Penobscot Nation with updated information about the project, including providing explanations of any technical terms

P.L. 2005, c. 341, § 2.

Nowhere, however, did The Legislature authorize the Committee to appeal Department-issued licenses. Such an authorization would have been, and remains today, inconsistent with the role of the Committee, which, as its full name, “joint citizen *advisory* committee,” manifests, is only advisory.² Moreover, if the communities of Old Town or Alton, or any individuals within these communities or any members of the Penobscot Nation are aggrieved by a Department license and otherwise satisfy the requirements for standing to appeal a Department action, the City of Old Town, the Town of Alton, individual residents of these communities, or members of the Penobscot Nation may appeal. The 2003 Resolve, as amended, in no way impinges on this right of the communities and individuals, nor does it create such a right for the Committee.

In addition to not having the specific authority to file the present appeal, it is not apparent that the Committee has the authority to take any formal action at this time. The 2003 Resolve became effective on June 23, 2003. In the seven years since, the Committee has not adopted by-laws or otherwise established formal procedures for its meetings. The Committee was created to serve as a liaison between the public and the owner and operator of JRL. The adoption of

² Resolve 2003, c. 93, § 1, sub-§ 5 (“The municipal officers of the City of Old Town and the Town of Alton shall establish a joint citizen *advisory* committee consisting of 7 members, of which 5 must be from the City of Old Town and 2 from the Town of Alton.”) (Emphasis added.)

procedures for the conduct of meetings and adherence to such procedures helps ensure the legitimacy of the Committee's actions and prevents the group from operating in an ad-hoc fashion never envisioned by the Legislature. In the present case, operating without a procedural framework, the Committee filed its appeal without a public vote or formal vote of any kind. There was never a motion to pursue a particular course of action, never a second, and never any discussion. Nor was there even a meeting of the Committee, public or private. Rather, the Committee chairman "polled" Committee members individually by phone. It was only after the appeal was filed, at a Committee meeting after the appeal period had expired, that the Committee concluded the action it had taken amounted to an appeal. The 2003 Resolve does not authorize this type of ad-hoc action by the Committee.

B. The Committee Lacks Standing to Appeal Pursuant to the Department's Rules

Additionally, and apart from lacking the legislative authority to appeal, the Committee is not an "aggrieved person" as that term is used in Chapter 2 of the Department's Rules. This is significant because only an aggrieved person may appeal a licensing decision by the Department.³ (DEP Rules, Ch. 2(24)(B)(1).)

An "aggrieved person" is a person who "may suffer particularized injury as a result of a licensing or other decision." (DEP Rules, Ch. 2(1)(B).) The Department's Rules establish that a person making an appeal "must include" in the written notice of appeal "evidence demonstrating the appellant's standing as an aggrieved person." (*Id.* Ch. 2(24)(B)(2).) No such evidence, or even an argument, that the Committee is an aggrieved person that may suffer a particularized

³ Technically, the Department of Environmental Protection consists of the Commissioner of Environmental Protection (including his or her staff) and the Board of Environmental Protection. 38 M.R.S.A. § 341-A(2). Commonly, the Commissioner (and his or her staff) is referred to as the Department or DEP, and the Board of Environmental Protection is referred to separately as the Board or BEP. The common nomenclature is used in this response.

injury as a result of the Department's issuance of the JRL License, is included in the Committee's written filing. On this ground alone, the Committee has failed to carry its burden and establish standing.

Nor could the Committee have established it is an aggrieved person had it tried. This is because the Committee has not, and will not, suffer a particularized injury.⁴ "A particularized injury occurs when a judgment or order adversely and directly affects a party's property, pecuniary, or personal rights." *Nergaard v. Town of Westport Island*, 2009 ME 56 ¶ 18, 973 A.2d 735, 740; *see also Nelson v. Bayroot, LLC*, 2008 ME 91, ¶ 10 953 A.2d 378, 382. The scope of Committee's authority was established by the Legislature in the 2003 Resolve and the 2005 amendment quoted above. Based on this limited authority, the Legislature did not vest the Committee with any property or pecuniary rights. To the extent the Committee's authority to review documents, hold meetings, provide SPO and NEWSME with suggestions, and act as a liaison constitute "personal rights," an interpretation which may strain beyond recognition the term "personal rights," none of these rights are infringed by the JRL License. The Committee has not suffered a particularized injury and therefore lacks standing to file this appeal.

