

November 23, 2016

Via Email and U.S. Mail

James W. Parker, Chair,
Board of Environmental Protection
c/o Ruth Ann Burke
17 State House Station
Augusta, ME 04333-0017

Cynthia S. Bertocci, Executive Analyst
Board of Environmental Protection
c/o Ruth Ann Burke
17 State House Station
Augusta, ME 04333-0017

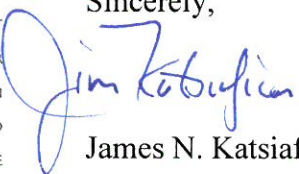
Re: Juniper Ridge Landfill Expansion
DEP # S-020700-WD-BI-N and #L-024251-TG-C-N

Dear Chair Parker and Ms. Bertocci:

Attached/enclosed for filing in this proceeding, please find the Post-Hearing Brief of Intervenor the City of Old Town.

Thank you for your attention to this matter.

Sincerely,



James N. Katsiaficas

cc: Service List
City of Old Town City Council

PHILIP C. HUNT
JOHN S. UPTON
PEGGY L. McGEHEE
MELISSA HANLEY MURPHY
JOHN A. HOBSON
JAMES N. KATSIAFICAS
TIMOTHY P. BENOIT
J. GORDON SCANNELL, JR.
FRED W. BOPP III
MARK P. SNOW
WILLIAM J. SHEILS
DAVID B. McCONNELL
PAUL D. PETROPAOLI
RANDY J. CRESWELL
JULIANNE C. RAY
DAWN M. HARMON
CHRISTOPHER M. DARGIE
SARA N. MOPPIN
PETER J. McDONELL
SHAWN K. DOIL
JOSEPH G. TALBOT
LAUREN B. WELIVER
JOSEPH C. SIVISKI
JOHN W. MASLAND
EMILY T. WHITE

**STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BOARD OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF

STATE OF MAINE) APPLICATION FOR
BUREAU OF GENERAL SERVICES) MAINE HAZARDOUS WASTE, SEPTAGE
JUNIPER RIDGE LANDFILL EXPANSION) AND SOLID WASTE MANAGEMENT ACT, and
City of Old Town, Town of Alton) NATURAL RESOURCES PROTECTION ACT
Penobscot County, Maine) PERMITS and
#S-020700-WD-BI-N) WATER QUALITY CERTIFICATION
#L-024251-TG-C-N)

POST-HEARING BRIEF OF THE
CITY OF OLD TOWN, MAINE

INTRODUCTION

The City of Old Town, Maine (“City”) is the Host Community for the Juniper Ridge Landfill (“JRL”). Following the Maine Legislature’s enactment of Resolve 2003, c. 93, the State of Maine purchased the West Old Town Landfill, now known as JRL, from Fort James Operating Company. The State of Maine conducted a competitive bid process and selected Casella Waste Systems, Inc. (“Casella”) to operate JRL. Following that selection, the State of Maine, Casella and the City entered into a “Host Community Compensation and Facility Oversight Agreement” (the “Host Community Agreement”) dated December 8, 2005, setting out the terms and conditions for Casella’s payment of a Host Community Fee to the City and for the City’s use of JRL, as well as Casella’s annual payment in lieu of taxes to the City. The Host Community Agreement also set out the obligations of the State and of Casella to provide information, notification of orders, and air, soil, and water quality monitoring data to the City, as well as the right of the City to conduct its own inspections of JRL. Section 10 of the Host Community Agreement contains the parties’ acknowledgement that Casella is obligated to apply for expansion of JRL.

As the Host Community for JRL, the City primarily is concerned with the health, safety and welfare of its residents and any impacts -- positive or negative -- that JRL and its proposed expansion (the “Expansion”) have on its residents. The City recognizes that the State of Maine has the authority to acquire a solid waste landfill and to contract for its operation, that it has done so in Old Town through the acquisition of JRL and the Operating Services Agreement, and that under the Host Community Agreement, JRL may so operate for up to 30 years from that agreement’s December 8, 2005 Commencement Date.

