IN THE MATTEROF

STATE OF MAINE, BUREAU OF GENERAL SERVICES, JUNIPER RIDGE LANDFILL EXPANSION City of Old Town, Town of Alton, Penobscot County, Maine #S-020700-WD-BI-N #L-19015-TG-D-N (APPROVALWITH CONDITIONS) SOLID WASTE LICENCE, NATURAL RESOURCES PROTECTION ACT, and WATER QUALITY CERTIFICATION NEW LICENCE	) EDWARD S. SPENCER) INTERVENOR)) COMMENTS ON STAFF)RECOMMENDATION / DRAFT BOARD)ORDER APRIL 14, 2017)) FOR BOARD OF ENVIRONMENTAL) PROTECTION)) FILED MAY 8, 2017)

May 7, 2017 Draft License Comments

We began the process of examining the Casella/BGS proposal to expand the State-owned Juniper Ridge Landfill (JRL) well over a year ago. Now we have the Department's Draft License, which presumably reflects the concerns raised by the Board, DEP staff, intervenors and others who took part in the Public Hearing process. There has been a strict and formal structure in place, which should protect the integrity of the Final Decision. We need to keep in mind from the start that the burden of proof is on the applicant, not the opponents.

Many times (73) in the Draft License there is language beginning with phrase "The Board finds…". Quite a few of these pronouncements contain conclusions that I don't recall being discussed at the Hearing or in Deliberative Session. It is also my understanding that the Board has not met on this proposal without Public notice. How did the persons writing this license come to understand the Board's findings on all these topics without direct input? Therefore, my suggestion is that before you consider voting this Draft License up or down, that you deliberate the merits of each "The Board finds…" statement individually. That way you can change the content to reflect your conclusions, which may differ from the authors'.

Expansion of JRL and how it will be regulated will serve as precedent for Maine waste handling for decades into the future. We can best preserve capacity by exerting control. A strictly regulated landfill sets a standard for excellence as our society evolves. Lax enforcement of existing laws and rules encourages unprincipled behaviors which may result in Maine increasingly becoming the dumping ground for the rest of New England. Judging from your excellent questions at the Hearing, I realize that you take your responsibility as final arbiters very seriously, and I encourage your patient consideration of these comments as part of determining final outcome.

HIERARCHY

The Draft license goes to great lengths trying to demonstrate how wonderfully Casella complies with our State Waste Hierarchy. The Draft's authors agree wholeheartedly with the Applicants' interpretation of State Law and Rule as it pertains to waste disposal at JRL. They want to measure compliance in terms of gross volume, when really our goal is to reduce all wastes into JRL. The percentage of wastes diverted is not mentioned, but it should be the true metric for compliance with our Hierarchy.

Several critical statements should be examined with extreme care before the Board signs off on it. On Page 42, it says: "With respect to intervenors Edward Spencer and Dana Snowman's argument that generators located outside Maine should be subject to Maine's laws governing recycling and source reduction, the Board finds that Maine recycling and source reduction law does not extend to generators located outside Maine." This is in direct conflict with Maine law on Recycling and Source Reduction Determination, 38 M.R.S. 1310-N(5-A), which says:

"An applicant for a new or expanded solid waste disposal facility shall demonstrate that:

(1) The proposed solid waste disposal facility will accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by this chapter and other provisions of state law…: and
(2) The applicant has shown consistency with the recycling provisions of the state plan."

If the Board were to comply with the above statement and exempt out-of-state wastes from our State Waste Hierarchy, this not only violates 1310-N(5-A), but creates an advantage for those dealing in out-of-state wastes over those serving strictly in-state customers who must fully comply with our Waste Hierarchy. Clearly the intent of the law is that it be followed in regard to all wastes landfilled, not just to Maine-discarded waste. If approved as written, this License would make it easier for non-Maine discards to come to our State-owned landfill which was created for the express purpose of controlling out-of-state wastes coming to Maine.

