

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017



PROPOSED
BOARD ORDER

IN THE MATTER OF

STATE OF MAINE, ACTING THROUGH THE)	APPEAL OF
BUREAU OF GENERAL SERVICES)	SOLID WASTE LICENSE
JUNIPER RIDGE LANDFILL)	
MODIFICATION OF OBW ANNUAL LIMIT)	
OLD TOWN, PENOBSCOT COUNTY, MAINE)	FINDING OF FACT
#S-020700-WD-CN-Z)	AND ORDER
(DENIAL OF APPEAL))	ON APPEAL

Pursuant to the provisions of the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 Maine Revised Statutes (“M.R.S.”) §§ 1301 to 1319-Y; *Solid Waste Management Hierarchy*, 38 M.R.S. § 2101; the *Rule Concerning the Processing of Applications and Other Administrative Matters*, 06-096 Code of Maine Rules (“C.M.R.”) ch. 2 (last amended June 9, 2018); the *Solid Waste Management Rules: General Provisions*, 06-096 C.M.R. ch. 400 (last amended February 9, 2021); *Landfill Siting, Design and Operation*, 06-096 C.M.R. ch. 401 (last amended April 12, 2015); and *Water Quality Monitoring, Leachate Monitoring, and Waste Characterization*, 06-096 C.M.R. ch. 405 (last amended April 12, 2015) (collectively, the “Rules”), the Board of Environmental Protection (“Board”) has considered the appeal filed by Mr. Edward S. Spencer (“Mr. Spencer”) of Department License #S-020700-WD-CM-M. Based upon materials filed in support of the appeal, the responses to the appeal, comments received, and other related materials in the Department’s file, the Board FINDS THE FOLLOWING FACTS:

1. APPEAL SUMMARY

On December 28, 2021 the Board received a timely appeal of Department License #S-020700-WD-CM-M issued on November 29, 2021 to the State of Maine through the Bureau of General Services (“BGS”), which established a process and methodology to determine the annual Oversized Bulky Waste (“OBW”) limit from 2021 through 2025 at the Juniper Ridge Landfill (“JRL”), returning to a disposal limit of 65,000 tons on an annual basis in subsequent years unless the limit is further modified.

The State of Maine, acting through BGS, owns JRL. NEWSME Landfill Operations, LLC (“NEWSME”), a wholly-owned indirect subsidiary of Casella Waste Systems, Inc. (“Casella”), operates the landfill for the State of Maine, acting through BGS. BGS and NEWSME prepared the application which is under appeal and are referred to as the Licensee or BGS/NEWSME.

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2. TERMS AND ACRONYMS

The following terms and acronyms can be found in this license and are listed in Table 1 for ease of reference:

Table 1: License Terms and Acronyms

2012 PBD	2012 JRL Expansion Public Benefit Determination #S-020700-W5-AU-N
2017 Expansion	2017 Expansion License #S-020700-WD-BI-N
2020 OBW Appeal	Board Order #S-020700-WD-CG-Z, issued June 25, 2020
2021 OBW Minor Revision	Department License #S-020700-WD-CM-M, issued November 29, 2021
Appeal	December 28, 2021 appeal of Department License #S-020700-WD-CM-M submitted by Mr. Spencer
Application	BGS/NEWSME's minor revision application for Department License #S-020700-WD-CM-M
Board	Maine Board of Environmental Protection
BGS	Bureau of General Services
Casella	Casella Waste Systems, Inc.
C.M.R.	Code of Maine Rules
CPI	Consumer Price Index
Department	Maine Department of Environmental Protection
JRL	The Juniper Ridge Landfill
Licensee	Refers to both BGS and NEWSME (or successor operator)
MRC	Municipal Review Committee facility in Hampden
M.R.S.	Maine Revised Statutes
MSW	Municipal Solid Waste
NEWSME	NEWSME Landfill Operations, LLC
OBW	Oversized Bulky Waste. Defined in the 2017 Expansion License #S-020700-WD-BI-N and carried forward in the 2021 OBW Minor Revision #S-020700-WD-CM-M (page 5): "The term OBW is not defined in regulation or statute; therefore, for the purpose of this licensing action, OBW refers to the standard industry meaning that includes large items that may be difficult to process, such as mattresses, furniture, appliances, and certain other components of demolition debris."
OSA	Operating Services Agreement
PERC	Penobscot Energy Recovery Company
PFAS	Perfluoroalkyl and polyfluoroalkyl substances
Resource	Resource Waste Services, formerly ReEnergy
Rules	The Department's Solid Waste Management Rules, including 06-096 C.M.R. chs. 400, 401, and 405

