

August 16, 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

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

Dear Chair Parker:

On behalf of the City of Old Town, I am enclosing the City's Response to Motion to Strike of Intervenor Edward S. Spencer.

Thank you for your attention to this matter.

Sincerely,


James N. Katsiaficas

Enclosure

cc: Service List (via email)

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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)

**INTERVENOR CITY OF OLD TOWN'S RESPONSE TO
MOTION TO STRIKE OF INTERVENOR EDWARD S. SPENCER**

Intervenor Edward S. Spencer has moved to strike a statement from either Old Town City Manager William Mayo or Toni King of Casella Waste Systems, Inc. (Casella) because of perceived inconsistencies in their statements in pre-filed testimony. Mr. Mayo stated at page 2 of his pre-filed testimony that

Casella also demonstrated that it uses less CDD fine ADC (Alternate Daily Cover] (20%) than comparable landfills (at 24%) so that it is not taking undue advantage of free disposal of this material at JRL.

Ms. King's pre-filed testimony, at pg. 5 and pg. 7, estimates that "about 30 percent of the waste that is accepted at JRL is used in landfill operations in this manner as alternative daily cover."

Mr. Spencer asks the Board of Environmental Protection (BEP) Chair to strike either statement as false, irrelevant or misleading. He observes that the difference between the two estimates would total 70,000 tons.

That there is a perceived discrepancy between witnesses' statements does not mean that either statement is false or misleading. However, such factual differences are better addressed through direct and cross examination at hearing, and not through a pre-hearing motion to strike. Moreover, the filings in this proceeding support both statements and show that there is no inconsistency, because the witnesses were speaking of different portions of the JRL waste stream.

Mr. Mayo was provided the information cited in his pre-filed testimony during and following a meeting with Casella staff. See Pre-filed Testimony of William J. Mayo at page 2. It is supported by the May 13, 2016 report of CES, Inc., which is part of the record of this proceeding, at pg. 4: "Since the amount of [CDD] fines disposed of annually at JRL equals nearly 20% of the total waste stream, . . ." (Copy enclosed.) This percentage also is supported by the Table 5-1 of the narrative portion of the NEWSME/BGS application, which lists at page

5-2 the "Proposed Waste Types to be Accepted in Expansion" and places the percent of total tonnage of CDD fines at 19.7%. (Copy enclosed.)

Ms. King's statement regarding 30% of waste accepted at JRL being used for ADC is supported by the NEWSME/BGS application. Section 3.14 of that application at pg. 3-31 states:

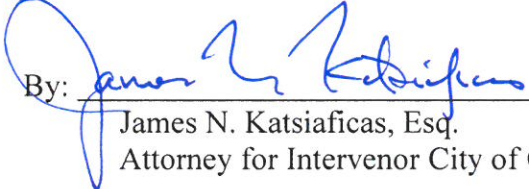
About 30 percent of the waste that is accepted at JRL is used in landfill operations in this manner as alternative daily cover. These materials include ashes, short paper fiber, and CDD fines. (Copy enclosed.)

Ms. King's pre-filed testimony and the JRL expansion application demonstrate that CDD fines are a part of a group of waste materials deposited at JRL and used as ADC that also includes ashes and short paper fiber, and that together these components total about 30% of the waste that is accepted at JRL.

Reading the statements by Mr. Mayo and Ms. King together, it appears each was referring to something different – Mr. Mayo to CDD fines as a percentage of total JRL waste, and Ms. King to CDD fines plus ashes and short paper fiber as a percentage of total JRL waste. This is the reason that the stated percentages are different -- not because either statement is false or misleading.

For the reasons stated above, Intervenor City of Old Town respectfully requests that the BEP Chair deny this portion of Mr. Spencer's Motion to Strike.

Dated at Portland, Maine this 16th day of August, 2016.

By: 
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Attorney for Intervenor City of Old Town

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as much as possible but did confirm that, to save time, drivers will occasionally avoid the weigh station. It was also pointed out that since the weigh station is on the south bound section, these trucks are empty. The City pointed out that the concern lies mostly with the condition of the portion of the road that is maintained by the state and ask if the DECD, as the facility owner, could communicate with DOT to initiate more responsive road repairs. Following the meeting, Mike Barden sent an email to DOT to initiate these discussions.

The last issue related to the solid waste fees paid to the City of Old Town, by NEWSME, and the waste types that are exempt from this fee. It was our understanding, based on discussion with the City, that they do not receive fees on waste accepted at the landfill that is used beneficially during waste placement. The specific wastes that we were asked to evaluate include municipal solid waste, accepted as part of the “soft layer”, and construction and demolition debris processing residuals (fines) accepted as daily cover. The specific language in the Host Community Agreement states that, *“materials approved in writing by MDEP for beneficial use at or on the landfill,, or other materials that Casella accepts for beneficial use and for a tipping or disposal fee of \$5.00 per ton or less, shall be exempt from the per ton fee.”* CES is unsure whether CDD fines have been approved officially (have a Beneficial Use Permit) by the MDEP for beneficial use at the landfill. We are also not aware of the tipping fee charged for disposal of the fines or the MSW utilized in the soft layer. **Since the amount of fines disposed of annually at JRL equals nearly 20% of the total waste stream**, and MSW is proposed for continued use in the soft layer of the Expansion cells, we recommended a discussion with the Applicant to clarify this issue prior to finalization of our comments.