Page 84 deserves special attention. It begins "In accordance with 38 M.R.S. 1310-N(11), a solid waste disposal facility owned by the State may not be licensed to accept waste that is not waste generated within the State." But in the very next paragraph, DEP proclaims: "Specifically, waste with out-of-state point of origins would be allowed to be disposed in a state-owned facility." These two statements conflict with each other, and we must clarify just what the rules will be for all State Landfills from this time on. The next paragraph proclaims:

"The Board finds that the definition of "waste generated within the State" applies to wastes to be disposed of in the proposed expansion. The Board has no authority to alter State statute."

The Draft author wants Board members to permit all wastes disposed at JRL in the future to be labeled as "waste generated within the State". How can that be done without examination of every waste from every source?

When the State took ownership of the Old Town Mill's landfill in 2003/2004, it was clearly the intent that wastes from outside of Maine's borders were to be excluded. This goes back to 1989 landmark solid waste legislation declaring that any future landfills sited in Maine would be state-owned (or owned by other public entities). The clear purpose was to control wastes from beyond our borders that threatened to overwhelm our capacity to regulate them and turn Maine into New England's dumping grounds. Although in 2003 State and Casella officials were outspoken about "No out of state waste!", there was actually an agreement allowing Casella to bring in enough debris from outside Maine to source fuel for the Old Town Mill's boiler EXCLUSIVELY. In 2006 the Fuel Supply Agreement between the Mill, Casella, and the State was secretly altered to allow non-Maine debris to be turned into fuel for ANY Boiler in Maine. This was in the second Amendment to the Operating Services Agreement (OSA). Then in 2007 the current definition of "Maine Waste" was passed, once again without notifying local citizens or our Juniper Ridge Advisory Committee (JRLAC).

The Draft License states (above) that "The Board has no authority to alter State statute." This is true. However, by the Department's interpretation of our existing State statutes they will have in fact altered Maine waste law. Many of us share the Board's frustration with the Legislature's failure thus far to revisit Maine waste statutes pertaining to out of state waste, which Chairman Parker requested of the Environment and Natural Resource Committee in his cover letter accompanying the Board's annual report in January of this year.

The Board does have the authority to offer its own interpretation of Maine statutes regarding out-of-state (OOS) wastes. You need to offer a different interpretation of the statutes, an interpretation based in logic and not the needs of Casella to operate JRL profitably. 38 M.R.S. 1310-N(11) does say that "a solid waste disposal facility owned by the State may not be licensed to accept waste that is not waste generated within the State." 38M.R.S. 1310-N(5-A) states that compliance with the State's Waste

Hierarchy is mandatory for a State-owned disposal facility, and that all wastes must be "reduced at the source" to the maximum extent practicable. You must insist that the rules of the hierarchy be applied at the source, and if that source is outside Maine's borders that waste must still follow our Hierarchy. As part of the "proper manifest documentation" required of JRL wastes, you can insist that proof of maximum reduction and recycling has taken place at the waste's source, which is its true point of discard.

BEYOND THE CONTROL

Section 18.B. of the Draft License is a Summary of Proposed Waste Streams Relative to the Hierarchy. It discusses the "…viable waste management options for these wastes as related to the hierarchy that are sufficiently within the control of the applicant to manage or facilitate…". Wherever this "lack of control" language appears in the Draft, it gives Casella license to accept any wastes at JRL regardless of compliance with the Hierarchy. Instead of doing its utmost to Control inputs to our state landfill, the Department says: "If you can't control it, let it in." Wastes with sources outside of Maine comprise at least 40% of JRL inputs (Spencer testimony at Hearing, not refuted).

The Board has the authority to eliminate this blanket approval of any "uncontrollable waste stream" by mandating that ALL WASTES, regardless of generator or source, comply with provisions of our State Waste Hierarchy. Tell Casella and BGS to either certify compliance, or exclude those wastes from JRL. No exceptions, no excuses, no vague language. Each load coming to JRL was controlled at its source by an entity that decided where that waste should go, either an intermediate or final destination. Being a State-owned landfill allows for control and exclusion, unlike commercial landfills which are subject to the U.S. Commerce Clause. We should preserve capacity by controlling waste inputs, and exclude wastes that are "beyond the control".