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3. LICENSING HISTORY

The following history is a summary of relevant licensing events and does not include all licensing actions:

- A. On July 28, 1993, James River Paper Company, Inc. was issued License #S-020700-7A-A-N to construct and operate a 68-acre secure landfill, known as the West Old Town Landfill, to dispose of the James River Paper Company's pulp and papermaking residuals.
- B. On October 21, 2003, the Department issued conditional approval for the transfer of the West Old Town Landfill licenses, from the Fort James Operating Company, to the State of Maine, State Planning Office ("SPO") (including License #S-020700-WR-M-T). The transfer became effective when the sale of the landfill to the State of Maine, acting by and through SPO, occurred on February 5, 2004.
- C. On February 5, 2004, the State of Maine, acting by and through the SPO, and Casella entered into an Operating Services Agreement ("OSA") for the operation of the West Old Town Landfill.
- D. In 2006, the West Old Town Landfill became known as the Juniper Ridge Landfill.
- E. Pursuant to PL 2011, ch. 655, § GG-69, on July 1, 2012, BGS, within the Department of Administrative and Financial Services ("DAFS"), became the state agency acting as the owner and licensee of JRL. For a period of time, the Department of Economic and Community Development was the manager of JRL. NEWSME, a wholly-owned indirect subsidiary of Casella, operates the landfill for the State of Maine, acting through BGS.
- F. On January 31, 2012, the Department approved a Public Benefit Determination for an expansion (License #S-020700-W5-AU-N) which includes a condition that if, and when, an expansion license is issued, the applicant shall comply with the limit, and any subsequent modifications to the limit, established by the Department in the license on the tonnage of OBW that may be disposed.
- G. On June 1, 2017, the Department approved the construction and operation of a 9.35 million cubic yard expansion at JRL (License #S-020700-WD-BI-N),

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which includes a condition (Condition 12) establishing an annual OBW tonnage limit of 65,000 tons and provisions to evaluate the OBW limit annually and propose modifications to the OBW limit, if needed.

- H. On December 20, 2019, the Department approved a minor revision (License #S-020700-WD-BW-M) which revised the expansion OBW disposal limit in Condition 12(A) in License #S-020700-WD-BI-N from 65,000 tons to 85,000 tons on an annual basis through calendar year 2020. In 2021 and in subsequent years, OBW disposal in the expansion is limited to 65,000 tons on an annual basis unless the limit is further modified.
- I. On January 21, 2020, Mr. Spencer appealed minor revision License #S-020700-WD-BW-M. The Board denied the appeal on June 25, 2020, affirming the Department's approval of the minor revision.
- J. On November 29, 2021, the Department issued a minor revision license (License #S-020700-WD-CM-M), which revises the 65,000-ton annual OBW disposal limit in Condition 12(A) in License #S-020700-WD-BI-N by establishing a process and methodology to determine the OBW limit annually utilizing the average OBW tonnage and the average Consumer Price Index ("CPI") over a five-year period. The annual limit is not to exceed 85,000 tons regardless of the outcome of the calculation. This methodology is to be utilized through calendar year 2025. In 2026 and in subsequent years, OBW disposal in the expansion is limited to 65,000 tons on an annual basis unless the limit is further modified.

4. PROCEDURAL HISTORY

A. Department License #S-020700-WD-CM-M

The application for Department License #S-020700-WD-CM-M, the subject of this appeal, was accepted as complete for processing on June 16, 2021. The application requested a modification of the 65,000-ton OBW annual disposal limit in the expansion at JRL and proposed establishing a methodology and process for determining the OBW limit at JRL annually over a five-year period (2021 to 2025). The license was approved with conditions by the Department on November 29, 2021.

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B. Appeal Received

A timely appeal of the 2021 OBW modification minor revision was filed with the Board on December 28, 2021 by Mr. Spencer (“Appeal”). Mr. Spencer requests that the Board reverse the Department’s decision and specifically requests (1) that the importation of sludge into Maine is banned; (2) that the Department adopt Mr. Spencer’s proposed methodology to determine the annual OBW limit at JRL, taking the average OBW tonnage over a nine-year period and subtracting the 10,000 tons allotted for the Penobscot Energy Recovery Company (“PERC”) OBW in the 2017 expansion; and (3) that the Department convene a working group to determine the best management practices for bulking and sludge stabilization at landfills.