III. The Treated Biomedical Waste Generated at AHR's Pittsfield Facility is Waste Generated Within the State

The central question presented to the Board in the Committee's appeal is whether, under State law and the Department's rules, the treated biomedical waste generated at AHR's Pittsfield facility, is a waste generated within the State. (Letter from P. Dufour, Juniper Ridge Landfill

⁴ In addition, the Committee is not an aggrieved person because it is not a "person" as that word is defined in the Department's Rules. A "person" is defined as "any individual; partnership; corporation; Federal, state or local government entity; association; or public or private organization of any character; except the agency conducting the proceeding." (*Id.* Ch. 2(1)(O).) The Committee is an advisory committee, and does not fall into any of these categories.

Advisory Committee, to M. Parker, Department of Environmental Protection (July 6, 2010) (“Committee Appeal”) at 1.) This question is important because JRL is a State-owned landfill. State law, specifically 38 M.R.S.A. § 1310-N, requires the licensing of all solid waste facilities in Maine, such as landfills, by the Department. Within this statutory section is a provision establishing that “a solid waste disposal facility owned by the State may not be licensed to accept waste that is not waste generated within the State.” (*Id.* § 1310-N(11).) This restriction applies solely to JRL, the only State-owned solid waste disposal facility in Maine.

The same statutory provision, while not stating precisely what is and what is not “waste generated within the State,” identifies three categories of waste considered in-State for regulatory purposes, noting: “waste generated within the State’ includes [1] residue and bypass generated by incineration, processing and recycling facilities within the State or [2] waste, whether generated within the State or outside the State, if it is used for daily cover, frost protection or stability or [3] is generated within 30 miles of the solid waste disposal facility.” (*Id.*)

A portion of the biomedical waste accepted by AHR is transported to the Pittsfield facility from out-of-state. (JRL License at 2.) This waste, along with biomedical waste transported to Pittsfield from Maine hospitals and other locations in Maine, is treated at AHR’s facility. The resulting treated biomedical waste is what the Department authorized JRL to accept.

In approving the disposal of AHR’s treated biomedical waste at JRL, the Department, interpreting Maine’s solid waste management laws and its rules, concluded this material is waste generated within the State. (JRL License at 6.) The Committee disagrees, focusing on the statutory language in Section 1310-N(11)⁵ that clarifies that certain solid waste generated out-of-

⁵ The Committee references “38MRSA 1310 – (11)” on page 1 of its appeal. This appears to be in error. The context of the Committee’s appeal indicates the intended reference is 38 M.R.S.A. § 1310-N(11).

State, transported to Maine, and processed in Maine is considered waste generated within the State. The Committee attempts to distinguish treatment from processing and notes that AHR “treats” biomedical waste, but does not “process” this waste. As a result of not being processed, the Committee claims, the treated waste that leaves AHR is out-of-State waste prohibited from disposal at JRL. (Committee Appeal at 1.)

The errors in the Committee’s interpretation of the controlling statutory and regulatory provisions are discussed in section III(B) below. More fundamentally, however, the Committee’s focus on whether the “treatment” of biomedical waste by AHR is the same as the “processing” of waste is misplaced. While as explained by the Department in the JRL License, the treatment of biomedical waste by AHR is akin to the in-State processing of solid waste that the Legislature has established qualifies solid waste with out-of-State origin as waste generated within the State, understanding the correlation between treatment and processing is not necessary in order to determine that the solid waste generated at AHR’s Pittsfield facility is waste generated within the State. Why this is the case and why the Committee’s focus is misplaced is discussed below in section III(A).

A. The Solid Waste Approved for Disposal at JRL is Generated in Maine at AHR’s Pittsfield Facility

JRL is a solid waste disposal facility. Such facilities may only accept solid waste. As explained above, biomedical waste is not a solid waste. Biomedical waste, whether originating in Maine or beyond the State’s borders, may not be disposed of at JRL or any other solid waste facility in Maine.

Consistent with State law, the JRL License does not authorize the disposal of biomedical waste. Rather, the license permits JRL to accept a different category of waste, a solid waste, specifically treated biomedical waste. This solid waste is generated in Pittsfield, Maine at

AHR's facility. The biomedical waste arriving at this facility, regardless of its origin, is sorted into one of two categories (see the discussion of the categories above) and the material falling within the second of the two categories goes through a treatment process. What emerges from this treatment process is solid waste. This solid waste is generated here in Maine and, consistent with the requirement of Section 1310-N(11), this "waste generated within the State" is what the Department authorized SPO to accept at JRL.

No further analysis is needed to conclude that the Department's determination in the JRL License is correct.

B. AHR's Treatment Facility and Maine Solid Waste Processing Facilities Both Generate In-State Waste

In the JRL License, the Department supports its determination that the solid waste generated at AHR's Pittsfield facility is "waste generated within the State" by noting the parallels between the treatment of biomedical waste and the processing of solid waste. (JRL License at 5-6.) The similarities are significant because the in-State processing of waste, even if that waste has out-of-State origins, makes the resulting waste "waste generated within the State." The in-State treatment of biomedical waste, even if the biomedical waste originates outside of Maine, is analogous.