UNREASONABLY VAGUE LANGUAGE

In the Draft License's Table of Contents some variation of the phrase "No Unreasonable" appears in 8 of the 38 Section titles. "Unreasonable" also appears in the draft license an additional 39 times.This strikes me as extremely inexact language for a legally binding regulatory license. This allows for harmful effects of an expanded JRL to be explained away by interpreting the damage as "not unreasonable". Wherever possible, this vagueness should be avoided. Where people with common sense see "No Unreasonable Adverse Effect on Air Quality", for example, we know that JRL is going to diminish our air quality.

To be honest let us just understand that: An expanded JRL:

1. IS going to adversely effect existing uses and scenic character.
2. IS going to have an adverse effect on air quality.
3. IS going to have an adverse effect on surface water quality.
4. IS going to adversely effect other natural resources.
5. WILL cause Erosion.
6. A discharge to a significant ground water aquifer may occur.
7. There may be adverse effects on existing or proposed utilities.
8. IS likely to cause or increase flooding.

While we are on the topic of vague language, we should consider Section 9's title: Fitting the Solid Waste Facility Harmoniously Into the Natural Environment. There is just no way to add over 50

additional acres of wastes piled over two hundred feet high into a formerly natural area and describe this as “Harmonious”. On Page 23, it says “…and at closure it will be fully planted with a vegetative layer and will resemble nearby hillsides with similar height, scale, and form.” There are no “nearby hillsides” that resemble JRL. The top of the landfill is at 390 feet above sea level, the next highest spot in Old Town is less than 170 feet high. I invite the applicant and Department to mark these “nearby hillsides” on a map. Please instruct the authors of the Draft to go back and replace vague language with realistic, factual, and provable assertions.

CAPTURED REGULATION?

Looking back at the history of JRL one may come to the conclusion that this is a good example of Captured Regulation. When the entity to be regulated, in this case Casella and the Bureau of General Services (BGS), has the ability to keep the Regulator (DEP) uninformed of changes to its Operating Services Agreement (OSA) which expands exponentially the amount of wastes allowed to be imported into Maine, this shows that Casella and the state-as-owner ignore the authority of the Department. These changes to the OSA were in the form of the Second Amendments to the OSA signed in November, 2006.

Another good example of the Regulated controlling the Regulator occurred at the Public Hearing in October. There, and in documents associated with the Expansion process, it became obvious that Casella/BGS feel no obligation to comply with Conclusions in their PBD license. They ignore Commissioner Aho’s mandate to reopen the OSA and address increasing CDD imports.

State ownership of future landfills in Maine became the law in 1989 and JRL was the first functioning State Landfill. Out-of-State wastes were banned other than those strictly controlled by contract with the State for fuel destined exclusively for the Old Town Mill. Now, we have over 300,000 tons per year coming into JRL that was disposed of beyond our borders. If this Draft License becomes adopted, this practice will surely increase. At the time of JRL’s creation, our Waste Hierarchy was a guiding principle. In the last few years our State Waste Hierarchy became law, not just an aspiration. Yet in this Draft document, our Hierarchy becomes twisted into a free pass for imported wastes, while real Maine waste must legally comply with the Hierarchy. How can this be allowed to happen, except in a place where the Regulated control the Regulator? The legal principle that the state as owner can control the waste inputs has been surrendered to Casella, with the silent help of the BGS.

PUBLIC BENEFIT DETERMINATION (PBD) AND OVERSIZED BULKY WASTE (OBW)

The Public Benefit Determination (PBD) for JRL expansion was signed in January of 2012, over five years ago. Much has changed since that date. In the PBD, Commissioner Aho determined that there likely Did exist enough capacity to meet the needs of the State, as long as waste outputs by society were not increasing. At the time, it was thought that the reason for waste amounts not growing was a result of the lasting effects of the Great Recession of 2008/2009. It has since turned out that societal waste outputs have continued to decrease slowly but steadily. It is now DEP policy that State waste outputs should decrease by 5% each two years.

