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casella
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June 14, 2010

Senator Seth A. Goodall, Chair
Representative Robert S. Duchesne, Chair
Joint Standing Committee on Natural Resources
100 State House Station
Augusta, Maine 04330-0100

HAND DELIVERED

Dear Senator Goodall, Representative Duchesne, and Members of the Natural Resources Committee:

Please find attached a letter which Casella has prepared in response to the Committee's discussions at the May 26, 2010 Solid Waste Study Committee. The letter is preceded by an executive summary that more concisely outlines the points covered in more detail in the letter.

I would be very happy to answer any questions you have at your meeting today.

Sincerely,



Brian Oliver
Regional Vice-President

Brian Oliver Letter to Natural Resources Committee – June 14, 2010
Executive Summary

JRL Fill Rate – see Section 1 of letter.

- Projections vary based on different assumptions which change over time.
- Projected for 2010: 650,000 tons.
- Higher than projections made in 2004 because of Pine Tree Landfill closure.
- Lower than projections made in 2006-2009 because Westbrook CDD processing facility has not been built.
- If no final expansion permit is obtained by fall 2014, some JRL customers may need to be turned away to reserve capacity for contracted customers (PERC & Old Town Fuel and Fiber). JRL capacity will be exhausted in 2018.
- Diversion of current JRL customers to other Maine landfills could be disruptive, expensive for customers and municipal landfills may not be staffed or permitted to accept other waste.
- 2009 Public Benefit Determination application submitted by Casella and SPO anticipated that remaining life of JRL was approaching time needed to permit an expansion.
- An expansion at JRL is preferable to developing Carpenter Ridge.
- A single application for expansion of all capacity available at JRL is more efficient for all parties.
- Actual capacity is individually permitted and constructed by cell as that capacity is needed.

Effect of KTI Bio Fuels on the JRL Fill Rate – see Section 2 of letter.

- Brian Oliver incorrectly quoted in recent Bangor Daily article.
- KTI Bio Fuels recycled about 56% in 2009.
- Use of fines as alternative daily cover is recycling as defined by State law.
- Processing residue disposed was about 44% of total C&D accepted at KTI Bio Fuels.
- C&D processing residue was about 10% of total disposal at JRL in 2009.
- Processing C&D at Bio Fuels reduces volume going to landfill by about 80%; similar to waste-to-energy.
- C&D wood fuel standards directly affect how much fuel can be recovered by processing and how much residue is generated that must be landfilled.
- The State asked Casella in 2006 to assign the Fuel Supply Agreement as part of the purchase of the Old Town Mill by Red Shield Environmental from Georgia-Pacific.
- Casella had the right, at its sole discretion, whether to assign that agreement.
- The 2nd amendment restated and clarified that C&D processing residue from a facility in Maine was acceptable waste at JRL, consistent with historical practice and now as defined in statute.

Funding of SPO Positions Administering JRL – see Section 3 of letter.

- More than \$3.5 million in special waste fees have been paid into the Maine Solid Waste Fund by JRL since it began operations in 2004.

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Dear Senator Goodall, Representative Duchesne, and Members of the Natural Resources Committee:

There were several topics discussed by the Committee at the May 26, 2010 meeting that we believe could benefit from some clarification. A bulleted executive summary is attached.

1. Projected fill rate of the Juniper Ridge Landfill.

Over the past several years, various projections of the annual fill rate at the Juniper Ridge Landfill (JRL) have been made by Casella, the State Planning Office, and the Department of Environmental Protection. These projections have differed, and they have also changed over time, apparently causing some confusion.

In her presentation, SPO's Susan Inches made the very important observation that such projections are based on a set of assumptions at a point in time and that actual events may, and in fact probably will, differ from those assumptions. Consequently, as actual conditions that affect the actual fill rate change (e.g., the economy, facility closures, competition, and public policy), a new set of assumptions will result in a different projection made at a later date. Casella's projections of the annual fill rate at JRL are higher now than they were back in 2003 because of the unanticipated closure of the Pine Tree Landfill. Our projections are considerably lower than they were in 2006 because of a slower economy and because we have not built, as we had anticipated then, a new C&D processing facility in Westbrook.

Remaining capacity at JRL may appear to have been a moving target, but this is primarily a function of different starting points. In its Waste Generation and Landfill Capacity Report, which SPO presented to the Committee in January 2009, the remaining capacity at JRL included in this report was as of the beginning of 2007. In its communication to the Committee around the same time as SPO's presentation last January, Casella provided JRL capacity numbers as of the beginning of 2009.

