

March 22, 2018 MSW to JRL Comments: #S-020700-WD-BL-A

I have read the Department's 03/12/18 requests and the Applicant's 03/15/18 response to those questions. In addition, I attended the March 15th Environment and Natural Resources Committee's Work Session and waste industry reports. Hopefully it is not too late in this process to include my additional comments.

Casella makes it very difficult to track the actual MSW movements from disposal point to final destination. It is not clear if wastes from out-of-state are accepted at the Westbrook transfer station. Likewise, it is difficult to discern if MSW from commercial sources in the former MERC communities is included in the wastes currently accepted at JRL. This is one more reason to deny the extension of MSW Department chooses to let the current status quo expire after 03/31/18: it will eliminate a lot of incentive to game the system.

Casella, with the tacit complicity of BGS, likes to create complicated dependencies, including making some agreements contingent upon DEP approval of this amendment. This is blatant and unseemly pressuring of a Regulator that should not be tolerated. Likewise, Casella likes to require that others testify on their behalf; if you comply, good things are promised. I have not gone through the transcript of the Feb. 28th, 2018 Public Informational Meeting in Bangor, but it seems that every individual in favor of this amendment request either worked directly for Casella, was contractually obligated to speak in support, or was dependent financially on Casella. Nobody testified in support otherwise. In contrast, those who spoke in opposition were members of the Public who gave their time freely. Kevin Roche of ecoMaine was the only exception and spoke in opposition from his perspective as the leader of the gold standard waste cooperative in the State of Maine at this point. We would be foolish not to take his advice: a little pain now precludes major trouble in the future.

Casella likes to give historical interpretations of JRL that only tell part of the story. They claim to have anticipated the closure of their MERC incinerator as part of their response to the OSA's Request for Proposals in 2003. They also indicated that they would post a \$50 million dollar performance bond as a requirement of the RFP. When the OSA was written after Casella was chosen as the only bidder to operate JRL, two of its essential elements were: No MSW and no Out-of-State wastes. In addition, Casella refused to post the \$50 million bond after they had been awarded the Operator's contract. Before lending too much credence to Casella's historical interpretations we should be prepared to examine the entire history of JRL in an objective manner.

In the discussions related to 4.a. of the latest exchanges (03/12/18) the question of disposal of Maine MSW in Out of State landfills is raised. They state "However, disposing of MSW in one landfill over another does not address the solid waste hierarchy standard....". For starters, if Casella really wanted to comply with Maine Waste Hierarchy, there would be no discussion of landfilling MSW anywhere. Secondly, what we are concerned with is our State owned Juniper Ridge Landfill and protecting our Waste Hierarchy in Maine. I question Casella's assertions that there is no capacity at WTE's beyond our borders. When Old Town was deciding whether or not to send our MSW to PERC or the new Fiberight facility, we looked at the WTE in Haverhill Massachusetts. At that time there was capacity at a cost of \$55/ton, plus transportation. It may well be the case that there is no capacity for Casella as a whole to send wastes, but that an individual community might be welcome to dispose of their MSW.

In discussion of 4.a. of the DEP/Casella/BGS letters, Casella said “Moreover, it is prudent and sound policy for Maine to provide for the management of its own MSW, and not rely on other states or out-of-state facilities to manage or dispose of MSW generated by Maine businesses and citizens.” This is blatant hypocrisy, and BGS should be ashamed to be a party to this statement. The best estimates are that over 40% of the wastes disposed at JRL were discarded out of state. Only creative definitions and pass-through “processing facilities” obscure the fact that nearly half of JRL comes from beyond Maine’s border. Continuing its creative rewriting of Maine waste history, Casella then says “In fact, the purpose of Maine’s 1989 statutory ban on new commercial disposal facilities... was for the state to be a market participant and to manage in-state waste at State-owned landfills.” The driving force behind our 1989 statutes was to prevent Maine from becoming the dumping ground for all of New England and beyond. By being a landfill owner, Maine has the right to determine what goes into its landfills whereas a commercial landfill (such as Crossroads in Norridgewock) is bound by the US Commerce Clause and must take wastes from wherever. Casella has arguably done more to circumvent the intent of our 1989 laws than any other entity, and therefore should not be taken seriously when suggesting policy.

Over the course of the last month or two, Casella and BGS have offered conflicting interpretations of the current and future markets involving PERC and MSW. On Feb. 14th, BGS’s Mike Barden told the ENR committee that PERC would take the former MERC MSW for \$150/ton. In its latest response to DEP, Casella quotes a letter from PERC that says “The competitive dynamics of the current msw market have depressed or limited the range of available tipping fees necessary to procure msw.” The key word here is “current”, which is to say before the March 31, 2018 deadline. Currently, PERC has strong incentive to operate at maximum capacity to benefit from the subsidized electricity rates. This means that they need to import MSW to run both boilers around the clock; and therefore they have accepted out of state MSW for as little as \$20-25/ton. Beginning 04/01/18, that incentive disappears and the bulk of PERC’s profits will come from tip fees, not electrical sales. Casella/BGS claimed on Feb. 14th that MSW disposal at PERC would be \$150/ton, less than a month later, Casella quotes PERC saying that there are “depressed” tipping fees. Which is it?

