

**March 26, 2012: Mr. Spencer's Response to the Motion to Dismiss his
Appeal of the Juniper Ridge Landfill PBD**

March 26, 2012

Ms. Susan Lessard, Chair

Board of Environmental Protection

17 State House Station

Augusta, ME 04333-0017

RE: SPO/NEWSME's Motion to Dismiss Appeal of Edward S. Spencer in the matter of Public Benefit Determination #S-020700-W5-AU-N

Dear Madam Chair,

I am writing in response to Mr. Doyle's request to deny my standing as an Appellant of Commissioner Aho's decision to grant Partial Approval to SPO and NEWSME's application for Public Benefit Determination of an expansion of the State-owned Juniper Ridge Landfill (JRL). First, some comments on the process to date.

It seems unusual for SPO/Casella (NEWSME's owner) to be allowed to argue on an appellant's standing before the Board separately from any discussion of the merits of my claims. By asking for (and being granted) a time extension in this matter, SPO/Casella are prolonging the time necessary to achieve their expansion plans. They often blame opponents for dragging out the permit process. If Mr. Doyle is allowed to argue my standing in front of the BEP, I insist on the right to defend myself in front of the Board.

Furthermore, I was informed in a letter dated March 20th, 2012 that I would have until March 27th to respond to this attempt to deny me standing. Is this an arbitrary length of time, or contained in DEP/BEP rules? I mention this because I am writing this on vacation. My wife Cheryl and I left Old Town March 21st and visited with her mother, who was widowed in January of this year. After leaving Cheryl's family we attended a reunion event at the University of Virginia, my alma mater. We are currently visiting my parents, ages 81 and 83, in Washington, D.C. The short time to reply takes precious time away from our family, so you must kindly excuse any lack of form or detail on my part.

The primary issue I want to convey to the Board is that Mr. Doyle's arguments are largely out of place because he equates standing before the BEP with standing in a court of law. There is a huge difference, in that the Board is a group of citizens who voluntarily serve an advisory and oversight function of the Department of Environmental Protection. Part of DEP's statutory mandate is to "protect and enhance the public's right to use and enjoy the State's natural resources." 38 M.R.S.A. § 341-A (1). One of my goals in appealing the PBD is to remind the State of its responsibility to enforce and enhance the State's waste policy, which includes "a coordinated statewide waste reduction, recycling and management program." This is consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent air, water and land pollution." 38 M.R.S.A. § 1302. A primary purpose of DEP, and the State's waste management

law is to protect and enhance the rights of Maine's citizens. The public has a right to be heard in any public process, including appealing the Commissioner's Partial Approval of PBD. Her PBD document contains critical information that was brought forward to DEP and the legislature by citizens including myself: notably the 2nd Amendment to the OSA, which includes the Fuel Supply Agreement.

Mr. Doyle asserts that I have no right to appeal because I have not yet been injured by the PBD. This is an impossible standard for a citizen to meet. Indeed, this is my only chance to challenge the determination, and if I do not do so now I will lose my right to challenge PBD, or to raise issues in further proceedings. 38 M.R.S.A. § 1310-N(3-A)(B) ("the commissioner shall make the determination of public benefit in accordance with section 1310-AA, and the commissioner's determination under that section is not subject to review by the department or the board as part of the licensing process under this section [relating to solid waste facilities licensing]).

Mr. Doyle tries to dismiss my injuries which result from Old Town's Host Community Agreement (HCA). Certainly our HCA, signed by SPO and Casella as a requirement of state ownership of JRL, is part of the record. This agreement contains the following provisions:

f. Suspension of Payments. Notwithstanding anything above to the contrary, the obligation of Casella to make the payments or provide the benefits set forth in Sections 3.1(a) and 3.1(b) above shall be suspended in the event that, and for so long as, the City:

(i) appeals or funds a third party to appeal to any administrative or judicial body and federal, state or local permit, license, approval or determination including, but not limited to, any of the foregoing issued by DEP to the State and/or Casella relating to the Landfill or any expansion thereof (provided that the City's participation in any such permit, license, approval or determination process up to the point of decision shall not be a basis for suspending payment under this provision)

Casella/SPO has limited my right to petition my local government to prevent damage and injury to me as a citizen because the HCA puts a financial penalty on any municipal challenge. Any other citizen in Maine, or beyond, has this right to petition their government for a redress of grievances. This is certainly a particularized injury, because as a citizen of Old Town I am in a group of approximately 8,000 citizens out of Maine's population of over 1,300,000 people (about six tenths of one percent). Maine is a tiny percent of the population of the United States (over 300 million), and this is relevant because waste from anywhere in the country, or in the case of Treated Biomedical Waste, anywhere in the United States or Canada can be brought to JRL.

I have lived on our property in West Old Town since 1978. This is a very special and unique place we chose to live and raise our children. Our nearest neighbors are a half mile away, and there are only two of them; the next closest residents are over a mile distant. We are blessed with the silence of our

natural surroundings and we are especially attuned to outside noises, odors, and other activities. This is nearly unique not only in Old Town, Maine but in the country as a whole.