Remaining capacity at JRL is determined on an annual basis by aerial photography and comparing current waste grades (the elevation of the landfill surface) to final waste grades in the

existing DEP license. The difference in volume between these two grades is the remaining capacity. This information is presented in the JRL Annual Report that is submitted to the DEP.

Based on the actual disposal from January through May of this year, our most current projection of the JRL fill rate for 2010 is 650,000 tons. Applying this projected fill rate to the remaining capacity in the landfill, without an expansion at JRL, some current customers may well need to be turned away in 2018 to reserve space for contracted customers (e.g., PERC and Old Town Fuel and Fiber).

As discussed at the last Study Committee meeting, there would likely still be some landfill capacity elsewhere in the state if the existing licensed capacity at JRL was exhausted at the projected rate. However, diverting current JRL customers to these other landfills would impose considerable expense and disruption on those customers, and greatly accelerate the fill rate of these other landfills, reducing their expected life. Municipal landfills may not be staffed, equipped, or even permitted to accept these additional waste streams.

An expansion at JRL would avoid this disruption. After all final permits are obtained, before construction of a new expansion cell at JRL could begin, it would take about six months to design, review, permit the cell, put out to bid, and select a contractor to build each new cell. Actual cell construction usually occurs in the May through October time frame. Therefore, in order to avoid disruption to existing JRL customers, final permits (assuming all appeals are exhausted) would need to be in place in the fall of 2014. SPO estimated in its 2010 Waste Generation and Landfill Capacity Report a permitting time frame for expanded or new landfills of between 6 and 8 years (page 22).

SPO and Casella recognized that the remaining life of existing JRL capacity was approaching the time needed to license new capacity when they prepared a Public Benefit Determination application in 2009. Since a public benefit determination is now a prerequisite to submitting an expansion application for a State-owned landfill, Casella's role in this application was entirely appropriate, and in fact completely consistent with the Operating Services Agreement (OSA). Under Section 4 of the OSA, "Casella shall use its best and most diligent efforts to, at its own cost and expense, apply for, seek, and maintain in full force and effect ...the Expansion Permit". With the draft denial of the public benefit determination application by DEP in January 2010, the risk of a capacity shortfall at JRL increases with the passage of time.

At the last Committee meeting, it was suggested that the process of authorizing, financing, designing, and building Carpenter Ridge should be initiated in response to the apparent potential landfill capacity shortfall that the Committee observed during the course of the discussion. It would seem that securing additional disposal capacity at the existing JRL is preferable to developing capacity and infrastructure at a new, greenfield landfill at far greater hauling distances to the majority of the generators. It would also seem to be most efficient, for all interested parties, including the State, and give waste generators in Maine long-term assurance of landfill disposal capacity, to license all of the remaining area at JRL suitable for landfill development in a single application. Licensing the same capacity in multiple applications is expensive, time consuming, an unnecessary demand on staff resources, and inherently

contentious. This does not mean that the entire landfill is built at once. As indicated above, each individual cell is reviewed and permitted, and then constructed as that capacity is needed.

2. Effect of KTI Bio Fuels on the JRL Fill Rate.

A recent article in the *Bangor Daily News* ("Lawmakers grapple with state's waste complexities", May 26, 2010) incorrectly quoted me as stating that "after sorting, about 80 percent of the total amount of CDD is classified as Maine-generated "residue" and disposed of at the Juniper Ridge Landfill". Slide 7 of my presentation showed 51,100 tons of processing residue landfilled out of 115,900 tons of C&D that came into Bio Fuels in 2009, or about 44% (not 80%, as the article incorrectly suggested). This represents about 10% of the total tonnage disposed at JRL in 2009. KTI Bio Fuels recycled about 56% of its inbound volume in calendar year 2009.

Processing fines, used as alternative daily cover, are classified as recycling, because they substitute for virgin soil that otherwise would be used as daily cover. Therefore, their use does not represent a net use of landfill space or disposal. The Legislature has expressly recognized this (pursuant to 38 M.R.S.A. §1310-N.5-A.B(2), recycling expressly includes reuse of residue as alternative daily cover at landfills). It also should be noted that there is a direct relationship between fuel quality standards and the amount of wood that can be recovered by CDD processing for fuel, and therefore the amount of residues that is generated to create a certain quantity of fuel; more restrictive fuel standards reduce the fuel yield and increase the residue that needs to be landfilled.