Since JRL’s PBD was signed, our Waste Hierarchy has become Law. You could never tell that by reading this Draft License. In 2012 Commissioner Aho and DEP was extremely concerned about large amounts of wastes coming into JRL in the form of CDD from outside Maine. She placed a Conclusion in the PBD that

the State as Owner (then SPO, now BGS) should open up the OSA and make some changes to address her concerns. Sadly, Casella and BGS refuse to do this, which is another example of an ineffective Regulator (see above section).

Also contained in the PBD was a Condition that a limit for OBW waste inputs to JRL be determined. This was because of the huge annual increases in OBW deliveries which defied the economics of the times. At the Hearing I was asked by DEP staff how I would go about determining an OBW limit, and I said we would need to come up with a "per capita" measure of OBW derived by studying the OBW inputs at various waste disposal facilities across Maine. I made an attempt, and it would be possible to come up with such a number, but there are many variables.

For example, I found a Fiscal Report for 2016 from ecomaine which showed 13,099 tons of OBW that year. We know that ecomaine handles about one third of the wastes for the entire state, which would correlate to roughly 450,000 Mainers. However, looking more closely at the numbers, I noticed that the City of Portland amounts were not included, because they have their own recycling facility and operator. At MMWAC, an incinerator in the Lewiston-Auburn area, they had 9,651 tons of OBW in 2014 and 9,822 tons in 2015. When looking at the population I found that the charter towns of MMWAC consists of about 54,000 people but could not determine the population of the other contributing non-member towns. Similarly, the Tri-County landfill showed 1939 tons of OBW for a population base of about 35,000 people, but it is complicated by some towns recycling through Tri-County and others not.

The DEP has the resources to work through the variables and find an approximation. The 65,000 tons/year limit set in this license seem high to me. It is more important perhaps to consider where it came from. A lot of Maine towns have spring cleanups where bulky wastes are collected, sorted and either recycled, incinerated, or landfilled. In fact, some of what is left curbside is "reused" and disappears before pickup, and not reflected in our statistics but is absolutely a substantial "reduction at the source".

Another important element and Condition of the PBD is that there be a 3rd-Party audit of all processing facilities that send over 10,000 tons a year to JRL before an Expansion takes place. Isn't it past time for this vital information to be gathered? While they are doing the audits, they should insist on the actual origins/points-of-discard of the OBW. That way we could see where this material in such high amounts actually comes from. My impression is that much of the OBW coming to JRL came from Massachusetts, where they have strict rules on Construction Demolition Debris (CDD), including a ban on landfilling CDD. A proper audit should inform the Regulators, and it is a shame that Audit Results are not already available to help inform the Board's work. Since this is a State landfill, does any State entity ever visit JRL and make sure the wastes are properly classified and fees paid appropriately?

OLD TOWN AS ONLY CHOICE

One measure of the State's BGS lack of effort to secure landfill capacity aside from JRL in Old Town is reflected in a statement on Pages 91-92 of the Draft: "The applicant stated that alternative State-owned landfill sites, such as Dolby in Millinocket and T2R8 NWP (currently undeveloped), and the one commercial landfill (Crossroads in Norridgewock) were not viable options because JRL was the only site which had a Public Benefit Determination." Are we to think that JRL or other prospective sites suddenly appear with a PBD prepared? A PBD has to be applied for and examined by DEP, with informational

sessions and perhaps Public Hearings included. In the case of the BGS, there is probably a combination of bureaucratic laziness and fear of controversial decisions.

Why wouldn't Casella want other sites developed besides JRL? They don't want any competition. To properly site another landfill, there would have to be an honest Request for Proposals (RFP) where they would face an open market, unlike JRL's RFP which got only one response and then the winner refused to comply with all the terms of the RFP. Casella wants to control the marketplace and be the last landfill open, according to what they have told their shareholders. Mike Barden of BGS bluntly told those of us gathered at the Public Informational Meeting for JRL Expansion in the fall of 2015 at Old Town City Hall, "Old Town is the only one we are looking at."

