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March 9, 2018

VIA E-MAIL AND REGULAR MAIL

Kathy Tarbuck, P.E.
Maine Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, Maine 04333
kathy.tarbuck@maine.gov

RE: Application #S-020700-WD-BL-A, Juniper Ridge Landfill Amendment for
Continued Acceptance of In-State Municipal Solid Waste

Dear Ms. Tarbuck:

I am submitting the enclosed written public comment on behalf of **ecomaine**, which is an Interested Party in the above-referenced proceeding.

Thank you for your attention to this matter.

Sincerely,

Mark A. Bower

MAB/gw
cc: Kevin Roche

STATE OF MAINE, DEPARTMENT OF)
 ADMINISTRATIVE AND FINANCIAL)
 SERVICES, BUREAU OF GENERAL)
 SERVICES, and)
)
 NEWSME LANDFILL MAINE)
 OPERATIONS, LLC)
)
 SOLID WASTE APPLICATION #S-20700-)
 WD-BL-A, JUNIPER RIDGE LANDFILL)
 AMENDMENT FOR CONTINUED)
 ACCEPTANCE OF IN-STATE)
 MUNICIPAL SOLID WASTE)

**WRITTEN PUBLIC COMMENT
 OF INTERESTED PARTY
 ECOMAINE**

NOW COMES **ecomaine**, by and through its attorneys, Jensen Baird Gardner & Henry, P.A., and hereby respectfully submits this written public comment with regard to the Amendment Application to License #S-020700-WD-BL-A (“Application”) filed by the State of Maine, Bureau of General Services and NEWSME Landfill Operations, LLC (the “Applicants”) on November 27, 2017. For the reasons stated herein, **ecomaine** respectfully submits that the Department should either deny the pending Application or modify the license so as to encourage greater diversion of waste from the Juniper Ridge Landfill (“JRL”) in compliance with the State solid waste hierarchy.

INTRODUCTION

By way of background, **ecomaine** is a nonprofit, quasi-municipal corporation formed pursuant to State law (38 M.R.S.A. § 1304-B) for the purpose of owning and operating a regional solid waste management system for the mutual environmental and civic benefit of its municipal member communities. **ecomaine** has 72 full-time employees with an annual budget of about \$22 million. In accordance with its mission statement, **ecomaine** provides municipal solid waste and recycling services to 73 communities in central and southern Maine. Owned by 20 member communities and governed by a 27-member Board of Directors, **ecomaine** operates three separate facilities at its site in Portland: (1) single-sort recycling facility; (2) a waste-to-energy (WTE) mass burn facility with a capacity to produce 14.7 megawatts of electricity; and (3) a landfill/ashfill site for disposal of ash and short-term storage of municipal solid waste (“MSW”). In addition, **ecomaine** has recently implemented a food waste recovery program, through which it receives roughly 5,000 tons per year of food waste and then transfers that waste to Exeter Agri-Energy, which operates an anaerobic digester. Furthermore, **ecomaine’s** education and outreach program reaches over 10,000 Maine residents per year through tours, presentations and events. Because **ecomaine** and the State are in similar positions with regard to the management of waste at their respective facilities, **ecomaine** is well-positioned to offer comment in this proceeding.

ARGUMENT

At the public meeting held on February 28, 2018 (“Public Meeting”), **ecomaine’s** CEO/General Manager, Kevin Roche, presented oral comments on behalf of the organization. This written comment is to supplement those comments and respond to the various arguments raised by the Applicants and their supporters in this proceeding.

1. The Applicant’s arguments regarding “stranded waste” are overstated.

One of the primary justifications cited by the Applicants and their supporters as grounds for the Department to grant the amendment is the assertion that, without unfettered use of JRL as a disposal option for unprocessed MSW, there will be an unspecified amount of “stranded waste” in Maine.¹ This position is undermined by a number of factors.