Processing of construction and demolition debris accomplishes a dramatic volume reduction comparable to that for incineration as described by the panelists at the May 26th meeting. Factoring in the recyclables that are recovered, and the difference in density between unprocessed CDD coming into KTI Bio Fuels, and CDD processing residue that is landfilled, the volume reduction accomplished by processing is about 80%.

The observation was made at the last Study Committee meeting that the whole purpose of the state-owned landfill acquisition authorized by the Legislature in 2003 was to save the Georgia-Pacific mill. The key to this rescue was reducing the mill's operating expenses by generating electricity in a biomass boiler fueled by very low cost construction and demolition debris fuel. Therefore, the Fuel Supply Agreement with the Mill was an essential element of the Georgia-Pacific transaction and incorporated as a requirement in SPO's Request for Proposals to select a landfill operator.

That Georgia-Pacific closed the Old Town Mill three years later was and is disappointing, even though the Mill continues to operate today under different ownership. It is important to note, however, that the primary condition under which Georgia-Pacific agreed, in 2003, to keep the mill open, had still not yet occurred when they closed the mill in 2006: Georgia-Pacific never used any C&D wood fuel in its boiler (indeed, the applicable DEP standards for CDW fuel substitution in boilers did not become effective until June 2006). It is also important to recognize that while current employment at the Old Town mill has not entirely replaced the lost

jobs, those jobs that remain and the tax revenue and other economic benefits of that operation are extremely valuable to the region and the State. The alternative, had the State not taken the

leadership it did in 2003, would have been a vacant mill with no jobs, no taxes paid, and no economic activity at all.

When Red Shield Environmental was negotiating the purchase of the Old Town Mill from Georgia-Pacific in the fall of 2006, it insisted on retaining the Fuel Supply Agreement as part of the purchase, given the value of this agreement to its business model. Under the terms of the original Fuel Supply Agreement, Casella had to consent to the assignment before Red Shield's purchase of the mill could occur. Under the terms of the original OSA, however, Casella could grant or withhold this consent at its sole discretion.

The Governor's office asked Casella to enter into a new Fuel Supply Agreement with Red Shield. Casella agreed, but also asked for a few items needed to undertake the obligation being requested by the State. One of those items was a restatement and clarification in the Operating Services Agreement (OSA) that CDD processing residue produced at a Casella facility located in Maine was acceptable for disposal at JRL, regardless of the origin of the CDD being processed, and regardless of whether the CDD fuel was being used at the Old Town Mill. (As you may know the Old Town Mill is not burning CDW fuel. Two other biomass boilers in Maine are successfully utilizing this CDW fuel supplied by KTI-Bio Fuels.) Casella needed this commitment from the State in order to enter to its own binding commitments to meet its obligation to supply fuel under a new Fuel Supply Agreement. Casella couldn't be placed in the untenable position of having entered into binding commitments to meet our obligations under a new Fuel Supply Agreement and then have no place to dispose of the residues, regardless of whether Red Shield (or the Old Town Mill under another owner) accepted the CDW fuel.

This processing residue described in the 2nd amendment to the OSA was acceptable Maine-generated waste in 2003 when the Resolve was enacted and when Casella's proposal to the State was accepted, and in 2004 when the OSA was executed and the DEP License Amendment for JRL was approved.

The reason for the restatement and clarification in the OSA 2nd amendment was the continued discussion since 2003 that what had historically been the practice for the past 20 years (processing residue generated at any Maine incinerator or Maine processing facility is Maine waste) should perhaps be changed. This would constitute a fundamental change in State policy and in the contractual provisions upon which Casella contractually committed to operate the State-owned landfill and undertake the Fuel Supply Agreement.

The only new waste category that was identified in the OSA 2nd amendment that was a change from the provisions in place in 2004 regarding acceptable waste at JRL was a very limited amount of out of state unprocessed CDD (20,000 tons) if bypass of waste was ever needed in the event of a mechanical outage at the in-state processing facility. This bypass would be acceptable Maine-generated waste under the definition now in statute. This change did not occur as SPO and Casella withdrew its application to the DEP to modify the JRL license to accept this bypass material.

3. Funding of SPO Positions Administering JRL.

Some concern was expressed that funding for the two (or 1 and 1/2) positions at SPO that administer the JRL contract should have been provided for back in 2003. In fact, JRL has provided very significant funding to the Maine Solid Waste Management Fund (which supports these two SPO positions). More than \$3.5 million in special waste fees have been paid into the Fund by JRL since it began operations in 2004.

We appreciate the opportunity to clarify the Committee record on these points.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Oliver".

Brian Oliver
Regional Vice-President