



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

July 10, 2015

Mr. Edward Spencer  
PO Box 12  
Stillwater, Maine 04489

Dear Mr. Spencer:

I am writing in response to your letter of May 28, 2015, and your June 28, 2015 "Petition to Revoke or Suspend Partial Approval", both related to the Department's January 31, 2012 Public Benefit Determination for the proposed expansion of the Juniper Ridge Landfill ("JRL") in Old Town. In part, your May 28 letter requested that the Department clarify its stance on the PBD as it relates to the potential acceptance of MSW in the proposed expansion, and urged that the Department require a modification of the PBD prior to the acceptance of an application for landfill expansion. Your June 28 petition seeks revocation, suspension, or modification of the PBD pursuant to the provisions of 06-096 CMR 2(25-27) . Although I appreciate your expressing your concerns about the PBD to me, I do not find, at this time, a substantive basis upon which to initiate such a proceeding or to modify the PBD, and am choosing not to move ahead with your request.

The 2012 PBD for the proposed JRL expansion does not approve the disposal of municipal solid waste (MSW), other than MSW bypass from Maine incinerators. My September 14, 2015 letter to the Bureau of General Services ("BGS") and NEWSME Landfill Operations LLC ("NEWSME") requiring that the PBD be modified prior to submission of the technical application for the expansion, followed their submission of the application to accept MSW resulting from the Maine Energy incinerator closure in the existing, licensed landfill. My letter assumed that BGS/NEWSME intended to continue the acceptance of that MSW in the proposed expansion area. In fact, the Department subsequently received both written and verbal confirmation that BGS/NEWSME does not propose to accept MSW that is not bypass in the expansion, and have acknowledged that any potential future plans to do so would require the Department's approval.

The question of whether MSW would be proposed for disposal in an expanded JRL was of primary interest to Department staff when they met with BGS/NEWSME in July 2014 to initiate discussion about the proposed JRL expansion licensing process. It was made very clear in that meeting and in a subsequent letter from BGS/NEWSME, that there was no proposal "at this time to accept municipal solid waste in the expansion, other than bypass from a Maine

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Letter to Edward Spencer

July 10, 2015

Page 2 of 2

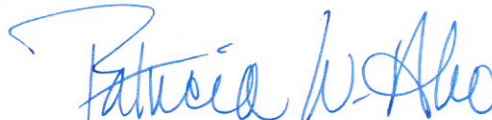
incinerator or bypass from a Maine incinerator to be used in the soft layer of the expansion cells”.

Although I certainly agree that the solid waste management landscape continues to evolve in a variety of ways (e.g. the recent submission of the MRC’s proposed waste processing facility application), I do not find that current conditions warrant any change to the JRL expansion PBD. Please be assured that should any situation arise that results in proposals to accept waste streams or otherwise modify operations at JRL beyond the limitations of the PBD or relevant licenses, the department will fully and carefully evaluate them.

As you know, we anticipate submission of the JRL expansion technical application later this month. We expect it to be fully consistent with the terms of the PBD issued in 2012. Among the issues raised in your petition is a concern about JRL’s ongoing consistency with the solid waste management hierarchy. Please note that the anticipated expansion application will be subject to the new provisions of the Solid Waste Management Rules, 06-096 CMR 400(4)(N) concerning the hierarchy, that became effective in April 2015. Interested parties will have the opportunity to engage with the Department in the licensing process for this application as provided in the Department’s Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2, and as provided by 38 MRS §1310-S(2), as it relates to public hearings on applications for new or expanded state-owned solid waste disposal facilities. The Department plans to post information and documents related to the expansion application online following its submission. I encourage you to participate in the review of this application through the public process, and will consider all of the information received by the Department throughout the proceeding.

Again, thank you for sharing your concerns about these important issues with me. Please let me know if I can provide anything further at this time.

Sincerely,



Patricia W. Aho  
Commissioner

May 28, 2015 PBD Inquiry

Dear Commissioner Aho,

I am writing to request that you clarify the Department's stance on Public Benefit Determination for the impending expansion of Juniper Ridge Landfill (JRL). Due to a combination of current events and a contract between Casella and PERC, it is clear that Casella, with the passive support of JRL's owner, the Bureau of General Services, has every intention of bringing unsorted Municipal Solid Waste (MSW) to JRL in amounts far beyond the limitations included in your PBD of January 2012.

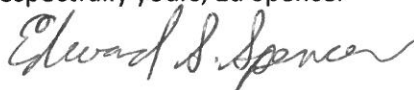
Here is the history as I understand it to be, and please correct me if I am wrong in part or parcel. You signed a Partial Approval for PBD of a JRL expansion in January 2012. My appeal of that document was denied by the BEP in July 2012. Casella/BGS then applied for an amendment to its DEP license for JRL to allow them to bring MSW from the southern Maine communities formerly served by the MERC incinerator in Biddeford. On September 14, 2012 you sent a letter to Casella and BGS stating "... the application proposes a material change in the underlying facts or circumstances upon which the PBD was based, requiring a modification of the PBD."