JRL was forced into existence by a heavy-handed paper company, but was strictly prohibited from putting anything but mill waste into the landfill. The 2003 Resolve eliminated our municipal ordinances to that effect. Carpenter Ridge and Dolby also began as paper mill generator-owned landfill. With all the shut down or struggling mill sites in Maine, doesn't it seem that the right amount of money and effort could yield results? Furthermore, all three current state-owned landfill sites are clustered in Penobscot County. As long as the Department keeps rubberstamping JRL expansions, the people of Old Town and Penobscot County will continue to bear the burden of nuisance and future ecological time bombs.

ENVIRONMENTAL JUSTICE

Throughout this lengthy process of determining JRL expansion or rejection, intervenors and members of the Public have raised concerns about Environmental Justice, which in general is meant to protect communities from being targeted for environmentally degrading projects disproportionately from the rest of the population. I raised this issue at the pre-Hearing meetings, and my concerns were rejected without adequate explanation. Most states have an entity within their regulatory network that deal with issues of Environmental Justice.

The Penobscot Nation's homeland is located within 4 miles of JRL on Indian Island in the River that bears their name, and much of their traditional hunting and fishing grounds, whether owned or accessed with the Public, are located close to JRL. The Tribe has subsistence fishing rights guaranteed by the federal government. Their people and the larger community suffer higher rates of cancer and other diseases than the population at large, as well as being economically disadvantaged. An expanded JRL would be an example of environmental injustice, and its (Environmental Justice's) elimination from consideration as part of this expansion process is a travesty.

COST-BENEFITS ANALYSIS

I raised the issue of applying a Cost-Benefits Analysis to the JRL Expansion. During the pre-Hearing meetings we were told that any discussion of cost-benefits analysis was either irrelevant to the statutory criteria or had been resolved in the Public Benefit Determination. It does sound like there should be some benefits analysis in a PBD, but actually the PBD is almost entirely about capacity. Dr. Coghlan, expert witness, attempted to offer an analysis of the value of wetlands but that testimony was redacted.

We were told that when the Public offered written or oral testimony that comments needed to be restricted to "relevant criteria". Opponents largely complied with that restriction. However, when it came time for proponents of Expansion to speak at the actual Hearing, they all voiced similar themes that basically argued that Casella (which employed many of them) was a good company and that if JRL

was not expanded it would be an economic hardship. The net effect was that the proponents' Public Testimony largely served as a cost-benefits analysis. They offered very little that would be included in the "relevant criteria". The Casella employees and dependent businesses who testified in favor of expansion were allowed to make arguments of costs and benefits while we opponents were prohibited from similar analysis.

As proof of this inequity, I offer the following quote from the Draft License: "Issues raised in testimony by the general public in support of the project included: the facility as a well-designed, operated and maintained landfill; the importance of the landfill to businesses and the community…". This is a misrepresentation of the Public's testimony, which can be revisited in the Hearing Transcript. For starters, the "general public" in support consisted entirely (with one possible exception) of persons dependent on Casella for money. Secondly, "importance to businesses and community" is not a "relevant issue", or at least it was not supposed to be, yet here it is offered in the Draft License.

TECHNICAL ISSUES

At the Public Hearing many of us first learned that over 12 acres of the planned expansion would be built "…where the base of the landfill is located under the water table on the site." (Mike Booth). Mr. Booth then said that the water would be pumped out during the construction process and that it would actually be helpful to have upward water pressure on the landfill! I am surprised that this will be allowed under DEP rules, and it defies common sense. This should require further Board scrutiny from both an engineering and a wetlands perspective.

Also at the Hearing, Mr. Sevee mentioned pumping groundwater as a means to control escaped leachate, "…and we have shown through these pumping test that we can affect groundwater levels out as far as 2000 feet away from where the well is being pumped." (Transcript Page 41). This would happen while pumping an area dry enough to do very sensitive and meticulous base preparation. This would seem to have negative effects on surrounding wetlands.