First, the Application contains doubtful assumptions as to the actual disposal capacity of several solid waste facilities in Maine that are higher on the hierarchy than JRL. First, the Application lists the capacity of Fiberight (Coastal Resources of Maine, LLC) at just 105,000 tons per year. As stated by Fiberight’s principal at the Public Meeting, that number represents only the tonnage that former MRC communities have committed to send to the facility and that Fiberight has committed to handle. According to Fiberight’s solid waste license #S-022458-WK-A-N, issued by the Commissioner on July 14, 2016, the facility is designed to process 650 tons per day, which well in excess of 105,000 tons per year. Fiberight’s own website indicates that its capacity is 180,000 tons per year.² In addition, as stated in the application, Casella affiliate Pine Tree Waste has entered into an agreement with Fiberight for the disposal of an additional 40,000 tons per year—above and beyond the 105,000 tons from MRC communities. Therefore, it is clear that the Applicants have understated the capacity of the Fiberight facility, and the Department should endeavor to gain some clarity as to the actual capacity of that facility. With regard to PERC, the Applicants state that the facility’s capacity after March 31, 2018 will be 210,000 tons per year, based on a February 20, 2018 letter from PERC Holdings, LLC, but there is nothing to suggest that PERC would be unable to handle additional tonnage—that appears to be the minimum based on PERC’s letter. As the Department knows, PERC has historically handled unprocessed MSW well in excess of 300,000 tons per year, and likely would

¹ At the Public Meeting, the Applicants and their supporters attempted to paint the picture that there will be piles of “stranded waste” throughout the state if MSW disposal is prohibited or restricted at JRL. A far better term for this waste would be “spot market waste,” as it will be treated as any other spot market tonnage and will be disposed at an appropriate facility. As stated by the Applicants, “Casella will continue to provide solid waste management services for the customer municipalities listed in Table 1. Casella expects that the disposal option for this MSW, if the amendment application is not approved, is at a landfill other than JRL.” March 2, 2018 Supplement at 1. In other words, Casella is contractually obligated to handle the waste—one way or the other. There will not be “stranded waste.”

² See <http://fiberight.com/fiberight-completes-70m-financing-for-maine-facility/>.

have continued at that capacity were it not for the fact that JRL is an available option. The fact that PERC was forced to significantly scale back its operations is a sign that there is less waste available in the Maine market and more competition for that waste. A recent example is the heavily competitive process for handling waste from Mid-Coast communities.

Second, the Applicants have not credibly demonstrated that there is inadequate in-state disposal capacity to handle the MSW generated in Maine. The Department’s Maine Solid Waste Generation and Disposal Capacity Report for Calendar Year 2016, released in January 2018 (“2016 Report”), contains total amounts of MSW landfilled and destroyed through incineration. *See* 2016 Report at 3. First, the total amount of MSW landfilled (429,098 tons) minus the tonnage of MSW incinerator ash disposed (102,878 tons) equals 326,220 tons.³ This is the amount of unprocessed MSW that was landfilled in 2016. Second, the total amount of MSW disposed at WTE facilities equaled 330,540 tons. Therefore, the total amount of Maine-generated, unprocessed MSW that required disposal in 2016 was **656,760** tons. Note that the Applicants calculate total MSW disposed to be 757,014 tons (based on 2015 numbers). This is because they included MSW ash from incineration and MSW disposed of at out-of-state facilities to arrive at that total. Neither category of waste should be deemed “stranded waste” and therefore is not relevant for this application. Incinerator ash may be landfilled at JRL regardless of whether the 2013 Order is extended. Also, because incinerator ash is a by-product of the waste that is initially processed at WTE facilities, including that tonnage in the total constitutes double-counting of that waste.

Unfortunately, the 2016 report does not contain data for disposal on a facility-by-facility basis. However, because the Applicants cite data from the 2015 report, *see* December 4, 2017 Supplement to Application at 1, **ecomaine** will also use that data. Using the Applicants’ assumptions for PERC and Fiberight capacity, plus the 2015 data on actual capacity for **ecomaine** and MMWAC, the total disposal capacity for facilities higher on the hierarchy than JRL is as follows:

ecomaine	187,485 (per 2015 totals)
MMWAC	78,239 (per 2015 totals)
PERC	210,000 (assumed per page 2-8 of Application)
Fiberight	105,000 (assumed per page 2-8 of Application)
TOTAL:	580,784⁴

³ The report does not specify how many of those tons were landfilled out of state. For reference, in 2015, 53,251 tons of Maine-generated MSW were landfilled out of state.

⁴ Note that the Applicants’ calculated total is only 544,000 tons—apparently attributable to the fact that they did not use actual numbers for **ecomaine** and MMWAC, but rather used their rated capacities. The above figure of 580,784 is more accurate and should be used by the Department.