During the Public Hearing process on Casella's MSW application, a contract between Casella and PERC became public. This contract was signed on October 29, 2012. Thus, Casella/BGS had read your 09/14/12 letter, including "The PBD must be modified in this regard prior to submission of the technical application for expansion of JRL." On Page 18 of that contract, section 7.4 is headed Support for Juniper Ridge Landfill Expansion. This section requires PERC to support the JRL expansion, "...which will allow municipal solid waste to be disposed at the Juniper Ridge Landfill." This shows that despite reading your letter which admonished them for not including unprocessed MSW in their PBD application, they signed a contract which clearly states their intention of doing just that. Has a PBD Modification taken place?

At a Juniper Ridge Landfill Advisory Committee meeting in the last several years, the subject of MSW restrictions came up. Casella's spokesman, Don Meager, said (perhaps not his exact words) "Condition #5 of the PBD only applies to bypass from the MERC incinerator. There could be unlimited MSW bypassed from PERC." More recently this April, you and I both testified against LD 1194, which would have allowed towns to contract with Casella for direct disposal of their MSW at JRL. In the ongoing uncertainty between the Municipal Review Committee (MRC) and PERC, the MRC had stated that if their proposed high-tech MSW processor was not ready by the end of the PERC electrical subsidy in March 2018, then they would have to bring their MSW to JRL.

By requiring PERC to support their plans to bring MSW to JRL, Casella has shown that any pronouncements on their part that they support our State Waste Hierarchy is empty rhetoric. Casella has seemingly ignored your 09/14/12 letter. I urge you to require them to submit a PBD Modification before the Department accepts their Expansion Permit Application as complete for processing. In addition, the MRC and some Maine communities have shown that they wish to violate the Hierarchy. At the very least, a clarification of PBD Condition #5 is necessary in short order.

Respectfully yours, Ed Spencer





STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

September 14, 2012

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Department of Economic & Community Dev.  
59 State House Station  
Augusta, ME 04333-0059

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Assistant Attorney General  
6 State House Station  
Augusta, ME 04330-0006

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77 State House Station  
Augusta, ME 04333-0077

Don Meagher  
Pine Tree & Juniper Ridge Landfills  
Casella Waste Systems  
358 Emerson Mill Road  
Hampden, ME 04444

Thomas Doyle, Esq.  
Pierce Atwood  
254 Commercial Street (Merrill's Wharf)  
Portland, ME 04104

Re: Application for a Solid Waste Project Amendment  
Juniper Ridge Landfill

Dear Applicant:

The Department has received your application to amend the solid waste license for the Juniper Ridge Landfill (JRL), # S-020700-WD-N-A, dated April 4, 2004. The proposed Amendment requests, among other things, to allow disposal of unprocessed municipal solid waste (MSW) at JRL other than the MSW legitimately bypassed from Maine incinerators to JRL, which is already licensed.

As you know, the Department issued a Public Benefit Determination (PBD) for expansion of JRL, # S-020700-W5-AU-N, on January 31, 2012 that was affirmed by the BEP on July 19, 2012. The PBD provides partial approval of an application from the State Planning Office/NEWSME Landfill Operations, LLC (SPO/NEWSME) which stated, among other things, that it proposed to continue disposal of the same waste streams which are currently permitted in JRL. The Department's Findings and Conclusions were based upon this representation as to the waste streams. Indeed, the PBD contains Condition No. 5, which imposes a limit of 25,000 tons of MSW bypass from Maine Energy to the JRL Expansion in any calendar year unless otherwise authorized by specific conditions in a Department license. Nothing in SPO/NEWSME's

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STATE OF MAINE, ACTING THROUGH THE	)	PUBLIC BENEFIT
BUREAU OF GENERAL SERVICES	)	DETERMINATION
OLD TOWN, PENOBSCOT COUNTY, MAINE	)	
JUNIPER RIDGE LANDFILL EXPANSION	)	
#S-020700-W5-AU-N	)	PARTIAL APPROVAL
(APPROVAL WITH CONDITIONS)	)	

Petition to Revoke or Suspend Partial Approval

Patricia Aho, Commissioner, MDEP  
 17 State House Station  
 28 Tyson Drive  
 Augusta, Maine 04333-0017

Michael Barden, Landfill Oversight Manager  
 Maine Dept. of Economic & Community Development  
 59 State House Station  
 Augusta, ME 04333-0059

Thomas Doyle  
 Pierce Atwood LLP  
 Merrill's Wharf  
 254 Commercial Street  
 Portland, ME 04101

Don Meagher, NEWSME Landfill Operations, LLC  
 2828 Bennoch Road  
 Old Town, ME 04468

June 28, 2015

Dear Commissioner Aho,

Please consider this to be a Petition to Revoke or Suspend the Partial Approval of Public Benefit Determination for Expansion of Juniper Ridge Landfill license held by Casella/BGS. This Petition may also serve as grounds to Modify the PBD. Under DEP Chapter 2 rules, Section 25.B says "Any person may petition the Commissioner to initiate proceedings to revoke or suspend a license. The petition must state which of the criteria listed in section 27 is being invoked, and must specifically describe the factual basis for the petition." I believe that Casella/~~PBD~~<sup>BGS</sup> has violated criteria A, B, E and F.