On January 12, 2022, the Board sent a Notice of Receipt, acknowledging that Mr. Spencer submitted a timely appeal of License #S-020700-WD-BI-N.

C. Supplemental Evidence

The Appeal did not specifically label or request supplemental evidence; however, it did include information that was not part of the licensing record; this information was treated as proposed supplemental evidence. The proposed supplemental evidence included Appendix A: a processing facility’s Annual Report from 2020; Appendix B: an article from a local newspaper; and a request to include leachate PFAS sampling results, which were not available by the appeal submittal deadline.

On January 27, 2022, the Licensee commented on the admissibility of the proposed supplemental evidence, asserting that the Appellant did not adequately label the evidence, nor demonstrate that it meets the requirements of 06-096 C.M.R. ch. 2, § 24(C)(4) for supplemental evidence. The Licensee requested that Appendix A, Appendix B, and the PFAS data be stricken from the record.

On February 1, 2022, the Board Chair ruled that Appendices A and B were not identified as supplemental evidence and that the Appellant did not discuss the relevancy of the material; therefore, both appendices and the related text on pages 2, 4, and 5 of the appeal were struck from the record and redacted from the Board packet. The Chair ruled that the Appellant did not make an argument as to why the leachate PFAS results were relevant to the issues raised on appeal, nor did the Appellant submit the supplemental evidence with the appeal;

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therefore, all information pertaining to leachate PFAS sampling data was struck from the record.

D. Response to Appeal

On February 1, 2022, the Board provided a February 21, 2022 deadline for the Licensee and Respondents to submit a written response to the merits of Mr. Spencer's appeal. On February 4, 2022, the Board extended the deadline to February 22, 2022, due to February 21st being a holiday observed by the State of Maine. On February 21, 2022, BGS and NEWSME submitted a response to the merits of the appeal and a request to deny the request for a public hearing on the appeal. Seven Respondents submitted comments by the deadline, all in support of Mr. Spencer's appeal.

E. Board Meeting

The Board heard oral arguments by the parties at its June 16, 2022 meeting in Augusta.

5. STANDING

06-096 C.M.R. ch. 2, § 24 states that final license decisions of the Commissioner may be appealed to the Board by persons who have standing as aggrieved persons. The term aggrieved person is defined in 06-096 C.M.R. ch. 2, § 1(B) as "any person whom the Board determines may suffer particularized injury as a result of a licensing or other decision. The Board will interpret and apply the term "aggrieved person", whenever it appears in statute or rule, consistent with Maine state court decisions that address judicial standing requirements for appeals of final agency action."

In the appeal, Mr. Spencer states that he qualifies as an aggrieved person based on his location relative to the facility. The Appellant asserts that expanded waste volumes at the landfill have been detrimental to his quality of life, property value, and the environment. The increased quantity of OBW disposed at JRL could result in more odors, noise, traffic, and exposure to contaminants. Additionally, the Appellant states that a large portion of his income comes from the timber stands on his property. During periods of high landfill gas odors caused by hydrogen sulfide production, the Appellant asserts that he is unable to continue working, hindering his business and his health.

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The Board previously found that Mr. Spencer had standing to appeal the Department's 2013 and 2018 Amendments regarding acceptance of non-bypass, in-state municipal solid waste ("MSW") at JRL (appeals #S-020700-WD-BG-Z, issued June 19, 2014 and #S-020700-WD-BM-Z, issued October 10, 2018, respectively) and the 2019 Minor Revision regarding the annual limit of OBW (appeal #S-020700-WD-CG-Z), and granted Mr. Spencer standing as an intervenor in the proceedings for the landfill expansion (#S-020700-WD-BI-N/#L-19015-TG-D-N, issued June 1, 2017). BGS/NEWSME notes that they respectfully disagree with those decisions and assert that Mr. Spencer lacks standing for the Appeal (February 21, 2022 Response to Appeal, pages 5 and 6).

The Board finds that Mr. Spencer has demonstrated that he has standing as an aggrieved person as defined in 06-096 C.M.R. ch. 2, § 1(B) and may bring the appeal before the Board.