Therefore, in order to protect the public health, safety and welfare of its residents, the City has participated in the matter of the “Application for Maine Hazardous Waste, Septage and Solid Waste Management Act, and Natural Resources Protection Act Permits and Water Quality Certification” (the “Application”) filed by operator NEWSME Landfill Operations, LLC’s

(“NEWSME”) and the Maine Bureau of General Services (“BGS,” together, the “Applicants”) since the filing of that Application. The Application proposes the addition of a total of 9.35 million cubic yards of solid waste disposal capacity to JRL, which will extend its useful life until approximately 2030. During the several “milestone” meetings convened by NEWSME and BGS, during subsequent meetings with NEWSME and BGS, and through meetings and conversations between the City’s review engineering consultant, CES, Inc. and the Applicants, the City has raised several public health, safety and welfare issues that the Expansion and the continued operation of JRL pose. These issues, as described in the Pre-Filed Testimony of City Manager William J. Mayo and of CES, Inc. President Denis. St. Peter, P.E., include:

- Use of and payment for Construction and Demolition Debris (CDD) Fines used as Alternative Daily Cover;
- Use of and payment for Soft Layer Waste;
- Road and traffic impacts;
- City’s role under Declaration of Covenants and Restrictions;
- General compliance with solid waste statutes and regulations; and
- Odor and public health.

DISCUSSION

As that Pre-Filed Testimony demonstrates, the Applicants have satisfactorily addressed the City’s issues and on one issue, the City will take additional steps to help ensure that the Applicants will operate without harm to the public health, safety and welfare.

1. Use of and payment for Construction and Demolition Debris (CDD) Fines. CDD is a type of solid waste that is defined under Maine statute and regulation separately from “municipal solid waste,” and “solid waste” (*see* 38 M.R.S §1303-C (8) and (29); Maine Solid Waste Management Rules, Chap. 400, Section 1 FF, NNNN and Hhh). Approximately 20% of the projected waste volume for the Expansion consists of CDD fines -- the residue from the processing of CDD waste at the former KTI facility in Lewiston now owned by ReEnergy. *See* Pre-Filed Testimony of William J. Mayo, p. 2 and Pre-Filed Testimony of Toni M. King, pp. 2, 6-7, and Table 5-1. The City’s Solid Waste Facilities Review Committee and the City Council had raised the concern that NEWSME/Casella uses CDD fines as alternative daily cover (“ADC”) in the operation of JRL as an alternative to soil that it otherwise must purchase, and yet does not pay the City for disposal of these CDD fines under the Host Community Compensation and Facility Oversight Agreement (the “Host Community Agreement”). *See* Pre-Filed Testimony of William J. Mayo, p. 2.

The City has resolved this concern with the Applicants. Under State law and the Host Community Agreement, the use of CDD fines as ADC is permitted and encouraged. State law requires a solid waste processing facility that generates residue for disposal to recycle or process

into fuel at least 50% of that waste, and recycling includes use as ADC. 38 M.R.S. §1310-H 5-A. B. (2). Section 3.1(a) of the Host Community Agreement exempts “other materials that Casella accepts for beneficial use and for a tipping fee (exclusive of transportation costs) of \$5.00 per ton or less” from the per-ton fees charged for solid waste disposed of at JRL. NEWSME/Casella’s use of CDD fines at JRL is for a beneficial use (recycling) and does not require a written determination of beneficial use from DEP, and Casella represents that it receives \$4 per ton for this material. *See* Pre-Filed Testimony of William J. Mayo, p. 2; Testimony of Mr. Mayo, pp. 452-453. Therefore, the City is satisfied that under State law and the Host Community Agreement, it is not entitled to receive payment for CDD fines used by NEWSME as ADC at JRL.

2. Soft Layer Waste. The City’s Solid Waste Facilities Review Committee and the City Council also had raised the concern that NEWSME/Casella was not paying the City under the Host Community Agreement for municipal solid waste (“MSW”) disposed of at JRL as part of the “soft layer.” NEWSME and BGS sought and obtained from DEP a license amendment to permit the use of municipal solid waste (MSW) as a “soft layer” on the bottom of new landfill cells at JRL to protect landfill liners. Casella demonstrated to City Manager Mayo that it has been paying the City under the Host Community Agreement for disposal of the MSW used as soft layer MSW. *See* Pre-Filed Testimony of William J. Mayo, p. 2.

3. Transportation/Bennoch Road. The City had raised concerns regarding the impact of JRL-related truck traffic following the expansion of JRL on the condition of Bennoch Road, State Route 16. These concerns implicate the ability of roads in the vicinity to safely and conveniently handle traffic attributable to the solid waste facility as required by the Solid Waste Management Rules, Chap. 400 D. 1. and 2.

