

State of Maine
Department of Environmental Protection

**JUNIPER RIDGE LANDFILL
AMENDMENT APPLICATION #S-020700-WD-BC-A**

TRANSCRIPT OF PROCEEDINGS

Pre-Hearing Conference

Augusta, Maine

January 30, 2013

10:07 a.m.

PRESIDING HEARING OFFICER:

HEATHER PARENT, POLICY DIRECTOR

Department of Environmental Protection

Christine Fraga Thornton
Registered Professional Reporter
THE REPORTING GROUP
207-797-6040

(The following is the transcript of the proceedings held January 30, 2013, beginning at 10:07 a.m. Heather Parent, Policy Director, presiding.)

MS. PARENT: Good morning, everybody. My name is Heather Parent. I am the policy director at the Maine Department of Environmental Protection. We are here today to hold the prehearing conference on the Juniper Ridge Landfill Amendment application. So, if anybody is here for a different matter, please sneak out now.

You should have received, either handed to you or by the door, an agenda for today's meeting. We will be following that agenda and taking up the items in order that are listed on the agenda, and at the very last item, after "Evidence Issue" on the agenda, will be "Other Issues," and as other issues arise during the conference today, I will be adding those to the agenda, and we will be covering those at the end.

I am going to be trying to make an effort to speak up and speak clearly during today's conference. We do have a reporter here taking and transcribing today's conference, and so I will be making an effort to be speaking up and speaking clearly. I would ask all of you to do the same when we enter into discussions with each other.

By way of general introduction, the Bureau of General Services filed an application to amend the license

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INDEX OF APPEARANCES

For the State of Maine:

Department of Environmental Protection:
Heather Parent, Policy Director
Cyndi Darling, Environmental Specialist
Michael Parker, Project Manager
Melanie Loyzim, Director
Bureau of Remediation and Waste Management
Paula Clark, Director
Division of Solid Waste Management
Nancy Macirowski, AAG, DEP Legal Counsel

Co-applicants and Intervenor:

For Co-Applicant, NEWSME Landfill Operations:
Don Meagher, Manager of Planning & Development
Brian Oliver and Michael Booth, Casella
Tom Doyle, Esq., and
Brian Rayback, Esq.
PIERCE ATWOOD, LLP

For Co-Applicant, Bureau of General Services:

William Laubenstein, AAG
For City of Biddeford: Keith Jacques, Esq.
For City of Saco: Will Kany
For ecomaine and MMWAC:

Mark Bower, Esq., and
Nicholas S. Nadzo, Esq.
JENSEN, BAIRD, GARDNER & HENRY

For MRC:

Greg Louder
Daniel Walker, Esq., and
Nancy McBradey, Esq.
PRETI FLAHERTY

For PERC:

Michael Mahoney, Esq.
FEDERLE MAHONEY

For Old Town Fuel & Fiber:
Joanna B. Tourangeau, Esq.
DRUMMOND WOODSUM

For City of Old Town:
James N. Katsiaficas, Esq.
PERKINS THOMPSON

Individual Intervenor:

Ralph Coffman
David Lincoln
Wanda Lincoln
Laura Sanborn
Ed Spencer

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with respect to the Juniper Ridge Landfill, to allow for the acceptance of unprocessed municipal solid waste. The Department accepted the application as complete for processing on October 3, 2012.

The commissioner, Patricia Aho, made the determination to hold a public hearing on this matter, and I have been designated by the commissioner as the hearing officer.

The purpose of the hearing is to develop a factual record for decision making in this matter. I also note that, in December, the applicant filed a revised application. All of these pertinent documents are on the department's website under the title, Juniper Ridge Landfill.

On November 15, 2012, I issued a notice explaining the procedure for petitioning for leave to intervene in this matter. The Department received 13 petitions. The applicant was provided an opportunity to object and did object to four of those petitions.

On January 15, 2013, I issued the first procedural order in this matter. In that order, I issued rulings on petitions for leave to intervene, and I also scheduled this prehearing conference.

I note that the hearing will be governed by the Maine Administrative Procedures Act, also known as the APA,

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1 Chapter 2 and Chapter 20 of DEP's rules. I, as the hearing
2 officer, may permit deviation from Chapter 20 when
3 compliance of it is found to be impractical or unnecessary.

4 The Maine APA is in Title 5, Sections 9051 to
5 9064, governing adjudicatory hearings. Title 5 may be
6 found on the state website under Legislature, then
7 Statutes. The Department rules may be found on the
8 Secretary of State's website.

9 The parties should have also received a letter on
10 January 15 which set forth an agenda for this conference.
11 As I already noted, we have an agenda that we handed out
12 today that sets forth the order in which we will be
13 proceeding. That agenda includes procedures for -- the
14 agenda that you received includes procedures for conduct of
15 the hearing and the review criteria which we will be
16 discussing today.

17 The purpose of this conference is to review the
18 responsibilities of the applicant and the intervenors and
19 the relevant review criteria and to discuss the issues to
20 be addressed at the hearing.

21 As an initial matter, I'm going to introduced the
22 people sitting up here at the table with me and then go
23 around the table hear and introduce each person. If you
24 are here as an interested person, and not as an applicant
25 or an intervenor, there is no need for you to identify

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1 yourself at this juncture. There are seats in the back for
2 those interested persons.

3 So, as an initial matter, we'll start with Mike
4 Parker and introduce ourselves at this table.

5 MR. PARKER: I'm Mike Parker. I am the DEP
6 project manager for this application.

7 MS. DARLING: I'm Cyndi Darling with the
8 Department of Environmental Protection Solid Waste program.

9 MS. MACIROWSKI: I'm Nancy Macirowski, from the
10 office of Attorney General.

11 MS. CLARK: I'm Paula Clark, I'm the director of
12 the Division of Solid Waste Management at DEP.

13 MS. LOYZIM: I'm Melanie Loyzim. I'm the director
14 of the Bureau of Remediation and Waste Management at DEP.

15 MR. DOYLE: I'm Tom Doyle. I'm with Pierce
16 Atwood. I'm here on behalf of the co-applicant, NEWSME
17 Landfill Operations, LLC, which is the operator of the
18 Juniper Ridge Landfill. The owner of it is the Bureau of
19 General Services. Bill Laubenstein is here, I believe, on
20 their behalf.

21 MR. OLIVER: I'm Brian Oliver with Casella.

22 MR. RAYBACK: I'm Brian Rayback. I'm with Pierce
23 Atwood, also here on behalf of NEWSME.

24 MR. MEAGHER: Donald Meagher with Casella.

25 MR. BOOTH: Michael Booth with Sevee & Maher

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1 Engineers, on behalf of Casella.

2 MR. JACQUES: I'm Keith Jacques with Woodman
3 Edmands. I'm the city attorney for the City of Biddeford.
4 MR. KANY: I'm Will Kany. I'm here representing
5 the City of Saco.

6 MR. BOWER: Mark Bower, here on behalf of
7 intervenors, EcoMaine and MMWAC.

8 MR. NADZO: Nick Nadzo of Jensen Baird, with Mark,
9 on behalf of EcoMaine and MMWAC.

10 MR. LAUBENSTEIN: William Laubenstein, Assistant
11 Attorney General, here on behalf of the Bureau of General
12 Services.

13 MR. SPENCER: I'm Ed Spencer. I'm an intervenor
14 from Old Town.

15 MS. LINCOLN: Wanda Lincoln, intervenor from Old
16 Town.

17 MS. SANBORN: Laura Sanborn, intervenor from
18 Alton.

19 MR. LINCOLN: David Lincoln, intervenor from Old
20 Town.

21 MR. KATSIAFICAS: Jim Katsiaficas, Perkins
22 Thompson, intervenor, City of Old Town.

23 MR. TOURANGEAU: I'm Joanna Tourangeau from
24 Drummond and Woodsum on behalf of intervenor, Old Town Fuel
25 and Fiber.

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1 MR. MAHONEY: I'm Mike Mahoney, Federle Mahoney,
2 here on behalf of PERC.

3 MS. McBRADEY: Nancy McBradey, I'm an attorney
4 with Preti Flaherty, here on behalf of MRC.

5 MR. LOUNDER: Greg Lounder, with MRC.

6 MR. WALKER: Dan Walker. I'm an attorney at Preti
7 Flaherty as well, on behalf of MRC.

8 MS. PARENT: Thank you. If this was any
9 indication, I'm going to ask several of you to use your
10 strongest voices and speak up during the proceedings today.
11 Thank you.

12 Moving on to the Item No. II, which is the Hearing
13 Officer's General Expectations of the Parties.

14 The applicant has the burden of proof in this
15 matter. The applicant's burden is set forth in Chapter 2,
16 Section 11.F. of the Department's rules. I'll read that
17 expectation for you: "The expectation is an applicant for
18 a license has the burden of proof to affirmatively
19 demonstrate to the Department that each of the licensing
20 criteria in statute or rule have been met. Unless
21 otherwise provided by law, all applications including
22 renewal, amendment, and transfer applications, are subject
23 to the substantive laws and rules in effect on the date of
24 the application is accepted as complete for processing.
25 For those matters that are not disputed, the applicant

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1 shall present sufficient evidence that the licensing
2 criteria are satisfied. For those matters relating to a
3 licensing criteria that are disputed by evidence the
4 Department determines as credible, the applicant has the
5 burden of proving by a preponderance of the evidence that
6 the licensing criteria are satisfied. The applicant has a
7 right to present witnesses in support of his application
8 and to cross-examine the witnesses of the other parties."

9 As we will discuss shortly, the applicant in all
10 parties will be required to file its testimony in writing
11 in advance of the hearing. The applicant's witnesses, like
12 all witnesses, will be subject to cross-examination by the
13 parties at the hearing.

14 The interveners have the right to present evidence
15 at the hearing regarding the licensing criteria which are
16 relevant to the amendment application.

17 This is not a public forum for anything and
18 everything related to the landfill. It's for the licensing
19 criteria, and it's limited to those licensing criteria
20 which are relevant to the amendment application.

21 The evidence by the intervenors may be in the form
22 of witnesses who will be subject to cross-examination and
23 documentary evidence. The intervenors will be required to
24 submit prefiled testimony of any witnesses. An intervenor
25 may choose not the present witnesses, but simply to

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1 cross-examine the witnesses of the applicant and the other
2 parties.

3 Members of the general public may attend the
4 hearing.

5 We will discuss the schedule later, but the plan
6 is to hold the evidentiary hearing during the business
7 hours and to reserve an evening session to receive
8 testimony from the general public. Public testimony will
9 be sworn, but will not be required to be prefiled. The
10 department is already accepting written public comment and
11 will continue to accept written public comment until a date
12 that we will discuss later and will be in a procedural
13 order that I will issue following this prehearing
14 conference.

15 If a party that has been granted intervenor status
16 decides that he or she or it does not want to participate
17 in the intervenor level, I would ask that you write a
18 letter or an e-mail to the DEP contact person, who is Mike
19 Parker at the end of the table, and you may then simply
20 participate in the interested persons level.

21 So, throughout the course of today's prehearing
22 conference, if there is a person who has petitioned to be
23 an intervenor and if you choose after today's conference to
24 instead participate as an interested person, if you
25 would -- I would ask that you send an e-mail or a letter to

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1 Mike Parker to that effect.

2 Interested persons are members of the public who
3 have been asked to be placed on a list to receive
4 information regarding the hearing including procedural
5 orders and notices. These documents will also be placed on
6 the Department website under the Juniper Ridge Landfill.

7 The role of the DEP staff is to gather facts on
8 behalf of the Commissioner including the ability to ask
9 questions of witnesses at the hearing. After the hearing
10 is concluded, DEP staff has all the information it needs --
11 once the DEP staff has all the information it needs, the
12 staff will analyze the record. And ultimately, the
13 Commissioner will make the determination on the license
14 application.

15 I wanted to welcome the individual who has joined
16 us in the process. We have gone around the room and
17 introduced ourselves, sir. If you can introduce yourself
18 for the room and the person who is transcribing today.

19 MR. COFFMAN: My name is Ralph Coffman. I'm an
20 intervenor from Old Town.

21 MS. PARENT: Welcome.

22 As the hearing officer, I will rule upon issues of
23 evidence, regulate the course of the hearing, rule upon
24 issues of procedure, including establishing time deadlines,
25 administering the oaths, and taking other such action that

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1 is necessary for the efficient and orderly conduct of the
2 hearing consistent with applicable regulations and
3 statutes.

4 You should not communicate with me or seek to
5 communicate with me regarding the substantive or procedural
6 issues regarding the hearing. Any of those inquiries
7 should be made to DEP staff as is done during the general
8 course of any licensing proceedings. And again, if you
9 would seek to communicate with DEP staff, I would encourage
10 you to speak with Mike Parker.

11 I must emphasize that all the parties, including
12 the intervenors, are expected to comply with the deadlines
13 and filing requirements established by the hearing officer.
14 Failure to comply may result in appropriate sanctions,
15 including rejection of the argument, evidence, or testimony
16 that the party offers seeks to offer.

17 All participants at the hearings are expected to
18 conduct themselves professionally both in their dealings
19 with the department and each other throughout the
20 proceedings. If a party is unable to conduct themselves
21 professionally, I reserve the right to take any appropriate
22 action, including excluding that individual from further
23 participation in these proceedings.

24 I'd like to pause here and ask if there are any
25 questions or concerns or comments on the subject matter

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1 that I just discussed? We will be going into more detail
2 with respect to the filing requirements and other matters
3 further, but I wanted to pause here and see if there were
4 any questions or concerns.

5 Yes, sir.

6 MR. COFFMAN: Yes. I'd like to know why the
7 Department of Environmental Protection has ordered police
8 security here today specifically for me.

