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January 4, 2013

Michael T. Parker  
Environmental Specialist  
Division of Solid Waste Management  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333-0017

Re: DEP Application S-020700-WD-BC-A  
Opposition to Certain Petitions to Intervene

Dear Mike:

I enclose the Opposition of State Bureau of General Services and NEWSME Landfill Operations, LLC to Certain Petitions to Intervene. BGS and NEWSME oppose the petitions to intervene in this proceeding filed by Paul Therrien, Ralph Coffman (both individually and on behalf of Citizens Against Genocide By Toxic Waste Dump), ecomaine, and Mid-Maine Waste Action Corporation. None of these parties have demonstrated that they will be substantially and directly affected by this license amendment application or that they are governmental agencies. These petitions represent only four of the thirteen petitions to intervene that were filed.

Please let me know if you have any questions regarding this document.

Very truly yours,



Thomas R. Doyle

Enclosure

cc: Nancy Macirowski, Esq.  
DEP Service List

**STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

State Bureau of General Services and  
NEWSME Landfill Operations, LLC

Application to Accept Municipal Solid Waste  
Sources at Juniper Ridge Landfill,  
Old Town, Maine  
DEP #S-020700-WD-BC-A

**SOLID WASTE LICENSE  
AMENDMENT**

**OPPOSITION OF STATE BUREAU OF GENERAL SERVICES  
AND NEWSME LANDFILL OPERATIONS, LLC  
TO CERTAIN PETITIONS TO INTERVENE**

The State Bureau of General Services (“BGS”) and NEWSME Landfill Operations, LLC (“NEWSME”) hereby oppose the petitions to intervene in these proceedings filed by Paul Therrien; Ralph Coffman (both individually and on behalf of Citizens Against Genocide By Toxic Waste Dump); ecomaine; and Mid-Maine Waste Action Corporation (“MMWAC”). None of these parties have demonstrated that they will be substantially and directly affected by a license amendment or that they are governmental agencies. As a result, they do not meet the standard for intervention as a party and should instead participate in this matter as interested persons.

**DISCUSSION**

BGS, as the owner of the Juniper Ridge Landfill (“JRL”), and NEWSME, as its operator, filed an application to amend the existing solid waste license for the JRL. The proposed amendment would remove the restrictions on disposal of in-state municipal solid waste (“MSW”) at the JRL in Old Town.

The proposed amendment flows from an agreement between the City of Biddeford and Maine Energy Recovery Company, LP, the latter of which is owned by the same ultimate parent

as NEWSME, Casella Waste Systems, Inc. (“CWS”). In the agreement, Maine Energy Recovery Company agreed to sell, shut down, and decommission the incinerator that it operates in Biddeford. The proposed amendment will allow NEWSME to dispose at the JRL some of the in-state MSW that would otherwise have been shipped to Maine Energy. For more information on the details of the agreement between Biddeford and Maine Energy, and how the proposal will affect operations at the JRL, please see the extensive discussions in the Amendment Application.

After concluding that the Amendment Application was complete for processing, the Commissioner exercised her discretion to hold a public hearing on the matter pursuant to Section 7(B) of Chapter 2 of the Department’s rules. The Department then issued a notice advising the public of the requirements to intervene as a party in that public hearing. In response, the Department received petitions from thirteen individuals and entities seeking to intervene, including from Mr. Therrien, Mr. Coffman, ecomaine, and MMWAC.

**I. The Standard For Intervention Is Strict.**

The standard for intervening in a public hearing is strict. This is not surprising, as parties have the opportunity to provide evidence and testimony, cross examine witnesses, and participate in pre-hearing conferences. Thus, pursuant to the Administrative Procedure Act (“APA”):

On timely application made pursuant to agency rules, the agency conducting the proceedings shall allow any person showing that he is [or] may be, or is a member of a class which is or may be, substantially and directly affected by the proceeding, or any other agency of federal, state or local government, to intervene as a party to the proceeding.

5 M.R.S. § 9054(1).

Thus, any individual or entity wishing to be granted party status as of right has the burden to show either (1) a substantial and direct interest in the pending application or (2) that it is an agency of a federal, state, or local government. Petitioners who cannot make such a showing are

not excluded from the process. Rather, they may participate as interested parties by providing written or oral comments as part of the hearing process.

## **II. Four Petitioners Have Failed to Meet The Standard For Intervention.**

As explained in greater detail below, Mr. Therrien, Mr. Coffman (both individually and on behalf of Citizens Against Genocide By Toxic Waste Dump), ecomaine, and MMWAC have all failed to make the required showing to be granted party status, and thus their petitions to intervene should be denied.