As City Manager Mayo stated, although Casella strongly encourages the use of I-95 to access JRL, there is a tendency for truck drivers to avoid the weigh station on that road when it is open by using Bennoch Road between Exits 193 and 199. Bennoch Road is a State highway – Route 16 – and the southerly portion of this Road is within the City’s urban compact area, and so is maintained by the City; the northern portion is maintained by the Maine Department of Transportation (“MDOT”). The City’s concern is that tractor-trailer traffic, particularly swinging empty trailers on vehicles leaving JRL, is causing deterioration of the Bennoch Road. The City is aware that other trucks use Bennoch Road, but dump truck use does not appear to have the same degree of road impact as the landfill-related tractor-trailer use. Although MDOT installed a 1” overlay over part of the road, the overlay is insufficient to repair the State portion, and while the City receives an annual host community payment of \$50,000 for several purposes (including roads, emergency response, staff training for monitoring, consultant monitoring, and an offset for City revenue loss due to effects on property values), neither this annual host community payment nor the State road maintenance reimbursement is sufficient to finance repairs to the City’s portion. *See* Pre-Filed Testimony of William J. Mayo, pp. 2-3.

NEWSME/BGS’ traffic consultant, Gorrill Palmer, noted in its conclusions (Application, Appendix E, p. 9) that:

3. We recommend that JRL prepare a policy requiring all trucks including independent haulers to utilize the Interstate system and that this be monitored periodically on an annual basis to determine compliance.

4. The weight limit on I-95 was increased from 80,000 to 100,000 in 2011. This allows trucks hauling material to access the site by I-95 rather than from local roads. We understand that NEWSME has a policy to advise trucks to use I-95 which should continue through the expansion.

The City asked BGS to discuss with MDOT actions that MDOT can take on the northern part of Bennoch Road to improve it as part of this Expansion. BGS did so; MDOT's work plan for 2016 includes "Preservation Paving" work on Route 16 in Alton and Old Town beginning 3.20 miles south of the Alton - Lagrange town line and extending southeasterly 5.89 miles; and for 2017/18 includes "Highway Rehabilitation" work on Route 16 in Old Town beginning at Interstate 95 NB off ramp and extending southerly 4.63 miles. This does not provide additional monies for the City to use in its repair of the southern portion, but does improve the northern half. *See Pre-Filed Testimony of William J. Mayo, p. 3*

The City also asked Applicants to do something to discourage tractor-trailer use on the road so that once MDOT repairs the northern half of Bennoch Road and the City addresses the southern half, the current state of road disrepair does not recur. The City understands that Casella is doing what it reasonably can to discourage such use by advising drivers to use I-95 and appreciates Casella's efforts, which include the recent installation of two signs—one at the weigh station at JRL and another plainly visible from the exit road instructing drivers to use I-95 to leave JRL. In addition, BGS has approached MDOT about this concern, and MDOT has agreed to install two signs in the area of the JRL exit road directing exiting trucks to use I-95 only. *See Pre-Filed Testimony of William J. Mayo, p. 3.* These actions are consistent with the recommendations and conclusions of Gorrill Palmer.

Thus, the City believes that the Applicants, Casella and MDOT have addressed the City's concerns regarding the truck traffic impacts of the Expansion.

5. **Declaration of Covenants and Restrictions.** With their application, NEWSME and BGS have offered a Declaration of Covenants and Restrictions (the "Declaration") as part of the wetlands compensation package. This Declaration places protections on 266 acres of the JRL parcel (the "Protected Property") such that it effectively is the same as a conservation easement, intended to keep the Protected Property in its natural state. Under that Declaration, the City would be the "Third Party," with third-party rights of administration and enforcement. The City had raised concerns about the potential cost of its administrative and enforcement responsibilities under the Declaration. Subsequently, Casella and the City negotiated an Agreement regarding Allocation of Costs for Implementation of Declaration of Covenants and Restrictions (the "Allocation of Costs Agreement") to address those concerns. As noted in our letter of September 16, 2016 to Board of Environmental Protection (BEP) Chair James W. Parker, on July 28 2016, the City Council reviewed the Declaration and the Allocation of Costs Agreement and authorized City Manager Mayo to execute both documents on behalf of the City. *See Pre-Filed Testimony of William J. Mayo, p. 3.*