6. PROJECT DESCRIPTION

In its application associated with the 2021 OBW Minor Revision, BGS/NEWSME requested a modification to the 65,000-ton annual OBW disposal limit in the expansion landfill license (#S-020700-WD-BI-N). Specifically, BGS/NEWSME proposed a process and methodology to determine the OBW limit annually utilizing the average OBW tonnage and CPI over the previous five-year period. The methodology was proposed to be utilized through calendar year 2025, after which, the methodology would be reevaluated. The applicant stated the two primary factors for the proposed revision were that: (1) JRL is experiencing greater disposal volumes of sludges because of restricted sludge management practices due to potential PFAS contamination and that sludge disposal requires mixing with bulkier and drier waste for stabilization purposes, and (2) the Resource Waste Services ("Resource") facility continues to invest in infrastructure to ensure they are recycling to the maximum extent practicable.

The 2021 OBW Minor Revision was issued based on the following Department findings: recent changes in sludge management practices due to required PFAS testing of wastewater treatment residuals has led to an increase in sludge disposal in landfills; OBW is a viable and consistently reliable bulking material for sludge that results in improved stabilization and lower hydrogen sulfide gas production when compared to CDD; and Resource was issued a license in January 2021 to update and install additional processing equipment to further enhance their recycling efforts and has demonstrated

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that the facility is meeting the intent of the 2012 Public Benefit Determination (“PBD”) by recycling to the maximum extent practicable.

Condition 2 of the 2021 OBW Minor Revision states:

2. The OBW disposal limit for the Expansion stated in Condition 12(A) in license #S-020700-WD-BI-N of 65,000 tons shall be revised using the proposed methodology to determine the annual limit, as follows:
 - A. Beginning in calendar year 2021, the applicant is restricted to an annual OBW disposal limit based on the average OBW tonnage over the previous five years adjusted by the average CPI over the same five-year period, with the understanding that the Department has the authority to modify this limit based on current OBW recycling opportunities, economic factors, and other relevant factors and utilizing the process set forth in condition 2(D) below. Pursuant to this methodology, for the year 2021, the OBW limit will be 76,648 tons.
 - B. The methodology is valid for five years (until December 31, 2025) at which time the annual limit will revert to 65,000 tons. The applicant must submit a minor revision application to Department license #S-020700-WD-BI-N to propose an alternative limit.
 - C. The annual OBW limit shall not exceed 85,000 tons regardless of the outcome of the methodology.
 - D. The applicant shall submit on a Department-approved form the calculated annual OBW limit as well as a discussion of other relevant factors that may impact the proposed OBW tonnage to the Department by January 31st of each calendar year. The initial submittal will be posted on the BGS and Department websites with certified mailing to the City of Old Town, the Town of Alton, the Landfill Advisory Committee, and interested persons as requested. The Department shall have 90 days

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(until May 1st) to respond to the applicant's request. The Department shall accept public comments for the first 60 days (until April 1st). If the Department does not respond within the 90-day period, the previous year's OBW limit will apply unless otherwise determined by the Department due to unforeseen and extenuating circumstances.

7. BASIS FOR APPEALS AND REMEDIES REQUESTED

A. Objections and Basis for Appeal

Mr. Spencer objects to the methodology and process established in the 2021 OBW Minor Revision to determine the annual OBW limit at JRL over a five-year period utilizing the average CPI and OBW tonnage over the previous five years. Mr. Spencer's appeal addresses several areas in which he objects to several Department findings, conclusions, or conditions in License #S-020700-WD-CM-M, including those related to upholding Maine's solid waste management hierarchy, OBW waste bulking characteristics, and the process for determining the annual OBW tonnage limit.

B. Remedies Requested

Mr. Spencer requests that the Board reverse the Department's decision and specifically requests (1) that the importation of sludge into Maine is banned; (2) that the Department adopt Mr. Spencer's proposed methodology to determine the annual OBW limit at JRL, taking the average OBW tonnage over a ten-year period and subtracting the 10,000 tons allotted for PERC OBW in the expansion if PERC is no longer sending OBW to JRL for disposal; and (3) that a working group be convened to determine the best management practices for bulking and sludge stabilization at landfills.