- A. The licensee has violated any condition of the license;
- B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;
- E. There has been a change in any condition or circumstance that requires revocation or suspension of a license;

F. There has been a change in any condition or circumstance that requires a corrective action or a temporary modification of the terms of the license;

Most of the reasons for license revocation or modification are contained in my letter to you dated May 28, 2015. I believe that Casella made misrepresentations in their PBD application regarding the amounts of Municipal Solid Waste to JRL. They failed to disclose their plan to bring MSW from the MERC plant to JRL after the plant was to shut down. Your PBD Partial Approval happened on Jan. 31, 2012. My appeal of that Order by BEP occurred on July 19, 2012. The potential for appealing that decision expired in late August 2012. On September 12, 2012 Casella/BGS applied for permission to bring over 90,000 tons per year of MSW from southern Maine to JRL. The timing presents strong circumstantial evidence that they waited for PBD approval to be final before revealing their MSW plans.

You responded to their MSW disposal request with a strongly worded letter on September 14, 2012. "The PBD provides partial approval of an application from the State Planning Office/NEWSME Landfill Operations, LLC (SPO/NEWSME) which stated, among other things, that it proposed to continue disposal of the same waste streams which are currently permitted in JRL. The Department's Findings and Conclusions were based upon this representation as to the waste streams. Indeed, the PBD contains Condition No. 5, which imposes a limit of 25,000 tons of MSW bypass from Maine Energy to the JRL Expansion in any calendar year unless otherwise authorized by specific conditions in a Department license. Nothing in SPO/NEWSME's application for the PBD itself states, or even suggests, that unprocessed MSW, other than MSW from a legitimate bypass from Maine Energy, PERC, MMWAC or ecomaine, would be disposed at the JRL Expansion. Instead, SPO/NEWSME's application repeatedly asserts that its operation of JRL supports the waste management hierarchy, in which landfilling is the disposal of last resort."

In addition, during the MSW to JRL hearing process, a contract was revealed between Casella and PERC which was signed on Oct. 29, 2012. On Page 18 of that contract, section 7.4 Support for Juniper Ridge Landfill Expansion requires PERC to support and advocate for JRL expansion, "...which will allow municipal solid waste to be disposed at the Juniper Ridge Landfill." This violates the PBD conditions agreed to by Casella that they will support the Maine Waste Hierarchy (Criteria A), and also shows that they obtained their PBD by making false representations and failing to disclose fully all relevant facts (Criteria B). This contractual agreement with PERC to support unprocessed MSW to an expanded JRL also presents a change of circumstance since PBD was approved, and at the very least requires a temporary or permanent modification of the terms of the license (Criteria E and F). In addition, Casella's spokesman Don Meagher told the JRL advisory Committee (perhaps not his exact words) "Condition #5 of the PBD only applies to bypass from the MERC incinerator. There could be unlimited MSW bypassed from PERC."

There have been other changes of circumstances since PBD approval that warrant a suspension or modification of the PBD portion of the DEP license. This spring you testified strongly against LD 1194, which would have allowed individual municipalities to send their unsorted MSW to JRL, in part due to higher costs of alternative disposal higher on the hierarchy scale. Thankfully, LD 1194 was defeated, but surely similar efforts will emerge in the legislature. The apparent PERC/MRC plan to pursue different

plans could result in an effort to bring MSW from MRC towns directly to JRL if there are problems with their development of their own disposal/processing facility. These scenarios should be addressed in the PBD.

Finally, there needs to be a fresh look taken at the amounts of waste projected to need disposal at JRL should circumstances change. It may be hard to believe, but there may be a lot less waste coming to JRL over the long-term, which is the major criteria for PBD. Some former MRC towns are sending their MSW to Crossroads instead of PERC. PERC says they plan to cut their MSW usage by about 100,000 tons/year post-2018. About one-third of what goes into PERC ends up at JRL in FEPR or ash. The MERC incinerator's residues no longer come to JRL, and when (if) Casella stops bringing MSW from the former MERC towns to JRL post-expansion, this would result in a decrease of more than 100,000 tons of waste per year than was projected in the PBD application. There is a developing competition for MSW that has resulted in at least one Massachusetts incinerator (Haverhill) charging far less than the tip fees at the former MERC plant. Should the legislature or Department change the definition of fines for daily cover being a recycled material, this would effectively end the conduit for Massachusetts CDD through the former KTI processing facility and dramatically reduce JRL inputs.

Due to the imminent submittal of the JRL Expansion Application, Casella/BGS's failure to respond to your Sept. 14, 2012 letter, the revelation of terms of the Casella/PERC contract, and changes of circumstances including the passage of LD 1483, I urge you to suspend the PBD license until you have a chance to consider whether to revoke or modify conditions of that Order.

Respectfully submitted,

A handwritten signature in cursive script that reads "Edward S. Spencer".

Edward S. Spencer

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