6. **Regulatory Compliance Issues.** The City hired the firm of CES, Inc. to review the Application for compliance with State and federal regulations, particularly with regard to the Natural Resources Protection Act, 38 MRS § 480-A thru § 480-JJ; Maine Hazardous Waste, Septage, and Solid Waste Management Act, 38 M.R.S. §§ 1301 - 1310-AA, as applicable; 38 M.R.S. §2101; and DEP Rules Chapters 300, 305, 310, 315, 335.400, 401 and 405 (traffic, odor, noise, air quality, vectors, litter, leachate management, stormwater and groundwater), in order to protect the health, safety and welfare of the City's residents. As to these regulatory compliance concerns, the City presented the testimony of Denis St. Peter, P.E., President of CES, Inc. and a "Juniper Ridge Landfill (JRL" Expansion Application Review" report prepared by him and issued by CES Inc. and offered by the City to BEP (Old Town Exhibit 2) as part of this proceeding.

Mr. St. Peter's report observes that: "In general, the Application was complete and thorough." and in his Pre-Filed Testimony, he concludes: "In general, CES finds the Applicants' Application and responses adequately meet or exceed the referenced State statutes and regulations." See Old Town Exhibit 2 at p. 3; Pre-Filed Testimony of Denis St. Peter, P.E. at p.1. He addressed four areas for additional discussion with Applicants; following those discussions, he and CES better understood the Application and did not identify any issues that would prohibit construction of the Expansion as proposed in the Application. Old Town Exhibit 2 at p. 3.

Mr. St. Peter's report did raise the issue of the proper methodology for addressing non-detect values for hydrogen sulfide generated by MSW and CDD fines at JRL. Old Town Exhibit 2 at p. 8. Given this issue and the potential for odor issues in the operation of JRL, in his Pre-Filed Testimony, he provided two recommendations related to off-site monitoring, reporting and evaluation of hydrogen sulfide gas concentrations generated at by the wastes disposed of at JRL, which Applicants have accepted and incorporated into the Application materials. See Pre-Filed Testimony of Denis St. Peter, P.E. at pp. 2-3.

One recommendation is that Applicants institute the use of acute exposure action levels for concentrations exceeding the 15 and 30 ppb levels, with the Old Town Code Enforcement Officer to be contacted if hydrogen sulfide concentrations exceed the 30 ppb level. The Applicants have agreed to incorporate these action levels and the notification protocol into the Operations Manual Appendix K Odor Control Plan for JRL. See Pre-Filed Testimony of Denis St. Peter, P.E. at pp. 2-3.

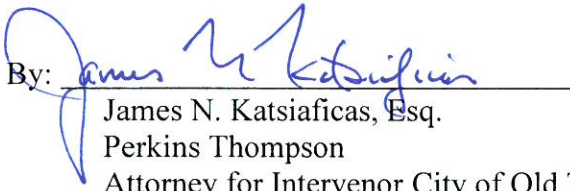
The other recommendation is that because the City remains concerned with the effects of possible chronic exposure to hydrogen sulfide (but the Maine Department of Environmental Protection ("DEP") has yet to adopt a chronic exposure standard), the City may implement its own evaluation protocol on an annual basis. Therefore, the City will use a portion of the Host Community funding supplied to it each year to hire a consultant to evaluate the NEWSME/Casella hydrogen sulfide data to evaluate a chronic exposure (one-year duration) scenario. If analysis determines that the data demonstrate the presence of hydrogen sulfide levels that exceed typical health-based guidance levels and so pose a potential health or safety risk to members of the public, including abutters, the City will report those findings to

NEWSME/Casella and to DEP. *See* Pre-Filed Testimony of Denis St. Peter, P.E. at pp. 2-3; Testimony of Denis St. Peter, P.E., pp. 451-452; Pre-Filed Testimony of William J. Mayo, p. 4.

CONCLUSION

The City does not object to and does not oppose the Application. Applicants have listened to the City and its concerns and issues, and have satisfactorily addressed those concerns and issues. Applicant NEWSME/Casella has been responsive when issues and questions have arisen regarding landfill operation, and has been a responsible community business contributing to civic organizations and events in Old Town. Applicant BGS has assisted in resolution of the City's road and traffic concerns.

Dated: at Portland, Maine this 23rd day of November, 2016.

By: 
James N. Katsiaficas, Esq.
Perkins Thompson
Attorney for Intervenor City of Old Town

cc: Service List
City of Old Town City Council