9 MS. PARENT: We have asked Capital Security to be
10 here at this hearing as we do from time to time, sir.

11 MR. COFFMAN: I understand.

12 MS. PARENT: That's all I'm going to say on the
13 matter. And as I just read in my statements, if there
14 are -- if you don't conduct yourself professionally, I will
15 be asking you to leave, so --

16 MR. COFFMAN: I don't think that's very
17 professional of the Department of Environmental Protection,
18 and specifically Patricia Aho to call Security because I'm
19 going to be here, when I've asked her to recuse herself for
20 having a conflict of interest.

21 MS. PARENT: So noted. And as I said, security is
22 here as they occasionally are for various proceedings.
23 This issue is closed, and we're going to be moving on at
24 this time.

25 MR. COFFMAN: Thank you.

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1 the Attorney General's office.

2 Second, with respect to the prefiled testimony and
3 exhibits, in addition to the standard electronic filing,
4 parties must provide a paper copy of all testimony to each
5 party on the service list and must submit three additional
6 paper copies to the Department.

7 The currently effective service list will be
8 maintained on the Department website, and it is the
9 responsibility of each party to be sure its filings are
10 copied to all of the names on that list. The service list
11 will contain contacts, not only for the applicant,
12 intervenors, and interested persons, but also for
13 Department staff, consultants, and counsel, as well as for
14 other governmental review agencies. And from time to time,
15 when that service list needs to be updated, in addition to
16 keeping the most current copy on the website, as I believe
17 many of you have already experienced, we will send out or
18 Mike will send out revised copies of the service list.

19 MR. DOYLE: Heather?

20 MS. PARENT: Yes.

21 MR. DOYLE: I have a question, really by way of
22 clarification. In that paragraph, the second -- item
23 second, which says, "With respect to prefiled testimony and
24 exhibits, in addition to the standard electronic filing,
25 parties must provide a paper copy of all testimony to each

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1 MS. PARENT: Are there any other issues or
2 concerns?

3 (No response)

4 MS. PARENT: Hearing none, moving on to Item III
5 of the agenda, Filing Requirements. I am going to be
6 reading through a number of items that were provided to you
7 in the Procedures for Conduct of Hearing, partially to
8 ensure that all of you are familiar with them and partially
9 to allow you to raise questions and issues with respect to
10 them. But don't be concerned with writing every single
11 thing down because, again, we have provided the detail of
12 this to you in the Procedures for Conduct of Hearing.

13 And I'm already losing my volume, so I'll try to
14 keep it up.

15 Filing Requirements: Unless otherwise required,
16 all filings with the Department related to this proceeding
17 must be made electronically in Adobe PDF format by e-mail
18 to Mike Parker, at Michael.T.Parker@Maine.gov, and must be
19 electronically served on all parties on the service list at
20 the same time they are filed with the Department.

21 There are several important exceptions to note
22 here. First, on the same day an electronic copy is served
23 by e-mail on the Department, the serving parties must also
24 mail by first-class postage a paper copy to the Department,
25 a paper copy to counsel for Casella, and a paper copy to

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1 party on the public service list, and must submit three
2 additional paper copies to the Department," there is the
3 service list of intervenor parties, and I see no problem
4 providing the paper copies to them, but do the interested
5 persons, in addition to getting a electronic copy, also
6 need to receive a paper copy, a hard copy? I'm thinking
7 about waste management here.

8 MS. PARENT: You do not need to provide paper
9 copies to the interested persons list.

10 MR. DOYLE: Okay. So just the intervenor list.

11 MS. PARENT: That's correct.

12 Moving on. All parties must prefile the testimony
13 they wish to submit on behalf of any witness in writing by
14 the established deadline. This testimony must be sworn.
15 If the witness wishes to be considered an expert, his or
16 her credentials must be set forth in the prefiled
17 testimony. No person will be allowed to testify at the
18 hearing for a party unless they have submitted prefiled
19 direct or rebuttal testimony, and no testimony will be
20 allowed into the record if the witness is not present at
21 the hearings at the designated time for questioning by the
22 Department, the staff, and the parties.

23 Prefiled rebuttal testimony will be allowed only
24 in response to the prefiled direct testimony of the other
25 witnesses, and parties are cautioned against attempting to

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1 introduce new evidence through rebuttal testimony that is
2 not, in fact, responsive to the direct testimony of another
3 witness. So, rebuttal testimony is only in response to the
4 direct testimony of the other witnesses.

5 All rebuttal testimony must identify the specific
6 direct testimony to which it is submitted in response. If
7 a party wishes to refer to documents already contained in
8 the administrative record within prefiled testimony, the
9 parties should attach a copy of that document to the
10 testimony.

11 The requirements of prefiled testimony is an
12 important part of the hearing process as it allows the
13 Department, the staff, and other parties to review the
14 testimony in advance, and come to the hearing prepared to
15 conduct efficient and focused cross-examination. I expect
16 scrupulous compliance with the prefiling testimony
17 requirements.

18 MR. DOYLE: Heather, just again by way of
19 clarification, I assume, although it's not clear or
20 implicit here, I assume it's implicit that a rebuttal
21 witness could be different than a witness in chief on
22 direct testimony. If you wanted to rebut something made by
23 another party, you could use a witness different than an
24 original witness.

25 MS. PARENT: Generally speaking, you are correct.

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1 weren't introduced in prefiled testimony, I will be very
2 carefully considering them and whether or not they're --
3 the need for it outweighs the prejudice to the other
4 parties of not seeing the exhibit prior to the day of the
5 hearing.

6 The use of exhibits that were not prefiled and are
7 not in the administrative record to impeach witnesses at
8 hearing may be approved by me on a case-by-case basis if I
9 am satisfied that the use of the exhibit as proposed will
10 assist the Department in its decision making. So there
11 will be times when an exhibit will make sense to be
12 introduced to impeach a witness where there is no
13 reasonable anticipation that you needed the exhibit based
14 on the prefiled testimony, and I will make those rulings on
15 the day of the hearing.

16 Reduced versions of over-size exhibits may be
17 prefiled with the full-size exhibit presented at the
18 hearing. It is the responsibility of each party to label
19 their exhibits in a manner that allows them to be easily
20 identified and referenced.

21 With respect to the prefiling of testimony, the
22 introduction of exhibits, are there any questions or
23 comments or concerns at this time?

24 (No response)

25 MS. PARENT: Hearing none, we will be moving on to

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1 Obviously, if --

2 MR. DOYLE: Subject to these rules.

3 MS. PARENT: Subject to these rules and subject
4 to, you know, common sense and fairness. If you are
5 seeking to rebut information with a witness who has
6 particular expertise in that, that's not your direct
7 witness, that makes perfect sense.

8 MR. DOYLE: Okay.

9 MS. PARENT: And that would be allowed.

10 Speaking about exhibits for a moment. Generally,
11 any exhibit that a party wishes to introduce into the
12 administrative record must be attached to the prefiled
13 testimony. I retain the discretion to allow the
14 introduction of an exhibit at hearing that was not prefiled
15 based on a showing of good cause. However, such requests
16 will be looked upon with extreme disfavor, and the
17 requesting party will bear the heavy burden of
18 demonstrating why it was not feasible to prefile the
19 exhibit and the need to introduce the exhibit outweighs the
20 prejudice to the other parties.

21 In order to ensure that the proceedings are fair
22 and efficient, we expect that all the exhibits should be
23 prefiled ahead of time so that everybody is prepared at the
24 time of the hearing to conduct the hearing. Therefore, any
25 exhibits that are introduced at the hearing itself that

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1 the Criteria and Legal Framework.

2 With my cover letter of January 15, 2013, I have
3 provided each of you with a document called Relevant Legal
4 Criteria. That document sets forth the applicable sections
5 of the state law and the Department regulations that set
6 forth the criteria for the matters that are likely to be at
7 issue in this proceeding. These legal criteria should
8 provide the context for our next topic, which are the
9 issues that each party intends to bring forth in the course
10 of the hearing.

11 And I wanted to pause here to see if there are any
12 questions with respect to the relevant legal criteria that
13 we provided to you on January 15th.

14 MR. DOYLE: (Gesturing)

15 MS. PARENT: Yes, Tom.

16 MR. DOYLE: Your referring to this two-page
17 document that has six Roman numerals, Relevant Review
18 Criteria?

19 MS. PARENT: I believe so. Yes. The one
20 entitled, Relevant Review Criteria.

21 MR. DOYLE: I'm looking at Roman numeral II,
22 1304.B. That's a section that deals with the establishment
23 of refuse disposal districts and the like, and I was
24 wondering about the relevancy of that section to the
25 proceedings.

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1 When you say relevant review criteria, are you
2 saying these are the standards that are going to be used to
3 determine whether NEWSME and BGS's application should be
4 approved? Because I don't see anything in 1304.B. that
5 provides any guidance in that regard.

6 MS. PARENT: 1304.B., like a number of the items
7 on this, are provisions that the Department may consider in
8 application reviews. And so, it is something that -- it is
9 something that the Department may consider in its review,
10 and in particular, 1304.B., I believe, if I'm not mistaken,
11 and I'm looking to --

12 MS. MACIROWSKI: It's flow control.

13 MS. PARENT: -- looking to Nancy, is actually
14 relevant to the flow control that the applicant's
15 application ties the need for an amendment to. So, it
16 could very well be relevant review criteria.

17 MR. DOYLE: Yeah, I guess, I'm not understanding.
18 Because 1304.B. talks about a municipality's right to
19 control waste within its borders, but not the state's right
20 to control waste.

21 MS. MACIROWSKI: I think, in terms of the way that
22 I think, Tom, you're saying, you know, is this a criteria
23 that the applicant needs to meet? No. It's part of the
24 overall legal framework as part of the background of it.

25 MR. DOYLE: Okay. That's all.

21

1 when you read what the Waste Hierarchy section says,
2 that -- I'm not sure I can find it here.

3 MS. MACIROWSKI: The section is -- what it states
4 is, "it's the policy of the state to use the order of
5 priority in this subsection as a guiding principle in
6 making decisions related to solid waste hierarchy."

7 MS. PARENT: So, in that instance, again, it's not
8 a standard that you check off, but the Department has a
9 right and an obligation to consider the waste hierarchy in
10 its decision making. And much like, you know, other review
11 criteria, it might not be a standard that you have to check
12 off the box, but it is something that the Department can
13 consider in its decision making on any application or any
14 matter in front of the board -- in front of the Department.

15 MR. DOYLE: Okay. Well, I hear what you say. To
16 the extent it is a up-or-down review criteria, we would
17 object to the use of that for the record --

18 MS. PARENT: Noted.

19 MR. DOYLE: -- because we think it raises all
20 sorts of constitutional issues, like due process and
21 vagueness and impermissible delegation. But beyond that,
22 I'll just note that for the record.

23 MS. PARENT: I believe we have noted that. Thank
24 you.

25 MR. DOYLE: Okay.

23

1 And then I had a question about Roman numeral III,
2 waste management hierarchy?

3 MS. PARENT: Yes.

4 MR. DOYLE: NEWSME and BGS are supportive of the
5 waste management hierarchy, but I've always thought of it
6 and it has always, in my view, been interpreted by the
7 Department to be sort of the policy or guidance of the
8 state, but the review criteria for how the state has
9 fleshed it out, are in 1310.N. and all of these
10 implementing regulations. So, I'm curious as to how you
11 intend to use that here. And I'm really, in terms of my
12 view of how the Department and the board have looked at
13 this in the past, I'm looking back to the PERC MSW bypass
14 appeal in 2011, where the board -- where the argument was
15 that the minor revision license violated the state waste
16 management hierarchy, and the board said, "The hierarchy is
17 a policy that guides decisions on waste management program
18 planning and implementation. The hierarchy is not a
19 regulatory standard that is applied to individual waste
20 facility licensing decisions of a technical nature." And
21 then it went on to say that, "neither the Department nor
22 the board have the authority to require a facility to
23 contract with one disposal facility over another."

24 MS. PARENT: I spoke with the Attorney General's
25 Office on this particular issue, and it is our view that,

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1 MS. PARENT: Are there other questions? Yes.

2 MR. BOWER: I would like to weigh in on that
3 issue, on behalf of EcoMaine and MMWAC.

4 Again I'm Mike Bower. On behalf of MMWAC and
5 EcoMaine, we feel strongly that the hearing officer
6 appropriately included the hierarchy in the review criteria
7 for two main reasons.

8 First, the applicant throughout its application
9 makes reference to waste hierarchy in arguments that the
10 application is consistent with waste hierarchy. Therefore,
11 we feel that it's appropriate for other intervenors and
12 parties to parties to respond to those arguments, as to
13 whether the application is truly consistent with the waste
14 hierarchy as they assert in their application.

15 Secondly, as Juniper Ridge Landfill is a
16 state-owned landfill, it's a state asset, and we feel its
17 appropriate in that circumstance to consider the solid
18 waste hierarchy if you're talking about state policy and
19 you're talking about a state-owned landfill, it's a state
20 asset. It seems entirely appropriate to consider the
21 provisions contained in .102.

22 That's our position; it was properly included in
23 the criteria.

24 MS. PARENT: Thank you.

25 MR. DOYLE: And I would just add that there's

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1 nothing in state law that, in this instance, treats a
2 state-owned landfill differently than any other landfill.

3 MS. PARENT: We've noted the applicant's objection
4 and the response of EcoMaine and MMWAC.

5 At this time, I am ruling that I have decided that
6 we are using the -- we can use the waste hierarchy as a
7 component of the review criteria.

8 Are there other questions or issues with respect
9 to the relevant legal criteria?

10 (No response)

11 MS. PARENT: Seeing none, we will move on now to
12 the Intervenor's Issues. And I wanted to get at this at
13 this question early in today's prehearing conference, I
14 wanted to know and ask each individual intervenor, and I'll
15 go around the table, what legal issues he or she or it
16 intend to bring forth during the course of the hearing.
17 I'll start with Dan. I'll start with you.

18 MR. WALKER: Okay. My name is Dan Walker. I'm
19 here representing MRC. We intend to bring forth,
20 basically, three issues with regard to this hearing
21 process.