### **A. Mr. Therrien Did Not Show Either That He Will Be Substantially and Directly Affected, Or That He Is A Governmental Agency.**

In support of his petition to intervene, Mr. Therrien states that during the public hearings on the sale of Maine Energy to Biddeford, the “current City Administration repeatedly informed it’s [sic] residents/taxpayers that as State taxpayers we are substantially & directly affected by the proceedings @ the State owned Juniper Ridge Landfill.” He then goes on to list a number of issues that were discussed at those hearings, such as transportation, volume reduction, and landfill capacity, and briefly offers various comments on those issues.<sup>1</sup>

Mr. Therrien makes no effort whatsoever, however, to demonstrate that he will be substantially and directly affected by this proceeding or that he somehow represents a governmental agency. He does not allege, for example, that he can see, smell, or hear landfill operations, or that BGS/NEWSME’s Amendment Application would impact his property in any

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<sup>1</sup> Some of those comments do not appear to express a position on the pending application at all. For example, he states: “FINANCIALLY escalating fuel costs will prove to be a serious burden on all communities/property taxpayers.” Here, he appears to be referring to the use of MSW as a fuel, and thus to the sale and closure of Maine Energy. That sale, however, has already occurred and is not the subject of these proceedings. Similarly, he states: “CURRENT REMAINING CUMULATIVE LANDFILL CAPACITY 14,279,632 CUBIC YARDS Projected to meet our needs for 131 years.” Here, he appears to be in favor of extending the life of all of the landfills in Maine, not just the JRL. In any event, as explained in the Amendment Application, the current proposal would actually *extend* the life of the JRL, not reduce it, and thus it would seem that Mr. Therrien might actually support this aspect of the pending application.

way. In fact, he lists his address as 18 Marial Avenue, in Biddeford, which is more than 130 miles from the JRL. Thus, it is clear that Mr. Therrien's interest in these proceedings is not different than that of anyone who is concerned about or has a general interest in solid waste policy.

Although Maine courts have not addressed what is required to demonstrate a substantial and direct impact for purposes of intervening in agency adjudicatory public hearings, they have repeatedly addressed the related question of who is sufficiently impacted by an agency's decision to file an appeal. The courts have even used language in standing analyses that is similar to the standard for intervention, stating that a party must show that the challenged action acts "prejudicially and directly" upon the party's rights. *Nelson v. Bayroot, LLC*, 2008 ME 91, ¶ 9. To meet that burden, the injury suffered must be somehow particular to the party filing the appeal, "distinct from any experienced by the public at large." *Nergaard v. Town of Westport Island*, 2009 ME 56, ¶¶ 18. In other words, generalized policy concerns, no matter how passionately held, are insufficient to show standing to file an appeal.

This approach is instructive in an intervention analysis, too, in which a party must demonstrate that it has a substantial and direct interest to participate in the proceedings on the application in the first instance. At best, Mr. Therrien is expressing general concern about issues of solid waste policy. His interest in these issues, however, is no different than that of any member of the general public, and is therefore not particular to him. As a result, Mr. Therrien does not meet the standard of 5 M.R.S. § 9054(1). If it were otherwise, practically any interested citizen could claim status as an intervenor, thus rendering the standard for intervention meaningless.

Accordingly, Mr. Therrien's petition should be denied, and he should instead be invited to offer public comment.

**B. Mr. Coffman Did Not Show Either That He Will Be Substantially and Directly Affected, Or That He Is A Governmental Agency.**

In his petition for intervention, Mr. Coffman states that he owns property "at the mouth of Pushev [sic] and Birch Stream" where he has a 27-acre campground, known as the Penobscot River Resort. He goes on to state that his campground has already "suffered directly because of J.R. Toxic Waste site locat[ed] just 2 miles upstream." He then claims that the pending application "to bring municipal solid waste from Maine and also from out of state to our location will effectively kill Old Town being an outdoor outfitter destination." He concludes by stating that he has attended Landfill Advisory Committee meetings and that he has been selected to petition for intervention by a group called Citizens Against Genocide By Toxic Waste Dump.