Mr. Booth referenced the extensive site selection process prior to the Old Town mill siting its landfill where JRL is now located. "From the 58 sites, the further screening of those sites narrowed those sites down to 18 sites. The sites that were eliminated were eliminated because of either wetland and surface waters surrounding use." I doubt that this specific below-the-groundwater site would have passed muster. The mill needed but a small fraction of footprint compared to the planned size of JRL. Another question never answered was how much of a factor cost of development and ease of permitting were in the landfill site selection process. We are told to believe that just by chance the one out of 58 sites selected as best suited was also the closest, least expensive to develop, and within the Old Town borders where paying over half the tax base certainly enabled ease of approval for the Mill.

In Chapter 401(C) Performance Standards and Siting Criteria, it says "Disturbance of soil material must not affect ability to monitor water quality at the facility site." Yet in the JRL Annual Reports, there are many instances where a well has tested higher for a substance than it did before, and often this is dismissed as "caused by construction". A landfill is Always Under Construction, and there seems to be a violation of 401(C) which is not addressed in the Draft. It is also concerning that it sounds as if the only thing that will convince Casella's experts that there is a liner leak would be if they detect test results with a "leachate footprint". Leachate formed in different parts of the landfill is not homogenous, but varies with the wastes it passes through.

Odor issues are talked about in the Draft License and were at length at the Hearing. I stand by my claim that this process is flawed because the Casella employees get to decide if it is a "confirmed" offensive odor. Interestingly, at a landfill in Southbridge, Massachusetts that is operated by Casella, there is a 3rd Party independent odor authority. Once again, Maine trails Massachusetts in waste regulation.

LEACHATE DISPOSAL

At the Public Hearing in October, much was said about LRL current practice and future plans to dispose of the toxic landfill leachate at the Old Town Mill site. The Department's Draft License seems to endorse future leachate disposal in this manner simply because there is a "licensed operator" to funnel leachate through. This will cause harm to the Penobscot River, and the Applicants and Department should be asked to explain and to prove that there will be no pollution involved.

Currently, the leachate is collected into a tank on-site, then transferred into trucks and driven to the former mill's Wastewater Treatment Plant (WWTP). It is supposed to be treated with chemical to get it into a very wide range of PH. Once dumped into the lagoon, it is aerated in order to neutralize Biological Oxygen Demand (BOD). Then it is drained into the Penobscot River. There is no secondary treatment for removal of particulates and sediments, many of which are heavy metals such as lead and arsenic. Where do these toxins end up, if not in the river? There is no tertiary treatment with chemicals, and from what they have said, it is not even diluted before being dumped ("batch released")into the River. There is very minimal testing required to determine the toxicity levels as it enters the River and no testing of its impacts on the adjacent parts of the River.

Under Solid Waste Facility Licenses 1310-N(1), it says:

"Licenses. The Department shall issue a license for a waste facility whenever it finds that: Facility will not pollute any water of the State…"

This means there should be no harm to ANY waters, not just those directly adjacent to the landfill. We are talking about 10 million gallons of toxic solution being dumped directly into our Penobscot River system. This is a threat to subsistence fishing, a protected practice of the Penobscot Nation, not to mention recreational fishing which many of us enjoy with our families. Simply put, there has to be a better way to protect our natural resources from leachate pollution.

FINANCIAL ABILITY AND CRIMINAL OR CIVIL RECORD

Building, operating, and closing a huge landfill requires major capital. Casella's proof of financial ability for the purpose of this license is limited to a single short letter from May 21, 2015. It is written on Bank of America stationery, but Bank of America in no way guarantees Casella's fiscal capacity. Instead, it states that Casella has access to financing from a "credit facility". There is no description of just who or what this "credit facility" consists of. The Board should consider asking for a more detailed and updated proof of long-term capital access.

When the State put out its belated Request for Proposals (RFP) for a JRL operator in 2003, one of the requirements was that applicants needed to post a $50 million Bond. After Casella, the sole bidder, was awarded the job, Casella refused to honor the Bond requirement. Some State officials, to their credit, thought that this was illegal. But Casella prevailed, offering a Bond in a much lower amount (less than

10% of that listed in the RFP). You can read documents detailing this in the Timeline presented by Mr. Paul Schroeder at the Hearing, and part of the Record. Lack of proof puts Maine's taxpayers at risk, and we need look no further than the Dolby landfill to see what happens when the State has to pick up the bill for an insolvent operator. DEP licenses have a spotty record as far as Financial Capability, and there have been several mill bankruptcies in Old Town in the last ten years where DEP has certified their "financial ability".