As noted above, Section 1310-N(11) clarifies that residue and bypass⁶ generated by incineration, processing, or recycling facilities within the State is "waste generated within State." "Residue" is defined as "waste remaining after the handling, processing, incineration or

⁶“Bypass” means any solid waste that is destined for disposal, processing or beneficial use at a solid waste facility but that cannot be disposed of, processed or beneficially used at that facility because of the facility's malfunction, insufficient capacity, inability to process or burn, downtime or any other comparable reason.” 38 M.R.S.A. § 1303-C(1-C). Biomedical waste cannot ever qualify as bypass since bypass must be a solid waste and untreated biomedical waste, by definition, is not solid waste.

recycling of solid waste including, without limitation, front end waste and ash from incineration facilities.” (38 M.R.S.A. § 1303-C(25).)

The following hypothetical example in which Section 1310-N(11) is applied is illustrative. A building in Massachusetts is knocked down in order to accommodate new development. Construction and demolition debris (“CDD”) that remains is hauled to Maine. This CDD is solid waste and when it crosses the border and enters Maine is out-of-State waste. This solid waste could not be hauled directly to a State-owned landfill for disposal because of its out-of-State status. Instead, this waste is hauled to a Maine processing facility where the CDD is screened, separated, and ground. The components of the waste that can be recycled and beneficially used (such as the wood that can be burned as an alternative fuel; metal that is recycled; fines reused as alternative daily cover; and asphalt, brick, and concrete that are recycled) are removed and the remaining material is hauled to a State-owned landfill for disposal in accordance with the landfill’s license. The portion of the CDD disposed at the State-owned landfill is the residue. This residue is a solid waste and as established by Section 1310-N(11) is “waste generated within the State.” This is the case even though the CDD has out-of-State origin.

The example above is significant because it clearly highlights that a waste originating out-of-State may become “waste generated within the State” if it undergoes transformation at an in-State facility. The transformation biomedical waste undergoes at AHR’s Pittsfield treatment facility is analogous and another example of how a waste with out-of-State origin can become “waste generated within the State.” The biomedical waste arriving at AHR’s facility is sorted and a portion of the waste is then treated. What emerges from the treatment process is a solid waste that is appropriate for disposal at a landfill. This treated portion of the waste is akin to the residue produced by the processing of CDD. In the case of the treated waste from AHR’s

facility, compared to the processed CDD, however, it is even clearer that the treated waste is generated within the State since an entirely new category of waste, solid waste, is produced at the AHR treatment facility.

The Committee fails to recognize the treatment of biomedical waste with out-of-State origin and the processing of solid waste with out-of-State origin as analogous. Instead, the Committee appears to contend that because “treatment” is not “processing” the treated biomedical waste generated at AHR’s Pittsfield facility is not “waste generated within the State.” (Committee Appeal at 1.) The central flaw in the Committee’s reasoning is that a waste’s status as “waste generated within the State” does not hinge on whether it is processed. While Section 1310-N(11) clarifies that a waste with out-of-State origin may become in-State waste through processing, this provision does not limit “waste generated within the State” to only waste processed in Maine.

Further, as explained by the Department in the JRL License:

Clearly, while *processing* refers to solid waste and *treatment* refers to hazardous waste, waste oil or biomedical waste, the terms are synonymous in that the waste is undergoing some form of physical, chemical, biological or stabilization transformation. Any distinction in the two terms is administrative to distinguish between the types of waste being handled, not the action of converting, processing, treating or transforming the waste.

(JRL License at 6 (emphasis in original).)⁷ Thus, any distinction between processing and treatment does nothing to detract from the analogy between the treatment of biomedical waste at

⁷ The term “treatment” is defined in statute to mean:

any process, including but not limited to incineration, designated to change the character or composition of any hazardous waste, waste oil or biomedical waste so as to render the waste less hazardous or infectious.

38 M.R.S.A. § 1303-C(39).

The term “processing” is not defined in either statute or rule, however, the term “processing facility” is defined in rule:

AHR's Pittsfield facility and the processing of solid waste at a Maine facility – both transform waste and produce “waste generated within the State.”