In addition to the above total, there is capacity for disposal of Maine-generated MSW at Tri-Community Landfill in Presque Isle (23,246 disposed in 2015), Hatch Hill in Augusta (30,753 disposed in 2015), Bath (10,305 disposed in 2015) and Brunswick (4,598 disposed in 2015). Therefore, total annual landfill capacity at municipally-owned landfills is 68,902. Adding that to the above figure results in a total disposal capacity is **649,626**. This total does not even take into account the additional capacity available at Waste Management's Crossroads Landfill in Norridgewock, which disposed of 81,484 tons in 2015, nor does it account for any disposal at out-of-state landfills. Even using the Applicant's figures, which are undoubtedly understated, there is sufficient capacity without JRL to handle Maine's annual MSW generation, making the so-called "stranded waste" crisis unpersuasive.

2. The Department's 2013 Order did not contemplate that JRL would serve as a long-term option for MSW disposal.

The current proceeding is grounded in the Department's prior proceeding that took place 5-6 years ago. On September 12, 2012, the Applicants filed an application to amend the solid waste license to allow, for the very first time, the disposal of non-bypassed (*i.e.*, unprocessed) MSW at JRL. The Commissioner exercised her discretion to hold a public hearing pursuant to Chapter 2, Sec. 7(B) of the DEP rules, and granted intervenor status to various parties, including **ecomaine**, which participated fully in that proceeding and offered testimony to the Department at the adjudicatory hearing.

On December 20, 2013, the Department issued an order on the 2012 amendment application ("2013 Order"). Although the Department granted the Applicants' request to dispose of MSW at JRL, it imposed two key restrictions on that use: (1) an annual disposal limit of 81,800 tons; and (2) an expiration date of March 31, 2016.⁵ Throughout the Order, the Department emphasized that the purpose of the amended license was to accommodate those municipalities that had previously disposed of MSW at MERC, and that the disposal at JRL was not a long-term solution for those municipalities. In other words, the purpose of the Department's 2013 Order was to provide a temporary disposal option for so-called "Maine Energy MSW" generated by those municipalities who had used the MERC facility for disposal of MSW, and the DEP included a defined expiration date.

Excerpts from the 2013 Order support this point:

- "[T]he Department finds that the applicant has adequately demonstrated the need for disposal of 81,800 tons per year of MSW on a **temporary basis**" 2013 Order at 15 (emphasis added).

⁵ On appeal by the Applicants, the Board of Environmental Protection upheld the tonnage limit, but extended the deadline by two years, to March 31, 2018.

- “The Department finds however, that limiting further disposal of MSW at JRL would better align the operation of JRL with the goals of the waste hierarchy, and that Casella should continue to pursue the establishment of arrangements that would accomplish that additional diversion.” 2013 Order at 24.
- “Therefore, the Department finds that the term of this license will be limited to the period of time during which licensed disposal capacity remains available for MSW disposal within the horizontal and vertical boundaries approved in Department license #S-20700-WD-N-A, or March 31, 2016, whichever occurs sooner. **This limitation is appropriate to ensure that activities at JRL support, and do not subvert, the waste management hierarchy.**” 2013 Order at 25 (emphasis added).
- “The acceptance of additional unprocessed MSW at JRL in addition to bypass and soft layer material for cell construction is consistent with the hierarchy **provided that limitations are placed upon such activity to ensure that other waste management options will be implemented for former Maine Energy MSW.** Such limitations include a volume limit, a time limit, and requirements for delivery of some MSW to a facility at a higher level on the hierarchy.” 2013 Order at 41 (emphasis added).

Unfortunately, the statistics cited in the Application reveal that the Applicants have had very little success at diverting Maine Energy MSW from disposal at JRL or reducing the tonnage of unprocessed MSW brought to the landfill. Table 2 of the Application (at page 2-3) provides the non-bypass MSW tonnages that have been disposed at JRL:

Year	Tons	Percentage Increase
2014	36,878	
2015	57,521	56%
2016 ⁶	69,934	22%

Not only is the dramatic increase in the rate of disposal at JRL alarming; it is at odds with the Applicants’ representations that Maine recycling volumes have increased over these same years. *See* Application at 2-5. The increase is also contrary to solid waste trends elsewhere in the State; for example, MSW disposal by **ecomaine’s** owner communities has declined by 20% over the past 11 years (FY 2006-2017)—from 62,905 to 50,689 tons per year. This begs the question: Why has the quantity of MSW disposed at JRL increased so significantly each year since the 2013 Order?

⁶ The data for 2017 was not provided by the Applicants.