On Page 8 of their 03/15/18 response to DEP Casella says “The critical date in question, March 31, 2018, was not established by the applicants.” This is only partially true. When Casella appealed to BEP after the DEP had given them until 03/16/16 to bring MSW to JRL following the MERC closure, Casella/BGS requested an extension to 03/31/17. Choosing the last day of March was clearly Casella’s request. The BEP inexplicably granted them another year to the current deadline. Casella once again is trying to leverage DEP to approve this Extension: “As a result of the above events, approval of the application and activation of the referenced PERC and Fiberight agreements are inextricable linked; either both must occur or neither will occur.” To the extent that linkage exists, this is of Casella’s volition with the apparent compliance of PERC and Fiberight. Also of note on Page 8, “Those agreements were heavily negotiated and included in the application to demonstrate the applicants’ continued compliance with the hierarchy for this non-bypass MSW...”. Bringing MSW to JRL is NOT Compliant with the hierarchy, period, so any talk of “continued compliance” is absurd. Landfilling MSW, much of it unsorted without recycling or waste reduction at the source, is a gross violation of Maine’s Waste Hierarchy.

The role of the MRC in this application deserves a close look. If you look back to 2003 when the State had proposed taking ownership of the Old Town Mill's landfill, the MRC supported State ownership on one condition: No MSW into (what became) JRL. Then about 10 years later, the MRC tried to site a landfill in Argyle or Greenbush. After coming to the conclusion that their relationship with PERC was irrevocably broken, MRC leadership decided to support the Fiberright processing facility. As a bridge in case the new plant was not functional on April 1st, 2018, they signed an agreement with the Crossroads landfill in Norridgewock. They now want a new bridge agreement between Crossroads, PERC, and JRL. There are problems with this idea: They did not mention this in their application for the Fiberright facility, and it is a gross violation of the Waste Hierarchy to send MSW to JRL (even if they had originally been vehemently opposed to ANY MSW into JRL). JRL is not licensed to accept MRC MSW.

In Exhibit A of the 03/15/18 response to DEP, MRC concludes that honoring their agreement to send their wastes to Norridgewock was not practical for a number of reasons: "insufficient regional transfer capacity to enable larger transfer vehicles to provide the transportation element during this period..." and that trucking MSW to JRL "...would thus reduce overall truck fuel use and emissions." Personally, I applaud consideration of fuel usage and vehicle emissions as a permitting consideration, but when this issue was proposed as one of concern during the DEP's consideration of JRL Expansion it was rejected. MRC would like to send their MSW (on a temporary basis) to PERC but would need the approval of Waste Management in Norridgewock to do this. This is the best solution, and perhaps if there are waste swaps involved somehow WM could be compensated. Clearly, the Department should not be overly concerned about various waste entities' contractual complications or pressured to approve extended MSW deliveries to JRL.

At the ENR Committee's meeting last Thursday afternoon (03/15/18), there was discussion of limited capacity for waste disposal in southern Maine. One business (Troiano) suggested the need for a landfill in southern Maine; another (Coastal Rubbish) mentioned that he and his (now deceased) partner had discussed setting up a waste disposal facility (dirty MERF) in that area. The discussion of the PERC situation was at once encouraging and troubling. The good news is that they have reformed their waste preparation so that it is more efficient and can process more materials for roughly half the cost as prior methods. The speaker for PERC (plant manager Hank) said that they have 225,000 tons/year currently lined up for post-03/31/18. The troubling news is that a whole lot of that depends on arrangements with Casella. It may be prudent for DEP to ask our Attorney General's antitrust people to have a look at how much control Casella has over PERC. Hank did indicate that they could still process 310,000 tons annually.

If DEP grants Casella approval to continue deliveries to JRL, there is a very real possibility that Casella would reserve existing capacity for MSW by beginning construction of the newly granted Expansion. MSW to JRL was originally banned, and Casella has had 5 years to find a solution to the MSW disposal needs of the former MERC customers in Maine. There is a vigorous spot market for wastes in Maine and beyond that ensures no "stranded wastes". Casella entered into these contracts freely, knowing full well the restrictions on MSW to JRL, and neither DEP nor BGS should feel any obligation to solve their problems. BGS is a prime example of "captured regulation" and cannot be relied upon to speak for the State's needs: they seem to be all about helping Casella. The Southbridge Massachusetts Landfill, community-owned and Casella-operated, will close at year's end. Casella's Bethlehem New Hampshire Landfill's expansion

proposal was just rejected by voters in referendum. Casella may be looking at disposal capacity problems throughout the New England region, and they have huge landfill capacity in New York.

It is time for DEP to say no more MSW to our State owned landfill in Old Town, the JRL. The marketplace will adjust to this new reality, and life will be simpler for regulators in Maine. Our Waste Hierarchy needs to be enforced as a Permitting Standard in order for Maine to become more progressive in waste management.

Respectfully submitted,

Ed Spencer

03/22/18