22 The first one is we want to ensure that this
23 amended license is limited to what the application says, so
24 far is limited to in-state MSW displaced from the
25 communities formerly serviced by the Maine Energy facility.

25

1 That's number one, and so far, that's what the application
2 says.

3 Number two, we want to address as part of this
4 process, one of our main issues are potential concerns
5 regarding NEWSME's future expansion plans at JRL and
6 possible impacts to waste energy facilities staying at
7 capacity. To the extent that, through this process and
8 we've been working on this going forward, is that the waste
9 energy facilities continue to operate at capacity, we're
10 not opposed to the excess going to Juniper Ridge.

11 Number three, and we just, you know, we were going
12 to weigh in a second ago, but you made your ruling about
13 the solid waste hierarchy going forward, that the MRC
14 supports, and all the 180-plus MRC communities, support the
15 state of Maine solid waste hierarchy, not just -- and its
16 included not just in the provision you declared, but it's
17 also in the declaration of policy for the entire waste
18 management chapter. It's set forth there as being used for
19 a management tool.

20 So, we would support and we would, MRC going
21 forward would support use of the solid waste hierarchy, and
22 we wanted -- that will be part of this process. That's our
23 third issue. Okay.

24 MS. PARENT: Thank you.

25 And next intervenor.

26

1 MR. MAHONEY: Hello, again. I'm Mike Mahoney for
2 PERC. Our issue to be presented in the proceeding would
3 relate to the disposal agreement that has been executed by
4 PERC and Casella, and the benefits and also its positive
5 impact on the hierarchy, given your prior ruling.

6 MS. PARENT: Thank you.

7 MS. TOURANGEAU: Good morning. I'm Joanna
8 Tourangeau, for Old Town Fuel and Fiber. As we indicated
9 in our Petition to Intervene, the mill and the landfill
10 have a long-standing symbiotic relationship, and our
11 concern is participating in the process sufficiently to
12 ensure that relationship is not impacted by the amendment.

13 MS. PARENT: Thank you.

14 Jim.

15 MR. KATSIAFICAS: Jim Katsiaficas for the City of
16 Old Town. The City of Old Town does not oppose the
17 application, but it does have some concerns on behalf of
18 its constituents, and those concerns are what we've put
19 together in our notice or our petition for intervention.
20 Traffic, particularly the number of trucks and the number
21 of trips; potential for odor from the municipal solid
22 waste; potential for noise from the landfill operation;
23 vectors that might come up, birds and rodent populations,
24 as a result of the raw MSW; and lastly, the nature of the
25 MSW.

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1 We understand the revised application is for up to
2 93,000 tons per year of municipal solid waste. It may not
3 just be from that which had been displaced from MERC. It
4 may be similar solid waste, and we just want some
5 assurances that it's of a similar nature.

6 MS. PARENT: If we can move actually beyond the
7 applicant on this side. I don't know who the first
8 intervenor is here.

9 MR. JACQUES: Keith Jacques for the City of
10 Biddeford. It's Biddeford's primary purpose to ensure that
11 the state-owned facility is available for Biddeford and the
12 13th former communities that were served by MERC, and
13 Biddeford and those municipalities will be able to deliver
14 its waste to the landfill, and also that the application
15 continues to include efforts to push back out-of-state
16 waste back out of state and encourage robust recycling
17 programs.

18 MR. KANY: Will Kany, the City of Saco, and a lot
19 of Saco -- we'd echo a lot of things Mr. Jacques presented
20 as far as the community continued being able to be served
21 by the facility, as well to bring up the issues provided
22 the economic development that we see being spurred by this
23 whole, so --

24 MR. BOWER: Again, Mark Bower for EcoMaine and
25 MMWAC. As mentioned previously, I think the primary legal

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1 issue for us is the solid waste hierarchy, and ensuring
2 that — the purpose for intervention in this matter is
3 ensuring that any amendment to the solid waste disposal
4 license for Juniper Ridge is reflective of the state solid
5 waste hierarchy.

6 MS. PARENT: Did I miss any nonindividual
7 intervenors? I want to allow them to hear all the issues
8 first.

9 EcoMaine and MMWAC, you have -- is there anybody
10 from EcoMaine and MMWAC in addition to?

11 MR. NADZO: I'm here with Mark, but they are they
12 are two different parties. I suspect the issue of
13 consolidation might come up, but we have talked with both,
14 and we'll get to that later, but we would prefer not to be
15 consolidated. But Mark actually spoke — both parties,
16 with regard to that particular subject on your agenda, is
17 identical.

18 MS. PARENT: So you don't have any additional --

19 MR. NADZO: That's correct.

20 MS. PARENT: Okay. Starting on this end, sir.

21 MR. LINCOLN: My name is David Lincoln, and I'm
22 from Old Town. I'm a resident near the landfill. And I've
23 got a concern about the obstruction from my house. I can
24 see the landfill now. On this amendment, it sounds like
25 it's going to grow higher and higher. So I'm concerned

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1 issued regarding another property.

2 MS. PARENT: Thank you, ma'am.

3 MS. LINCOLN: I'm Wanda Lincoln, the other half of
4 David Lincoln, and he mentioned the obstruction, noise.
5 And I'm not sure, did you mention the odor, when we're out
6 on our deck? So those are all issues that we're concerned
7 about.

8 Yes, sir.

9 MR. SPENCER: Ed Spencer, I guess my legal issues,
10 I'm sympathetic to the Lincolns and Laura's, and I think
11 what Mr. Bower says very well as far as the waste
12 hierarchy. So I guess my primarily legal — myself is, I
13 think the waste hierarchy is good policy, should be
14 enforced. It was part of the RFP that Casella bid on
15 before they became operator. And it's very clear in that
16 that the operator shall follow the waste hierarchy, laid it
17 right out, and I think it should be enforced.

18 MS. PARENT: Thank you.

19 Sir.

20 MR. COFFMAN: My name is Ralph Coffman again, from
21 Old Town, and I had a business, a campground that was
22 affected by this toxic waste site. I happen to have
23 property at the mouth of Pushaw Stream and Birch Stream,
24 which is both sides of this dump.

25 I had -- the issues that I would like to see

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1 about my obstruction of view from the western horizon from
2 my house.

3 And also, the noise. I realize that, since the
4 interstate has allowed higher weight trucks being allowed
5 on the interstate, the trucks coming off the ramp, the
6 northbound ramp, which is only probably a couple hundred
7 yards from my house, the noise from the Jake breaks all
8 hours of the night are -- it's a noise pollution at this
9 point. And it -- you know, when you're waking at 2:00,
10 4:00 in the morning, it gets kind of concerning in that
11 situation.

12 So, those are my two biggest concerns.

13 MS. PARENT: I'll encourage all of you to speak
14 up. Thank you.

15 MS. SANBORN: Laura Sanborn from Alton. I'm in
16 the area of the entrance to the landfill. My husband,
17 Harry, can't be here today. He's in New York. But our
18 issues are the health issues of the unprocessed MSW; the
19 traffic. You know, we intend to look at the environmental
20 issues with -- you know, I know it says no extra truck
21 traffic, but we have a concern there.

22 One of my biggest concerns is basing a license for
23 a state-owned landfill on another facility. You know, MERC
24 and PERC and, you know, the Juniper Ridge -- I just don't
25 see where one property should be -- one license should be

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1 addressed and find out the legality of them is, the amount
2 of out-of-state toxic waste, trash, whatever you want to
3 call it, that's coming in. We figure that its -- the pile
4 that we have in Old Town is 63 percent of that is coming
5 from out of state. We don't feel that this is in -- I feel
6 this is in noncompliance with the Maine waste hierarchy
7 directive and should be looked at.

8 The issue of locating it in a wetland to begin
9 with. I happen to have been a representative, a state
10 representative for the area, when I was taken to the
11 property and shown test wells that were under water. That
12 Junipers don't even grow on ridges. They grow in swamps.
13 It's a wetland there. And there's quite a bit of run off
14 that's coming off that is being treated in the Old Town
15 water treatment plant. Is there any -- any concern that
16 this is affecting the water supply of Old Town?

17 In addition, the location of this toxic waste site
18 is right above the Old Town water district's wells that
19 supply water to Old Town, Orono, University of Maine, the
20 Penobscot Nation. What happens when there's a leak? You
21 know, I've heard from engineers that showed me that, like,
22 two test wells located a couple feet apart, you could have
23 a fracture in the liner and that stream of toxic waste can
24 go in between a two-foot section and never get picked up by
25 the test wells. Plastic is going to deteriorate

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1 underground, especially with the amount of weight that's on
2 there and the amount of weight that's proposed to put in
3 addition on top.

4 I'd like to address the issue of the transport.
5 Are we subsidizing the out-of-state transport of this toxic
6 waste into here by allowing them a lower charge per mile?

7 How about the safety issue? When we come down to
8 hearings here in Augusta on this issue, and we follow
9 trucks that are seeping their liquid left-overs out onto
10 the road that everybody is driving on, that they're
11 inhaling all this stuff going up and down the interstate,
12 just the interstate alone, I think that transport is
13 improper and hasn't been inspected and looked at and
14 thought about.

15 How about, is there any monetary -- state monetary
16 reserves for when Casella leaves and we're faced with this
17 mountain? That's going to cost somebody to treat it, to
18 guard it, to maybe move it eventually.

19 That's the issues that I'd like to see answered.

20 MS. PARENT: I was wondering, sir, if these are
21 issues related to the amendment application or just the
22 landfill in general?

23 MR. COFFMAN: They're related to what's going on
24 here with this hearing --

25 MS. PARENT: With respect to --

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1 MR. SPENCER: But I think that does need to be
2 spoken to. Shall I bring it now as a legal issue?

3 MS. PARENT: I was just trying to make sure that I
4 understood the full breadth of the legal issues.

5 MR. SPENCER: Right. So, basically, Casella is
6 saying by, exercising this plan with the waste, that this
7 is actually going to be better for the environment than
8 following the -- than if the state follows the waste
9 hierarchy and excludes MSW from the landfill.

10 I think that can be proven to be a false
11 statement. As far as the legal matters involved with that,
12 I'm not sure just how that would fit in.

13 MS. PARENT: That's a subject matter that you
14 would include in there.

15 MR. SPENCER: Absolutely. I think that's
16 critical.

17 MS. PARENT: Are there other issues that you had,
18 that any of you had either raised in your petition or would
19 like to raise now with respect to the legal criteria that
20 you will be writing forth today -- bringing forth at the
21 hearing?

22 MR. SPENCER: Could I say one more thing quickly?
23 I think what Mr. Coffman brought up reminded me that one of
24 the issues here is MSW is quite a bit different than the
25 primarily construction debris that's going in there. So I

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1 MR. COFFMAN: -- and the expansion.

2 MS. PARENT: -- the landfill -- the amendment
3 application that's in front of us today.

4 MR. COFFMAN: We're talking about Juniper Ridge,
5 right?

6 MS. PARENT: Well, we're talking about the
7 amendment application with respect to Juniper Ridge. I was
8 just trying to make sure that I understood that you're
9 speaking with respect to the amendment application and not
10 the landfill in general.

11 MR. COFFMAN: Yup. They will be using the same
12 trucks to bring we don't even know what, but hopefully,
13 we'll find out during these hearings what they're going to
14 bring up; right? So those trucks will be used -- so those
15 trucks -- the issue of the trucks hauling would be relevant
16 to the new -- I think everything here would be relevant.

17 MS. PARENT: Thank you.

18 I noticed, Mr. Spencer, would you have -- you had
19 mentioned something in your filing to us about methane gas?

20 MR. SPENCER: Right.

21 MS. PARENT: Are you looking to include that as
22 one of your subject matters?

23 MR. SPENCER: Well, I was going to wait for that
24 under "proposed witnesses."

25 MS. PARENT: Okay.

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1 think you could have problems from a change in leachate
2 quality that could possibly affect the breakdown of the
3 facility, i.e., the liner. So, just --

4 MS. PARENT: Thank you. I violated my own
5 promise. I'm going to try to speak up a little more.

6 Now that we have identified the intervenors'
7 issues, which is very helpful in our next subject matter,
8 which is discussing consolidation.

9 MR. DOYLE: Before we go on to the intervenors'
10 issues, I mean it's nice that everyone wants to talk about
11 a number of issues, but I think we need to try to focus it
12 on what's relevant to this application. And if I can go
13 and comment on some of the issues that have been laid on
14 the table; I mean, I don't think they're all relevant to
15 this particular proceeding.

16 MS. PARENT: Please speak to the relevance.
17 Absolutely.

18 MR. DOYLE: Okay. With respect to MRC's issues,
19 the one that I was a little confused about was concern re
20 future expansion of Juniper Ridge and impact on other waste
21 management facilities. This application is only about an
22 amendment to the existing license for the existing landfill
23 to bring in addition municipal solid waste. There's
24 already municipal solid waste bypass going to the landfill.
25 This is just additional municipal solid waste from the

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1 Maine Energy communities and customers. So, the issue of
2 the expansion is that entirely separate issue and is one
3 that will be taken up in the future once such an
4 application would be pursued, but this is not about the
5 expansion. So I would like to separate in this hearing
6 process the existing landfill from the expansion.

7 MS. PARENT: I wanted to hear your objections to
8 each of the relevant criteria, to the extent that somebody
9 files some prefile testimony that goes beyond the
10 relevant -- relevance to the application in front of us,
11 I'll be ruling at that time, but --

12 MR. DOYLE: Okay.

13 MS. PARENT: -- I wanted to give you the
14 opportunity to, while it's fresh in everybody's mind, tell
15 us, you know, the relevance of what we've heard today. So,
16 I won't be making any determinations today on that, but I
17 would like to hear your objections.

18 MR. DOYLE: Mr. and Mrs. Lincoln, one of the
19 issues that they're concerned about is the visibility, as I
20 understand it, of the construction. The height of the
21 landfill and, you know, what is the planned height of the
22 landfill does not change from -- with this application.
23 The height of the landfill was determined back in 2004 when
24 the amendment application for the vertical increase was
25 approved by the Department. People had a chance to weigh

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1 Mr. Coffman's -- some of his issues.