One possible answer to that question is provided in the Application itself: the Applicants admit that “the robustness of each community’s recycling program is not within the Applicants’ control.” *See* December 14, 2017 Supplement at 2. Therefore, while the Applicants would like to take credit for the recycling efforts of the municipalities that Casella serves, they also repeatedly state that Casella actually has no control over those recycling programs. This means that, in reality, Casella’s statewide recycling program is wholly unrelated to the amount of Maine Energy MSW that is being diverted (or not) from JRL.

Another possible answer is that, during the years since the 2013 Order, the Applicants have allowed more and more municipalities and businesses to use JRL as their primary disposal option—more than just the former MERC communities disposing Maine Energy MSW, which the 2013 Order allowed. Table 1 (at page 2-2 of the Application), which is titled “Contracted Municipalities that Utilize JRL for MSW Disposal, 2017” helps to illustrate this point. The table lists the 14 former MERC communities: Acton, Alfred, Biddeford, Buxton, Cornish, Dayton, Kennebunk, Kennebunkport, North Berwick, Old Orchard Beach, Sanford, Shapleigh, South Berwick, and Wells. The Applicants also admitted that it is difficult to track waste from any given customer once it arrives at the transfer station—a fact that the Department should find alarming. Table 1 further indicates that there are another 15 communities that are currently using JRL for MSW disposal, despite the fact that they are not MERC communities. In addition, the Application states that “there are several commercial customers throughout Maine currently using JRL for MSW disposal.” Application at 2-1. In other words, the Applicants have more than doubled the number of municipalities that use JRL as their primary disposal option, and have allowed unspecified commercial customers to bring MSW for disposal at JRL, despite the fact that the 2013 Order was expressly targeted to address Maine Energy MSW. In their March 2, 2018 response to the Department’s comments, the Applicants stated that, in 2016, the amount of waste generated by the former MERC communities was only **22,827** tons. *See* March 2, 2018 Supplement at 4. Yet, according to Table 2 of the Application, there were 69,934 tons of unprocessed MSW disposed at JRL—a difference of 47,107 tons.

Not only is this proposal inconsistent with the rationale underlying the 2013 Order, it is also inconsistent with the Applicants’ own statements in the Application. *See* Application at 1-1 (“This extension will serve to meet the ongoing need of primarily southern Maine communities, formerly contracted with Maine Energy Recovery Company, as an environmentally safe and secure method for handling MSW.”); December 14, 2017 Supplement at 2 (“As discussed in the Application, the extension of the acceptance date of MSW to JRL will serve to meet the ongoing need of primarily southern Maine communities, formerly contracted with Maine Energy Recovery Company.”).

3. The Application does not satisfy the burden to show that it is consistent with Maine’s solid waste hierarchy.

As stated previously, the Applicants attempt to demonstrate compliance with the regulatory standard on the solid waste hierarchy by citing various municipal recycling programs, over which the Applicants admit they have no control. Rather, NEWSME’s parent or affiliate (Casella or Pine Tree Waste) is involved only as the hauler of the materials or the ultimate destination for the materials (*i.e.*, the Lewiston MRF). Although some of those communities have strong recycling rates, others have much lower rates—sometimes in the single digits. An improvement to the recycling rate could lead to greater diversion of waste to a much higher rung on the hierarchy, lessening the need for landfilling.

The Applicants have not satisfied the regulatory standard found in the Department’s rules:

The application must include evidence that affirmatively demonstrates that the purpose and practices of the solid waste facility are consistent with the solid waste management hierarchy including, but not limited to . . . evidence that demonstrates that the waste has been reduced, reused, recycled, composted, and/or processed to the maximum extent practicable prior to incineration or landfilling, in order to maximize the amount of material recycled and reused, and to minimize the amount of waste being disposed. Such evidence shall include, but is not limited to, a description of the reduction, reuse, recycling, composting and/or processing programs/efforts that the waste is or will be subject to, **and that are sufficiently within the control of the applicant to manage or facilitate**....

06-096 C.M.R. ch. 400, § 4(N)(2)(a) (emphasis added).