In Section 23 of the Draft License, Criminal or Civil Record, it says "…a license for a solid waste facility or activity may be denied if the owner or the operator or any person having a legal interest in the applicant or the facility has been convicted of any criminal law or adjudicated or otherwise found to have committed any civil violation of environmental laws or rules of the State, other states, the United States, or another country." The disclosure statements only included members of NEWSME and the operator of the (now closed) Pine Tree Landfill in Hampden. The Department also requested and received an organization chart of other Casella companies that do business in Maine.

If we reread the above quote from 1310-N(7) carefully, it requires disclosure of unsavory activity by "…any person having a legal interest in the applicant or the facility…". However, the Department has only looked at the local Casella subsidiaries. These are wholly owned by Casella, so shouldn't the entire management structure be asked to disclose criminal or civil judgments? They certainly have a "legal interest" in the facility. What about the lenders who finance Casella activities, including this expansion? The Bank of America refers to a "credit facility", who would have a "legal interest" in Casella activities: shouldn't the Department ask for their records to be included? It needs to be said that throughout the northeastern United States there have been many cases of criminal activity by those in the solid waste business. One wonders about the long list of contributors to JRL and those "not sufficiently in the control".

INADEQUATE ENDANGERED SPECIES EVALUATION

The Draft License continues the inadequate effort to fully evaluate JRL's expansion's impact on the surrounding and larger ecosystem. In fact, the Department has neglected to fulfill its obligations to fully review the criteria necessary to issue an NRPA license. Remember, this is a federal permit administered by the State DEP. After sixteen months of formal steps leading us to the issuance of a Draft License, we suddenly learn that all our testimony, by the Public, applicants, intervenors and agencies alike, have been filed under the wrong number. This may be grounds for voiding any NRPA permit issued.

Let us pause for a moment and consider a future scenario. Perhaps after the Board concludes its work, either the applicants or opponents dislike the outcome and file suit. At that point, perhaps an opponent wants to make reference to the testimony of Dr. Stephen Coghlan. But, couldn't the attorneys for the applicant say: "That testimony is no good, it was not filed properly (improper license number identification)". Or, an opponent could say: "This NRPA application was filed under the wrong number and the permit should be disallowed." Either way, it may be better back up and restart the process. We need to understand the potential impacts before this gets ever more complicated.

The Draft license goes through the various criteria for the NRPA. However, it looks at the projected expansion in a very narrow way. For example, Stantec found that there are no salmon streams on the property. But the Draft says: "The Department's rule 06-096 C.M.R. ch. 315, guides the Department in its analysis of impacts to existing scenic and aesthetic uses resulting from activities in, on, over or

adjacent to protected natural resources subject to NRPA." (Page 87). It appears that the Department may have looked at "activities in, on" the proposed footprint, but that they gave very little attention to impacts "over or adjacent to protected natural resources subject to the NRPA."

At the Hearing there was this exchange between myself and Stantec's Bryan Emerson (transcript Page 192):

Mr. Spencer: "Okay, Mr. Bryan Emerson, you mentioned that your consultation regarding Atlantic salmon consisted of two sentences transmitted via e-mail. Did you engage in a formal consultation with U.S. Fish and Wildlife Service as may be required under the Federal Endangered Species Act and if not, does this e-mail exchange serve as an adequate replacement for a formal ESA consultation review?"

Mr. Emerson: "We have not engaged in formal consultation with U.S. Fish and Wildlife service regarding Atlantic salmon, as we understand from our conversations with the Corps that formal consultation will not be required."

Mr. Spencer: "Has there been any analysis done as part of this application of potential impacts to fisheries associated with disposal of JRL leachate into the Old Town mill's wastewater treatment plant?"

Mr. Emerson: "We did not do any studies of that, no."