8. STATUTORY AND REGULATORY FRAMEWORK

The relevant review criteria for the subject Order include, but are not limited to, the following applicable statutes and Rules:

- A. *Department of Environmental Protection Organization and Powers*, 38 M.R.S. §§ 341-A-349-B (2017), as applicable.

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- B. *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S. §§ 1301-1319-Y (2017), as applicable.
- C. *Solid Waste Management Hierarchy*, 38 M.R.S. § 2101 (2017).
- D. *Rule Concerning the Processing of Applications and Other Administrative Matters*, 06-096 C.M.R. ch. 2 (last amended June 9, 2018), as applicable.
- E. *Solid Waste Management Rules: General Provisions*, 06-096 C.M.R. ch. 400 (last amended February 9, 2021), *Landfill Siting, Design and Operation*, 06-096 C.M.R. ch. 401 (last amended April 12, 2015), and *Water Quality Monitoring, Leachate Monitoring, and Waste Characterization*, 06-096 C.M.R. ch. 405 (last amended April 12, 2015), as applicable.

9. DISCUSSIONS AND FINDINGS

A. Maine's Solid Waste Management Hierarchy

As stated in 38 M.R.S. § 1310-N(1)(D) and 06-096 C.M.R. ch. 400, § 4(N)(1), the purpose and practices of the solid waste facility must be consistent with the State's solid waste management hierarchy pursuant to 38 M.R.S. § 2101(1), which reads as follows:

Priorities. It is the policy of the State to plan for and implement an integrated approach to solid waste management for solid waste generated in the State and solid waste imported into this State, which must be based on the following order of priority:

- A. Reduction of waste generated at the source, including both amount and toxicity of the waste;
- B. Reuse of waste;
- C. Recycling of waste;
- D. Composting of biodegradable waste;
- E. Waste processing that reduces the volume of waste needing land disposal, including incineration; and
- F. Land disposal of waste.

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In addition, 38 M.R.S. § 2101(2) establishes that “it is the policy of the State to actively promote and encourage waste reduction measures from all sources and maximize waste diversion efforts by encouraging new and expanded uses of solid waste generated in this State as a resource.”

The Department’s Rule at 06-096 C.M.R. ch. 400, § 4(N)(2)(a) states that for a solid waste disposal facility, the applicant must affirmatively demonstrate consistency with the hierarchy, including the following:

[T]hat 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, including relevant metrics to evaluate effectiveness; and a description of ongoing efforts to increase the effectiveness of these programs/efforts.

For the purpose of 06-096 C.M.R. ch. 400, § 4(N):

[R]educing, reusing, recycling, composting and/or processing waste to the “maximum extent practicable” prior to disposal means handling the greatest amount of waste possible through means as high on the solid waste management hierarchy as possible, resulting in maximizing waste diversion and minimizing the amount of waste disposed, without causing unreasonable increases in facility operating costs or unreasonable impacts on other aspects of the facility’s operation. Determination of the “maximum extent practicable” includes consideration of the availability and cost of technologies and services, transportation and handling logistics, and overall costs that may be associated with various waste handling methods.

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(1) Mr. Spencer's Appeal

Mr. Spencer states that the Department continues to find that Resource is meeting the Maine solid waste management hierarchy requirement of recycling to the "maximum extent practicable" based on the results of a third-party audit. However, Mr. Spencer states that repeated requests from him and other interested persons for the Licensee to provide evidence that the source of the OBW has also met the requirements of the hierarchy, as required in 38 M.R.S. § 2101(2), have not been answered. Mr. Spencer conjectures that the reason he and others have not received an answer to their request is because Casella is transporting the OBW from the source, to Casella-owned transfer stations, to Resource, and providing the option to Resource to dispose of the material at JRL for a reduced rate.

Mr. Spencer disagrees with the Department's finding that Licensee has met Maine's solid waste management hierarchy requirements.