C. Application of the Solid Waste Management Laws and Rules to Treat Biomedical Waste

The Department's reading of Section 1310-N(11), specifically, and the solid waste management laws and Solid Waste Management Rules, more generally, is both consistent with the statutory and regulatory text, and reasonable. The result of this application of the laws and rules is that biomedical waste cannot be disposed of at Maine solid waste disposal facilities, including Maine landfills. This is because biomedical waste is not a solid waste. Treated biomedical waste, because it is a different category of waste, a solid waste, may be disposed of in Maine landfills if the receiving landfill is licensed to receive this particular type of solid waste. JRL, because it is owned by the State, is subject to the additional restriction contained in Section 1310-N(11) and may only accept treated biomedical waste that is “waste generated within the State.” This means biomedical waste treated in Massachusetts, New Hampshire, or elsewhere

A processing facility is any land area, structure, equipment, machine, device, system, or combination thereof, other than licensed incinerators, that is operated to reduce the volume or change the chemical or physical characteristics of solid waste. Processing facilities include but are not limited to facilities that employ shredding, baling, mechanical and magnetic separation, or other stabilization techniques to reduce or otherwise change the nature of solid waste. Processing facilities include, but are not limited to, facilities that:

- (1) Shred automobiles, white goods, scrap metal, machinery, vehicles, tires, demolition debris, wood waste or other similar materials;
- (2) Shred, separate, or otherwise increase the heat input value of municipal solid waste to produce refuse-derived fuel;
- (3) Aerobically digest, anaerobically digest, air dry, heat dry, heat treat, lime stabilize, pelletize, chemically treat, irradiate, pasteurize, or otherwise reduce pathogens or stabilize residuals, including dewatered septage, to render the residual suitable for agronomic utilization in accordance with the standards of Chapter 419;
- (4) Process solid waste to render the waste suitable for beneficial use in accordance with the standards of Chapter 418.

(DEP Rules, Ch. 409(1)(A). See also DEP Rules, Ch. 400(1)(Gg) (also defining “processing facility”).)

outside of Maine may not be disposed of at JRL. Only treated biomedical waste that is treated in Maine may be accepted at this State-owned landfill.

IV. The Volume of Treated Biomedical Waste the Juniper Ridge Landfill is Licensed to Receive is Reasonable and Consistent with State Law

The Committee agrees that JRL should be authorized to receive only 3,000 tons per year of treated biomedical waste, as opposed to the 5,000 tons per year the SPO applied for and the Department approved in the JRL License. The Committee states:

Previously the Pine Tree Landfill in Hampden was approved for 2,000 tons per year and at no time had AHR quantities exceeded the license restrictions. Therefore the request for 5,000 tons appears to be excessive.

(Committee Appeal at 1.) Notably, the Committee provides no statutory or regulatory basis for the requested reduction. For example, the Committee does assert that JRL can safely accommodate 3,000 tons per year, but not 5,000 tons per year. It does not assert that this difference of 2,000 tons will adversely affect the environment. On the other hand, the Department clearly explained why it approved the 5,000 tons per year applied for by SPO:

Both the Department and several interested parties asked for an explanation for the increased amount of waste proposed in current application. In response, AHR provided figures for December 2009 that showed the facility was treating 257 tons per month of biomedical waste. In April 2010, the WMDSM Crossroads Landfill received 231 tons of treated waste from the AHR facility. Annualized, these figures translate into 3,090 and 2,770 tons per year, respectively. This is consistent with the facility's current operational schedule of two 8-hour shifts working six days a week, potentially generating up to 3,900 tons of treated waste. Further, as currently configured, and assuming the facility operated 24 hours per day and 365 days per year, AHR stated that the facility could process up to 7,000 tons per year waste. The proposed 5,000 tons reflects 71% of the potential maximum treatment capacity of the facility and allows for potential fluctuations in the amount [of] waste accepted at the facility. Finally, in the event of a pandemic outbreak, the AHR facility may see a rapid increase in the amounts of biomedical waste needing treatment prior to disposal, necessitating the need for the increased disposal capacity of treated waste at the Juniper Ridge Landfill.

(JRL License at 4.)

There is no basis in statute or rule for disturbing this sound reasoning by the Department and amending the JRL License as requested by the Committee.

V. Conclusion

The laws and rules governing solid waste handling and disposal in Maine are detailed and technical. The regulation of out-of-State waste is no exception. While the Committee lacks the authority or standing to bring this appeal, if the merits are addressed, recognizing the distinction made in laws and rules between biomedical waste and treated biomedical waste is central to the evaluation of the JRL License. Despite the similarity in name, treated biomedical waste is an entirely separate category of waste – a solid waste. When this solid waste is generated in Maine, as it is at AHR’s Pittsfield facility, treated biomedical waste is “waste generated within the State.” This reading of Section 1310-N(11) is wholly consistent with the statutory text, the text of the related rules, and the regulation of solid waste processed in Maine.

Equally appropriate is the 5,000 ton per year cap the Department placed on the disposal of treated biomedical waste at JRL.

Accordingly, the State Planning Office and NEWSME respectfully request that the Board deny the Committee’s appeal and affirm the Department-issued JRL License.

Dated: August 30, 2010


George MacDonald

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