2 The amount of out-of-state waste coming in. This
3 licensed landfill is not allowed to take out-of-state
4 waste. There's nothing in this application that would
5 allow it to take out-of-state waste. So, I don't see the
6 relevance of that issue.

7 Secondly, he has a number of topics that relate to
8 the original siting of the landfill. He said it's located
9 in a wetland to begin with. Well, it was approved to be
10 located in a wetland in 1993 when James River licensed the
11 landfill, and all that's happened since then is it's stayed
12 within the existing footprint, and there's nothing about
13 this application that proposes to fill any wetlands. So I
14 don't see the relevancy of wetland issues.

15 Similarly, he said the landfill is above the Old
16 Town waste water district's wells. What happens if there's
17 a leak? All of those issues were explored back in 1993
18 when failure analysis was done, and those issues were
19 resolved favorably for the applicant. They're in the
20 existing license. We're not changing anything here with
21 this amendment application to bring in additional municipal
22 solid waste with respect to anything relating to the siting
23 of the landfill.

24 And then the issue of the state monetary reserves
25 after Casella leaves. Casella is required under its

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1 in on that process. It was appealed. The appeal was
2 denied and that was the end of it. So the height of the
3 landfill is set in the existing landfill. We're not
4 changing that at all with this application. So, I don't
5 see that as a relevant issue.

6 MR. LINCOLN: If you live here, you would.

7 MR. DOYLE: Yeah, but nothing is going to change,
8 Mr. Lincoln, as a result of this application.

9 MR. LINCOLN: I understand, but if you lived where
10 I live, you would see it and be concerned.

11 MS. PARENT: And so that everybody is clear, I
12 just wanted to understand what the objections are. I'm
13 actually not going to make any -- not only am I not going
14 to make any decisions today with respect to the relevant
15 legal criteria or the objections, I'm also not treating
16 this as testimony or evidence. I'm trying to get an
17 understanding of what the issues are and are likely to be
18 when we see the prefiled testimony.

19 So my lack of response to the substance of your
20 comments should not be taken as either accepting them as
21 relevant legal criteria or accepting the objections. We
22 will have the opportunity to debate the substance of the
23 relevant legal criteria at the right time.

24 Thank you all.

25 MR. DOYLE: And then I had some objections to

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1 agreements with the state and under its license to provide
2 financial assurance in terms of a reserve account to
3 provide for closure and post-closure care. It is providing
4 that financial assurance. Nothing about this application
5 changes any of that, so I don't see that as a relevant
6 issue for this particular application either.

7 MS. PARENT: Are those the primary ones that you'd
8 like to identify today?

9 MR. DOYLE: Yes.

10 MS. PARENT: Thank you. We've noted those.
11 Yes, sir.

12 MR. NADZO: Nick Nadzo, on behalf of EcoMaine and
13 MMWAC, and perhaps this goes without saying, but I would
14 hope that, as we go forward and some other issues may
15 develop as a result of testimony or whatever, that we
16 are -- wouldn't be barred from addressing those issues. In
17 other words, I guess, if more formally, that we'd like to
18 reserve the opportunity to explore other issues as they may
19 develop through the process.

20 MS. PARENT: So noted, your reservation of what
21 you need to explore, more issues.

22 It was important for me to understand the relevant
23 issues on the table today because we will be talking, after
24 I just see if there are any more questions on this issue,
25 on consolidation, and the relevant legal criteria really

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1 helps me understand what the prefiled testimony is going to
2 be and what the hearing is likely to consist of, as well
3 as, you know, the appropriate consolidation of the various
4 parties who have similar interest in various legal
5 criteria.

6 So, to the extent there are other legal criteria
7 that you would provide in prefiled testimony, that would be
8 reviewed at the time it was submitted with prefiled
9 testimony, with the appropriate opportunities for rebuttals
10 and objections and other procedural opportunities at that
11 time.

12 Before moving on to Consolidation, are there any
13 other questions/issues/concerns with respect to the
14 relevant legal criteria?

15 Yes, sir.

16 MR. COFFMAN: I just had one more issue, as you
17 bring up --

18 MS. PARENT: Could you speak up, sir, please?

19 MR. COFFMAN: Pardon me?

20 MS. PARENT: Talk louder.

21 MR. COFFMAN: I just had one more issue that I'd
22 like to bring up, and that's the legality of Casella
23 Corporation's, for lack of a better word, slush fund, and
24 how it's administered in selectively selecting whose home
25 or business gets bought out, who gets their taxes paid, and

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1 MS. PARENT: Moving on to the Consolidation of
2 intervenors. As I had noted in the materials that I had
3 provided to you on January 15, I have proposed to
4 consolidate "Laurie" -- Laura and Harry Sanborn -- my
5 apologies -- Wanda and David Lincoln, Edward Spencer, and
6 Ralph Coffman as a single group.

7 I, also, propose consolidating the cities of
8 Biddeford and Saco as a single group.

9 As we will discuss further, I'm sure other
10 intervenors may wish to consider consolidation in order to
11 conserve their resources, and they should be prepared to
12 discuss any such request for consolidation.

13 A little bit about this before we engage in some
14 discussion. Pursuant to the Administrative Procedures Act,
15 Title 5 of our Maine statutes, Section 9054, subsection 4,
16 I may require consolidation of interested parties.

17 Preliminarily, it appears that the individuals who
18 have sought and have been granted intervenor status based
19 on their proximity to the landfill and who pay appear to be
20 opposed to the amendment application should be consolidated
21 as a single group. The discussion that we just had with
22 respect to the identification of issues today also seemed
23 to indicate an appropriate consolidation of that group.
24 Those individuals are, again, Laura and Harry Sanborn,
25 Wanda and David Lincoln, Edward Spencer, and Ralph Coffman.

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1 who gets water deliveries paid.

2 MS. PARENT: I've noted that as an additional
3 item.

4 I'm assuming, Mr. Doyle --

5 MR. DOYLE: Yeah. I mean --

6 MS. PARENT: -- you'd object to that? Okay.

7 MR. DOYLE: Pejorative term, "slush fund," I don't
8 even know what he's talking about. I mean, I don't see
9 whatever he just said as relevant to the MSW amendment
10 application that's before us.

11 MS. PARENT: Yes, Mr. Coffman?

12 MR. COFFMAN: I apologize. I'm not trying to run
13 this longer. That in addition to that, there's one more
14 item. I'm finding a problem with Casella dedicating or
15 doubling of their allotted money for, well, advertising,
16 PR, propaganda. They're hitting the air waves with all
17 this money, and they're -- they doubled their lobbyist
18 account. I think that's very improper.

19 MS. PARENT: I have noted that as another one of
20 your issues, Mr. Coffman. I would venture to say that,
21 based on what you've just said, that it's probably not
22 relevant to the amendment application that's in front of
23 us, but I've noted that as one of the items that you
24 believe is relevant legal criteria.

25 MR. COFFMAN: Thank you.

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1 I would ask if any of these individuals wish to be
2 heard on the proposed consolidation. And I will go to
3 Mr. Spencer.

4 MR. SPENCER: Yes. I object to being consolidated
5 for a number of reasons. For starters, when -- during the
6 predeadline for intervening, I did some research. I spoke
7 to Cyndi Darling. I e-mailed the Department. And what I
8 found is it is difficult, it's formal, the process, and so,
9 to kind of share the burden I thought, Okay, we'll form a
10 group and intervene as a group of citizens from that area.

11 So, I looked into that some more, and I e-mailed,
12 and I found out that a group is not a person unless we were
13 to form a corporation out of our group. And if we were to
14 form a group, if anyone in that group was found to not be
15 sufficiently aggrieved to meet the hurdle to being an
16 intervenor, then the entire group may be at risk.

17 Okay. When I go back and look at my letter, I
18 petitioned to intervene as a full party. I want the same
19 rights, the same time as all the other parties. I am a
20 member of the public, and I think it's a public hearing
21 we've been waiting for for nine years, and I think it's
22 just time.

23 Now practically speaking, yes, I know Laura and
24 Harry pretty well. The Lincolns I met on the way down. We
25 never even got to discussing this issue on the way down. I

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1 think it places an unreasonable burden for us to have to
2 choose a spokesperson.
3 What if, for example, I wanted to hire an attorney
4 to represent me? Does that attorney -- do I have to pay
5 the attorney to interact with the others? To, you know, to
6 form a single voice? And you know, like I said, we try to
7 form a group; it was too difficult. And now you want to
8 make us be a group, which I just thought that could
9 possibly impact us on the way down. If we were to get an
10 unfavorable outcome on this and wanted to appeal, would we
11 have to appeal as a group? Would we have to appeal as an
12 individual? So it raises all these issues and it just
13 makes it so much harder for us -- for me. I can speak only
14 for myself, but that's what I think. And if it's a matter
15 of time, I'm willing to share time and, possibly, we could
16 consolidate for purposes of paperwork, if we wanted to, you
17 know, because it's -- just the mailings could become a
18 burden. I think, you know, that would be possible, and for
19 communications.

20 But when it comes to -- you know, it sounds like
21 we have similar concerns, and we do. But you have to
22 understand, everyone's got a different background.
23 Everyone -- we all have different information. We're all
24 volunteers. No one's getting paid to this. We've got a
25 person who ran for office as an Independent, we've got

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1 attorney, and those issues.

2 MS. LINCOLN: And I'll speak, hopefully, for David
3 and myself, that we would prefer to be alone. When
4 Mr. Spencer talked about the group not being recognized as
5 a person and if one issue was not supported, does that mean
6 everything is thrown out? I would prefer to be able to
7 speak for ourselves.

8 MS. PARENT: Before we start engaging in
9 discussion about this, I wanted to ask -- I guess I'll
10 start with Mr. Spencer -- how your issues differ from the
11 other ones? Because that, when I was looking to
12 consolidate as I, you know, have a right to do, and with a
13 group as large as this, an obligation to at least consider,
14 I look to see where the issues were the same, because those
15 are the times when, if the issues are the same and the
16 interests are the same, it makes sense to consolidate
17 resources and time, so that we don't have a week-long
18 hearing, hearing the same information that the Department
19 will then take into consideration.

20 MR. SPENCER: Like I said, as far as the time,
21 we've got two full days. Okay. And I don't mind sharing
22 time if -- I can ask questions very quickly during
23 cross-examination.

24 MS. PARENT: What issues differ between you and
25 the others?

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1 someone who served as a Democratic, and we've got two
2 Republicans. So you know, it's -- we're from all over the
3 place. So, to make us become a suddenly homogeneous place
4 and where, you know -- when it comes cross-examination
5 time, if I, you know, or if we rotate being spokesperson,
6 an issue comes up, Laura remembers stuff that I forgot.
7 Okay? And it might be the same way the other way around.

8 So, I think we should all have a chance to speak
9 for ourselves. And if it means our time is limited,
10 although I think that would be unfair, then perhaps that
11 would be a way out for this. But like I said, I object to
12 being combined. Thank you.

13 MS. PARENT: Mr. Coffman.

14 MR. COFFMAN: I object, also. I'd like to use his
15 words. He did very well. And also ask, is there a public
16 intervenor expense account that we can get our gas and --
17 reimbursed?

18 MS. PARENT: Taking your second question first, I
19 am not aware of any public intervenor expense account for
20 matters like these.

21 Are there any more questions or comments before I
22 engage in some dialogue with you?

23 MS. SANBORN: Harry and I would prefer to stay
24 alone, and the issue of, you know, hiring an attorney or --
25 Spencers and Sanborns probably wouldn't hire the same

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1 MR. SPENCER: Okay. For example, from what I
2 heard, just heard now, Mr. Doyle objects to the MRC's
3 inclusion of some legal standards because he says the
4 expansion is irrelevant. Well, I would note that, just
5 thinking off the top of my head, that the expansion is
6 relevant because under the public benefit determination,
7 past -- this past year, in effect now, Condition No. 5
8 limits the amounts of MSW. Okay? So, I can't speak for
9 the MRC, although my town is a member, but perhaps they see
10 it as an issue of a timeliness of the expansion.

11 For example, right now, Casella, I believe, is
12 unable to go forward with expansion because they would have
13 to come back and amend their public benefits determination
14 before moving ahead. So that's just an example of how I
15 think differently than Laura Sanborn.

16 She thinks differently, too. You know, she's --
17 she's at the entrance to the landfill. Truck traffic's a
18 bigger issue there. I'm to the opposite side, so it's
19 more -- we have more long term, land value issues perhaps.
20 So, I just think this -- we have to incorporate to become a
21 person and then now, so we intervened as persons, and to be
22 forced into a group that is not incorporated, it just seems
23 like -- like, if you had said when I first wrote, when I
24 first asked, Sure, if you want to have a group with, you
25 know, Laura and Harry from Alton and members of the Old

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1 Town community, if you would have said that will pass the
2 aggrieved hurdle, we'll elect three spokespeople from us or
3 whatever, that could have happened, but we didn't have that
4 opportunity. It had to be incorporated, you know, then,
5 and it was just an unreasonable burden.

6 Just like it is -- just to choose a spokesperson,
7 like Harry said. I think he was kidding the other day, but
8 he said, how are Laura and I going to decide who gets to
9 speak? You know, so it is an issue. And I think it just
10 infringes on my rights as an individual or everybody
11 else's, too, to not be able to speak.

12 MS. MACIROWSKI: I want to address something about
13 the expansion. Okay? If -- and I think I know what you're
14 referring to -- there was a public benefit determination,
15 this application was then a material change to one of the
16 facts underlying the public benefit determination. If this
17 application -- and correct me if I'm wrong, Tom -- if this
18 application is in fact granted, the public benefit
19 determination would then be redone, so to speak.