(2) BGS/NEWSME's Response to Appeal

The Licensee states that Mr. Spencer's appeal argues that the OBW coming from Resource should be classified as out-of-state waste. The Licensee refutes this claim by reiterating that the statutory definition of waste generated within the state includes, "residue and bypass generated by incineration, processing and recycling facilities within the State or waste, whether generated within the State or outside of the State, if it is used for daily cover, frost protection or stability" (BGS Response page 7)¹. Further, the Licensee asserts that the solid waste management hierarchy focuses on how solid waste is managed within Maine and that there is no language making the distinction between in-state and out-of-state waste that Mr. Spencer claims in the appeal. Additionally, the Licensee argues that the OBW limit promotes the solid waste

¹ Public Law 2022, Chapter 626, effective August 8, 2022 will amend the definition of out-of-state waste as follows: "Beginning February 1, 2023, notwithstanding paragraphs B, C and E [of 38 M.R.S. § 1303-C(40-A)], if the total weight of the residue generated in a calendar year by an incineration facility, recycling facility or solid waste processing facility that is disposed of or otherwise placed in a solid waste landfill in that calendar year exceeds the total weight of the solid waste initially generated within the State that was incinerated or processed by that facility in that calendar year, any such excess residue generated by that facility is not considered waste generated within the State." The updated definition does not impact the licensing decision for License #S-020700-WD-CM-M.

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management hierarchy by limiting the disposal options for OBW, and therefore encouraging Resource to recycle to the maximum extent practicable. The Licensee asserts that the Board concluded that the OBW limit was consistent with the solid waste management hierarchy two years ago in the JRL OBW appeal #S-020700-WD-CG-Z decision (“2020 OBW Appeal”).

3. Board Analysis and Findings

The Board comments that the solid waste management hierarchy applies to the management of solid waste generated within Maine and solid waste imported into Maine. However, the State of Maine cannot enforce its laws outside of the state and imported waste cannot be managed according to the solid waste management hierarchy until it has arrived in Maine. Resource has demonstrated through a third-party audit that they are recycling to the maximum extent practicable, and therefore, meeting the requirements of the solid waste management hierarchy.

The Board finds that the Licensee has adequately demonstrated its efforts to comply with the solid waste management hierarchy by establishing that the OBW it receives from Resource has been processed consistent with the hierarchy to the maximum extent practicable prior to landfilling.

B. OBW Waste Bulking Characteristics

(1) Mr. Spencer’s Appeal

Mr. Spencer asserts that the Licensee has not adequately demonstrated that OBW is a viable sludge stabilizer and that the Department has accepted the Licensee’s anecdotal evidence as fact. Mr. Spencer points out that the license stated that MSW is a viable sludge stabilizer (2021 OBW Minor Revision, page 14). Mr. Spencer states that large quantities of bypassed MSW were disposed at JRL during 2020 and 2021 due to the cessation of operations at the Municipal Review Committee facility (“MRC”) in Hampden and due to occasional equipment issues at PERC. Mr. Spencer submitted a comment on the draft of the 2021 OBW Minor Revision decision questioning why JRL needed an increased OBW limit for 2021 since they received so much bypassed MSW from the

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aforementioned facilities. Mr. Spencer states that he did not receive an answer to his question.

Page 13 of the 2021 OBW Minor Revision states “CDD has desirable physical characteristics for bulking sludge, but it produces hydrogen sulfide gas when combined with moisture.” Mr. Spencer submitted a comment on the license draft questioning why it is acceptable to use CDD fines for daily cover when they are exposed to moisture, but unacceptable when CDD is combined with the moisture from sludge. Mr. Spencer states that there was no satisfactory answer offered. Mr. Spencer points out that large quantities of CDD are already disposed at JRL and questions why the CDD cannot be used for bulking/stabilization.

Mr. Spencer comments that in response to a comment on the 2021 OBW Minor Revision draft requesting that sludge is dewatered prior to being landfilled, the Department stated on page 13 that, “wastewater treatment facilities generally dewater their sludge prior to landfilling.” Mr. Spencer questions why sludge requires extra stabilization if the majority of sludge is dewatered prior to landfilling.

In response to these concerns, Mr. Spencer requests the following: that the Department ban the importation of sludge into Maine, by emergency decree if necessary, to allow sludge processors, such as Casella’s Hawk Ridge facility in Unity Township, to process more Maine sludge and reduce the quantity of sludge that requires landfilling; and convene a working group to determine the best management practices for bulking and sludge stabilization at landfills.