As an initial matter, it is unclear whether Mr. Coffman is seeking to intervene solely on behalf of the Citizens group or if he is also seeking intervention individually. To the extent that he is seeking intervention on behalf of the group, his petition clearly fails to meet the standard. He states only that "a group of us have gotten together to educate the State on the Soft Kill Genocide approach to solving Maine + New England[']s toxic waste disposal problem." He makes no effort to show that this group would somehow be substantially and directly affected by the pending application or that it represents a governmental agency. He does not say who the members are, what the group's mission statement is, or even why a group that styles itself as against "genocide" by "toxic waste dump" would have an interest in a landfill application that accepts only solid (and not "toxic") waste. Moreover, based on a corporate name search, the group does not even appear to be registered with the Secretary of State's office.

Likewise, to the extent that he is seeking to intervene personally (or possibly on behalf of his business), Mr. Coffman's petition also falls short. According to the Secretary of State, the campground that he claims to own, Penobscot River Resort, has been administratively dissolved, and is thus prohibited under 13-C M.R.S. § 1421(3) from transacting "any business in this State except as necessary to wind up and liquidate its business and affairs under section 1406 and notify claimants under sections 1407 and 1408." For evidence that this corporation has been administratively dissolved, please see Exhibit A. In addition, based on a drive-by of his alleged resort, the property he identifies as his campground is vacant, and thus there does not appear to be any kind of going concern there at all.<sup>2</sup>

In any event, the location of the property where he claims to operate this business appears to be two miles from the JRL, on the opposite side of I-95. He does not even attempt to explain how disposing of additional in-state (but not, as Mr. Coffman incorrectly alleges, out-of-state) MSW at the JRL will have any impact at all on his operations, to the extent that they exist. Thus, there is no mention at all of potential concerns, such as traffic, odor, or vectors, or how those might harm his business, or even that there is a basis to believe that the JRL is in any way impacting his location. Likewise, he does not say how attending Landfill Advisory Committee meetings, which are open to the general public, might indicate that he would be substantially and directly affected by the Amendment Application. As discussed above with respect to Mr. Therrien's petition, expressing a general interest in issues of waste policy is not enough to meet the standard for intervention here. 5 M.R.S. § 9054(1).

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<sup>2</sup> The location of his campground is somewhat difficult to determine because it is not clear from his petition exactly where he claims the campground is located. According to the City of Old Town property tax records, Penobscot River Resorts LLC owns parcel 041 on tax map 6. This is a triangular parcel about an acre in size (not 27, as claimed in his petition) that is located just to the south of the intersection of Routes 43 and 16. The location of this parcel in relationship to the JRL is shown on the figure included as Exhibit B. The parcel is taxed only on the land; there are no other taxable features indicated in the records.

For these reasons, Mr. Coffman's petition, both individually and on behalf of Citizens Against Genocide By Toxic Waste Dump, should be denied, and he should instead participate, if he chooses to, by providing public comment.

**C. Neither ecomaine Nor MMWAC Has Showed That They Will Be Substantially and Directly Affected, Or That They Are Governmental Agencies.**

For their part, ecomaine and MMWAC have filed substantially the same petitions to intervene, prepared by the same counsel, alleging that they meet both prongs of the standard for intervention. Thus, for convenience, we will address both of them together.

**1. They Are Not Governmental Agencies Under The APA.**

Both ecomaine and MMWAC claim that they are entitled to intervene here because they are "political subdivisions" of the State. While this has a superficial logic to it – because political subdivisions and governmental agencies are at least related concepts – it is unsupported by the text of the applicable statutes or common sense.

To begin, this element of the intervention test requires ecomaine and MMWAC to demonstrate that they are an "agency of federal, state, or local government." 5 M.R.S. § 9054(1). To meet this test, ecomaine and MMWAC argue simply that they are political subdivisions.

In their initial filings, each dated December 6, 2012, both ecomaine and MMWAC cited the following definition of a political subdivision:

"Political subdivision" means any municipality, plantation, county, quasi-municipal corporation and special purpose district, including, but not limited to, any water district, sanitary district, hospital district, municipal transmission and distribution utility and school administrative unit.

30-A M.R.S. § 2252 (applicable to interlocal agreements pursuant to 30-A M.R.S. § 2202(1)(A)).



It was unclear from those initial filings, however, whether ecomaine and MMWAC were seeking to intervene, and so the Department requested that both parties clarify their petitions. In response, ecomaine and MMWAC again state that they are political subdivisions, but this time rely on a different definition of a political subdivision, as provided in the Uncontrolled Hazardous Substance Sites law, at 38 M.R.S. § 1362(1-C):

“Political subdivision” means any city, town, plantation, county, administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119, or quasi-municipal corporation or special purpose district, including, but not limited to, any water district or sanitary district.