20 MR. DOYLE: We'd have to file a modification plan.

21 MS. MACIROWSKI: You'd file a modification before
22 the expansion could happen. So, this application is
23 relevant to the expansion -- potentially, to the expansion
24 in the public benefit application. However, the inverse is
25 not true. The potential expansion and a potential future

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1 public benefit determination is not relevant to this
2 proceeding on this application. Do you follow me?

3 MR. SPENCER: Yeah. I guess I would say, and you
4 know, this is kind of out there in a way, because I'm
5 taking what MRC said, but I would think it could be an
6 issue with expansion because, just for the timing of it.
7 Okay. We're going to go through this process. We're going
8 to have a hearing set in early April, hopefully, right?
9 And then, after that, we'll see what happens. There's
10 likely to be an appeal either way it goes, I would think.
11 That could stretch on. I mean, look what happened when
12 public benefits determination was passed, actually, I think
13 a year ago tomorrow. And then it didn't go through the
14 appeals process, didn't get through that until sometime in
15 August. So, there is an additional time, that was my
16 point, as far as it affecting expansion. And some people
17 might say, you know, we're better off just excluding this
18 right now and getting on with the expansion because, like
19 with the MRC, they'd need a place to put their -- you know,
20 front-end process, their residuals, and so, just as an
21 argument for time's sake, I think it is an issue for the
22 expanding business, but I understand what you're saying,
23 Ms. Macirowski.

24 MS. MACIROWSKI: Yeah --

25 MR. SPENCER: I accept that.

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1 MS. MACIROWSKI: -- and I'm just trying to say
2 that to you because I think, when you're doing your
3 prefiled testimony, I think it's helpful if you keep that
4 in mind, so that you're focusing it on issues that --

5 MR. SPENCER: Right.

6 MS. MACIROWSKI: -- at least they're
7 aren't objections as to whether they're relevant.

8 MR. DOYLE: Could I speak to their -- the
9 consolidation issue for a second?

10 MS. PARENT: What I would like to do, if possible,
11 Mr. Doyle, is explain a little bit about what consolidation
12 does mean and does not mean, and then perhaps we can speak.

13 Consolidation does not mean that you become one
14 party, and that -- and what it does, it does still allow
15 each individual who has been consolidated, either
16 voluntarily or by me, the hearing officer, you each remain
17 individual parties with individual appeal rights with
18 individual -- the full rights of a party.

19 What it does mean is that you are required to
20 coordinate as much as possible the testimony and the
21 cross-examination efforts during the hearing process. We
22 would expect that those parties who have been coordinated,
23 coordinate the prefiled testimony, so that there is one set
24 of prefiled testimony. We would really expect that the
25 group would probably separate out the cross-examination and

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1 witness functions. So that, for example, if the group of
2 individuals was grouped the way I had proposed, say,
3 Mr. Spencer would have cross-examination, Mr. Spencer would
4 cross-examine on the methane-gas issue, Ms. Sanborn would
5 cross-examine on the traffic issue, and you know,
6 Mr. Lincoln would cross-examine on the odor issues, for
7 example. Where each one of you would take, you know, an
8 issue and be responsible for it at the hearing.

9 It allows you for the opportunity to collaborate
10 and coordinate in that way, and therefore, be more
11 effective and efficient with the information that needs to
12 come to the Department for our consideration.

13 But if, at the end of the day, you have differing
14 opinions or issues or approaches with respect to a
15 particular issue, there are two ways that you could address
16 that.

17 The first one is that you will also have the
18 opportunity, and I would be granting that opportunity, to
19 speak during the public comments session in addition to
20 providing witness testimony and to providing
21 cross-examination opportunities. So, therefore, again,
22 Mr. Spencer, if you differed with the rest of your group on
23 a particular issue -- traffic, say -- during the public
24 comment period, which is also sworn, you would have the
25 opportunity to speak to that issue without otherwise

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1 jeopardizing the group.

2 The other approach that could be made, if in the
3 process of developing your prefiled testimony, it becomes
4 very clear that the group agrees on all issues, but one,
5 for example, you could petition me as hearing officer to
6 allow for individual testimony on a particular issue that
7 the group simply does not agree upon.

8 The idea here is to not hear the same evidence
9 seven, eight and nine times --

10 MR. SPENCER: Sure.

11 MS. PARENT: -- from seven, eight, or nine
12 different parties --

13 MR. SPENCER: Sure.

14 MS. PARENT: -- when it will be the same evidence
15 or information from the people with the same interests, but
16 still preserving your opportunity to raise those issues
17 where you do have a difference of opinion.

18 My hope is that explaining that to you will
19 provide you some understanding of what consolidation does
20 and doesn't mean.

21 MR. SPENCER: Not to take up too much of people's
22 time, but I'm certain that some of our testimony is going
23 to be common and shared, just speaking about, you know,
24 with Laura and Harry.

25 My other concern is that, if how many intervenors

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1 Department is more meaningful.

2 So, for example, if all 13 of you, you know, were
3 given three minutes on direct and, you know, ten minutes on
4 cross-examination on, you know, an issue that's critical to
5 you, we might not ever have the opportunity to get the
6 information that we need. However, if you consolidate, and
7 it's, say, a half an hour on direct -- and these are just
8 pulling out of the air -- half an hour on direct and, you
9 know, 45 minutes on cross-examination, that gives you an
10 opportunity to provide much more evidence and much more in
11 depth, and really get at those issues that we need to hear
12 in order to make an appropriate decision as a Department.

13 MS. LINCOLN: Could I ask, is it possible that we
14 could identify maybe two people to be spokespersons if the
15 group is consolidated? For example, when you were talking
16 about testifying, there may be one person that's more
17 knowledgeable when it comes to that, and then there may be
18 a person that's more knowledgeable for cross-examining.

19 MS. PARENT: Absolutely. When I say absolutely,
20 there will be some logical identification of people during
21 the hearing itself. So, for example, each one of you might
22 end up cross-examining or testifying on a different subject
23 matter. With respect to the filings of the testimony, what
24 have you, I believe that that is something that we would be
25 asking you to identify one person to communicate with the

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1 are there total here, 13? Is that right?

2 MS. PARENT: I believe so.

3 MR. SPENCER: Right. So if you consolidate us, we
4 five parties into one, does that mean that we will get one
5 out of the -- that would mean that we'd be down from nine
6 parties, I believe. So does that mean our combined parties
7 would get one ninth of the time?

8 MS. PARENT: That is not what that means, and
9 that's a good question.

10 MR. SPENCER: Okay.

11 MS. PARENT: I won't give the exact calculation
12 here because, quite frankly, I don't know it and won't know
13 it until --

14 MR. SPENCER: Yup.

15 MS. PARENT: -- resolve the consolidation issue.
16 However, part of what I would seek to do is make sure that
17 there is fairness with respect to the time that you
18 present. If all of the parties remained individual, you
19 all probably would get a very, very, very short period of
20 time for both presentation of your testimony and
21 cross-examination, such that we're not going to be able to
22 get to the information that we need. By consolidating you,
23 I'm able to give each group a much larger period of time to
24 do with the direct testimony and to have cross-examination
25 occur, so the evidence that's presented to us as a

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1 rest of the group on. But with respect to the hearing
2 itself, I will be looking to those parties who have been
3 consolidated to identify for me -- the easiest way to say
4 this is one person per issue, and you could end up having
5 one person on all the issues or each of you could end up
6 dividing them out, but I will be looking to you, because
7 you will know what's most appropriate for your group.

8 MS. LINCOLN: Thank you.

9 MR. SPENCER: So I'd just say, it sounds like
10 we're going to get consolidated to an extent, but if we
11 have a spokesperson, say I'm on the greenhouse gas issue,
12 right? And you know, it's stressful and, to go through
13 this stuff, and Laura notices, "Ed forgot to mention the
14 truck transportation gasses." Can she say to me at that
15 point when I'm up there fumbling around a little bit, "Hey,
16 what about the transportation gasses that let go?" You
17 know what I'm saying? So we can have sort of way to back
18 up at if -- what if I had an attorney, you know? And the
19 attorney's doing the presentation, and he sees me going
20 nuts, and he leans over and goes, "Hey, what are you
21 thinking?" "Oh, yeah."

22 MR. LAUBENSTEIN: You don't want to ask me.

23 (Laughter)

24 MR. SPENCER: But you know, that's what I'm
25 saying. So let's make pretend that, if we are

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1 consolidated, that we are each other's attorney as
 2 well, and I'm taking more time doing this right now --
 3 MS. PARENT: This is important.
 4 MR. SPENCER: -- than I'm going to take.
 5 MS. PARENT: This is important. And so I
 6 certainly think it's important to take this time, and I
 7 appreciate the dialogue that we're having. I am -- I will
 8 be giving a fair amount of latitude for such an instance.
 9 The only caveat there is I, you know, obviously to the
 10 extent that you abuse that latitude or do something that
 11 prejudices the proceedings, I would, you know, cut off the
 12 back -- you know, your ability to communicate with each
 13 other. But I recognize that, you know, if one of you is
 14 sitting back in the audience and something hasn't been
 15 raised that's important, that there might be appropriate
 16 ways for them to bring it to that spokesperson for the
 17 particular issue.
 18 So, in other words, yes, you will have some
 19 latitude there. I will be looking to ensure that it's not
 20 abused. But to the extent that you're just trying to
 21 coordinate at my request, I will be allowing you to find
 22 ways to coordinate, if that makes sense.
 23 MS. PARENT: And Mr. Coffman, and then I want to
 24 give Mr. Doyle an opportunity, because he had asked a while
 25 earlier, but Mr. Coffman, yes.

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1 MR. COFFMAN: Is there legal assistance available
 2 from the state of Maine for public intervenors in
 3 situations like this?
 4 MS. MACIROWSKI: No, there is not.
 5 MS. PARENT: Mr. Doyle.
 6 MR. DOYLE: Well, I think you've covered a lot of
 7 the same ground that I was going to cover. I mean, I think
 8 the whole purpose of consolidation of parties with common
 9 issues is to try to streamline the process for the sake of
 10 the process. And that, if you're consolidating it into a
 11 group, you don't lose your individual status. And that if
 12 they had, contrary to what Mr. Spencer said, if you were an
 13 aggrieved party, then you'd be able to appeal, but you're
 14 going to have to show that you're a person aggrieved. And
 15 simply because you're a part of a group doesn't mean you
 16 lose that ability to try to show you're a person aggrieved
 17 on appeal.
 18 MS. PARENT: That's true.
 19 MR. SPENCER: But if we had come to you with this
 20 same group as intervenors --
 21 MR. DOYLE: I don't think --
 22 MR. SPENCER: -- you wouldn't have objected to
 23 anyone's status as an aggrieved?
 24 MR. DOYLE: The only person I objected to of
 25 all -- of the four of you -- four different -- I assume Mr.

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1 and Mrs. Lincoln, I treat them as one and the Sanborns as
 2 one, I'm sorry, for purposes of you live in the same house.
 3 MS. LINCOLN: He's already consolidated with me.
 4 (Laughter)
 5 MR. DOYLE: The only person I objected to was
 6 Mr. Coffman, because I didn't think he met the test for
 7 being an intervenor, and I was overruled, but I don't think
 8 that you need to be a corporation to be an intervenor.
 9 MR. SPENCER: Do you need to be a corporation to
 10 be a person?
 11 MR. DOYLE: No. No, you don't.
 12 MR. SPENCER: Okay. I'll keep that in mind.
 13 MS. PARENT: Yes, Mr. Coffman.
 14 MR. COFFMAN: Excuse me. Mr. Doyle objected for
 15 our citizens group, the Citizens Against Genocide by Toxic
 16 Waste Height, you objected to the group getting status
 17 because we weren't incorporated.
 18 MR. DOYLE: Well, the reasons for my objection are
 19 in the petition, and those were granted. I understand that
 20 group is not part of it, but Mr. Coffman has been allowed.
 21 MS. PARENT: Mr. Coffman, as an individual, is
 22 granted intervenor status, the group, I apologize for not
 23 remembering the name, was not granted intervenor status.
 24 With respect to the consolidation of the
 25 individuals, I'm inclined to -- based on the conversation

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1 that we've had today, I am going to require the
 2 consolidation of the individuals I've identified. I will
 3 request of any of the individuals, if you have -- if it
 4 becomes apparent during the process of developing prefiled
 5 testimony, that new information has come to light that
 6 would cause you to not be able to coordinate on any
 7 particular issue, that that information be provided to me
 8 as hearing officer, copying the parties, and I will make a
 9 determination as to whether or not the consolidation
 10 requirement needs to be adjusted.
 11 And the rules that I discussed at the beginning of
 12 the proceeding with respect to requiring that all parties,
 13 and I am looking to everybody around the table, comport
 14 themselves in a professional manner applies within the
 15 individual consolidation groups as well as when you are in
 16 front of me during these prehearing conferences or the
 17 hearing itself. And I just wanted to remind everybody
 18 around the table of that requirement.
 19 With respect to Cities of Biddeford and Saco. I
 20 had indicated -- that you -- I'm a little discombobulated.
 21 Thank you. Cities of Biddeford and Saco, I had indicated
 22 that you also have similar interests, and I believe you
 23 might have even filed one particular document requesting
 24 intervention status. Any objection to being consolidated?
 25 MR. JACQUES: I believe we filed separate

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1 documents, but I don't have any objection on behalf of the
 2 City of Biddeford to combine our intervention.
 3 MR. KANY: No objection from the City of Saco.
 4 MS. PARENT: Which attorney will be the primary
 5 fern?
 6 MR. JACQUES: Probably me. Keith Jacques for the
 7 City of Biddeford.
 8 MS. PARENT: Well, when it comes to providing
 9 prefiled testimony, if we can do something to just make
 10 that indication to us, that would be helpful.
 11 MR. JACQUES: Sure. Thank you.
 12 MS. PARENT: Are there any other parties before us
 13 who would like to consider consolidation? Those parties
 14 that I had identified we've discussed today, but are there
 15 other parties who would like to consolidate?
 16 MR. SPENCER: Can I ask you a quick question?
 17 MS. PARENT: Sure, Mr. Spencer.
 18 MR. SPENCER: MRC owns one fourth of PERC, yet
 19 they're going to have individual representation. Is there
 20 a legal reason for them to be separate or should they be
 21 consolidated as well? Not to be problematic.
 22 MS. PARENT: Would the representatives like to
 23 respond?
 24 MR. WALKER: I can speak to that, that the MRC
 25 would not support consolidation with PERC at this point.