(2) BGS/NEWSME’s Response to Appeal

The Licensee refutes Mr. Spencer’s claim that OBW is not a necessary bulking agent for sludge and that other waste streams could be used instead at JRL. The Licensee reiterates arguments made in the application including that sludge requires mixing with bulkier drier wastes and that best management practices include a 4:1 ratio of drier dense material to sludge, with one of those four parts being OBW. The Licensee asserts that the ratio is not merely anecdotal evidence, and that the application was signed by a professional engineer. Further, the Licensee argues that other waste streams are not ideal for bulking sludge

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at JRL. JRL can only receive bypassed MSW resulting in unreliable waste volumes. Additionally, the Licensee explains that CDD is not an optimal bulking material due to the gypsum content, which produces hydrogen sulfide when mixed with wetter wastes. The Licensee asserts that while JRL has a hydrogen sulfide gas collection and treatment system, an increase in gas production could surpass their gas treatment system capacity. The Licensee emphasizes that the Board found that OBW is a viable and appropriate bulking material in the 2020 OBW Appeal decision.

The Licensee states that Mr. Spencer's requests to ban the importation of sludge into Maine and convene a working group to address best management practices for bulking sludge at landfills are both outside of the scope of this appeal. Banning the importation of sludge would require a change in legislative policy.

(3) Board Analysis and Findings.

The Board comments that the 2021 OBW Minor Revision does not state that CDD is an unacceptable bulking material for sludge, but rather concurs with the statement that the production of hydrogen sulfide gas should be minimized. The production of hydrogen sulfide gas created by the combination of gypsum board and sludge is due to both the water content and the organic material. When CDD fines that are used as daily cover mix with precipitation, they do not produce the same quantity of hydrogen sulfide gas as when CDD is mixed with sludge.

JRL does use CDD as a bulking material for sludge; however, the Licensee asserts that sludge should be combined with other types of bulking materials to reduce the hydrogen sulfide production. CDD is used to bulk sludge at other solid waste facilities within Maine, but typically in combination with other bulking agents available at the facility. Additionally, the Board comments that the other solid waste facilities in Maine are not required to differentiate between CDD and OBW; therefore, the ratio of OBW used for sludge bulking at other facilities is unknown.

Mr. Spencer commented on the need to bulk sludge that has been dewatered. The Board comments that dewatering sludge reduces the

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moisture content; however, it does not eliminate moisture in the material. The process of dewatering results in a more stable product than the original sludge slurry, but less stable than dried sludge. Due to the remaining moisture content, sludge generally requires further stabilization for placement in a landfill.

Mr. Spencer has requested that the Board ban the importation of sludge into Maine. Such a ban would require a change in law, which would be within the purview of the legislature. Banning the importation of sludge into Maine is not within the Board’s jurisdiction. Additionally, Mr. Spencer requests that a working group be convened to determine the best management practices for bulking and sludge stabilization at landfills. The Board responds that this request is outside the scope of this license review, and in any event, there are no universal best management practices for sludge bulking that can apply to all landfills due to the varying quantities and types of wastes accepted at each facility. Practices for sludge bulking are better determined on a landfill-specific basis.

The Board finds that OBW is a viable and appropriate bulking material. The Board further finds that it does not have the authority to grant Mr. Spencer’s request to ban the importation of sludge into Maine and the request does not relate to the 2021 OBW Minor Revision. Additionally, the Board finds that Mr. Spencer’s request to convene a working group to determine best management practices for bulking sludge at landfills is not a licensing criterion within the Rules and does not relate to the 2021 OBW Minor Revision.

C. Process for Determining Annual OBW Limit

(1) Mr. Spencer’s Appeal

Mr. Spencer states that the proposed methodology for determining the annual OBW limit is arbitrary. Mr. Spencer asserts that when the 65,000-ton annual OBW limit was established in the PBD, the total included 10,000 tons coming from the PERC facility. Mr. Spencer explains that due to improvements in operations at PERC, the facility no longer produces large quantities of OBW, and therefore, the annual limit should be reduced by 10,000 tons. Additionally, Mr. Spencer asserts that multiplying previous years’ OBW tonnages by the CPI means that the

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quantity of waste will continually increase. Mr. Spencer questions why the annual quantity should continue to increase when Resource should be working towards reducing the quantity of OBW that cannot be recycled or repurposed. Mr. Spencer proposes an alternative methodology utilizing the average OBW over a nine-year period and subtracting the 10,000 tons that was previously allocated to PERC. Mr. Spencer asserts that CPI should not be a factor in determining the annual limit. Mr. Spencer's proposed methodology would yield a 55,481 OBW tonnage limit for 2021. Moving forward, Mr. Spencer proposes an OBW limit using the average OBW disposal rate over a ten-year period along with evaluating PERC's need for OBW disposal on an as-needed basis.