During the meeting, NEWSME confirmed that fees are paid to the City for all the MSW accepted at the landfill and offered to have their accounting staff review the figures with the City staff. They also stated that the tipping fee charged for the CDD fines was \$4.00 per ton, making them exempt from the fee.

For ease of review, we have organized our comments, below, to follow the licensing criteria and requirements as they are presented in Chapter 400, Chapter 401, Chapter 405 and as they were distributed by the Board prior to the Pre-Hearing Conference in February 2016. Following each of the licensing criteria, we have provided a brief summary of the information that was provided in the Application and our comments as applicable.

Solid Waste Management and Recycling Law, 38 M.R.S. §2101

§2101. Solid Waste Management Hierarchy

BGS and NEWSME propose to meet the standards of the Solid Waste Management Hierarchy through the use of NEWSME’s sister companies Casella Organics and Casella Recycling, LLC’s Zero Sort facility in Lewiston as well as their waste acceptance criteria. Wastes proposed for

TABLE 5-1

WASTE MANAGEMENT TECHNIQUES FOR PROPOSED EXPANSION MATERIALS

Material Category	Proposed Waste Types to be Accepted in Expansion		Is Material a Residual from a Processing Facility that reduced the amount of material landfilled?	Is Material subject to recycling efforts by generator or otherwise prior to landfilling or is its use in the landfill is considered recycling	State Plan ¹ Ranking of Landfill Disposal As Current Management Method	State Plan ¹ Ranking for Source Reduction, Recycle, Compost, Beneficial Reuse Processing As Current Management Method
	Tons	Percent of Total Tonnage				
Waste Treatment Plant Sludges and Biosolids	70,000	10	No	Yes	L	H,L,N,N/A
Contaminated Soil	30,000	4.3	No	Yes	H	N/A,N
Municipal Solid Waste Incinerator Ash	58,000	8.3	Yes	No	H	N/A
Front-End Process Residue ²	54,000	7.6	Yes	No	H	N/A
Biomass and Fossil Fuel Combustion Ash	35,000	5	Yes	Yes	M/H	N/A,M
Construction and Demolition Debris	195,000	27.9	No	Yes	H,M	N/A,N,M
Construction and Demolition Debris Processing Facility Fines	138,000	19.7	Yes	Yes	N/E	N/E
Oversized Bulky Waste	60,000	8.6	No	No	H	L
Miscellaneous special waste	35,000	5	No	No	M,H	N/A,N,M
MSW Bypass and Soft Layer Material ³	25,000	3.6	Yes	Yes	M, H	N, N/A
TOTAL⁴	700,000	100	44.2	70.5		

Notes:

1. Source: MEDEP Maine Material Management Plan: January 2014 Appendix C Current Management of Maine's Solid Waste by Type; N=None L=Low; M=Medium; H=High; N/A=Not applicable (not possible); N/E Not Evaluated.
2. Listed as shredder residuals.
3. Note included in Table as an individual category compared to MSW Other Organics.
4. Values are percent of total material landfilled except tons total.

As shown in Table 5-1, of the materials proposed to be landfilled in the Expansion, it is expected based on past disposal data that 44.2 percent will be residuals from a processing facility that reduces, prior to disposal, the amount of material landfilled, and 70.5 percent will be materials subject to recycling efforts at their source prior to landfilling or at the landfill itself.

2. Casella Organics, a sister company to NEWSME, manages programs to compost and land apply organic wastes and is responsible for helping its customers maximize the diversion of waste from landfill disposal as allowed by applicable rules and market conditions. For these customers, Casella Organics only landfills wastes that have physical or chemical properties that preclude them from being beneficially reused or land applied, or when issues such as a lack of site access or lack of reuse/recycling outlets for these materials preclude the wastes from being beneficially reused. For example, in 2014 Casella Organics managed a total of about 12,700 tons of wood ash from the ReEnergy Fort Fairfield Biomass Power Plant. About 72 percent of this ash was land applied throughout central and northern Maine and the rest was taken to JRL for at least one of the reasons described. Ultimately, however, even the ash that had to be landfilled was used in the operations of JRL as a bulking agent or as daily cover, avoiding the need for NEWSME to use non-waste materials (virgin soil) in these applications. Additional details on similar programs and how JRL is operated in a manner consistent with the hierarchy are summarized below.

NEWSME also will focus on utilizing by-products and residuals from waste processing facilities as beneficial use and recycling in daily operations of the Expansion in the same manner as currently used at JRL. This reduces the amount of landfill capacity consumed by non-waste materials (e.g., virgin soil) that are required by the Rules for daily cover. About 30 percent of the waste that is accepted at JRL is used in landfill operations in this manner as alternate daily cover.¹² These materials include ashes, short paper fiber, and CDD fines.

As new and alternative methods become available to recycle, process, or reuse wastes that have historically been landfilled or incinerated within the State, the Expansion will be available to handle any residuals or by-pass that are generated by the new and alternative methods of waste management. This supports the hierarchy by providing an environmentally sound management option to handle residuals and by-pass, and ultimately reduces the amount of

¹² MEDEP evaluated the amount of alternate daily cover materials used at JRL, in comparison to the only commercial landfill in the State, the Crossroads landfill in Norridgewock, and concluded that the two landfills use a similar amount of daily cover. (See page 12 of Department Order #0207000-W5-AU-N)