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1 We're both represented by separate counsel at this point.
 2 We both filed separate intervenor applications.
 3 MRC, as you know, is made up of 180 separate Maine
 4 municipalities that dispose of their waste at PERC through
 5 a contractual agreement with PERC. They do own 25 percent
 6 of PERC, but they are only a limited partner in that
 7 arrangement. And therefore, they're a separate entity from
 8 PERC. The MRC's current contractual arrangement with PERC
 9 expires in 2018, which is not that far away. So MRC needs
 10 to separately review everything as part of this process
 11 separate from PERC because of this planning for 2018. And
 12 also, they weren't -- MRC was not a party to the disposal
 13 agreement between PERC and Casella. So, for all those
 14 reasons, we would object.
 15 MR. SPENCER: Okay. I fully accept that. I'm
 16 fine.
 17 MS. PARENT: If I could just ask additional
 18 questions of the representatives. Based on my asking
 19 everybody what your legal issues were, I got the impression
 20 that you had different legal issues and interests in the
 21 proceedings. Is that an accurate read?
 22 MR. WALKER: Yes.
 23 MR. MAHONEY: I think you heard correctly, ma'am.
 24 MS. PARENT: And Mr. Spencer, that's a primary
 25 reason why we didn't consolidate --

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1 MR. SPENCER: Okay.
 2 MS. PARENT: -- to begin with. However, if they
 3 had chosen to, for whatever reason, I would have
 4 entertained that. Thank you.
 5 I believe we're ready to move on to the Conduct of
 6 the hearing.
 7 MR. DOYLE: Before we move on --
 8 MS. PARENT: Yes.
 9 MR. DOYLE: -- I have a question about why
 10 ecomaine and MMWAC should not be consolidated. They filed
 11 nearly identical petitions to intervene. They filed nearly
 12 identical briefs clarifying whether they wanted to be an
 13 intervenor. They're represented by the same counsel,
 14 Jensen Baird and, as we heard this morning, they have the
 15 same issue, which is ensuring that the solid waste
 16 management hierarchy is followed. So I wonder why, for
 17 purposes of streamlining this proceeding, similar to the
 18 way we've consolidated the individuals, they should not
 19 also be consolidated.
 20 MR. NADZO: I can address that.
 21 MS. PARENT: Yes.
 22 MR. NADZO: Although it wasn't suggested by the
 23 hearing officer that consolidation be made, but I think
 24 that the fact is that we, in a way, have already
 25 consolidated in the sense that EcoMaine is 21 member

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1 municipalities who own and operate a waste energy facility
 2 in Portland, and its members are pretty much central,
 3 southwest Maine. And Mid-Maine Waste Action, again, kind
 4 of a consolidation of its 12 member owners of
 5 municipalities, with a facility in Auburn, its members
 6 pretty much in central Maine.
 7 There were -- some of those municipalities
 8 expressed grave concern about this application and even
 9 considered intervening individually. We assured them that
 10 we would be representing them as a part of EcoMaine, for
 11 those who are members of EcoMaine and MMWAC or MMWAC.
 12 There are potentially some different issues that, as we get
 13 down the road, so, we think that we're -- by having just
 14 the two organizations, rather than 21 and 12 municipalities
 15 all sitting here, we've attempted to serve the purpose of
 16 consolidation, which is to streamline to the extent
 17 possible.
 18 MS. PARENT: Mr. Coffman?
 19 MR. COFFMAN: For the record, I'd like to voice my
 20 objection to the consolidation of the citizens intervenors
 21 into one.
 22 MS. PARENT: Noted that objection. I have made a
 23 decision, but that objection is noted.
 24 It has occurred to me that we have the reporter
 25 diligently typing for almost two hours. Before we move on

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1 to the other matters, I'm going to take a ten-minute recess
2 so allow her to recover. I suppose I'll do this, just
3 because it's fun. (Pounding gavel) We'll be back at 12:00
4 according to that clock on the back wall.

5 (The conference recessed from 11:49 a.m. to 12:04 p.m.,
6 when the Hearing officer called the conference to order.)

7 MS. PARENT: Welcome everybody back. It's just
8 after noon time. I believe we have only a few other items
9 that we have to cover, and at the end of this process, I'll
10 lay this out in more detail. However, I just wanted to
11 note that the decisions made today and the decisions that I
12 have reserved for making after this meeting will be
13 provided in a procedural order. So, some of the details
14 that we discuss today, as you're leaving this meeting and
15 trying to remember how exactly it worked out, I will be
16 providing a procedural order after this meeting sometime,
17 you know, sometime in the week's following this meeting
18 that lay out some of these details.

19 Moving on to the portion of the agenda entitled
20 Conduct of Hearing. As I had mentioned earlier, we have
21 circulated a document entitled Procedures for Conduct of
22 Hearing. I wanted to ask at this time whether or not there
23 are any questions about those procedures?

24 And I believe, as I had, noted, or at least as I
25 previously stated, the Administrative Procedures Act in

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1 cross-examination of all of the parties to the witness will
2 occur, and then I and the staff and Department counsel will
3 ask for clarifying questions, if we have clarifying
4 questions at that time.

5 Does anybody have any comments with respect to,
6 again, either the order or order of cross-examination?

7 MS. McBRADY: I have a quick question. Nancy
8 McBradey for MRC.

9 You just mentioned that almost envisioning
10 individual witnesses for the parties. Sometimes at other
11 hearings, licensing hearings held by the Department or the
12 Board of Environment Protection, witnesses are actually put
13 in panels. Is that something that you are considering?

14 MS. PARENT: With your prefiled testimony, if that
15 is the way that you feel would be most efficient or
16 effective, I would request that you propose that at that
17 time. It will not provide you more time than I would
18 otherwise allocate.

19 In other words, if I have determined a
20 certain time period -- again, I'll just throw out a time
21 period -- if I determine that a half an hour per witness,
22 you know, per subject matter, by putting the witnesses in a
23 panel, you're still going to end up with that same
24 allocation. However, if that's the way that you feel would
25 be the most appropriate, I would entertain that request and

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1 Chapter 20 apply to these proceedings, although I have the
2 authority to not apply portions of Chapter 20 that are not
3 relevant or appropriate during these proceedings.

4 In the procedures for conduct of the hearing, I
5 have proposed the following order. So, all of the
6 testimony and witnesses who go up will be in the following
7 order, for discussion today. First, the applicant; then
8 PERC; then MRC; Old Town Fuel and Fiber; EcoMaine;
9 Mid-Maine Waste Action Corporation; the grouping of the
10 Sanborns, the Lincolns, Spencer, and Coffman; and then the
11 towns of Biddeford and Saco; and the City of Old Town.
12 That's the order that I have proposed here. Traditionally,
13 the municipalities -- the applicant goes first, and the
14 municipalities traditionally in other proceedings go last,
15 so that's -- that was part of the reason for the order in
16 which I noted.

17 Are there any questions or comments with respect
18 to the order of the parties?

19 (No response)

20 MS. PARENT: Seeing none, with respect to
21 cross-examination, the Department staff, counsel, and I may
22 request clarifying questions after the parties have had an
23 opportunity to cross-examine the witnesses.

24 So, in other words, the witnesses will go up and
25 testify. A witness will go up and testify and then

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1 entertain the responses to that request at the time of
2 prefiled testimony, and I would make my determination after
3 that.

4 MS. McBRADY: Great.

5 MR. DOYLE: Can I just follow up on what Nancy
6 suggested? My experience in these hearings is that usually
7 the parties -- we're going to have prefiled testimony here,
8 which everyone will have a chance to read. At the hearing
9 or that the applicant or someone else puts on their case,
10 and the witnesses provide what I will refer to as a
11 Reader's Digest version of their prefiled testimony. They
12 don't read their prefiled testimony. They give a Reader's
13 Digest version. And then it is much more efficient, in my
14 experience, to have each party do their entire case in
15 chief, and then make their witnesses available in either
16 panel form or just make their witnesses available for
17 cross-examination. It seems to be more efficient, more
18 coherent, if it's done in that fashion.

19 MS. PARENT: And you are echoing and building upon
20 what Ms. McBradey said. And part of the reason why I said
21 I would entertain it is, I do see the validity in that
22 approach and would take that request very, very seriously
23 under advisement. I would, obviously, want the opportunity
24 for all parties to, if they have valid objections, provide
25 me with those objections, but there is a validity to the

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1 panel approach, and I will consider it.
2 However, it's the responsibility of each party or
3 consolidation of parties to determine how that panel
4 configuration would work, and you will be advised that, you
5 know, you won't be afforded more time than you would
6 ordinarily be afforded if the panel went individually, if
7 that makes -- if you understand what I'm saying.
8 MR. DOYLE: You mean for cross-examination or --
9 MS. PARENT: For direct. For direct testimony.
10 MR. DOYLE: Direct.
11 MS. PARENT: I will certainly take that under
12 advisement, but I would request, and I think we will put
13 something in the procedural order, to request such
14 arrangements be provided at the time of prefiled testimony,
15 so that I am aware of the arrangement that you're seeking
16 to undergo.
17 At this time, I was -- I was wondering, at this
18 time, it would be good for me to -- the staff and I to
19 understand the identity and the nature and the number of
20 witnesses that you are currently contemplating if you
21 actually, in fact, begin to have an idea today as to either
22 how many witnesses or the nature of the witnesses or, just
23 in general terms, I'd like to hear from you what you
24 envision your witnesses would be speaking to.
25 For expediency, I will start with --

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1 MS. MACIROWSKI: The applicant.
2 MS. PARENT: That makes sense. Thank you.
3 I always listen to the woman on my right.
4 MR. DOYLE: NEWSME Landfill Operations and Bureau
5 of General Services expect to present four witnesses
6 currently. I'd like to reflect upon the procedural order
7 when it comes out, but currently, we're estimating four
8 witnesses. And are you looking for the names of the
9 witnesses?
10 MS. MACIROWSKI: I think it's -- generally, we're
11 not holding you to this. I think it's generally useful,
12 especially because we're going to know who these people
13 are.
14 MR. DOYLE: So, are you looking for their names
15 now?
16 MS. MACIROWSKI: I am looking for their names.
17 MR. DOYLE: Just so long as everyone else --
18 MS. PARENT: And therefore, I am.
19 MR. DOYLE: -- has to provide their names, sure.
20 MS. PARENT: And therefore, I am.
21 MR. DOYLE: We would have Mike Barden, as the
22 representative for DECD, talk about their role here in this
23 process, and his oversight of JRL and of NEWSME as the
24 operator, and his participation in the review of the
25 application before it went in.

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1 Brian Oliver, who's the vice president of the
2 northeast operations for NEWSME Landfill Operations, will
3 discuss the events that led up to this submittal of the
4 application, now that it's still a review criteria,
5 although it's not an up and down criteria, consistency with
6 the waste management hierarchy, the benefits from the
7 approval of this application.
8 Jeremy Labbe and Mike Booth. Jeremy is an
9 engineer, who works at the landfill on behalf of NEWSME
10 Landfill Operations, will talk about many of the
11 operational issues related to the application. And Mike
12 will talk about similar related operational and engineering
13 issues that Jeremy doesn't cover. So, between the two of
14 them, they will be dealing with the operational and other
15 issues that some of the individual intervenors have raised
16 today. So, in terms of -- well, those are -- I'll rest
17 there, before we get to time.
18 MS. PARENT: Okay. Moving down the line. I'm
19 sorry. PERC.
20 MR. MAHONEY: PERC hasn't made any final decisions
21 on calling witnesses, but I think for purposes of planning,
22 we'd like to submit sort of a place holder for one witness.
23 It could be Kevin Nordby from PERC, or another authorized
24 representative of PERC, to speak about the disposal
25 agreement and consistency with the hierarchy.

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1 MS. PARENT: MRC.
2 MR. WALKER: Dan Walker, MRC. We propose three
3 witnesses at this point. First would be Greg Louder, the
4 executive director, who would talk about MRC's partnership
5 with PERC. Again, going back to our issues that we talked
6 about before, concerns regarding the proposed amendment's
7 potential impact to capacity at PERC. And then, again,
8 concerns regarding utilization of air space at Juniper
9 Ridge for MSW, raw MSW.
10 Secondly, the MRC board president, Chip Reeves,
11 who's the director of public works in Bar Harbor. He would
12 talk about the community's perspective and MRC's long time
13 advocacy of the hierarchy.
14 And then, lastly, we would -- we'd want to call
15 George Aronson, who is the long-time consultant, technical
16 consultant from Commonwealth Resource Management to the
17 MRC. And he'd bring up more of the technical aspects and
18 bring up statistics regarding solid waste generation and
19 management in Maine.
20 MS. PARENT: Thank you.
21 Old Town Fuel and Fiber.
22 MS. TOURANGEAU: One or two, I would guess, at the
23 most, in order to discuss mill operations and the
24 agreements between the parties possibly, and possibly
25 someone to talk about changes in waste disposal practices

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1 at the mill and/or changes to the leachate quantity and/or
2 quality.

3 MS. PARENT: Ecomaine.

4 MR. BOWER: Ecomaine at this point would plan to
5 be having two witnesses: Kevin Roche, the general manager,
6 and a representative from one of the member municipalities,
7 one of the 21, but we don't -- we're not sure of that yet.
8 We'd want a place holder for that.