The only evidence submitted by the Applicants that is somewhat relevant to the regulatory standard are the two contracts that have been submitted. The Application includes a recent contract with Fiberright as evidence that the Applicants are complying with the hierarchy. That contract requires Casella affiliate Pine Tree Waste to bring 40,000 tons of MSW per year to the Fiberright facility in Hampden. In addition, the Application includes a contract with PERC to bring 30,000 tons of MSW per year to the WTE plant in Orrington. Hopefully, these contracts will result in the reduction of waste to be disposed at JRL to the tune of 70,000 tons per year. Indeed, as the total tonnage of Maine Energy MSW is roughly 23,000 tons, the agreements with Fiberright and PERC should fully address the need—and then some. Moreover, as stated

previously, the contract with Fiberight demonstrates that the Applicants have understated Fiberight's capacity in the Application, and that the quantity of "stranded waste," to the extent it even exists, is greatly overstated.

Finally, the Applicants' argument that MSW is a "prime source of bulking material" is not relevant to whether the application is consistent with the solid waste hierarchy.⁷ Moreover, prior to the 2013 Order, JRL did not have the benefit of using MSW as a bulking agent even though it was accepting sludge during that time period. The Applicants state that they used FEPR and ash as bulking agents during that time, and, according to the Application, will continue to accept those waste streams as long as PERC is operational. It can be assumed that the Applicants will also use MSW bypass for this purpose.

In summary, the Applicants have not met their burden to demonstrate that the request to indefinitely bring 81,800 tons of waste to JRL complies with the above-quoted regulatory standard.

4. At the very least, the annual tonnage cap for MSW disposal should be lowered.

Almost five years have passed since the 2013 Order, which was designed to encourage waste diversion away from JRL; however, during that time the opposite has resulted, with tonnage figures that have significantly increased. Therefore, in the event that the Department finds that the Applicants have satisfied all of the regulatory criteria and grants the application, **ecomaine** would suggest that the tonnage cap should be either lowered significantly or diminished annually to encourage diversion of waste from the landfill.

On this issue, **ecomaine** would offer two points. First, the tonnage cap should be more in line with the purpose of the 2013 Order—to accommodate the MERC communities sending Maine Energy MSW to JRL. As stated above, those communities generate just under 23,000 tons of MSW per year, some of which is recyclable material that could be easily recovered. The current cap of 81,800 is clearly excessive in light of that fact. Second, as stated in the Application, average non-bypass MSW disposed at JRL over the three years since the 2013 Order (2014, 2015, 2016) is **54,747** tons (per Table 2 at page 2-3). At the very least, the tonnage cap should be reduced to a cap that is closer to the historical average, but that also encourages landfill diversion.

Finally, an unnecessarily high disposal cap increases the risk that "waste swaps" will be used to trade tons of MSW between facilities (*i.e.*, JRL and PERC) as a loophole to get around

⁷ This entire issue raises the question: How much sludge is being disposed at JRL if this quantity of MSW is needed as a bulking agent?

the restriction on disposal of out-of-state waste. Because it is excessively high, the current cap subverts, rather than supports, the solid waste hierarchy.

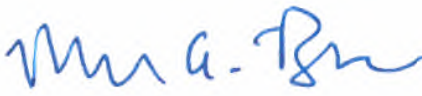
CONCLUSION

As stated previously, **ecomaine**'s owner communities are in a similar position as the State is with regard to this Application. The State and **ecomaine** each own landfills and have choices about how to operate them in order to serve the best interests of the public and the solid waste hierarchy. For **ecomaine**, the owner communities are careful as to how their landfill is used, and has adopted policies that are closely aligned with the hierarchy. Capacity in the landfill is an asset; however, it will become a liability when the landfill is full. The path **ecomaine** has taken is to follow the waste hierarchy closely and use its landfill only for those materials that cannot be processed using means that are higher on the hierarchy. As a result, by carefully managing what waste is landfilled, **ecomaine** has more than 25 years of available landfill capacity. Although it could have filled its landfill with unprocessed waste—at a great savings to its member municipalities—it would have used up that capacity long ago to the detriment of its communities. Indeed, landfills have historically filled up faster than expected (the Pine Tree Landfill in Hampden is just one example), and, based on 2015 numbers alone, JRL is filling up at a rapid rate of 631,762 tons per year (714,803 cubic yards). This data supports the adage that if you build the fill, the tons will follow. In sum, **ecomaine** encourages the State to take a careful approach with regard to its landfill, and limit JRL's use as a disposal option for unprocessed MSW.

On behalf of **ecomaine**, we appreciate the opportunity to provide this written comment in this proceeding, and would be pleased to respond to any questions that the Department might have regarding these comments.

DATED: March 9, 2018

Respectfully submitted,

By: 

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