The applicant did not ask for formal review by the USFWS, and neither did they spend any significant amount of time with the State's Department of Marine Resources (DMR) and Department of Inland Fish and Wildlife (MDIFW). They received short letters with no explanation from the state agencies. Yet somehow the authors of this Draft License want people to think that a permit should be issued and justifies this in part on "review comments" of DMR and MDIFW. There is no official documentation that the U.S. Army Corps of Engineers told the Applicants or Department that for the purposes of the NRPA permit, "formal consultation will not be required."

As a technical matter, Mr. Emerson said (transcript Page 103): "…the Corps regulates 750 feet out from the pools." These are vernal pools he references here. Other Casella witnesses stated that all the groundwater would have to be pumped from beneath the 12 acres of the expansion area that are below groundwater level to allow construction. They also testified that in the past they have pumped groundwater in the past and effected groundwater levels 2000 feet from the wells. Since groundwater underlies surface water, and the expansion site is surrounded on three sides by wetlands and contains an area that is NOAA-designated Critical Endangered Atlantic Salmon Habitat, draining the 12 acres for construction would have to have a negative effect on the wetlands to an undetermined distance from the landfill footprint.

Part of the NRPA contains an Alternatives Analysis. Casella did not do a serious analysis of options to avoid needing this much additional landfill capacity. Why would they really want to show other alternatives when they control JRL? In testimony I mentioned that Department Staff had concluded that there were alternatives for every JRL waste stream except the PERC incinerator ash and FEPR, which is a relatively small percentage of total wastes. Given these unnamed options to dispose of waste streams elsewhere, the lack of formal review with USFW, the very limited review by the State's DMR and DIFW, and the complete absence of any consideration of impacts to fisheries associated with dumping 10 million gallons of barely treated toxic leachate directly into the Penobscot River, this Draft License

approval of an NRPA permit is unjustified. The Board should reject it outright, or ask for a thorough review, this time including engagement with Federal Agencies.

THREAT OF BYPASSED MSW

From the beginning of JRL it was understood that curbside garbage (MSW) was to be excluded from State landfills except in emergency situations where an incinerator is out of commission. Over the years, MSW became accepted as a so-called "soft layer" to be placed at the bottom of new cells as a supposed buffer between other wastes and the liner. I object to this practice because I do not consider it to be an appropriate medium since it is not uniform and may contain sharp objects and extremely acidic or caustic materials that could endanger the liner.

Closely reading Condition 11 on Page 101, in A it lists as a potential source of MSW to JRL: "…waste delivered under an interruptible contract with PERC…". The Board, Department, and Public need to know if there is such an "interruptible contract" between PERC and Casella/BGS. Does one exist, and if so, what are the terms and conditions? It is well known that after March 31, 2018 PERC will be operating without many of its former municipal customers who have signed up with the Municipal Review Committee (MRC) to bring its MSW to their new Fiberight facility in Hampden. There is a lot of uncertainty involving PERC's future, and it would basically dismantle the State Waste Hierarchy if MSW going to PERC were to go straight into JRL should PERC fail. The Board needs assurance that this will not happen.

The requirements in 11.C. mandate that Casella/BGS notify DEP about excess MSW deliveries beyond incinerator capacity when MSW deliveries continue to JRL for a week. This should be stricter. A week is too long, it should be a matter of days or even immediately. It has been documented in the past that Casella had deliberately scheduled MSW deliveries that only lasted for six days to circumvent the notification requirement.

In general, as part of regulating a State-owned landfill, there should be a requirement that all contractual clauses held by Casella that could possibly effect JRL should be revealed. An "interruptible contract" is a start. Also, just what is the arrangement between Casella and its former KTI Biofuels processing facility in Lewiston and its owner since 2012, ReEnergy? Do terms of that sale require that ReEnergy residues be given preference over other materials for use as Alternative Daily Cover (ADC)? This allows ReEnergy to avoid paying tip fees to Old Town and Alton, and under Maine's absurd definitions qualifies as a "recycled material". It should be noted that these large "processing facilities" would not come close to meeting their 50% threshold of recycling inputs without this privilege. Does Casella assure customers in other states that JRL is available as a backup disposal site if the primary landfill is unusable?

Respectfully submitted,

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