9 MS. PARENT: And Mid-Maine Waste Action Corp.

10 MR. NADZO: Mid-Maine Waste would also be
11 expecting two, and it would be Joe Kazar, who is the plant
12 executive director, and then one of -- an official,
13 either -- public official either who's on the board or
14 otherwise. So we'd --

15 MS. PARENT: Don't forget to speak up.

16 MR. NADZO: Sorry about that. So, two, and we're
17 unsure who the second would be.

18 MS. PARENT: Thanks. And with respect to the
19 Sanborns, Lincolns, Spencer, and Coffman, do you have any
20 ideas at this time?

21 MR. SPENCER: We can't identify anyone right now,
22 I would say, but what I was thinking for sure is an
23 atmospheric scientist to speak to greenhouse gasses
24 relevant to landfills and incinerators. There's a
25 possibility -- I need to speak with Mr. Roche, because he

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1 could fill a large part of that, he has expertise in that
2 area.

3 The other thing, it sounds like leachate quality
4 will be addressed by Old Town Fuel and Fiber. That was a
5 concern.

6 The other thing I was thinking is some historical
7 perspective on this because -- and I'm not sure if you
8 would even allow this, but I'm just thinking how this
9 landfill starts out being for paper mill waste only, then
10 it becomes for in-state with some exceptions for
11 out-of-state construction demolition debris. Next thing
12 you know, it's going okay to bring all -- potentially all
13 of Canada's biomedical waste to Maine to be treated and
14 then put in. So this creeping incremental history of
15 expansion of waste streams and loss of control.

16 MS. PARENT: Speaking to your comment about
17 whether or not I would allow that, I would just ask you to
18 look to the relevant review criteria of the amendment
19 application and be sure that the witnesses and the
20 testimony that you propose are directly -- directly address
21 the amendment application and the review criteria that we
22 have to decide upon. So, I'm not saying what you said is
23 or is not relevant --

24 MR. SPENCER: Okay.

25 MS. PARENT: -- but just make sure that what you

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1 provide is specific to that application.

2 And again, as we had mentioned, we're not holding
3 anybody to numbers or names. We're just trying to get a
4 general sense.

5 The Towns of Biddeford and Saco.

6 MR. JACQUES: Keith Jacques for the City of
7 Biddeford, now for Saco as well. I haven't had an
8 opportunity to speak to Saco to get a sense as to what we
9 will do by way of witnesses, but I anticipate we'll
10 probably call four witnesses: The mayors from each city,
11 and if, for some reason the mayors were unavailable, the
12 city manager from each city. And then also, if you need
13 their names, Alan Casavant from the City of Biddeford -- is
14 the mayor of the City of Biddeford, and Mark Johnston is
15 the mayor of Saco, and John Bubier is the city manager for
16 Biddeford, and Rick Michaud is the city manager for Saco.

17 And then in addition to those witnesses, I
18 anticipate -- and those witnesses, primarily, I think would
19 talk about the cities' interests in having the state
20 landfill available for the disposal of its MSW waste. And
21 then I anticipate that we, also, would have Brian Finney,
22 who is the city of Biddeford environmental code officer,
23 and Dan Stevenson, who is the environmental development
24 director, also testify. And they would -- their testimony
25 would be focused on the state hierarchy issues.

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1 Thank you.

2 MS. PARENT: And just recall that, with respect to
3 the consolidation, we'll be looking for, you know,
4 essentially one witness per issue. So when the procedural
5 order comes out, that will be made very clear to you, and
6 we'll be asking you to just take that into consideration in
7 presenting your witnesses.

8 MR. JACQUES: I understand, but I just wasn't
9 going to cut the City of Saco's mayor out quite yet.

10 MS. PARENT: Absolutely not. Yeah, I completely
11 understand. I just wanted to make sure that you understood
12 that the same rules will apply.

13 MR. JACQUES: I do. Thank you.

14 MS. PARENT: City of Old Town.

15 MR. KATSIAFICAS: Jim Katsiaficas for the City of
16 Old Town. I see one to two witnesses: the city manager,
17 William Mayo, and the appropriate city staff person might
18 have some specific issues, depending on what they are, what
19 they implicate.

20 MS. PARENT: Thank you.

21 Just like we just talked about, providing an
22 estimate and an general idea of who your witnesses are, I
23 was also looking to see if we had an estimate -- Sorry.
24 (Pause) If we could just have one moment here.

25 (Brief off-the-record colloquy.)

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1 MS. PARENT: My apologies for that. With respect
2 to the estimate of time for cross-examination and the
3 hearing as a whole, part of what I will be doing is
4 reviewing the proposals for testimony and making a
5 determination based on that. However, I wanted to hear
6 from the parties today as far as their thoughts and
7 recommendations with respect to how long it would take
8 them.

9 As I believe Mr. Doyle said -- I can't remember, I
10 think it was Mr. Doyle said the bulk of the testimony will
11 be within your prefiled. I would anticipate that the
12 direct testimony of the witnesses will be very short,
13 because we will have your information already prefiled. I
14 would expect that the bulk of time taken during the hearing
15 is with respect to cross-examination. So, you know, it
16 will probably be something on the order of five minutes per
17 witness for presenting what they have already presented in
18 a written document, and obviously, a longer time allowed
19 for cross-examination of that information.

20 And with that in mind, I wanted to give the
21 parties an opportunity to provide me their thoughts and
22 estimates as to how long they would expect their witnesses
23 to take to present the evidence and respond to questions on
24 the various issues.

25 And keeping with the habit I'm trying to form with

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1 staying in the order that we will be proceeding during the
2 hearing, I'll start with the applicant.

3 MR. DOYLE: Well, I had envisioned even, you know,
4 since the applicant has the burden of proof as you pointed
5 out --

6 MS. PARENT: Mm-hmm.

7 MR. DOYLE: -- first thing this morning, that for
8 our case in chief, prefiled testimony, it would probably be
9 done in about one and a half to two hours.

10 MS. MACIROWSKI: Your direct testimony.

11 MR. DOYLE: Direct testimony, yeah. You know, it
12 may be less, but we're going to try to do it as efficiently
13 as possible, but you know, we have a burden of proof. So,
14 I estimated based on my experience and knowing what number
15 of witnesses we have, it would be one and a half to two
16 hours. And then we would, you know, present that panel of
17 witnesses for cross-examination.

18 MS. PARENT: Okay.

19 MR. DOYLE: And are you asking me for my estimate
20 of how long it would take me to cross-examine other people?
21 Because I don't really, without having seen their
22 testimony, and their -- they weren't quite as specific as I
23 would have hoped in terms of names and what they're going
24 to cover, it's a little tough to say for length of time for
25 cross right now.

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1 MS. PARENT: Yeah, and I recognize that. I won't
2 be asking you to estimate something that you are unable to
3 estimate today. And with respect to the --

4 MR. DOYLE: Let me just add, and there are some
5 people that I may not cross-examine at all, but you know, I
6 think I would like to be allowed at least as long as
7 they're up there for cross-examination, the time that they
8 spend on direct.

9 MS. PARENT: Okay.

10 MR. DOYLE: So that's -- if that's any help to
11 you.

12 MS. PARENT: Okay. Thank you. With respect to
13 the -- your estimate with respect to the direct
14 presentation of prefiled testimony, I believe we'll need to
15 take a long look at how we expect the hearing to unfold and
16 the information that we have in both your application and
17 in your prefiled testimony, and we'll be making a
18 determination as to, you know, whether the time estimate
19 that you provided might be adjusted.

20 I do expect that we will either have a number
21 of -- sorry, I'm speaking softly again -- a number of
22 procedural orders between now and when we have the hearing
23 or we might also have an additional prehearing conference
24 if necessary. So we will be communicating more with
25 respect to the time of your presentation of your case in

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1 chief to allow you to ensure that your information -- that
2 you have been given ample opportunity to provide the burden
3 of proof.

4 PERC?

5 MR. MAHONEY: Mike Mahoney for PERC with respect
6 to PERC's potential witness, I would anticipate needing no
7 more than 30 minutes for direct testimony.

8 MS. PARENT: I'll say collectively, with
9 everybody, we'll be taking a look at the time limits, but
10 the estimates are helpful for us to get a general sense
11 from where you're coming from.

12 MRC? Eventually, I'll get this right.

13 MR. WALKER: We've discussed this and we believe,
14 you know, taken individually, we were thinking 30 minutes
15 each if we -- but we, also, are very interested in honoring
16 your will to be efficient, and also, with the potential
17 that we might be presenting them in a panel as well. So
18 we're going to say 30 minutes each, but it could -- you
19 know, we will work with you to make it as efficient as
20 possible.

21 MS. PARENT: Old Town Fuel and Fiber?

22 MS. TOURANGEAU: Joanna Tourangeau, for Old Town
23 fuel and Fiber. I can't imagine that we would need more
24 than 30 minutes each. I think we would be fine with saying
25 15 each if we go to two.

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1 MS. PARENT: Ecomaine.
2 MR. BOWER: Mark Bower for ecomaine. Similarly,
3 probably 15 minutes for each witness. I'm not sure how
4 long they will be cross-examined for, but in terms of the
5 direct testimony. So, not more than half hour for ecomaine
6 and similarly for MMWAC.
7 MS. PARENT: Okay. Thank you.
8 The -- have the grouping of Sanborns, Lincolns,
9 Spencer, and Coffman had enough time to provide me an
10 estimate? And it's okay if you have not.
11 MR. SPENCER: No, we haven't, but I would think it
12 could take an hour, hopefully less, maybe two, a half hour
13 each. But we've just gotten formed as a group. So I'd say
14 an hour maximum, and you know, hopefully, we'll cut that
15 down as time approaches.
16 MS. PARENT: And I recognize that you've just been
17 formed, and I won't be holding anybody to these numbers,
18 either to increase them or lower them. It's just good to
19 have a --
20 MR. SPENCER: Yup.
21 MS. PARENT: -- general sense.
22 MR. SPENCER: Right.
23 MS. PARENT: So, thank you.
24 And the Towns of Biddeford and Saco?
25 MR. JACQUES: I would anticipate no more than 30

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1 minutes combined.
2 MS. PARENT: And City of Old Town?
3 MR. KATSIAFICAS: Thirty minutes maximum.
4 MS. PARENT: As I think I had mentioned at one
5 point, we've reserved two days for this hearing. We would
6 anticipate having the hearing during the daytime hours with
7 a public comment portion of the hearing in the evening.
8 We're looking at having the hearing on April 9th and 10th
9 of 2013, and the public comment portion being during the
10 evening of April 9th of this year. And as I mentioned for
11 the public comment portion, we will provide the public an
12 opportunity to testify under oath, and I have already
13 indicated that, if in the groupings there is an issue that
14 is unique to a particular individual, they will be
15 permitted to testify during the public comment portion as
16 well.
17 I wanted to open up the discussion with respect to
18 the ninth and tenth, understanding that there are a lot of
19 parties involved, so we're trying to -- I wanted to see if
20 there was anybody who could not make that -- those days and
21 if there are objections to those days.
22 (No response)
23 MS. PARENT: Seeing none, the procedural order
24 will indicate that April 9th and 10th will be the days of
25 the hearing.

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1 The Commissioner, when she identified this
2 application as being an application that was to be held
3 during a public hearing, had designated the location to be
4 Augusta. The reasons for that were set forth in her
5 delegation to me as hearing officer and were posted on the
6 website as well.

7 We are going to be holding the public hearing
8 in Augusta understanding that there are -- that this is --
9 in many ways involves statewide issues and looking at the
10 representation around the table, there are a number of
11 parties who are from various parts of the state. I wanted
12 to provide the parties an opportunity to make any comments
13 that you would like to make on the location at this time.

14 Mr. Spencer?

15 MR. SPENCER: I think I've requested between six
16 and ten times DEP officials, including the Commissioner
17 herself, that there be an opportunity for people in the
18 greater Old Town area to comment under oath, but you know,
19 closer to home. And I understand, you know, that this is a
20 central location, Biddeford, Saco, and Old Town is about
21 the same distance, but I must mention that, as far as
22 effects in the near and the far term, it's the people of
23 that area that are going to bear the long-term burden.

24 We've got -- the Penobscot Nation is just
25 downstream, you know. You've got Bangor, Brewer, Orono --

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1 all these communities, and you've got a thriving scientific
2 community living around there and, you know, working out of
3 the University of Maine. So, to make it more difficult for
4 them -- if the purpose is -- and I agree, you know, if the
5 purpose is fact finding, I think it would be wonderful if
6 you could have something up there. Now, would it have to
7 be, you know, all hands-on deck, you know, at great
8 expense? I'd think, you know, there would be some salaried
9 DEP employees, perhaps a site could be furnished up there
10 at no cost.

11 So I urge you just to consider that, not in
12 instead of the April 9th and 10th, but in addition to at
13 some point. Because everybody -- I know I'm going to go
14 back this afternoon and my wife's going to ask, you know,
15 and everybody -- so just, anything you want to add to that?

16 MR. LINCOLN: Is there a possibilities of having a
17 remote communication site at the University of Maine, so
18 that the people in the communities could meet there and be
19 able to talk back and forth to the meeting here in Augusta.
20 Is that a possibility or is the technology not there?

21 MR. COFFMAN: It's there.

22 MS. PARENT: I do know that there would be some
23 probably some logistical challenges with that.

24 MR. LINCOLN: Really.

25 MS. PARENT: What I do want to make sure that I

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1 make sure you understand is that, even if parties are not
2 able to come to the meeting and testify under oath at the
3 public comment session, we will be accepting comments,
4 written comments for this application the way we do with
5 all of them, and they will be part of the decision-making
6 process.

7 So, to the extent that there are people who, for
8 whatever reason, regardless of whether, you know, the
9 meeting -- the public comment process was held in Augusta
10 or in another location, could not make it for that day,
11 they have the opportunity to provide written comment to the
12 Department until the record closes, and we'll be making
13 sure that we publish the date of the record closure in
14 ample time for people to provide their written comments.