There are certain unique topographic conditions where we live, and there are especially unique pieces of equipment at JRL. For Doyle to imply otherwise is at best a misstatement of fact, and at worst a lie. Our house sits at about 135 feet elevation above sea level, JRL towers above at 325, and is permitted to go to 390. The next highest point in Old Town is about 250 feet above sea level, and there is nothing above 200 feet east of our location in Old Town. This should help to visualize what a surface to surface view might yield. The properties abutting us to both the north and south have a clear view of the landfill in its current configuration. The only reason we cannot see JRL currently now is because of trees in the way, or JRL not being up to full height yet. This makes it extremely damaging to cut certain trees, which by the way are very good sound buffers as well. Limiting one's decisions on what to harvest hurts me financially as well as carrying out my management plan as a steward of the forest, which by the way, I do professionally as a low-impact logger.

Mr. Doyle properly states on page 12 that "The primary source of sound at JRL is the equipment." He further states "...the equipment at JRL is not unique and does not generate unique sounds." This is once again a false statement by Mr. Doyle, and demonstrates his lack of any boots-on-the-ground experience at JRL, which also limits his concept of how overwhelming the odors emanating from JRL can be. Aside from the backup beepers and slamming tailgates and truck bodies, there is a nearly constant roar of a monstrous trash-compacting piece of equipment smashing and crunching all beneath it into as small and dense a place as possible. This machine looks like a huge bulldozer, except it has two sets of rolling steel wheels with big spikes sticking out of it. I defy Mr. Doyle to identify other non-landfill construction sites where this specific piece of equipment goes back and forth twelve hours a day except for maybe eight hours on Sundays and holidays. While he is at it, perhaps he could also measure the decibel levels of it at full throttle.

There are certain conditions that enhance sounds from JRL. These include, but are not limited to, cold and clear conditions, warm and still conditions, low cloud cover which sound bounces off, thermal inversions, and situations where they are dumping above the tree line with the taller, already filled landfill mound behind it, which gives an amphitheater effect. Breezes from the northeast also bring us greater sounds and smells.

I am certain that Chair Lessard's experience as town manager of Hampden includes odor and noise complaints from Casella's Pine Tree Landfill (PTLF). This facility is now closed, so the birds have left, but it still puts off strong odors at times. One difference between PTLF and JRL is that PTLF is located right next to the interstate highway and one of the largest truck stops in Maine, while JRL is located in a largely undisturbed (except for JRL's 40 acres or so of noxious pile) area remote from other industrial activities. I hope I have sufficiently demonstrated our unique setting and circumstances.

As far as truck traffic posing a threat, Mr. Doyle talks about the Law Court having rejected claims of generalized traffic impacts being a threat of particularized injuries. As I stated early in this letter, the BEP is not a court of law. What I am fearful of is the one particular truck bound for JRL that struck and killed

a teenage driver in Hampden not many years ago. There are many overweight trucks documented at JRL each month; I fear the one trucker speeding past the Post Office in Stillwater where we get our mail, overweight and avoiding the weigh station on the interstate perhaps because his log book is out of date or he has been driving over the hour limit that day back and forth from Massachusetts. Maybe's it's a little icy when I pull out into the road, or he swerves to avoid a pedestrian on the other side and meets me head on. It can happen any day, and I wouldn't be around to argue my injury.

I hope to have convinced the Board by now to uphold my right to standing. In case there are any doubts and you are in agreement with SPO/Casella's narrowly construed definition of standing, I will offer some comments and applicable case law references which I have borrowed from Lynne Williams' letter to Chair Lessard dated March 21, 2012. This was brought to my attention by an interested friend, and I include this without Ms. Williams' permission which hopefully is not necessary since her letter is now a public document.

Beginning on the bottom of Page 1:

In *Conservation Law Found. v. Town of Lincolnville*, 2001 WL 1736584 (Me. Super.), the Superior Court held that the Conservation Law Foundation had standing to bring suit against the town of Lincolnville based on the individual standing of a sole member. They further found that such standing did not depend on that sole member having been a member during any of the municipal proceedings. *Id.* at 8.

The courts have long been expansive in granting standing in environmental challenges. See *National Wildlife Federation v. Agricultural Stabilization and Conservation Service*, 955 F.2d 1199, 1205 (8th Cir. 1992) (plaintiffs lived four miles from the site at issue and were found to have standing to challenge a permit that allowed farmers to drain wetlands, given that the plaintiffs hunted on the wetlands and enjoyed the "aesthetic beauty" of the site); *Port of Astoria v. Hodel*, 595 F.2d 467, 476 (9th Cir. 1979). Maine courts have taken a similar view. In *Conservation Law Foundation*, the appellee argued that appellant had not demonstrated a "particularized injury" sufficient to give him standing to pursue the appeal. The court however, noted that "[a]s abstract and general as injury to the environment may seem, it is well settled that such injury is sufficient to support standing as to any plaintiff as to any plaintiff who used the effected environment. *Conservation Law Foundation* at 4, citing decisions in *Sierra Club v. Morton*, 405 U.S. 727, 31 L.Ed.2d 636 (1972) and *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 37 L.Ed.2d 254 (1973). The court goes on to note that "a few cases can be found that deny standing for failure to show any injury whatever, or for failure to show that any injury was caused by the challenged act... Nonetheless, standing to protect the environment is thoroughly entrenched..." *Conservation Law Found.* at 4.

In conclusion, I hope we can move beyond the issue of standing and consider the merits of my appeal. If Mr. Doyle appears in front of the Board, I insist on my right to respond to that and to any other of his actions on the behalf of SPO, Casella, or the DEP. Thank you for your time.

Respectfully submitted,

Edward S. Spencer