As an initial matter, neither ecomaine nor MMWAC explains why they now rely on a statute that does not even apply to their operations, *see* 38 M.R.S. § 1362(3) (defining “uncontrolled hazardous substance site”), or why they apparently prefer this definition to the one originally cited. In any event, the result is the same. Nothing in either definition states that a political subdivision is, *ipso facto*, an “agency of federal, state, or local government,” as required.

On the contrary, the two definitions relied upon by ecomaine and MMWAC are clearly much broader than the concept of a governmental agency as used in the APA. The term “agency” is defined in the APA itself, which is the applicable statute here, as follows:

“Agency” means any body of State Government authorized by law to adopt rules, to issue licenses or to take final action in adjudicatory proceedings, including, but not limited to, every authority, board, bureau, commission, department or officer of the State Government so authorized; but the term does not include the Legislature, Governor, courts, University of Maine System, Maine Maritime Academy, community colleges, the Commissioner of Education for schools of the unorganized territory, school administrative units, community action agencies as defined in Title 22, section 5321, special purpose districts or municipalities, counties or other political subdivisions of the State.

5 M.R.S. § 8002(2) (emphasis added).

This definition would seem to limit the term “agency” only to a body of State government, and certainly to entities with substantial governmental authority to engage in rulemaking, licensing, and adjudication. Further, the APA excludes from the definition of an “agency” some of the very types of bodies that are included in the definition of a “political subdivision,” such as school administrative units, special purpose districts, and even municipalities. Neither ecomaine nor MMWAC qualifies as an “agency,” as defined in the APA, because they themselves admit that they are composed of local governments, not State governments, and, in any event, they do not have the authority to adopt rules, issue licenses or take final action in adjudicatory proceedings. *See* 30-A M.R.S. § 2203(8) (limiting bodies created by interlocal agreements to powers held by their individual members). To be sure, the intervention standard in 5 M.R.S. § 9054(1) goes beyond just instrumentalities of state government to include agencies of federal and local government, as well, and therefore the definition is difficult to reconcile with the use of the term in the intervention standard. The definition does illustrate, however, that the Legislature did not intend to grant every political subdivision the rights of agencies under the APA. *Rich v. Dept. of Marine Resources*, 2010 ME 41, ¶ 7 (stating “[o]ur primary purpose in interpreting a statute is to give effect to the intent of the Legislature”).

The argument also fails as a matter of common sense. The term “political subdivision,” however defined, includes disparate and relatively minor bodies, such as water, sanitary, and hospital districts, municipal transmission and distribution utilities, and school administrative units, none of which would be considered governmental “agencies,” as that term is generally understood. The position taken by ecomaine and MMWAC – that they must be governmental agencies because they are political subdivisions – therefore goes too far. By their reasoning, any

municipal transmission and distribution utility or school administrative unit would have the power to intervene automatically in any adjudicatory public hearing governed by the APA, no matter the connection to their governmental functions. While it is certainly understandable that the Legislature wanted to provide broad authority to such bodies to enter into interlocal agreements to make the most effective and efficient use of public resources, there is little reason to believe that the Legislature similarly intended for nearly any conglomeration of public bodies to intervene as of right in a permitting proceeding.

Thus, both ecomaine and MMWAC's petitions to intervene because they are political subdivisions should be denied.

**2. They Are Not Substantially and Directly Affected By This Proceeding.**

Next, ecomaine and MMWAC argue that they should also be permitted to intervene because they will be substantially and directly affected by the pending application. In essence, they argue that BGS and NEWSME's proposal is inconsistent with the State's solid waste hierarchy and that this would deprive them of a potential source of fuel for their operations.

As an initial matter, the solid waste hierarchy is not applicable as a licensing criterion in this proceeding. 38 M.R.S. § 1310-N(5-A) (hierarchy applies only to an application for a new or expanded landfill). In fact, in a recent proceeding the Board of Environmental Protection concluded that "the hierarchy is a policy that guides decisions on waste management planning and implementation; the hierarchy is not a regulatory standard that is applied to individual waste facility licensing decisions of a technical nature."<sup>3</sup> As discussed above with respect to Mr. Therrien and Mr. Coffman's petitions, ecomaine and MMWAC's general interest in a policy, no

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<sup>3</sup> Nonetheless, the amendment application explains in detail that the project is, in fact, consistent with that hierarchy. See Amendment Application at § 2.6.

matter how passionately held, cannot establish a substantial and direct interest in these proceedings.

Rather, what ecomaine and MMWAC are apparently concerned about is the future supply of fuel to their operations. There are at least two reasons that this argument should be rejected.