15 We do have some logistical challenges that we're
16 trying to accomplish, and we have noted your request and
17 your -- for an additional public comment session. The one
18 with respect to this hearing will be held in Augusta
19 because of the logistics required with us traveling back
20 and forth during the hearing time. But please and, you
21 know, if you know that people want to comment and for
22 whatever reason can't make it, please let them know that
23 they have another vehicle to comment, and it will be
24 considered by the Department in making the application
25 decision.

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1 MS. PARENT: Yes, I've made note of the fact that
2 there is a request to have it up north -- have it up in the
3 Old Town area.

4 MR. COFFMAN: And one other reason is that Old
5 Town can't speak for the citizens, because if Old Town
6 government objects, it's like a contractual blackmail
7 that's going on.

8 MS. PARENT: I've made a note of it, sir.

9 MR. COFFMAN: The funding that they're receiving,
10 stops immediately.

11 MS. PARENT: I've made a note of your request and
12 your reasons, and the request and reasons of the other
13 parties.

14 MR. COFFMAN: So the citizens have no one to speak
15 out for them. They have to come down here.

16 MS. PARENT: At this point, we're moving on, sir.

17 MR. COFFMAN: Thank you.

18 MS. PARENT: To the Transcription of hearing, as
19 you may have noted today, we have a person -- a person
20 recording today's meeting. It was not required, but it
21 will certainly be useful to the parties going forward.

22 The hearing itself, we will have a court reporter
23 there, a recorder there, taking transcription at the
24 hearing itself, and we will be making that available, and I
25 believe the details for that will be in our procedural

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1 MS. LINCOLN: Excuse me. I have a question. Is
2 it possible to communicate with Mike Parker about some
3 suggestion we may have for a remote site or is that an
4 inappropriate suggestion?

5 MS. PARENT: It is always proper to communicate
6 with Mike Parker with respect to the application process as
7 you would with any application process. The logistics of
8 the hearing will be presented by me in the procedural
9 order, and you will have the opportunity to object and copy
10 all the parties on it. But, as with any application
11 process, you have the opportunity to communicate with staff
12 on, you know, any part of that application process. But
13 the logistics of the hearing will be formally communicated
14 by me and formally responded to by all the parties copying
15 each other.

16 MS. LINCOLN: Thank you.

17 MS. PARENT: Yes, Mr. Coffman.

18 MR. COFFMAN: I would also like to suggest that
19 there be another meeting in Old Town, greater Old Town area
20 because, you know, I thought, like, we, in government,
21 would want inclusion, that citizens would be included,
22 especially citizens that are affected by the policies that
23 you're deciding on. I don't know who is more affected in
24 the state than the residents of the greater Bangor -- the
25 greater Old Town area that Ed spoke about.

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1 order. So I wanted to make note of that today.

2 With respect to the schedule, I skipped ahead a
3 little bit to note that the hearing itself will be held on
4 April 9th and 10th with the public comment portion, the
5 sworn public comment portion of the hearing being on the
6 evening of April 9th here in Augusta.

7 The question of when prefiled testimony is due,
8 looking at a calendar and counting back to make sure that
9 there is fair and adequate time for the parties to prepare
10 and deliver their prefiled objections and rebuttal
11 testimony, we were seeking to have the date for prefiled be
12 on February 28th, the objections to the prefiled testimony
13 being on March 8th, and the rebuttal to the -- the rebuttal
14 testimony being on March 22nd.

15 I'll pause here to see if anybody has concerns
16 associated with those particular deadlines for prefiled and
17 rebuttal and objection testimony.

18 MS. TOURANGEAU: Can I just repeat those? It was
19 prefiled on February 28.

20 MS. PARENT: February 28th.

21 MS. TOURANGEAU: Objections, March 8.

22 MS. PARENT: That's correct.

23 MS. TOURANGEAU: And rebuttal, March 22nd?

24 MS. PARENT: You've got that correct.

25 MR. SPENCER: I wanted to bring up the possibility

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1 of changing that middle date. I believe February 28th,
2 four weeks from tomorrow, so that's a Thursday. March the
3 8th is the following Friday. So that gives one weekend
4 for, you know, we citizen intervenors. So I was wondering
5 if we could possibly move that March 8th date back to the
6 following Monday, the 11th, just to afford us more, you
7 know, nonwork -- give us another weekend to look at the
8 voluminous, last-minute testimony. And if that -- I know
9 it cuts the next period down some, but I -- you know, I
10 just -- when I first saw the schedule, that kind of jumped
11 out.

12 MS. PARENT: I think that that's a reasonable
13 request, and --

14 MR. DOYLE: Before you make a decision, we sort of
15 need to know what the ruling is on the objections before we
16 prepare rebuttal testimony.

17 MS. PARENT: I was going to look to see timing for
18 rebuttal as well.

19 MR. DOYLE: So, take that into your calculus of
20 when these dates are due, because one won't know what to
21 put in for rebuttal until, you know, when an objection is
22 sustained and a particular piece of testimony is stricken
23 because it's not relevant, we obviously don't need to
24 prepare rebuttal testimony related to it.

25 MS. PARENT: Thank you. In the procedural orders

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1 talking about the time needed. With the prefiled testimony
2 and the exhibits, then we'll also ask that you state
3 whether you intend to offer those witnesses as a panel and
4 then the amount of time that you're requesting. And then,
5 at the same time as the objections, even if you're not
6 objecting, that will also be the deadline to submit
7 something that you then will state the time that you want
8 for cross-examination of the witnesses. And that will then
9 help with planning.

10 MS. PARENT: Well said.

11 Are there any other questions with respect to the
12 schedule of either the actual meeting times or the prefiled
13 testimony?

14 I'm not sure if this is -- we did have one
15 evidentiary issue that has come to light. And I'm not sure
16 whether or not the confidentiality of the PERC-Casella
17 contract is being alleged. Both the applicant in its
18 revised application and PERC in its petition for leave to
19 intervene have cited a small portion of the contract. It's
20 my understanding, based on a discussion with the DEP staff,
21 that the applicant doesn't intend to offer the contract,
22 itself, but that understanding might have changed.

23 Can you -- Mr. Doyle, can you speak to the
24 contract and whether or not you will be introducing the
25 entire contract or whether you will be seeking to redact

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1 that will be issuing after this hearing, I expect that we
2 will be moving the date to March 11th. And as Mr. Doyle
3 suggested, we also will look to make sure that we adjust
4 the rebuttal testimony to allow for an appropriate time for
5 rebuttal testimony as well. We're talking about a two- or
6 three-day swing here as opposed to a larger period of time,
7 so I think we can find a way to accommodate your request.

8 MR. SPENCER: Sounds great.

9 MS. McBRADEY: Heather, Nancy McBradey for MRC.
10 Do you think there might be a deadline for demonstratives
11 as we approach the deadline for the hearing?

12 MS. PARENT: Demonstratives being different than
13 the exhibits in the prefiled?

14 MS. McBRADEY: Correct. If any parties -- I'm not
15 speaking that MRC will have any demonstratives, but
16 demonstratives essentially are the culmination of prefiled
17 testimony and exhibits provided that they reflect what's in
18 the record.

19 MS. PARENT: Demonstratives, the deadline for
20 demonstrative exhibits would be the same as prefiled
21 testimony.

22 MS. McBRADEY: Okay.

23 MS. MACIROWSKI: The other thing, and this will be
24 reflected in the next procedural order that comes out, but
25 it came up in my head as we were going around the room and

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1 the monetary figures?

2 MR. DOYLE: Well, the parties that to the
3 contract, PERC and NEWSME Landfill and Casella, have no
4 objection to submitting the agreement provided that price
5 terms, sensitive business price terms are redacted from the
6 agreement, and that sufficient time be given for PERC and I
7 believe the MRC community -- MRC to communicate with its
8 member communities about the agreement because they have
9 not done that yet.

10 So, we were suggesting that to allow time for
11 those communications to occur, that the agreement be
12 submitted in that redacted form, I believe on the 14th of
13 February. Today is the 30th of January.

14 MS. PARENT: So, essentially, two weeks.

15 MR. DOYLE: Two weeks and a day. It's Valentine's
16 Day.

17 MS. PARENT: What a great present.

18 That would be acceptable to us to have the
19 contract with just the price terms redacted, the rest of
20 the contract may be relevant for context or for other
21 reasons. I would caution you to ensure that only the price
22 terms be redacted, and if we see entire paragraphs or other
23 large segments of the contract being redacted, we will most
24 certainly look unfavorably upon that.

25 Those were the issues that we had identified at

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1 the outset of the meeting today, the prehearing conference
2 today. I did indicate at the beginning of this conference
3 that Item No. IX would be other issues that arose during
4 the course of this meeting. So, I wanted to open up the
5 floor for other issues that are procedural in nature, that
6 need to come before us today.

7 Mr. Spencer?

8 MR. SPENCER: Yes. Not being a trained in these
9 things, I'm always confused about what is actually going to
10 be included in the record for this. For example, I
11 mentioned some terms contained in the request for
12 proposals. Now, will that be in there? Do I have to
13 request that that be made part of the record?

14 And also, you know, I hope we can assume that the
15 operating services agreement between the state and Casella
16 and the amendments to that will be part of the record, that
17 this is an amendment to the DEP license. Right? I assume
18 that is in there.

19 How about newspaper articles, statements made on
20 the record? For example, I think Mr. Doyle quoted from a
21 transcript from a public informational session back a time
22 ago. Is that included? So, I'll just --

23 MS. PARENT: The record consists of the
24 application, and you know, you do not have to produce the
25 application as part of the record. However, most of the

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1 MS. PARENT: I encourage you just to communicate
2 with Mike Parker to ensure that what you believe is part of
3 the record is actually part of the record, and that would
4 be the easiest way to answer that question.

5 MS. TOURANGEAU: Is there on the website right
6 now -- sorry, this is Joanna Tourangeau again -- an index
7 of any sort to what is in the file already?

8 MS. DARLING: (Shaking head in the negative)

9 MR. TOURANGEAU: Is there an index anywhere?

10 MS. DARLING: Not for this application.

11 MR. DOYLE: But on the other hand, there are a
12 number of documents that have been posted on the website,
13 including the updated application. I don't know if you
14 have response to comments that we just filed on the website
15 yet.

16 MR. PARKER: I think those are all up there, too.

17 MR. DOYLE: So there are a number of items that
18 are posted on the website.

19 MS. TOURANGEAU: Oh, yeah, I know. I guess my
20 thinking was that there probably are some documents that
21 many parties are going to want to have in the record, and
22 better to just know that it's already in the record than to
23 have five or six different parties submit the same thing as
24 an exhibit, but --

25 MS. PARENT: As information is provided to us, we

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1 other items that you identified, if you want to be sure
2 that they're part of the record, and if we -- I rule that
3 they're relevant to the amendment application that's before
4 us, you need to make sure that you include that as part of
5 your prefiled testimony. That's the only way to ensure
6 that some of those items are included in the record. So,
7 include those as part of your prefiled testimony.

8 MR. SPENCER: Could requests be made for inclusion
9 in records before the prefiled testimony is done? That way
10 we'd know if, for example, you know, if you didn't admit
11 something, then we're not going to waste our time compiling
12 the testimony that came from there. You know, in other
13 words, could -- you know, the end of the week or early next
14 week, could I say, you know, prior to prefiled testimony or
15 does it have to wait and be part of the prefiled testimony?

16 MS. PARENT: You can ask Mike Parker specific
17 questions about what can and can't be part of the record.

18 MS. MACIROWSKI: I think Mr. Spencer's question is
19 not what can be part; it's what is part of the record.

20 MS. PARENT: Okay.

21 MS. MACIROWSKI: So DEP staff would have a good
22 sense of what's already part of the record. So those would
23 be the folks to ask if you have a specific question about a
24 specific document.

25 MR. SPENCER: Okay.

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1 put it up on the website.

2 Are there procedural issues that are relevant to
3 what we've been talking about today?

4 (No response)

5 MS. PARENT: Seeing none, the next step -- did you
6 raise your hand?

7 MR. DOYLE: No.

8 MS. PARENT: The next step that we will have here
9 is that we will be developing a procedural order detailing
10 a lot of what we talked about today, providing you some
11 further definition and clarity as to your roles and
12 responsibilities as parties and as consolidated parties,
13 and you know, setting up the next set of deadlines.

14 As we discussed, the prefiled testimony will be
15 required to be submitted by February 28th, and the
16 objections will be required to be submitted by March 11th,
17 and I believe the rebuttal testimony will probably be
18 submitted March 25th, but the date will be appropriate.
19 There will be an appropriate adjustment to the rebuttal
20 testimony date.

21 The redacted contract will be required by
22 February 14th, with just the redactions to the price terms.

23 And are there any other deadlines?

24 MS. MACIROWSKI: No.

25 MS. PARENT: And so we will be getting out the

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1 procedural order as soon as we can, and I wanted to thank
 2 everybody today for a very productive, very professional,
 3 and cordial meeting. I very much appreciate you taking
 4 these three hours to complete this work today. Thank you
 5 all very much. And I'll bang this thing.

6 (Conference adjourned at 12:59 p.m.)

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1 CERTIFICATE

2 I, Christine Fraga Thornton, RPR, a Notary Public
 3 in and for the State of Maine, hereby certify that the
 4 foregoing is a true and accurate record, to the best of my
 5 skill, ability and knowledge, of the evidence as taken by me
 6 by means of mechanical stenography and computer-assisted
 7 translation, of the proceedings held on January 30, 2013, at
 8 Augusta, Maine.

9 I further certify that I am a disinterested person
 10 in the event or outcome of the above-named cause of action.

11 IN WITNESS WHEREOF, I subscribe my hand and affix
 12 my seal this 12th day of February, 2013.

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 14
 15
 16 
 17 Christine Fraga Thornton, RPR
 Notary Public

18
 19 CHRISTINE FRAGA THORNTON
 20 NOTARY PUBLIC - STATE OF MAINE
 My Commission Expires
 21 April 10, 2014
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 24
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