(2) BGS/NEWSME's Response to Appeal

The Licensee contests Mr. Spencer's claim that the methodology for calculating the annual limit approved in the 2021 OBW Minor Revision is arbitrary. The Licensee states that the proposed methodology was based on the formula that was used to determine the 2020 OBW annual limit, but rather than use the median OBW tonnage and CPI over the previous five-year period, the new methodology uses the mean value, resulting in a lower total. Both the Department and the Board have previously recognized CPI as a reasonable indicator of the impact of the economy on OBW generation in the 2020 OBW Minor Revision and Appeal decision. The Licensee emphasizes that under the 2021 OBW Minor Revision the Department has the authority to change the proposed annual tonnage depending on additional circumstances.

(3) Board Analysis and Findings

The Board comments that the PBD established the requirement that the Department set an annual limit on the OBW tonnage disposed of in the expansion that was based on annual demonstrations that the OBW was recycled or processed to the maximum extent practicable. Further, pursuant to the PBD, the Department is authorized to reevaluate and modify the limit annually (2012 PBD, page 20). The Department established a limit of 65,000 tons per year in the 2017 Expansion License based on the OBW recycling opportunities, economic factors, and other relevant factors at the time of evaluation (2017 Expansion, page 89). While the 10,000 tons of OBW originally allocated to PERC may no

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longer be relevant in determining the annual OBW limit, other changes in relevant factors have occurred. The most prominent change has been the increase in sludge disposal at JRL due to the reduced ability for generators to land apply their sludge due to concerns with PFAS contamination. Both the PBD and the 2021 Minor Revision state that the Department has the authority to modify the annual limit proposed by the Licensee. If any of the factors that were considered to establish the 2021 annual OBW limit were to change, the Department has the authority to modify successive limits accordingly. Further, the Board notes that the methodology of using the average OBW tonnage over the previous five years adjusted by the average CPI over the same five-year period is valid for only five years, until December 31, 2025, at which time the annual limit will revert to 65,000 tons. At that time, the methodology can be reevaluated and modified accordingly. Regarding Mr. Spencer’s concern about the OBW limit always increasing, the Board notes that the Department specified in the 2021 OBW Minor Revision that the limit shall not exceed 85,000 tons regardless of the outcome of the methodology.

The Board finds that the Department’s consideration of recycling opportunities, economic factors, and other relevant factors was appropriate in the 2021 OBW Minor Revision decision and that the methodology developed was appropriate.

BASED on the above Findings of Fact, the BOARD makes the following CONCLUSIONS:

1. Mr. Spencer has standing as an aggrieved person and has made a timely appeal of Department License #S-020700-WD-CM-M, issued on November 29, 2021.
2. JRL is operating in accordance with the Rules and their Department-approved Operations and Maintenance Manual, including provisions for leachate monitoring and waste characterization; and the Board affirms the Department’s conclusion in the 2021 OBW Minor Revision that the proposed modification of the OBW disposal limit will not pollute any waters of the state, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance, provided that the license requirements are met.
3. JRL is operating in compliance with the solid waste management hierarchy, and the Department’s 2021 OBW Minor Revision decision supports continued compliance with the solid waste management hierarchy.

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4. OBW is a viable bulking material for sludge, and considering recycling opportunities, economic factors, and other relevant factors in the license decision, the established methodology to determine an annual OBW limit at JRL is appropriate.
5. The Board does not have the authority to ban the importation of sludge into the State.
6. The Board does not have the authority through the review of this license to convene a working group to establish best management practices for sludge bulking at landfills.
7. All other conclusions remain as set forth in Department License #S-020700-WD-CM-M.

THEREFORE, the Board DENIES the appeal of Mr. Edward S. Spencer and AFFIRMS the Department’s partial approval with conditions of the minor revision as described in Department License #S-020700-WD-CM-M.

DONE AND DATED AT AUGUSTA, MAINE THIS _____ DAY OF _____, 2022.

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____
 Susan S. Lessard, Board Chair

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

Date of initial receipt of application: June 1, 2021
 Date of application acceptance: June 16, 2021
 Date issued and filed with the Board of Environmental Protection: November 29, 2021
 Date of receipt of appeal: December 28, 2021
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