First, ecomaine and MMWAC are viably operating waste-to-energy facilities that do not currently receive, nor are they entitled to receive, any of this fuel supply. They operate without the Maine Energy fuel supply today and there is no reason to believe that they cannot operate effectively after closure of Maine Energy without this fuel supply. After closure of Maine Energy, ecomaine and MMWAC are free to compete for this in-state MSW or enter into negotiations with CWS to obtain a portion of this fuel supply, but this is a process wholly apart from this license amendment proceeding.


Second, and more importantly as a policy matter, accepting ecomaine and MMWAC's argument would mean that any competitor would have the right to intervene in an adjudicatory licensing proceeding under the APA. This would encourage businesses in competitive industries to intervene regularly in such proceedings, in hopes of driving up the applicant's cost of doing business or otherwise seeking some economic advantage. While the benefits of such aggressive actions might be substantial, they cannot be considered "direct," as required. At best, they are indirect, as illustrated by the point made directly above that the MSW in question is not currently going and is not slated in the future to go to either ecomaine or MMWAC. Thus, ecomaine and MMWAC's argument should be rejected on this ground, as well.

## CONCLUSION

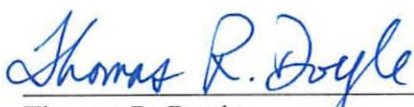
In adopting the provisions on intervention in proceedings under the APA, the Legislature sought to balance competing aims. On the one hand, it sought to encourage participation as parties by those who are most substantially and directly affected by the proceedings in question. This is a question of basic fairness, to ensure that those whose rights and duties may be fundamentally impacted will have a seat at the table. On the other hand, the Legislature clearly recognized that such hearings must be efficient to ensure the effective use of limited public resources and avoid unreasonable delays for applicants. People and organizations that could not meet the stringent standard for intervention would therefore be required to participate instead as interested persons, which affords them ample opportunity to participate.

In this case, the petitions for intervention filed by Mr. Therrien, Mr. Coffman, ecomaine, and MMWAC – only four of the thirteen filed – have failed to strike this balance. None of these petitioners have demonstrated that they meet the standard for intervention set out in the APA. Because the burden is on the petitioner to make such a showing, these petitions should be denied.

Dated: January 4, 2013

  
Donald J. McCormack, Director

Bureau of General Services  
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Augusta, ME 04333

  
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Brian M. Rayback

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Attorneys for NEWSME Landfill  
Operations, LLC

**EXHIBIT A**

**Penobscot River Resort, LLC  
Maine Corporate Status Report**



# MAINE

Department of the Secretary of State  
Bureau of Corporations, Elections and Commissions

## Corporate Name Search

### Information Summary

[Subscriber activity report](#)

This record contains information from the CEC database and is accurate as of: Fri Dec 28 2012 13:20:31. Please print or save for your records.

Legal Name	Charter Number	Filing Type	Status
PENOBSCOT RIVER RESORT, LLC	20040026DC	LIMITED LIABILITY COMPANY (DOMESTIC)	ADMINISTRATIVELY DISSOLVED

Filing Date	Expiration Date	Jurisdiction
07/11/2003	N/A	MAINE

**Other Names** (A=Assumed ; F=Former)

NONE

#### Clerk/Registered Agent

JOSEPH L. FERRIS  
120 NORTH MAIN STREET  
BREWER, ME 04412

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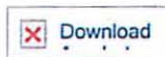
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**EXHIBIT B**

**Map and Town Tax Assessment Record  
Regarding Property of  
Penobscot River Resort, LLC**



\\server1\c\clients\DOT\TownLand\General\blair\Acad\Figures\BLR\_DISTANCE LOT 41.dwg, 12/20/13 7:06:53 AM, sfp



PARCEL OWNED BY PENOBSCOT RIVER RESORT LLC





### Old Town Real Estate Database: Property Assessment

[\[Assessor's page\]](#) [\[new search\]](#)

**W OLD TOWN ROAD**, Old Town, Maine  
Book and Page: B9086P0289  
P0810R  
Map/Lot: 006-041

PENOBSCOT RIVER RESORT LLC  
C/O RALPH COFFMAN  
OLD TOWN , ME 04468

mill rate = 0.01869

	Valuations	Tax
Land:	4000	75
Building:	0	0
Exemptions:	0	0
Total:	4000	75

Living area (SF): 0  
Zoning: 13  
Utilities: 9  
Year built:  
Number of rooms:  
Number of bedrooms:  
Number of full baths:  
Number of half baths:  
Number of fireplaces: