

October 19, 2016

To: James Parker, Chair, and Members
of the Board of Environmental Protection
From: Paul Schroeder

Dear Chairman Parker and Members of the Board:

This letter summarizes points I made in public testimony yesterday. I appreciate the opportunity to express my views to the Board, and welcome the opportunity to provide the Board with a detailed timeline of the emergence and evolution of the origins of the Juniper Ridge Landfill (then West Old Town Landfill) in 2003 and 2004.

In my oral presentation I suggested that the expansion proposal for JRL should be denied, or if approved it should be with conditions that no further expansion at Old Town should be approved beyond the terms of the present Public Benefit Determination. I also suggested that the Department of Environmental Protection should implement a full waste stream audit, both to ensure that no 'out of state waste' enters the state-owned JRL, and to serve as the basis for crafting future Maine waste policy.

In addition, I suggested that a close reading of the year-one timeline will provide insight into how waste policy and legislation regarding this state-owned facility were undertaken in the past, and would serve as a model, in negative terms, for how waste policy should be undertaken in the future.

Again, I appreciate your providing the public with an opportunity to engage in this important public policy process.

Yours sincerely,



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This detailed timeline of the first year of JRL is available at:
<http://www.commoncoordinates.com/oldtowndump/timelinetext.html>

ABOUT THIS FILE

This is a detailed timeline related to the West Old Town Landfill project.

The timeline is based on documents received through Freedom of Information Access requests to state and local government agencies, the official record of Maine Department of Environmental Protection review of the project, news sources and other communications. Sources for every element are provided.

This file was created with the aim of creating an orderly overview of a very complex process. Not all entries are equally detailed, nor are all events known to the compiler included in this document. It is a work in progress under constant revision.

All quotations from documents are in quotation marks. Comments added by the compiler are clear from context or are explicitly included as follows: [NB ..] Unless within quotations, use of first person "I" is understood to mean the compiler. In some cases, entries are based on photocopies of handwritten notes provided from agencies. Effort has been made to correctly attribute these notes; however, in some instances inaccurate attributions may have been made. Corrections are welcome.

This file was compiled by Paul Schroeder, 13 Hamlin Street, Orono, ME 04473, (207) 866-7766, who is responsible for contents. If any item included here is known to be in error, please contact the compiler with correction information.

Most recent file version: October 20, 2004.

2003.03.00: CASELLA IN DISCUSSIONS WITH MRC; "COMMERCIALIZATION" OF GNP SITE

See thumbnail history provided in "Public Private Partnership" section of Proposal submitted by Casella 2003.07.09. The plan apparently was to "commercialize" the Dolby landfill as part of the GNP effort. For some reason that fell through. This was portrayed as the conceptual origins of the deal achieved in Old Town. The date given was March, 2003.

2003.04.02: GP-OLD TOWN CITIZENS COMMITTEE INFORMED OF CLOSURE

Information from personal conversation with member of GP-Old Town public involvement committee.

2003.04.03: GOV. BALDACCI MEETS WITH GP OFFICIALS

An April 4, 2003 fax from Ralph Feck (GP) to Baldacci's office, thanking for and reviewing a meeting held "yesterday" with Baldacci.

2003.04.03: MILL CLOSURE ANNOUNCED

Along with announcement, a memo this day from Lance Boucher to Baldacci, copied to Lee Umphrey, lists Lord and Reynolds as OT officials and Randall and Deschaine as PACE 80 officials.

2003.04.07: MEETING WITH PUBLIC OFFICIALS RE: MILL CLOSING

This included (invited or attending) Dunlap, Peavey-Haskell, Cathcart, Youngblood, Lord, Reynolds, Cates, McLeod, Plourde, Pinkham, Sirois, Stormann, and "union officials and workers." Topics included enumeration of the efforts underway.

2003.04.16: BUREAU OF AIR QUALITY OFFERS EXEMPTIONS TO GP

2003.04.17: "MARATHON" MEETING

A 2003.04.18 note from Mike Barden of Maine Pulp and Paper Foundation, to Sen. Tom Sawyer, including an .xls file <GP_rop_tax_compare> a "graph of GP tax burden. I'll follow up with our other members on whether they have some hard data on other operating costs that inhibit their ability to compete." Among these, Barden suggests: "As you are likely aware, there are several env [sic] programs that are unique to Maine. While these don't necessarily lead to make-or-break management decisions for a mill, they do add incremental costs and 'intangibles' that can tip the balance on corporate investment decisions. Of particular interest to you: I was recently informed by one of our members that a corporate mill in Europe recently licensed a new landfill. The administrative process from start to finish took less than 60 days and cost ~\$100,000 (US). By contrast, it took GP over 2 years and \$2 million to license their landfill."

[NB This message begins, "I trust you've recovered from the marathon session yesterday." This is probably one of the earlier meetings referenced in Sawyer messages, see 2003.05.05d and 2003.05.06.]

2003.04.17: CASHMAN TO CORRELL MEMO

This notes items "identified by your management team as the problems that need to be addressed." These were both environmental: extending exemptions from air emissions standards, and "Permitting the existing landfill as a commercial landfill ..."

This is the memo that WtP identifies as outlining the "commercial landfill option" that became the essence of the final deal.

2003.04.19: BDN OVERVIEW OF PENOBSCOT MILLS

Story "Success -- and struggles, Six mills see fortunes change" reports the "downward spiral in recent years" for Penobscot River paper mills. Of Old Town, "More than two weeks ago, Georgia-Pacific Corp. in Old Town retired its two tissue machines, putting 300 people out of work. What remains is its pulping operation, but some analysts wonder for how much longer. At least 300 people still have jobs."

2003.04.24: CASELLA SENDS PROPOSAL TO GP

A fax from Cashman to Dave Lennett (DEP) says: "This is the proposal given to G.P by Casella last Thursday. Could you please take a look at this and give me some feed back before our 3:30 meeting with G.P.?" That Thursday would have been 2003.04.24.

The file this came from did not include a proposal from Casella to GP. [NB However, it would likely have been an early draft of the 2003.05.09 NEWSME "Proposal, Georgia-Pacific (Old Town) Landfill" Term Sheet, on which was

written "latest".]

Cashman's memo of April 25 says Casella "met with GP officials last night." This must have been when the "proposal" was put forward.

2003.04.25: CASHMAN MEMO TO BALDACCI OUTLINING "GREAT PROGRESS"

This outlines transfer of the biomass boiler, a meeting with GP about the landfill (reporting a meeting between OT and GP the previous night) and a "series of meetings" with SPO and DEP "details of a plan to have the State buy the landfill as an alternative to Casella." Reports that there will be a meeting on "Monday" [Ap. 28; subsequent memos from MacDonald to Cashman and Cashman to Lennett indicate that this was actually Tuesday, Ap. 29] with GP, SPO, DEP "to choose between the landfill options and set in motion the process of closing that deal."

In addition: "Now for the really exciting news. Jim Bostic has been up here from G.P. in Atlanta ramrodding this process, and he talked to Pete Correll today. Pete told him that if everything goes well on Monday (which it will) that we should arrange a time for the Governor and Pete to make a joint announcement late next week that they are opening back up the tissue machine and six converting lines and bringing back 150 workers."

[NB The phrase "as an alternative to Casella" indicates that preliminary conversations were aimed at a direct transaction between Casella and GP.]

2003.04.29A: MACDONALD MEMO OUTLINING LANDFILL OPTIONS

This memo basically outlines a straightforward state ownership of the landfill, guaranteeing capacity to GP at current use for over 30 years, no new permitting, and 1,000,000 tons surplus capacity left over.

This was faxed at 12:01 p.m. to Cashman. Later, a fax stamped 3:07 from Cianbro was forwarded by Cashman to DEP's Lennett for comment "before our 3:30 meeting with GP?"

2003.04.29B: CIANBRO FINANCIAL ANALYSIS OF WOTL

This was faxed 2003.04.29 at 3:07 p.m., from Cianbro Engineering, addressed to Mike Curtis, Jack Cashman and George MacDonald, from Pete Maher and Rick Leonard.

"Per your request we have conducted a financial analysis of the West Old Town Landfill. The purpose of this analysis was to estimate a value for sale by Georgia-Pacific (GP) to the State of Maine. Our analysis estimated a value under 3 scenarios: ..."

Their analysis was based on a 70 ft. vertical increase, a 5.3 million cubic yard capacity, 50,000 tons of mill waste at low tipping fees, 115,000 cubic yards per year of "commercial waste," and state pays for the landfill "through a 20-year revenue bond at a rate of 3.9 percent."

At various assumptions, the "landfill value" is between \$33 and \$43 million.

2003.04.29C: MEETING TO FINALIZE LANDFILL APPROACH

According to Cashman memo of 2003.04.25 looking ahead to this meeting, the

outcome of this meeting will allow GP to announce the re-opening of "the tissue machine and six converting lines and bringing back 150 workers."

The meeting was scheduled for 3:30.

There is another memo from Cashman to Lennett (undated, but giving a "proposal given to GP by Cassella [sic] last Thursday..." This was likely an early version of the draft Term Sheet of 2003.05.09. The fax was time stamped 3:07, and Cashman was asking David Lennett to look it over "before our 3:30 meeting."

Handwritten notes "GP Issues (4/29)" state: "Operating landfill --> generate \$10-12 m = Donate to Casella (new par.) Under ex. state laws (SPO/DEP) --> must be owned by state ..."

[NB I'm not sure who wrote this, though see also notes in same hand headed "GP (5/21/03)" -- in both cases there is mistakenly written GN then corrected to GP. This was the same time period that the state was involved in keeping the GNP facilities in Millinocket open. This person was in a meeting that date with "JEB, JC, JL, JCP" and JCP's notes say "cut the cord w/Casella" as do the notes in this hand. On looking at the 5/21 memos, this likely is Jane Lincoln's, the Gov's chief of staff.]

This same handwritten note includes various fragments related to deal arrangements, including: "GP marry operating to deal 1) avoids RFP 2) can structure a better deal -- can do w/in the existing framework"

2003.04.29D: MACDONALD TO CASHMAN, DRAFT BUSINESS PLAN

This e-mail was a followup to the 3:30 meeting.

MacDonald notes that the state would probably have to collect a \$5 per ton fee for disposal, and to avoid this fee might need a license variance.

2003.04.30: INSURANCE FOR GP, SPO

Insurance documents filed with Casella's Proposal show that Georgia Pacific and the State Planning Office are "Certificate Holders" on Casella's liability insurance, \$10,000,000 each and all claims, with \$50,000 deductible, for term 2003.04.30 through 2004.04.30.

[NB These dates may have little significance -- may only be attaching these provisions to the term of their existing policy written for these dates.]

2003.05.01: BALDACCI, CORRELL TALK

Handwritten notes, likely Jane Lincoln, are headed "JEB (GP) Pete Correll," also "Jackie > Beth > Steve, same time" The rest of the notes are:

- Specifics Agreement on Landfill
- Boiler > put to bed [bid?] by noon tomorrow
- Friday afternoon 3:00 > Pete couldn't be more excited
- Thrilled w/ response by state, people, unions
- IRAP -->
- Creative / responsive /-> word on boiler may be enough, Pres. Union > International Rep -> 3:00, 1 1/2 / Sunday time /->

[NB This is interesting about the boiler. There is no doubt that the boiler

was central to the deal, was well underway in late April. But see issues that arose with Boralex last minute, 2004.03.04-12.]

2003.05.01: CASHMAN MEMO TO GOVERNOR ON LANDFILL PURCHASE

This memo says "It will be operated as a commercial landfill in the future" and that GP is negotiating with several operator options.

[NB These are not named, and at this time it was assumed the deal could be done without an RFP.]

"By having the state as the owner we can insure that the facility will not be available for out-of-state-waste."

States this memo provides "talking points" for Friday press conference. [NB That would be the following day, May 2. Since it is a "talking points" memo, there is possibly less credence to the "several operator options" statement -- unless it just means, several ways to structure the deal, not several options for firms to be operators.]

2003.05.02: BALDACCI ANNOUNCES LANDFILL DEAL

See also Cashman memo of 2003.05.01. Penobscot Times article of 2003.10.23 reported that the deal was announced May 2 in Old Town. BDN story of 2003.05.03, weekend edition, "Restart at G-P means rehires, 1 tissue machine to go back online." The rehire would be "... nearly half of the 300 workers laid off last month..." Most of the article is devoted to the mill and production issues, though the landfill component is mentioned. Regarding the restart of the second tissue machine, "The likelihood that the mill will restart the company's second tissue machine, which produced the Brawny paper towel line, is remote. The age of the machine and newer technologies have made the machine obsolete, union officials said."

[NB But see ahead to negotiations of 2003.12, for instance Stearns' memo of 2003.12.18.]

2003.05.03: BDN EDITORIAL

Titled "Reprieve on the Penobscot," and commented on the GP decision to restart operations, the BDN claimed the Governor has "provided the outline for what needs to be done on a broader scale to address the state's persistent economic woes." "... no one can fault his commitment to trying to save the state's economy. As the governor himself said, his administration is not willing to take no for an answer. He is not willing to let a company leave the state without making every effort to keep them here. 'We were astounded by the efforts put forth to develop a tangible economic package - one that is too good for us to walk away from,' said G-P's chief executive officer, Pete Correll. Such efforts will go a long way toward making Maine known as the little state that could rather than the state that was."

2003.05.04: BDN ARTICLE

Article reported that 2 tissue machines ceased operation on April 4. A remedy was sought by "governor's staff, along with G-P and union officials." The source of funding would be "revenue bonds." GP Controller Rick Douglas credited "key staff members" including Cashman. "We spent many days in Augusta putting the pieces of this deal together."

2003.05.05A: MACDONALD MEMO OUTLINING STEPS TO ACQUIRE LANDFILL

In this memo MacDonald outlines "a number of issues that need to be addressed" including Facility Development sections of Maine law. (38:2156-A).

[NB This provision is among the "notwithstanding" provisions that were negated by the Resolve.]

Handwritten on this memo is a note to "Kurt" [Adams] "Let's talk about this when you have a moment."

Among points raised by MacDonald, the first is "Compliance of site to Rule 450, Siting Criteria ..."

Mentions legislative approval -- on basis of report submitted, not of totally new law. The requirement for prior report to Legislature was negated by Resolve.

[NB Overall the memo seems to outline a rational basis for state acquisition (including funding) and steps for how to proceed. It also seems to have perhaps unintentionally provided a basis for project proponents to ensure that certain provisions of Maine law were negated by the Resolve.]

2003.05.05B: CASHMAN NOTES ON "DRAFT PROCESS"

A set of comments (undated) written on MacDonald's "Draft Process" memo include "Find operator first" at steps to purchase, and "A bill is necessary & George & Kurt will work on slight change in law."

[NB: The changes to the law were not minor; see also Townsend recommendations to conduct licensing before determining operator, see 2003.05.27.]

2003.05.05C: PARKER E-MAIL TO SAWYER AND YOUNGBLOOD

One of the points raised in the note from Parker, an engineer identified by Sawyer as having experience in waste management, is the concern that "this will start a movement for every private landfill to get the state to take over ..."

[NB This seems to be exactly one of the problematic outcomes that this project would pose for State policy, according to people who are familiar with waste management policy in Maine.]

[NB The news conference on May 2 seemed to be the basis of growing public awareness, including Parker's.]

2003.05.05D: SAWYER RESPONDS TO PARKER

Copies of this message were sent to Umphrey, Cashman, Adams.

Sawyer says he "suggested" MRC role, etc. -- leading to assume he had already been involved in the idea stage, and he was having trouble having his suggestions heard. "This was far preferable ..."

[NB When was he consulted? Perhaps, see "marathon" session of 2003.04.17.]

Regarding the landfill, he underlines the word "expenses" of the landfill as

being a financial concern for GP -- implying a different slant than need to profit from sale.

If this were to be owned by PERC / MRC, it could accept mill waste, PERC ash "plus 15% from other sources."

[NB On what basis is this statement made -- probably under some conditions within the existing license?]

[See also Sawyer letter of 2003.05.06]

2003.05.06: BDN ARTICLE ON LANDFILL

This was the first article devoted to the landfill deal. The true scope was not apparent in it -- it seemed to be a transaction in which the State would assume expenses and liabilities of ownership, and GP would pay for this over time with long term disposal guarantees. This also is the article in which DEP's David Lennett is named, and as saying "the landfill is good for the state." [quoting the BDN, paraphrasing Lennett] Quoting Lennett: "'The facility was built in 1996 and very little of the capacity has been used so far,' he said. 'One of the issues with the purchase agreement is how to allocate the liability of the site and I think the state will assume the liability.'" [...] "'It's a state-of-the-art landfill,' he said. Lennett said the only time the state would have to pay liability costs would be if 'something bad happens.'"

[NB This is the article that prompted Sawyer's e-mail to Lennett, see 2003.05.10.]

2003.05.06: SAWYER LETTER TO UMPHREY, ADAMS AND CASHMAN

This letter refers to the previous meeting he attended "with G.P. officials in the Cabinet Room" but does not give the date.

Refers to "today's BDN" that the state is now proposing to purchase.

Raises issue of self-regulation: (underlined): "There must remain a certain tension between regulator and regulated."

[NB This is one of the points raised also in PCS appeal.]

Among other points, Sawyer wants this in all respects to "meet all Subtitle 'D' regulations" [NB This is a generic term for Federal rules about landfill operation] and he names several others, including "pay appropriate Commercial Landfill fees to the DEP" [NB In current contract, disposal of GP wastes is exempt from state fees.]

Here also is the illustrative comment: "If it walks and talks like a duck ... it's a duck. If it operates and competes like a Commercial Landfill ... it's a Commercial Landfill."

He also asks for negotiating guarantees with GP.

He also refers to Rhode Island ownership of "the Johnston facility" and he does not know other states that have "taken that leap." [** look up that facility; also double check that Maryland or Delaware have such a facility]

2003.05.07: DRAFT HOST COMMUNITY BENEFITS AGREEMENT

This is dated 2003.05.07, but was attached to an e-mail sent by MacDonald on 2003.05.06. It clearly is an agreement between SPO and Old Town -- without mention of operator or other relevant entities.

2003.05.08: MACDONALD MEMO ON DRAFTING LEGISLATION

This is the memo in which MacDonald says "This G-P opportunity doesn't fit neatly into what was planned." Among other problems, there is too much capacity left in presently operating landfills for the regular, statutory siting process to go forward.

He also says "David Lennett at DEP has also offered to assist in this effort....." [ellipses in original]

2003.05.09: DOUGLAS TO GP, CASHMAN, ADAMS, AGREEMENT OUTLINE

This "landfill sale.xls" document was sent by Rick Douglas to GP corporate officials Feck and Bostic outlining the essential points of the agreement.

It is labeled "issues for discussion and agreement" and says "State of Maine (owner) and NEWSM (operator)"

2003.05.09: PROPOSAL FROM CASELLA, (NEWSM) TO "FACILITATE THE TRANSITION"

[NB This was faxed from Pine Tree, dated May 9, 2003 but handwritten on this copy is "latest." Implication -- earlier concepts had already been brought forward.]

Among other information, states that C&D will be sorted at Lewiston facility.

[NB At the March 29-30, 2004 public meetings, they claimed that they did not know where the C&D sorting facility will be located. In the draft dismissal of the appeals, at p. 15, "... the Department does not have any specific information regarding the location and operation of such a facility, or regarding the sources and volumes of CDD expected to be handled."]

At this time, it was conceived by Casella that the operating agreement would be between GP and Casella. After closing on the transfer, the agreement would go over to the state. [NB: This is the order in which the eventual agreements were achieved.]

At point 5, "This operating agreement may, by mutual agreement of NEWSM and the State of Maine, limit or entirely preclude out-of-state waste from being disposed at the landfill."

[NB Clearly they saw this as being regulated by the operating agreement. At the time they probably also knew how they would approach the definition of how out of state waste becomes Maine waste through processing within the state. C&D was integral to the Casella approach from the beginning.]

2003.05.09: RESIDUALS DISPOSAL MEMO TO MRC

Memo from Louder to MRC board. See also letter of this date and followup letter of 2003.05.14 to Cashman.

[NB This e-mail outlines what in essence became the MRC approach to negotiations related to this project throughout the next 2 months, to the day, when Casella submitted its proposal.]

The message reads:

"Dear MRC Board:

"PERC and MRC have been focused in past couple of days on gathering information on the future use of the Old Town G-P special waste landfill in the context of the deal that is being put together by the Baldacci administration to enhance future pulp and paper operations there. PretiFlaherty has ties to this transaction.

"The state is proposing to own the landfill, place some stipulations on use, but turn over the control (future contracting) to a third party. That party, to be announced Monday, is likely Casella.

"PERC / MERC have been advised by PretiFlaherty that it is in our interest to try to strike a deal on future residuals disposal with Casella, before this transaction gets closed, which will take an act of the Legislature (Governor's Bill). I'm headed to PERC this afternoon to discuss a possible negotiating strategy with PERC, should they move forward with negotiations. The thought at the moment is PERC will negotiate, and the governor's office would play some role.

"I'll provide more info next week as it develops"

[NB A few points: first, at this time it was not believed by the project promoters that the operating contract would have to go out to RFP; second, there was no doubt at that time that Casella was the chosen contractor -- see "latest version" of proposed contract being circulated by Casella this same day; and third, the MRC's main interest was in negotiating a long term ash disposal contract, not in exploring the financial possibilities of being a serious bidder for the operating contract, which was perhaps not conceived at this time -- except see, messages from Sawyer.]

In a reply e-mail of the same date, MRC board member Lee Yeaton briefly raised two important questions that don't seem ever to have been fully answered. His message in full:

"Hi Greg: Good luck this afternoon. What are PretiFlaherty's ties to this transaction? What are the pros and cons concerning MRC owning this landfill? (I am not suggesting it or even supporting the idea but I am concerned enough to think about the idea)."

2003.05.10: GALLAGHER MESSAGE, "IN CASE YOU WONDERED ..."

On May 10 Sen. Tom Sawyer wrote to the DEP's David Lennett as follows:

"David,

"Since you were the one quoted in the Bangor Daily News regarding the GP Landfill, I thought it proper to copy you my thoughts to Kurt and Jack regarding 'ownership'. I continue to believe ownership by either the MRC or PERC would make the most sense for all concerned! GP could get some cash and reduce their disposal costs. 144 towns would have a disposal site for their

Ash, FEPR and C&D wastes. The DEP could continue in its current role of Regulator. When CWST or WMI finally fill up, we could revisit the rules at the Old Town facility then ... [ellipses in original]

"I've heard a rumor that Jack is planning on having the State 'own' the facility, and negotiate with a private operator (no RFP process)! to enjoy 'super' operation rights (if it looks like a Commercial Landfill ... [ellipses in original] it is!). If that's the course we're on ... [ellipses in original] I can predict some interesting debates with Joanne, Beth, etc., when we allow a Commercial Landfill to be created without changing State law.

"Anyway, I thought it proper to try to keep you in the loop. At least the loop I'm up to speed on. Hopefully, you'll be able to reciprocate down the road."

Lennett sent this along to Dawn Gallagher, who replied: "In case you wondered, I don't think we should answer this email until we meet with the gov's office."

2003.05.12: GP MEETING

Handwritten notes provided by the Governor's office.

This was an "All hands meeting." Quotes Bohlig: "Casella, we can't afford any false starts." [...] "Have to modify statutes. Casella G.P. will lock down deal & State will do what they can."

Under "Terms of Deal" Bohlig asks "How long to get Bond Package done?" "Cashman -- 12 weeks or so." Assuming State gets going with bond, then Casella "will work on permitting."

Quotes "Dave Linnett" [sic] "Sees no physical bars to Casella [here notes are unclear] and operating the facility to accp. G.P. waste prior to full completion." [NB: this is what happened]

Another note: "C&D that will be used is already being burned by Livermore. [Cas.] would like to review some air regs."

[NB See forward to Boralex negotiations with the State, 2004.03.04-12]

2003.05.13: BARNES QUERY ON MANAGING FOI REQUESTS

This refers to a FOI request from BDN, and also asks "... how should we handle materials distributed at meeting yesterday or other transaction-related materials?"

[NB This meeting is apparently the "all hands" meeting of 5/12.]

2003.05.13: CASELLA OFFERS DISPOSAL AGREEMENT TO MRC

In a memo to the MRC board, Louder writes:

"Please find enclosed a copy of a letter hand delivered to EMDC today. It essentially outlines a willingness on Casella's part to extend the existing terms of the residuals agreements and non-complete provision of the Settlement Agreement, forward through 2018 on the speculation that an arrangement on the future use of the Old Town landfill will be realized. It seems we should consider a response to Casella while learning more on all aspects of the

pending G-P deal."

[NB The reference to Settlement Agreement refers to a condition that needs to be explored. We have seen some reference to this, but its bearing on the unfolding of this deal has not been discussed. Is this what was imposed on Casella by the Attorney General due to their potential impact on market power, mentioned in the Ackerman / Townsend report? PCS 2004.10.06]

Though the cover letter was not in documents received from MRC, one page of a fax from BSSN (Casella attorneys) dated May 13, 2003 providing points 7 and 8 of a proposed "Agreement." Point 7 related to long term tipping fees at the new facility for municipal solid waste (MSW), and point 8 extends "... through 2018 the terms of the existing disposal agreement for residues (ash, Front End Process Residue, and NonProcessables as defined in the Contract with PERC) [...] thereby providing for disposal at the Landfill as of the termination of operations at Pine Tree Landfill,"

[NB This opens the issue of long-term disposal future at Old Town. Clearly, the day will come when Pine Tree is full, PERC closes and MERC closes -- with the MERC closure likely coming first, according to news accounts. The huge potential capacity of Old Town would then have all of Maine's MSW potentially coming to Old Town. It is even possible that Casella has a financial incentive to close MERC, which it owns, getting rid of what amounts to a liability and opening Old Town to all wastes from southern Maine. The provisions of the license appear to limit waste stream volumes, but there are often conditional clauses that leave room for opening the door to larger flows.]

The section continues:

"There will be no increase in the residue disposal price associated with the additional transportation distance to the landfill as compared to Pine Tree Landfill. The Agreement will, at the option of the State when it assumes ownership of the Landfill, contain a provision similar to that contained in the current disposal agreement with PERC and Pine Tree Landfill under which NEWSM will be required not to accept from any so called 'MRC communities' waste of a type accepted at PERC while PERC is accepting such waste from such communities at its facility. This restriction will not be applicable as to any 'bypass waste' created by PERC and will be terminated upon the permanent closure of PERC as a disposal location under the existing contracts with the MRC communities."

[NB Regarding transportation distance, we note that Casella has constantly claimed that the costs of smaller trucks on the Interstate could not be managed due to contractual obligations -- which they crafted themselves; and particularly see 2003.12.16 notes in which Casella states that they would lose the contract if smaller trucks were required. Note also that at the time Casella was well aware that all of their trucks leaving PERC were overloaded, not only for use of the I-395 bridge, but for legal travel on any Maine roads. How can we not assume that they build these facts into their bids as a matter of course?]

[NB In addition, note that by this date, Sen. Tom Sawyer's reservations about this deal were fully known to all parties, and that Casella knew that they were making an offer to a potential competitor for the landfill project. What is not known to us now is when the existing disposal contract was to terminate -- some indication it would be 2006 -- and whether absent this emerging deal Casella would be coming forward with this offer at this time.]

[NB Related to MSW not accepted from MRC communities, it was these clauses that first captured our attention as to the relationship between Casella and MRC in the crafting of the final agreement. Further, the entire picture, given the eventual closure of Pine Tree and the eventual cessation of operations at PERC and MERC (a possibility reported recently in the press) leaves Old Town as the depository of choice for raw MSW from the entire state of Maine, to say nothing of the provisions for unlimited construction and demolition debris that may come from outside Maine, especially given the mandate for seeking the horizontal expansion permit that is integral to this deal.]

2003.05.13: DRAFT TERM SHEET (NEWSM)

See also "latest version" of 2003.05.09.

This proposes NEWSM as managing transition between GP and state ownership.

At this time it was imagined that financing would be from the State, to the amount of \$12 million, with NEWSM assuming the payment of debt service.

At section 23 there is a very detailed description of the C&D plans.

2003.05.14: LOUNDER / MRC LETTER TO CASHMAN

This refers to a meeting "last week" between Cashman, Lounder and Gary Stacey.

[NB This letter is nearly identical in form to a letter sent 2003.05.09, referring to a meeting "this week" except in that the earlier letter did not include the statements about the "follow up discussion" that caused them to believe that the state's thinking had changed on key guarantees desired by MRC. As stated in other messages within MRC indicate that these letters aimed at getting more details about the deal from the State.]

Cashman's position is recapitulated: "You indicated that, in efforts to ensure the long-term availability of the facility capacity for waste generated in Maine, key stipulations regarding future use of the facility include an express prohibitions [sic] on: 1) the disposal of unprocessed MSW and 2) the disposal of those wastes generated from out-of-state sources." MRC is in support while recognizing challenges.

However, in "our follow up discussion" this week, it appeared thinking with respect to those stipulations may have changed. This uncertainty compels MRC, as a representative of over 160 Maine municipalities, to request access to current information on the elements of this deal."

Next paragraph notes "Enforcement of such stipulations [regarding monitoring of amounts and types of solid waste] is notoriously difficult ..." and they offer MRC as a "resource in your efforts to meet your objectives."

On ownership and control, MRC believes "the more control the state is able to retain" will lead to likelihood public interest will be served.

Apparently there was a glimmer of MRC ownership: "In the absence of an MRC ownership position in the facility or an acceptable arrangement for its future use for PERC's residuals, MRC encourages the state to retain control over the nature of the facilities' [sic] future business arrangements."

Suggests a prompt opportunity to meet to learn more about the pending

arrangements.

In a followup message to the MRC board, forwarding this letter, Louder writes:

"attached is letter faxed to jack [sic] Cashman in efforts to spring loose more facts concerning the elements of the pending deal affecting the future use of G-P landfill in Old Town. I met with Dan McKay today to discuss the situation. He continues to analyze the possibilities for MRC landfill ownership. I also plan to request information from Casella in efforts to confirm more regarding their ability to service PERC's residuals for the next 15 years. Francis Ackerman of the AG's office is following this issue and is regular [sic] communication with us. A bit of due diligence has been done on the Old Town site (DEP record)."

[NB Why and at what time did Francis Ackerman, the AG office person most knowledgeable about competition in the solid waste industry, cease participation in this process?]

2003.05.15: ADAMS CONFLICT OF INTEREST; NEGOTIATION RATIONALE

This memo from J Chris Parr to Jane Lincoln, copying to Martha Freeman and Kurt Adams, raises question of Adams' earlier work for BSSN including representing Casella on energy "not waste management" issues.

[See memo of 2003.05.22 in which the decision was made that he must be disqualified from participation "until at least the point at which an operator has been awarded a contract to operate the facility."]

This memo also gives the rationale for the ongoing negotiations with Casella: "Currently, the State is in negotiations with GP concerning the purchase of a solid-waste facility in Old Town, Maine. GP also is in negotiations with Casella for an operator's agreement for the same facility. When the State purchases the solid-waste facility from GP, the State will take over the operator's agreement brokered between Casella and GP. To protect the State's interest, therefor, the State must participate in negotiations with GP and Casella prior to the State's purchase of the solid-waste facility. [new par.] A range of regulatory and legal issues is at play, and the Governor has asked KA to serve as the lead attorney for the State in the matter. Casella, for its part, is represented in the transaction by BSSN."

This memo also has handwritten note on it: "JL -- Let's discuss. -- JCP" This note shows who had written some of the various notes in subsequent entries.

2003.05.15: MRC "FAVORABLE CONTRACT TERMS"

In continuing communication between Louder and MRC board, he forwarded the following message sent to board member Lee Yeaton responding to Yeaton's message: "While I agree that we should explore MRC ownership -- we must be fully aware of the potential cleanup potential [sic] in the future." Louder replies:

"I agree, future environmental liability risk absolutely needs to be assessed and incorporated into decision-making. In our situation at the moment, the more the MRC is positioned to actually possess the capability to accomplish an ownership position, irrespective of whether it ultimately wanted to or not, the better positioned we are to get more favorable contract terms in lieu of

an ownership position. Given present circumstances, I believe its [sic] a prudent strategy. Do you concur?"

In reply, Yeaton wrote: "Greg: I sure do concur" [sic]

2003.05.16: CASHMAN REQUESTS MEETING WITH ADAMS, GP, CASELLA

See e-mail log from Governor's office, batch 1

[NB About this time it was becoming apparent that an RFP would be required.]

2003.05.16: LOUNDER MEETS CASHMAN

Louder informed the MRC board that he would be meeting Cashman at 1:30 in Augusta. "The object is to learn all we can on the pending G-P Old Town landfill deal. I'm checking with Dan to see if he can get me a Confidentiality Agreement to diminish any 'premature disclosure' issue that might arise as reason for not giving us information."

[NB The questions proliferate. If Casella were not the pre-ordained contractor, why would there be any question of the State's sharing information with an entity that could at that time have been considered an alternative operator, as was clear from Sawyer's earlier memos?]

2003.05.19: TERM SHEET DISTRIBUTED TO AG

See e-mail from Adams to Laubenstein, 6/9/03, referencing this.

2003.05.20: MACDONALD E-MAIL ON PARR DOCUMENTS

It is not clear what documents he is referring to, "Chris has prepared for us."

1. Addresses "the purchasing of the landfill and costs that NEWSM will be putting into expansions of the landfill" [ellipses in original] but notes that other costs are not covered.

[...]

5. "I do believe it would be helpful to have DEP review the draft legislation and contracts, since they are, and will be, the site operations regulator David Lennett would be the one to involve" [ellipses in original] [NB: See Parr memo of 5/23 mentioning Lennett involvement, though incorrectly identifying him as being from SPO. Lennett had been involved in the 4/29 meeting; also wrote an original draft of the RFP]

There is a reply from Cashman, "Good suggestions especially number 1 [sic] some of the others have been taken care of" [sic]

2003.05.21A: PARR MEMO TO BALDACCI RE: BID PROCESS OPTIONS

Memo is to Baldacci outlining bid options, from Chris Parr, copied to Jane Lincoln [Governor's chief of staff] and Jack Cashman. Critical element seems to be the timeline for the bids. The third copy I have (Cashman's?) only has one note on it: "Expedited bid process"

I have copies of this memo in three versions: one clean copy; one with neat

handwriting (Parr's); and one in somewhat scribbled hand (looks like Cashman's).

The one in Parr's hand says: "JEB -- So that I am clear, could you confirm which of the four options below you want to exercise? I thought you said option 3, but I am" --and the note breaks off and option 3 is circled. The essence of option 3 is that there would be a regular bid but "waiver" of appeal process, with risks from an appeal, which would be minimal -- in other words, they have thought through the legalities in such as way as the "selected contractor" could "begin work immediately."

In addition, there is a 2-page worksheet, again in Parr's hand, outlining the bid options and noting some cryptic comments about DEP.

2003.05.21B: PARR WANTS TO BE IN THE LOOP

Memo from Parr to Lincoln and Cashman, suggesting that they both keep him in the loop in terms of "any and all internal and external discussions about the transaction" so he can effectively give legal advice to the Governor.

2003.05.21C: CASHMAN MEMO TO BALDACCI, NEED FOR BID

Because Casella "have not done their job" in satisfying AG on "Market Power issues and on process issues" [...] "It seems we need to reopen the process and allow for competitive bids to satisfy the Attorney General."

[NB: another indication that preference would have been to do all of this without open bid process]

In addition, costs of the biomass boiler are rising due to moving costs, so various ideas are presented as to how to get more cash to make that happen.

[NB: The issue of doubling costs for biomass boiler is somewhat troubling. Why did the costs go from 12 to 24 million? Is the involvement of Cianbro in this part of the deal, from the beginning (participating in the meeting in Montreal related to acquiring the boiler) to now (moving and constructing the boiler) part of the answer?]

2003.05.21D: MEETING, BALDACCI, LINCOLN, CASHMAN, PARR

Two sets of meeting notes: Parr's and Lincoln's. See also notes from 4/29 meeting in Lincoln's hand.

"JEB" wants the state to not be "on the hook" financially, expedited legislative process, "Casella to be told for expedited bid process; G-P -- monies will be obtained"

"RFP: structured so that upfront monies are obtained; JEB --> time constraints are not there now"

[NB: See 2003.05.22 memo from Parr to Baldacchi, copied to Lincoln and Cashman. "As a result of information I learned during the course of the day yesterday, I understand that the only urgency to the process now is in relation to the legislation that must be introduced to ensure the transaction between the State and G-P must occur." What was the last day on which a final bill could be presented to the Legislature for consideration in the session?]

"G-P wants \$ and boiler transport"

"Close door Casella" "(1) Cut cord w/ Casella, (2) Pete Corell called"

"(1) Legis. -- transfer = blessing of transaction"

Lincoln's [apparently] notes on this meeting:

"Close door to sole source."

"Structure open process

- 1 term sheet agreed to by GP / State
- cas in bidding process > front end \$
- fair shot f/ all int. parties
- cut cord w/Casella, talk w/Pete Correl
- open process

"Thru legislature --
approve purchase
blessing on operator

"Word out to key legislators

"finance payments upfront
length of operating agreement
gets you more \$ up front

"legislation > p hng next wk
call Casella
meeting w/ag
public facility / public process

"--> 1:00 Casella (SPO)"

Continuing in Parr's hand:

At 9:35 Parr speaks with Juliet Brown, "informed her that the state would be (1) purchasing the OT landfill and (2) putting the operator agreement out to bid" This bidding process would be "as we see appropriate" (underlined) and that JEB would determine which option would be followed. [Brown, according to the Phoenix article of 2004.04.2-8 Juliet Brown is an attorney representing Waste Management.]

At 9:35, talked to Linda Pistner, who feels Kurt Adams is still conflicted, and "I concur." [NB: however, see later memo: he stayed part of the case, ultimately]

At 9:47 Parr "Confirmed bidding process option w/JEB"

The notes go on and on. At time noted 10:07+, "Bill Laubenstein, Francis Ackerman, Linda Pistner, Jack Cashman, JCP [Parr] @ AG Dep't" Notes indicate that legislation is correct; no need for legislation "for expedited bidding;" Linda Pistner says "30-yr. deal not a deal-breaker"; Cashman, "RFP would keep PERC protected & L P & P" with K in a circle, followed by a ?. "would exist, no out of state waste"

[NB: Questions and thoughts about the treatment of the MRC in the operating

agreement began our search for the full story about the terms of the deal. This gained interest when MRC pursued the project as a bidder, eventually supported the Casella proposal, while at the very same time renegotiating long term disposal contract with Casella, at improved terms.]

Francis Ackerman, "Structure RFP so that bidders (underlined) propose time periods."

Lower: "+ Call John Delahanty" [Pierce Atwood attorney, representing GP]

2003.05.21E: PARR MEETS CASHMAN AND MACDONALD

"Permit application process must begin"

The rest of the notes deal with RFP, P & S with GP, and Resolve. Several of the provisions under RFP are "Terms as in past agreement", namely: Extend to PERC Sec. 9; L P & P provision; leachate provision; Old Town's wood ash.

Close 12/1/03 or earlier, "issue bonds, bonds assumed by bidder."

Under P & S w/ GP, following: "GP must agree to put \$ to Old Town mill for mill's competition \$; Mill employment provision; capacity commitment; price open; L P & P + 3 or 4.

[NB Need for employment guarantees seems to be recognized, does not occur in final agreement.]

The last line is "Legislation: + Resolve?"

2003.05.21F: PARR REVIEWS RESOLVE WITH DELAHANTY

5:16 p.m. Parr meets Delahanty.

Delahanty "representing G-P" [however, see notes of Elks Club meeting, at which Doyle says "PA is paid by Casella." Of course, these were separated by 7 months. The Phoenix article of 2004.04.02-08 writes: "'Pierce Atwood was very unpleasant to deal with,' Adams wrote on September 22, adding that 'they have a history of overreaching.' Particularly, perhaps, when one of their lawyers is representing G-P and lobbying for Casella."]

"JD explained background of previous transaction & discussed present circumstances ..." [What previous transaction, perhaps the existing license for the landfill as operated by GP?]

Parr "discussed present circumstances & JEB's commitment to save jobs; identified RFP, legis., & P&S as necessary 3 elements to tackle --> are doing so"

At 6:26 p.m. Parr sent an e-mail to Delahanty, Doyle, copied to Cashman and MacDonald, with draft legislation attached. "At your earliest convenience, please review ..."

See 2003.05.23 response from Doyle, "a redline with G-P's suggested revisions..."

2003.05.21G: LOUNDER CONTACTS SAWYER

In a message copied to Peter Prata of PERC, Lounder wrote:

"Dear Senator Sawyer --

"MRC / PERC have been working diligently to obtain a full description of the essence of the pending deal concerning future use of the G-P Old Town landfill. Bits and pieces have been obtained from the Governor's Office. We are attempting to gather information from Casella as well. Do have [sic] any information that you can discuss with us?"

In a reply message of the same date, Sawyer wrote, copying to Prata:

"There are some things that I 'know' and some more that I 'suspect' ... [ellipses in original]

"I've circulated an earlier letter listing my opposition to the State owning the GP site.

"My stated preference would be to have PERC (generator) or MRC (quasi-muni) purchase it. In either instance, I strongly believe some sort of 'coalition' should oversee its operation to minimize risk to taxpayers ... [ellipses in original] both State and local!

"My second choice would be to have its 'purchase' put out to RFP and let the chips fall where they may.

"I understand the exact situation remains rather fluid even as we 'speak'. Additionally, most any scheme will require Natural Resources Committee hearings and votes ... [ellipses in original] I suspect I'll be kept up to speed that way.

"That's the best I can offer at the moment. I'll try to keep you guys posted as best I'm able."

2003.05.22A: CASHMAN AT MR's BOARD

In part, Lounder's invitation to Cashman reads: "As we have discussed, it is our desire to learn as much as possible on the further details concerning the landfill facility in our efforts to be positioned to support the cause in efforts to best serve the public interest."

2003.05.22B: PARR DELIVERS RESOLVE TO DUNLAP

12:19 p. "Delivered draft of resolve to Rep. Dunlap, who I understand will be speaking to Sen. Martin"

[NB ** What was the latest date a bill could be submitted and still considered within the schedule of the session?]

2003.05.22C: PARR CONSULTS HOWARD / PA ON RESOLVE

12:42 p. "Spoke w/ Chris Howard @ PA; generally fine w/draft resolve, save for sovereign immunity waiver assurance in K; CH also would want term sheet prepped for reference during resolve hearing / WS process"

[Note: 23 minutes after the resolve was delivered to its legislative sponsor, the attorney for GP was being consulted as to its content, and request was

received for cooperation in preparing for legislative workshop and hearing]

2003.05.22D: DAVID LENNETT "HONES" LEGISLATION

See May 23 memo from Parr to Baldacci.

[NB In that memo he identifies Lennett as being with SPO -- that opinion was not correct.]

2003.05.22E: PARR TO BALDACCI ON ADAMS CONFLICT, RFP

The recommendation is made to exclude Adams from participation, at least until an operator is selected.

As to the RFP: "As a result of information I learned during the course of the day yesterday, I understand that the only urgency to the process now is in relation to the legislation that must be introduced to ensure the transaction between the State and G-P must occur." Recommends regular 32 day period from when RFP is released. "Using the normal process and timing very likely would close the door to any real or perceived legal or ethical issues or challenges that might be otherwise made if the appeal period were to be waived. Please advise." [Please advise is in bold]

The cover memo is followed by one page devoted to the Adams issue.

[NB In this memo Casella is not mentioned, only "operator" in general terms; yet it was Adams' involvement with Casella's attorneys, and his own representation of them, that was of concern.]

2003.05.22F: PARR REVISES OPINION ON ADAMS CONFLICT

In a second memo of that day, from Parr to Baldacci, copied to Cashman, Lincoln and Adams, he has revised his position and thinks Adams is not conflicted. This is because of "the change in approach the State has taken by opting to place out to bid a contract for the operation of a waste facility on the property." There was generally agreement that this would conform with the law, though Linda Pistner continued to be "concerned that an appearance of conflict could have negative consequences, at least politically." Only Adams would be at risk legally. "Therefore, while there would be a political risk involved for you if Kurt were to be prosecuted under the law, Linda said you would not be legally vulnerable." In bold: "Please advise."

2003.05.22G: ACKERMAN CONSULTS TOWNSEND

See memo distributed 2003.05.27 from Ackerman to: Cashman, Parr, Adams, MacDonald, Lennett, Clark, Rowe, Pistner, Laubenstein, Garrett and Peters.

It states that "Kathi Peters and I spoke with Dr. Ralph Townsend on May 22, 2003 for the purpose of seeking his advice with regard to the bid process for selecting an operator to run the GP landfill." 12 points follow.

2003.05.23A: PARR TO BALDACCI, "UPDATE ... ON TRANSACTION"

"Update on G-P/State of Maine transaction" This memo says that on 5/21 the draft legislation crafted by MacDonald and Parr was sent to Pierce Atwood.

"Legislation is in the works. Wednesday evening [May 21] I sent to Pierce

Atwood (PA) (representing G-P in the transaction) a draft of legislation crafted by George Macdonald [sic] (of the SPO) and me. PA is honing the draft a bit. The draft also was shown and proved satisfactory to Rep. Dunlap and Sen. Martin. Yesterday, David Lennett of the SPO [NB: actually of DEP] tightened the draft a bit more and that was sent on to PA for consideration."

[NB It was always a question with me, who wrote the Resolve? Here it is stated, Parr and MacDonald. In the transcript of the 2003.03.29 session, Charlie Gibbs asked "Did Pierce Atwood in any way help write tht Resolve that the Legislature had to approve? Mr. Doyle: We reviewed the Resolve language. We didn't write it. The Legislature wrote it." (P. 67, line 22) In "Response to Comments" from the DEP, at p. 68 of 83: "Legislators were involved in the process of drafting and working on the Resolve that authorized the State Planning Office to purchase the landfill." Response to Comments at p. 73 of 83: "The Resolve was written by legislators, Governor's staff and State Planning Office."

The second part of the memo deals with the complexities of participation of Kurt Adams, whose former firm BSSN also represents Casella. The core of it: "The greatest concern, then, likely would be that Kurt would have worked on an RFP and contract with the knowledge that Casella probably would be bidding on the contract, thereby possibly raising a challenge asserting that a conflict of interest issue, or an appearance of a conflict of interest problem, exists."

There are certain aspects that are not troublesome -- in that the mere potentiality that Casella might bid cannot be condition of conflict, as that would apply to any client of BSSN doing anything. However: the "totality of circumstances" aspect might come into play, "i.e. the fact that Casella and BSSN were involved in the initially contemplated transaction and it thus was foreseeable that those two parties might be involved in the bidding process that will now occur."

[NB: This is the most direct statement that Casella was involved in the origins of this entire idea. However, also see history paragraphs from Casella proposal, putting origins of this line of thinking in March, in GNP deal and Dolby facility.]

Their decision: for Adams to remain involved, with Toni Kemmerle and Parr also involved, and that "the RFP and the contract that ultimately are developed for the bidding process will be subject to the review and approval of the Office of the Attorney General prior to the release of those documents. [new par.] I have spoken to Kurt about the possible legal liability that exists for him if he becomes involved in the transaction, and I understand him to be comfortable with becoming involved nonetheless. Consequently, I, too, am comfortable."

2003.05.23B: LENNETT DRAFTS RFP

10:58 a.m. David Lennett sends a draft RFP to MacDonald, Parr, Ackerman, Darling, Clark, and Barnes. "Recommend we consider these for internal consumption at the present time, since they do not yet reflect input from SPO/AGs office, etc."

[NB The Record List enters e-mails among staff related to RFP, however these seem to be restricted to staff assistance on technical requirements of the site, particularly toward assisting SPO answer questions from bidders. An issue for me: why are the earlier staff activities not similarly entered?]

2003.05.23C: DUNLAP, MARTIN AND CASHMAN CONFER ON THE RESOLVE

2003.05.23D: CASHMAN REPORTS MARTIN IS OK WITH RESOLVE

This is an e-mail from Cashman's secretary, Andrea Smith, to Chris Parr. "Jack just called...[ellipsis in original] Matt Dunlap spoke with John Martin and he is fine with the resolve...[ellipsis in original] we need to get it submitted to the Revisor's office ASAP so it can be scheduled for a public hearing...[ellipses in original] Matt Dunlap will take care of getting the signatures for us."

[NB: See public meeting of March 30, I asked who wrote the resolve, and was told the legislators and the SPO]

2003.05.23E: PA REPLIES ON RESOLVE

At 1:52 p.m. Friday May 23, 2003 Tom Doyle replied with a redlined edit of the draft resolve, replying to e-mail of 5/21. This was sent to Parr and Cashman, copied to Delahanty and Howard.

[I'm not expert at reading this redlined text. It is clear from the summary that "pursuant to a bid process" is removed, and "enter into such contracts the office determines are necessary" is added.]

At 1:56 p.m. this text is forwarded on to MacDonald and Kurt Adams.

2003.05.23F: MRC MEETS CIANBRO

E-mail from Rick Leonard, Cianbro, headed "Financial Model," to Lounder and other MRC officials, states: "Great to meet you guys today. We'll get back at it next week. I look forward to it. Thanks."

In a follow-up message to the MRC Board, Lounder reported that Cianbro's Vigue, at the meeting, "... expressed his thoughts on the long term benefits of a public interest position of control at the landfill. He explained that his company had discussions with the state about a potential Cianbro proposal. Information had been compiled by Cianbro to that end and it was shared with us in confidence. He encouraged MRC to further analyze the information and submit a bid to an RFP now being prepared by the state. We suggested the MRC would look things over and continue discussions with them this week. Near as I can tell, Cianbro's interest in the G-P 'job retention transaction' is twofold: 1) they would be involved in / hired to accomplish the relocation and retrofit of a biomass unit located in Athens... [ellipses in original] said to be a job costing 22 million or less, and 2) they could secure the job of running the landfill under an operating agreement they presently project to cost someone around 1.4 MM on an annual basis."

Comments that follow relate to having George Aronson follow up with financial analysis. "I roughly studied the numbers over the weekend. I couple of things [sic] jump out at me. First, the arrangement contemplates a guarantee of G-P's continued use of the facility at rates way below cost (part of the package needed to keep them competitive). In absence of 'filling fast' with out of state material, it is going to be very hard for anyone to 'make up that loss.' Second, if the numbers all prove valid, it does appear that the airspace, on a cost basis, is somewhere around \$30 to \$35 per yard, or ton, for Ash and FEPR. Transportation costs would need to be figured in for comparison to present

costs."

[NB See also Waste Management letter submitted in lieu of bid, 2003.07.09]

In addition there are comments about Cashman's not wanting to discuss the details due to RFP process. "Also, Jack Cashman from the state called this morning to explain where it was going out to RFP now, he couldn't discuss details with us anymore. Also mentioned that he hopes to have a legislative resolve before the natural [sic] Resources Committee by Friday... [ellipses in original] apparently to make way for the state ownership of the Old Town facility and the RFP process. Will send a draft for our review. He hopes we will support."

[NB Cashman had not been too forthcoming with information about this transaction, even before the decision to go for Resolve and RFP. MRC did testify in support of the project before the legislative committee, with caveat that they did not want competition for disposal of MRC communities' MSW. See also at least two sets of notes from meeting 2003.05.21 with Baldacci, Lincoln, Cashman and Parr, "cut cord w/ Casella.]

2003.05.27: ACKERMAN MEMO ON TOWNSEND CONVERSATION

Memo distributed 5/27/03 from Ackerman to: Cashman, Parr, Adams, MacDonald, Lennett, Clark, Rowe, Pistner, Laubenstein, Garrett and Peters.

It states that "Kathi Peters and I spoke with Dr. Ralph Townsend on May 22, 2003 for the purpose of seeking his advice with regard to the bid process for selecting an operator to run the GP landfill." 12 points follow.

These include: convene an interagency committee to oversee the bidding; licensing should precede the bid, "Ralph questioned how prospective operators can effectively construct a bid without having prior knowledge of what materials will be accepted at the landfill." Reasons given: otherwise large "players" already active will have advantage, and state might not get best deal.

At (6) "Ralph questioned whether CDD should perhaps be barred from the facility up front." At (7) expresses possibility that the State actually might make some money out of this. At (12) suggested "the use of a carefully calibrated capacity-usage or depletion charge to reduce the incentive to fill the landfill faster."

2003.05.27: ADAMS ON TOWNSEND

At 12:03 p.m. Kurt Adams responded to the Ackerman memo on Townsend, to the effect that the suggestions would slow the process.

At 12:51 Ackerman replied to Adams that some of Townsend's recommendations would not obstruct the pace, others might, for instance "the recommendation that the State license the facility before going out to bid ..." Ackerman asks if the critical issue is getting "GP's cash needs" met, and if that can be done, then why expedite the process; additionally the expedited process would advantage those firms "familiar with Maine's permitting procedures."

2003.05.27: BEVER FOIA RE: GNP

Fred Bever of Maine Public Radio submits FOA request for items related to the

GNP mills in Millinocket and East Millinocket. This is included in this batch -- in some earlier memos there was some confusion in the Governor's staff between GP and GNP.

2003.05.27: DELAHANTY, "WHO WILL BE THE PRIME SPONSORS?"

This was sent 5/27/03 at 7:02 p.m. It comments on the "final resolve." Copies to: Parr, Doyle, Howard, Adams, Cashman, Kemmerle, MacDonald, Andrea Smith.

It was in response to an e-mail sent by Parr at 5:21 p.m., 5/27, stating that the bill had gone to the Office of the Revisor.

He says toward the end to Chris, "thanks for all your help on this."

[NB Clearly, the point is to help GP, though in the long run the firm that really was helped, and to which Chris Parr is directly connected, is Casella.]

[I don't exactly follow the various alternatives related to municipal roles. They are balancing their needs to get the deal done, with political realities. PCS]

The recommendation is made that changes be in place before the bill goes to the revisor with signatures. "By the way, who will be the prime sponsors?"

2003.05.28: MRC MEETS CASELLA

Note from Louder to MRC Board reported meeting 3 p.m. 2003.05.28. Meagher and Hiltner attended for Casella, Louder, Peter Prata (PERC) and Gary Stacey (PERC) attended for MRC. This was mainly reiteration of the 2003.05.13 long term disposal offer, with suggestion that Casella would include details of this offer in their Proposal to the State. MRC gained the sense that MRC was interested in the "... possibility submitting [sic] a bid of its own. They apparently feel the need to deal with us. Otherwise, they could have simply said, 'OK the offer in the May 13 letter stands.' It sounds like they are going restate [sic] and perhaps modify their proposal... [ellipses in original] hopefully with more favorable terms. I'll keep you informed."

The rest of the message related to the status of the Resolve (unknown at that time) and ongoing consideration of Cianbro arrangement.

[NB This points toward the what seems to be the main intent of MRC participation, gaining a better long term price for ash disposal.]

Related to the Cianbro talks, on 2003.05.30 Aronson provided the following figures to Cianbro:

"For estimating purposes, assume that PERC generates the following materials:
"52,000 tons per year of ash @ 1.0 ton/cy, 26 tons per truck load
"46,000 tons per year of glass and grit @ 0.75 ton/cy, 31 tons per truck load
"12,000 tons per year of non-processibles at 0.2 tons/cy, 22 tons per truck load"

Aronson also "attached a note on some legislation that might be of interest" and the page that follows is titled Internal Notes: PERC / MRC Discussion w/ State regarding future use of G-P Old Town landfill" These are as follows:

"Message 1 -- We're aligned as partners in public interest

"Message 2 -- MRC is an experienced public interest resource in this area
"Message 3 -- MRC wants to support this cause & we need information on the
essence of the deal in order to do that
"Message 4 -- With information, we can help it fly, we can work in confidence
(see agreement)
"Message 6 -- We have experience on the issue of delegation of owner's
control, Andy Hamilton, SASWDD, [sic]
"Message 7 -- We have experience in issues of airspace utilization ...
[ellipses in original] MSW to Hampden, DEP
"Message 8 -- Mechanism for owner / control shift over time, we can check fit
"Message 9 -- Legislative piggyback 'regional association'
"We believe³ our involvement will support the State's objectives."

2003.05.28: MRC MESSAGES ON RFP, RESOLVE

See also discussion at 2003.05.23, MRC meets Cianbro, including followup
messages of 2003.05.28.

Larry Folsom of the MRC Board asked on 2003.05.27 "Can we get our hands on the
resolve?" Louder replied, "Cashman promised to send it to us as soon as it
becomes available... [ellipses in original] the document we really want to see
and / or influence is the RFP (we discussed the idea of a backdoor thru Cole,
however, Cashman said yesterday he had to cut off communications on the RFP,
in fact he had an attorney with him on the call to me yesterday, Parr?, which
[sic] I think is the MDOT guy that Vigue referred to. I think the possible
'in' there closed, and in an RFP process with sanctity, that's probably
appropriate."

[NB Unfortunately, all indications are against "an RFP process with
sanctity."]

[NB See ahead, 2003.09.19-22, names Jim Smith as DoT counsel. No indication
this is person referred to here.]

2003.05.29: BIOMASS BOILER MEETING

These are notes in unknown hand (would have said Cashman, but at one point
says "Jack has made \$22 m. state commitment ...")

[NB See also 2003.05.23 MRC Meets Cianbro, which gives same \$22 million
figure, "or less."]

There is an Agenda, and the topics are the biomass boiler and the purchase and
sale agreement. Various issues including C&D "waste provision" are discussed,
though it is not clear what if any conclusions are made.

Last line is: "Boralex are very strange guys."

2003.05.29: MACDONALD SENDS WOODARD AND CURRAN REPORT

This "preliminary report" may be sufficient to satisfy the earlier questions
from Risk Management.

2003.05.30: GP TERM SHEET

See Howard e-mail of 6/2/03, on which a revision of "G-P-State Term Sheet
05.30.03" is attached."

2003.05.30: MACDONALD DISTRIBUTES RFP DRAFT

MacDonald sent a "rough draft of how the FRP might be 'introduced' am willing to flesh this out further...." [ellipses in original] "I haven't included language on what we would ask for financial assurances up front (know we talked about \$20,000 cash and \$1 M surety bond to be part of the application...) [ellipses in original]

2003.06.01: ADAMS DISTRIBUTES TERM SHEET

The "Non-Binding Term Sheet" that in effect became the operating agreement, including details about provision of C & D for biomass fuel, was distributed by Adams to Parr, Cashman, Karrass, Wyke and Lincoln at 10:53 p.m. from Adams' home e-mail address.

It is already a "redline" and there is no indication where it came from originally. [NB However, see Howard e-mail of Monday, 2003.06.02 to which a revised term sheet is attached, dated 2003.05.30]

Needed, to get it back to GP "by COB Monday."

It is requested to set up a meeting of the "in-state team" at 3 p.m. Monday 2003.06.02 in the Governor's office.

In essence, the document names the "state" in terms of sale agreement and obligations of operating agreement. Many of the provisions here went over to Casella after their proposal was accepted.

2003.06.01: HOWARD ON LPP / CARPENTER RIDGE

From Howard to Cashman, Adams and Parr.
Note that this is a Sunday.

Howard had retrieved documents from his firm's (PA) archives related to the Carpenter Ridge sale agreement. Apparently they were involved in that one, too. Here, he is advocating for a "waiver of sovereign immunity" and two other provisions -- apparently to the advantage of their client that they would like to have included in the present deal.

"1. A waiver of sovereign immunity; 2. A commitment to appropriate for its performance on a priority basis above all other MWMA functions; 3. A reverter in the form of a \$1.00 purchase option in the event of MWMA default, secured by a mortgage on the site and a security interest in the site data."

2003.06.02: ADAMS ON CARPENTER RIDGE

Adams replies to Howard e-mail suggesting provisions from the Carpenter Ridge agreement. He says this is what he would like to follow in general, but that the specific items Howard was bringing up would be different in this case.

Of particular note: "Indeed, I believe that building on this agreement will provide some political cover for both parties." [NB Exactly why would political cover be needed by anyone? Why would structuring the deal in a similar way as Carpenter Ridge take heat off this deal?]

2003.06.02: MRC DISTRIBUTES RESOLVE

Though received by e-mail the afternoon of Friday, May 30 from its attorneys, Lounder did not distribute the text of the Resolve until morning of Monday, June 2. Lounder stated that "MRC should testify in favor" and that he would be distributing something for the Board to review later in the day.

2003.06.02: NOTICE OF HEARING

Notice of the hearing scheduled for the following day 2003.06.03 was printed in the Bangor Daily News 2003.06.02. In full the notice read:

"Public Hearing: Tuesday June 3, 2003. 12:30 pm, Room 437 State House [new par.] Resolve, to Authorize the State Purchase of a Landfill in Old Town, Maine. [new par.] Contact Person: Elizabeth A. Reinheimer, 100 State House Station, Augusta, ME 04333-0100, 287-4149 [new par.] June 2, 2003."

2003.06.03: LEGISLATIVE PUBLIC HEARING

An e-mail sent Friday May 30, 2003 at 11:53 a.m. by Jack Cashman notes the scheduling of this meeting. See directory printout, in first group from Gov's office.

Original scheduling was distributed by e-mail from Elizabeth Reinheimer 2003.05.30 at 9:59 a.m.

[NB The elapsed time between scheduling and hearing was 4 days (including a weekend) and 3 hours.]

I don't have copies of the e-mails about this meeting, which might shed light on who was invited.

[NB When was the committee workshop? Was it before or after this date?]

Notes distributed after visiting Augusta to review legislative documents include the following points:

Testimony was given by the following people, all checked as "proponents": Dunlap, Lord, MacDonald, Cashman, Reynolds, Bostic (GP), Feck (GP), and St. Peter (Local 80). Written testimony also received from MRC / Lounder, stating support with reservation that it does not want to become a competitor with the landfill for MSW, would not want unprocessed MSW allowed. Also a baseline preliminary report from Woodard and Curran was also in the file, stating that though there was no obvious evidence of pollution emanating from the site, however since most of the important substances that would be indicators were not being tested, a revised testing program and further analysis would be needed.

2003.06.03: MEETING ON TERM SHEET

This is noted in e-mails involving Curtis, Howard, Adams, Cashman, Parr, Toma, Helen Edmonds, Bostic, Delahanty, Feck, Douglas, Ronald Allen and Doyle.

They wanted a meeting immediately after the hearing, but Cashman and Adams are "tied up" so they will be meeting at 3.

In a reply e-mail from Mike Curtis at 6 a.m. June 3, "We should plan to have Tom Doyle attend the public hearing today (if available) to answer any questions regarding the legal aspects of the proposal."

[NB This is exactly the point I was making at the Jan. 21 meeting, when questioning why Tom Doyle was asked for an interpretation of the statute, when SPO and other state officials were there and presumably able to do that. This e-mail is addressed among others to Kurt Adams and Chris Parr -- they would not be able to explain the "legal aspects" of this?]

2003.06.03: OLD TOWN COUNCIL LETTER SUPPORTS THE RESOLVE

[NB See also Public Participation timeline distributed by Casella and the State. "June 2003. Old Town City Council public meeting resulting in Resolution supporting legislative Resolve." No record of any meeting held in Old Town related to the letter signed in support of the resolve by Council members, signed the day of the legislative Public Hearing, June 3.]

2003.06.03: TOWNSEND MEMO DISTRIBUTED AGAIN

See also 2003.05.27. For some reason the same memo was sent again, dated June 3.

There may be some change in the text, but I don't notice it.

I don't have a cover sheet for it -- was it just an attempt to steer the process at a very late date?

2003.06.04: LENNETT ON C&D ETC.

This e-mail from Lennett to Parr and Adams comments on the term sheet and on the redlined Resolve. He mentions issue of "waste handling fee to support DEP/SPO" -- perhaps it is missing and should be there? Also mentions C&D, mentioned as part of license transfer paragraph -- "Why are these two issues combined like this ...?"

[NB This is an ongoing question, perhaps one of the reasons Betty Lamoreau calls this RFP "unique" see 2003.1008 Michael High meeting and memo.]

A new term sheet was distributed at 11:27 a.m. "reflecting comments received this morning" by Howard.

This new draft under title "No Disposal Fees" says: "The state will not charge any disposal or waste handling fee on disposal of Georgia-Pacific mill waste, or Georgia-Pacific or Lincoln biomass ash ..." It shows no change from earlier drafts.

In a reply e-mail dated 2003.06.05 Dave Fitts from Risk Management (part of state contracting oversight) suggests the "No Disposal Fee" section should include "language that limits mill waste to be only waste from GP mills located in Maine and that the waste or ash be only from renewable resources grown in Maine. The proposed language I fear could allow waste from other GP mills to be dumped in Maine for no fee."

[NB It may be of interest to note that these various term sheets, distributed by PA lawyers, are marked "for discussion purposes only, not official administration policy"]

2003.06.04: MRC REPORTS ON HEARING

"Yesterday's hearing went well. There was no voiced opposition. Casella and

WMI were there but did not testify. There was not a lot of depth to committee questions, but several key legislators were conspicuously quiet." Louder promised further report on "the Committee's handling of the bill."

[NB Are we to wonder at the "no voiced opposition" and the "conspicuously quiet" legislators?]

In his follow-up memo of 2003.06.09, Louder notes on the legislation that it was reported out 11-2 ought-to-pass, and adds: "Note the new calling [sic] for up to a \$20,000 non-refundable deposit for respondents to the RFP for landfill operations."

[NB This was clearly signaling trouble for a potential bid from them.]

In the same memo, Louder reported receiving a letter from Pine Tree (Casella) that "does not accurately characterize" their earlier discussions. Louder ponders what Casella is getting at here. "Along that line, we received reliable word that Casella believes that MRC and PERC are actively working with Cianbro to put a proposal together."

Louder reports that those discussions are in fact progressing.

A partial answer to Louder's questions about Casella came in the form of "an interesting chat with Sam Zaitlin" on 2003.06.09. "He mentioned that the 'lack of directness aspect, proposal-wise' of the Pine Tree letter was due to legal curtailment..... [ellipses in original] that is, where this is all headed to an RFP process, if Casella made an offer to us, the AG's office may view it as dissuading a prospective bidder. [new par.] I'll discuss this further with Dan McKay."

To this, Robert Farrar, MRC Board member from Bangor, wrote: "Greg -- I get it! The MRC is seen as a real player in this process -- which may hurt our chances to negotiate an up-front deal with Casella. Be careful what you wish for !! [ellipses in original] I still think we are in decent shape, all things considered."

[NB Several thoughts. One is that the suspicions about "dissuading a prospective bidder" seem to be on the mark in terms of how this all evolved in the end. Secondly, if what we have been advised as to the MRC's being, as a public entity, not subject to the same restraint of trade rules as private entities would be, why then would Louder and Zaitlin be engaging in this conversation as well as in the "lack of directness" in earlier communications?]

2003.06.04: NRC APPROVES RESOLVE

The Natural Resources Committee vote on the Resolve was reported in the BDN on 2003.05.05. In this article was the first public hint of the scope of this project: "Two committee members were concerned about the potential for the landfill to be leased to a third party by the state and operated as a full-blown solid waste facility on a scale similar to the Pine Tree Landfill in Hampden." In addition, Anita Peavey-Haskell "... said she felt the administration was trying to rush the proposal by lawmakers in the waning days of the current legislative session without giving residents of Old Town and the area the chance to weigh in on the planh at locally scheduled public hearings." Cashman replied that "the advisory board would serve as a public watchdog for the Greater Old Town community" according to the BDN. Joanne

Twomey was quoted, "'I've deal with the Department of Environmental Protection and I've dealt with toxic ash being spread in my community which they said was lime dust until I collected it to prove it was unacceptable levels of lead and dioxin,' she said. 'So I'm very skeptical about this proposal and I have a lot of concerns,' she said."

See also Penobscot Times article of 2004.01.29, after the Elks Club meeting, reporting in depth on the issues raised by Twomey, Makas and Linda Rogers McKee, Democrat of Wayne. McKee is reported as saying: "The question I have to ask is when those hearings were held in Old Town for the permitting of the paper mill to have the landfill (back in 1991 when Fort James first applied for a landfill permit), were the people, in fact, at that point aware that the landfill would reach the proportions or the magnitude of Norridgewock or of Sawyer Mountain in the future or did they think that it would be a paper mill landfill only?"

In a Penobscot Times story of 2004.02.12, taking a look back on the legislative process (DEP: Off-site public hearings are rare) it was stated that "Public notices are posted in the weekend editions of the dailies in the state's three largest cities: Portland, Lewiston, and Bangor. The public notice for LD 1626 appeared two weeks before the public hearing, held in Augusta June 3, 2003. A work session was held the following day, June 4."

[NB This has been checked -- the notice for the hearing was published only one day before, Monday 2003.06.03. Two weeks before the hearing on the Resolve would have been Tuesday, 2003.05.19. A full two weeks notice in the weekend paper would have been Saturday, 2003.05.15. If the notice had been in the following week, it would have been 2003.05.23. This public hearing was not even scheduled until Friday, 2003.05.30]

2003.06.05: JOHANNESMAN COMMENTS ON RESOLVE

In this 5:24 p.m. memo, Johannesman from the Office of Policy and Legal Analysis raises several points including the absence of language allowing SPO to enter into other contracts than the acquisition, correcting a too-restrictive clause about local control, and absence of "emergency clause" meaning it won't be effective till 90 days after adjournment.

Cashman replied at 6:08 p.m. that "we do not need an emergency clause because the closing is not until 12-1" [NB The Resolve went into effect 2003.09.13; still awaiting opinion on implication of this effective date for the RFP process, with award letters of 2003.08.14-18.]

Also in Johannesman's note was discussion of exactly how to phrase the elimination of Old Town local control.

On June 6 Johannesman adds a question about the reverter clause, and brings up "expansion." "You added the provision that the office can enter into contracts for the 'expansion' of the facility. I'm not sure that the committee is ready to explicitly include expansion of the facility in this resolve. Do you think it's necessary for it to be included?"

2003.06.05: MEET W/ AG ON TERM SHEET

This meeting is referenced in Laubenstein comments sent to Adams 6/9/03.

2003.06.05: NEW RFP DRAFT FROM MACDONALD

See 2003.05.30, MacDonald draft to Adams, Parr and Cashman.

2003.06.07: TOWNSEND TO ACKERMAN ON RFP

Townsend forwarded his reactions to the RFP. Townsend's main reaction: "Before the state can put out a meaningful RFP, it needs to come to grips with what it means to be the owner of a landfill and how it wants to use that ownership to pursue state solid waste policy."

Townsend notes that the bidder would assume huge financial risks. "The only reason that a bidder would consider accepting such large unspecified risks is that control of the landfill fits into some broader strategic interest of the bidder. Given that the original proposal from GP was to put the state into a contract with Casella, one has to wonder if the contract simply allows a public bid process that heavily favors Casella."

Townsend also cautions against haste, and that haste is actually against GP's interests. "It [GP] wants a viable operator, and it should not want to be blamed in 10 years when the defects of this process become obvious to businesses and municipalities."

[NB: Huge pressure was being exerted by GP; see Adams' reply to Laubenstein comments of 2003.06.09. What Townsend worries about might not apply if GP and Casella had already made a mutual-benefit deal, which is what this all seems to be, with dollars sent to Cianbro along the way.]

"I think that a key step in understanding its [State's] future role would be to invite a public process that includes potential bidders to comment on how alternative contract terms are likely to affect the bid process. ... De facto, Casella has been allowed to influence bid terms, which gives it a large advantage over other potential bidders."

Raises several issues, including status of the refundability of the \$10,000 deposit; "A bidder who did not have advance notice of the process would have great difficulty putting a bid together by July 20" [especially noting the fuel commitments]; point 5 details issues around serving the needs of MRC / PERC and other issues around MSW; etc.

2003.06.09: LAUBENSTEIN COMMENTS ON TERM SHEET

This refers to meeting of Thursday, June 5.

The opening paragraph indicates the difficulties in negotiations with GP. "As we indicated at the meeting, we were still reviewing the document and would provide you with our thoughts and concerns. We realize that the negotiations with GP have been difficult and much that we have to say you may not only disagree with, but even if you did agree, you may not be able to persuade GP to include in the document "

At point 7, "Disposal Capacity" it is mentioned that present terms may "have an adverse impact on the interest of other operators in submitting a bid." [NB Why phrase this as "other operators" if there were not already one operator assumed?]

At point 9, "Fuel Commitment" again the issue of other bidders is raised, "This term may be onerous for many potential bidders ..."

At 1:30 Adams sent a very testy reply. He said that the elements of the term sheet had been sent to the AG "on May 19th" and that the present suggestions are late.

Adams' last paragraph tells the story: "Lastly, and for your information, we amended the term sheet and resolve per your suggestions last Friday [May 30]. GP notified us this morning that the timing and content of the comments have cooled their enthusiasm for the transaction. They have insisted on a waiver of sovereign immunity or they will terminate negotiations. The Governor will be asking me why the State gave LP&P a waiver and why I am opposed to providing the waiver now. I would really appreciate it if you could give me something to hang my hat on with regard to that issue as well as the others you raise."

2003.06.09: MCCLINTOCK COMMENTS TO LAUBENSTEIN

Jan McClintock, waste management specialist with AG (and at present 9/04 is assigned to advise BEP on this case) sent memo to Laubenstein and other lawyers with comments.

She notes some confusion as to "Who will be the license holder of the DEP licenses?" [NB this is an ongoing concern, with sometimes the SPO being the license holder, and sometimes they are co-applicants with Casella] She suggests that the operator "be the sole license holder of all DEP licenses associated with the landfill."

She also notes that this "seems to be neither a commercial landfill nor a state-operated and controlled landfill such as Carpenter Ridge. Rather, this is a hybrid in which a state-owned landfill is completely controlled by an operator who assumes all financial responsibility for the landfill." At issue are what provisions of law apply, including public benefit, out of state wastes, recycling, and various financial provisions.

Regarding CDD, she says "Aside from the oddity of requiring the operator of this landfill to supply GP with processed construction and demolition debris (CDD) as fuel for GP's biomass facility..." she has questions about other provisions in this section.

[NB PCS 2004.10.13: I have only recently realized how "odd" this arrangement is. We have a waste management company being contracted to supply fuel for a large corporation in the wood products industry. The contract actually provides that GP may use its own "bark" first, then must turn to Casella for fuel derived from C&D. This is mandated. If Casella can't supply adequate fuel derived from C&D, then they may supply green wood chips as a substitute. It is this very clause that the State relies upon as the reason for not limiting the amount of C&D that is brought into the State. Provisions for C&D were integral to the very first term sheets of 2003.05.]

In her section "State Right to Direct Solid Waste to the Facility" she states "This is the only reference in the RFP to the State controlling anything at the landfill. (Proposal Content, para. 4.b) I don't know what it means. Does it mean that the DEP, or SPO, or the Governor, can require the landfill operator to take certain shipments of waste? Is this an oblique reference to bypassed waste from waste incinerators? Does it include large quantities of special waste for which there is a one-time need for disposal (i.e. the million mice carcasses when Jackson Labs had its fire years ago)?"

2003.06.10-11: TESTY EXCHANGE ON GP "ULTIMATUM"

6/10: There were unresolved issues related to "indemnity, sovereign immunity and recourse to the State" that were causing GP concern -- whereas Adams replied that they were raising issues that "have no concrete impact on the continued operation of the Mill, further investment in the facility or the purchase price." Adams stated, "The Governor's Office is taking an enormous risk with this transaction." In part, Adams writes: "You have since given us an ultimatum. The ultimatum was vastly different than the any [sic] discussion we have had to date. We cannot answer that ultimatum a manner [sic] satisfactory to you."

6/11: In a follow-up, Howard outlined his understanding of the agreement, at one point stating: "If there is no compromise on the issue, then G-P is not read to do the deal without a waiver." Apparently to this statement Adams replied within a longer point-by-point statement, "I am sorry that you now assert that without a waiver the deal is off. This is disappointing. I will let Jack and the Governor know."

2003.06.12: PRELIMINARY FIGURES TO MRC

Aronson writes: "I have so many questions about actual design parameters and costs that I don't trust the numbers; still, it's interesting that the pro forma does NOT work for the MRC. THE [sic] residuals tip fee would need to be >\$62/ton in the break-even scenario. But don't get too excited; there are so many unknown factors, that I'm not ready to believe the numbetrs [sic] yet."

[NB Again, why do these numbers not work for MRC, but work fine for Casella; especially in that long term disposal of GP wastes is a losing proposition. Where will Casella be making its money on this deal? See also letter from Waste Management 2003.07.09 in declining to bid. However, recall Townsend's remarks on the RFP: "The only reason that a bidder would consider accepting such large unspecified risks is that control of the landfill fits into some broader strategic interest of the bidder. Given that the original proposal from GP was to put the state into a contract with Casella, one has to wonder if the contract simply allows a public bid process that heavily favors Casella."]

A follow-up message 2003.06.20 from Aronson to Sean Small of CES, copied to Lounder, reads: "Attached is an updated version with all of the caveats we discussed on costs, lack of a design basis, uncertainty regarding material densities, cover requirements, leachate numbers and costs, etc. ENjoy [sic] your weekend!"

2003.06.13: CASELLA CONFIRMS PRICE TO MRC

Along with an update on meetings with Cianbro (to be rescheduled) Lounder reports, "I received a letter from Casella this morning that basically says they are willing to extend present pricing terms on ash, FEPR, NP's, in and out of state MSW if they win the Old Town bid (I will mail today)."

2003.06.13: PUBLISHED NOTICE FOR RFP

[NB This actually appeared in the newspaper before the Resolve was voted. E-mails distributed as part of the Record for BEP hearings include a note from Dave Burns, DEP engineer, to Cyndi Darling: "I saw the RFP in the paper this morning - very interesting language." Exactly what was he meaning by this comment?]

The notice was published in the Kennebec Journal. It stated that "Proposals must include a \$10,000 non-refundable bid processing fee ..." The heart of the notices is the contract services, including operation of an existing landfill, acquiring permits for an expansion, operating the expanded landfill, and "securing qualifying construction and demolition debris for GP to use as fuel in a proposed biomass electricity generating facility. In addition, the operator will provide services to GP including, without limitation, accepting and managing the approximately 50,000 cubic yards per year of mill waste for the duration of the contract."

A copy of the RFP is among materials received from the MRC. Among provision was State intent to "finance the purchase of the landfill with a revenue bond supported by the revenue potential of the landfill." The copy received from the MRC had the marginal comment "Why" and the section about provision of C&D fuel circled: "The operator will provide GP with an option to purchase processed construction and demolition ("C&D") debris fuel for GP's proposed biomass facility beyond what is required after burning all available bark from GP's pulping operations ..." The MRC's copy of the RFP also had a big "?" at discussion of "value of landfill" under Financial Bid. The section begins with: "The value of the landfill, as expressed in the willingness of the bidder to assume responsibility for repayment of the bonds that will be issued to complete the purchase of the landfill by the State and necessary site improvements, shall be presented by the bidder."

The RFP also had the language related to credit rating and the \$50M performance bond.

2003.06.14: RESOLVE ENACTED

This passed the Senate under "suspension of the rules" on June 14. There was some confusion as to when this was enacted. Message from the Law and Legislative Library:

Hello Paul,

Resolve 2003, c. 93 was enacted on June 14

<http://janus.state.me.us/legis/LawMakerWeb/dockets.asp?ID=280011148>.

That is not however when it went into effect. It went into effect on Sept. 13, 2003, along with all the other non-emergency legislation of that session. Please let us know if you have further questions.

Sue Wright

Reference Librarian

Maine State Law and Legislative Reference Library

Augusta, Maine 04333

207 287-1600

The contents of the web site she links:

LD 1626 (HP 1205)

"Resolve, To Authorize the State To Purchase a Landfill in the City of Old Town"

(Governor's Bill)

Sponsored by Representative Matthew Dunlap

Date, Chamber Action

5/30/03 House

Committee on NATURAL RESOURCES suggested and ordered printed.

Resolve REFERRED to the Committee on NATURAL RESOURCES

Sent for concurrence. ORDERED SENT FORTHWITH.

5/30/03 Senate Under suspension of the Rules On motion by Senator TREAT of Kennebec REFERRED to the Committee on NATURAL RESOURCES in concurrence

6/12/03 House Reports READ.

Representative THOMPSON of China MOVED to ACCEPT the Majority Ought to Pass as Amended Report.

On further motion of the same Representative TABLED pending his motion to ACCEPT the Majority Ought to Pass as Amended Report.
Later today assigned.

6/13/03 House Speaker laid before the House Subsequently, the Majority Ought to Pass as Amended Report was ACCEPTED.

The Resolve was READ ONCE.
Committee Amendment "A" (H-563) was READ and ADOPTED.

ROLL CALL NO. 245
(Yeas 110 - Nays 17 - Absent 24 - Excused 0)

Under suspension of the rules, the Resolve was given its SECOND READING without REFERENCE to the Committee on Bills in the Second Reading.

Subsequently, the Resolve was PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-563)

Sent for concurrence. ORDERED SENT FORTHWITH.

6/13/03 Senate Under suspension of the Rules Reports READ On motion by Senator MARTIN of Aroostook Majority Ought to Pass As Amended Report ACCEPTED in concurrence READ ONCE Committee Amendment "A" (H-563) READ

On motion by Senator MARTIN of Aroostook Senate Amendment "A" (S-312) to Committee Amendment "A" (H-563) READ and ADOPTED Committee Amendment "A" (H-563) As Amended by Senate Amendment "A" (S-312) thereto ADOPTED In NON-CONCURRENCE

Under suspension of the Rules, READ A SECOND TIME PASSED TO BE ENGROSSED AS AMENDED BY Committee Amendment "A" (H-563) AS AMENDED BY Senate Amendment "A" (S-312) thereto In NON-CONCURRENCE Sent down for concurrence

6/14/03 House The House RECEDED and CONCURRED to PASSAGE TO BE ENGROSSED as Amended by Committee Amendment "A" (H-563) as Amended by Senate Amendment "A" (S-312) thereto. ORDERED SENT FORTHWITH.

6/14/03 House FINALLY PASSED. Sent for concurrence. ORDERED SENT FORTHWITH.

6/14/03 Senate Under suspension of the Rules FINALLY PASSED

2003.06.18: BOSTIC MEETS CASHMAN

Bostic e-mail to Cashman, forwarded to Adams. There was an issue around Bostic's understanding, "...we had said that we would be 'silent' on the issue

of sovereign immunity with regard to the indemnity thus I believe that we must have two separate [sic] agreements ..." "If our long term commitments from the State are contained in the acquisition agreement, the issue of sovereign immunity is pre-determined in the State's favor, which is not the basis for silence as were discussed. I thought that silence on this issue meant that there would be two agreements; I think that you should make the clear [sic] with the AG."

2003.06.18: GP LAYOFFS

BDN reports "GP lays off 7 salaried employees at Old Town," see 2003.06.18. The article noted the "April 4 restructuring" [...] "The mill shut down the tissue-making portion of its facility in early April. However, G-P restarted one of two tissue machines in May, with help from Gov. John Baldacci. The move put 140 of the 300 laid-off workers back on the job."

2003.06.18: HIGGINS CONTACTS MRC

Eric Higgins sent the following message to Louder: "If the MRC is looking to partner with someone on the state's landfill, let me know. We can operate it, and provide material (revenue) for both the landfill and the biomass."

This was forwarded to Peter Prata (see forwarded subject line, "old town") who replied: "Very interesting. What [sic] do you think, bring him up to the meeting on Monday."

That would be 2003.06.23.

2003.06.23: RFP PRE-BID MEETING

Many pages of questions and answers are available related to the pre-bid process. Physical stability of current fill is an issue, under study. On leachate, it is now 1% of GP's total waste water treatment, "so it is not a concern to G-P." [NB Yet we have learned that the volumes and composition of the leachate are potentially a problem, that the GP plant is not equipped to handle the flow, and Old Town has not yet agreed to take it.] Regarding community relations, "There have been no comments from citizens regarding the possible sale of the landfill to the state." [NB This was late June. Remember that there were no opposing comments at the Legislative Committee hearing, either.]

A list dated 2003.06.19 of "Questions for the Pre-Bid Conference" was faxed from Aronson to the MRC. Among these questions was "Capability to provide a performance bond of \$50 million !!!!!" Also, "Why 6.0 million gallons per year of leachate?"

The next day 2003.06.24 Louder reported that he would not likely be available to forward further questions, and that he was meeting from 9-11 a.m. with Casella.

[NB Materials obtained from the MRC contain the questions and replies that were submitted before the pre-bid meeting, at the meeting, and from SPO replying after the meeting.]

Among questions asked prior to pre-bid meeting:

"Q. What was the thinking behind requiring a minimum financial rating of 'bbb'

and the \$50 million dollar [sic] performance bond if the rating wasn't held?
A. Given the nature of the project, the level of bonding that will be involved, and the realm of potential issues related to landfill operations, the State wanted financial assurance from bidders."

Apparently, at the pre-bid meeting:

"Q. Will the State impose any restrictions on the use of out-of-State material to fulfill the fuel supply obligations? A. The State does not now, nor intend to, impose any restrictions on the use of out-of-State generated / provided fuel supply."

"Written questions received following the pre-bid meeting:"

"Q. Will alternate bids be accepted / reviewed? Specifically, if GP's financial parameters, ie: 1. 30 years landfill capacity, 50,000 tpy, \$10 per ton; 2. 30 years fuel supply, 100,000 tpy, \$4-9 per ton; 3. \$12 million for landfill [new par.] cannot be met, is there any reason to prepare & present a bid and \$10,000? A. If the minimum requirements for responses to the Request for Proposals cannot be met, the bid(s) cannot be accepted."

[NB However -- how is it that the bond requirement could not be met yet the bid was accepted, while the fuel and disposal clauses were assumed to be firm, and deterred other bidders ...?]

"Q. How much C & D processed wood is available in the state? A. The DEP tracks processor of C & D waste. Their information shows that in 2001, 32,390 tons and in 2002, 88,680 tons of C & D waste were processed into chips. These are estimates of C&D processed into chips based on numbers provided to the Department by the processors. There is no guarantee that all the chips met specifications as a fuel chip."

"Questions after the site walk" include:

"Q. Does the RFP allow for MSW to be placed in the landfill? A. The RFP asks for recognition of the solid waste management hierarchy. We are not saying 'no' to the landfilling of MSW. The State is saying 'no', however, to 'out of state' generated waste being disposed of at the site."

"Q. Who gets the profits? The operator, state, GP? A. The selected vendor, the operator of the landfill, gets the profits."

2003.06.26: NRCM ATTY. JON HINCK SENDS CONCERNS TO ADAMS

Three concerns were sent from Hinck to Adams, who put him off in various ways, finally Adams on 2003.07.04 asked if "we can talk in a couple of weeks?" [NB After everything was in place and the Proposal had been received; even though Hinck on 2003.06.26 agreed to a delay "particularly if the short answer is that you spotted and addressed the three issues." Which had not been done.]

The three points raised by Hinck were 1. tax issues, particularly with regard to no revenue neutrality, no fees to be collected, and possibility of creating a "tax-free dumping zone"; 2. environmental liability due to state involvement, and 3. out of state waste, particularly freeing up space in existing commercial landfills in that "Maine origin waste that would be landfilled elsewhere could be diverted to the new landfill, opening up space

at other landfills to receive more out-of-state waste." Hinck continued, "In fact, each of the three above issues do not appear facially to have obvious environmental impacts. The more obvious concern is the potential for putting more public money at risk than anticipated. Since this is not part of my organization's core mission I merely share these thoughts for your consideration."

2003.06.27: MRC RESOLUTION DRAFTED

Aronson forwarded a draft of the MRC resolution supporting Casella's bid, "I put together on the basis of conversations with Jim Bohlig on Friday." [NB Not clear what Friday that is, since this message was sent 2:59 p.m. Friday.] "Jim Bohlig will be available on Wednesday for further discussions if needed."

[NB This indicates that the resolution was a joint Casella - MRC product.]

In reply, Bohlig called this "an excellent first start from our discussions" but suggests there be added "... an additional 'whereas clause' related to the MRC potential involvement in recycling statewide initiatives that Casella may contemplate to offer to implement associated with the RFP bid ... [ellipses in original] specifically ... [ellipses in original] we would like the MRC to consider being joint investors in these projects on a full equity basis ... [ellipses in original] you would have a right but no obligation to co invest [sic] on these programs where your participation could cause a much higher participation rate at the municipal level and as an equity investor you could be instrumental in getting other municipalities to bring materials and implement community recycling programs."

[NB This sounds wonderful, until we remember that this "investment opportunity" is being offered to a potential competitor on the RFP, and also given that there are no specifics as to exactly what is being offered here.]

2003.06.30: CASELLA / MRC PARTNERSHIP

This letter from Meagher to Louder outlines conversations ongoing since March, with original objectives of providing disposal for PERC and "a fixed planning horizon in which to develop expansion plans" for Pine Tree. "During the course of our many meetings the level of trust among the parties grew, aided in part by the close working relationship that developed during this session of the Maine Legislature."

[NB Meaning, MRC support of the Resolve, or were there other cooperating efforts at the Legislature?]

Then an opportunity arose related to the Dolby facility owned by GNP, which "was not to be, but the idea, the concept of commercialization, remained alive."

"... the governor's office resurrected the concept of commercializing a generator owned landfill..."

[NB this is one party's answer to the question: who came up with this idea? Dunlap's statement in legislative floor debate was "Everybody got an idea."]

This letter continues in outlining "consideration of 'investment' opportunities for MRC in the West Old Town facility were Casella chosen as the operator ..."

The letter goes on to detail what this partnership would look like, and some of the functions it would address, including "utilizing the lined West Old Town facility as the region's principal C&D repository, both for environmental reasons (reduction in use of scattered <6 acre unlined sites) and to enhance beneficial reuse by segregating clean waste wood which can be processed for use in Georgia-Pacific's biomass boiler."

[NB This points toward another element in what seems to be Casella's overall strategy, convincing towns to discontinue their functioning C&D sites and pay Casella for disposal.]

A message from Louder to MRC board 2003.07.01 states, "Attached is a memo and related draft trem [sic] sheet outlining current thinking of staff with respect to the the [sic] Old Town landfill situation and related possible MRC actions. The information is highly confidential." [NB Memo is not among materials provided by the MRC.]

2003.07.03: MRC UNDERSTANDING WITH CASELLA

Louder writes to Larry Folsom, "On west old town [sic], I think we've landed a good arrangement on the contract side ... [ellipses in original] yesterday, Casella agreed in principle to modify the addendum to specify that airspace in the first 68 acres will be set aside for PERC, thus addressing the concern that the residuals contract extension would be contingent on the second major expansion. Airspace reservation of that sort represents a significant new commitment from them & I'll feel better when the discussion is transferred into agreement language. They allowed Dan to draft. The investment angle (1.0 MM) appears out & we are working on the partnership concept for broader waste stream management elements. We are working to organize this into a resolve for the Board's consideration Monday morning at 10:00 AM."

[NB This refers to the investment in recycling initiatives, apparently; yet, if the investment deal is "out" then why did the word "investment" appear in documents Casella submitted within its Proposal? See forward to 2004.02.12, Casella apparently put information into the Proposal that apparently was not true, and this also ended up in the OSA.]

[NB This paragraph also states a "significant new commitment" from Casella, part of the arrangement defined as MRC pulled back from at least the appearance of being a serious competing bidder.]

In a message to the MRC board, Louder writes: "attached [sic] is a final draft of the addendum to the existing waste disposal and residue disposal agreements between PERC and Casella that are agreeable to both PERC and Casella. PERC's intention is to support Casella's bid on Old Town by incorporation of this agreement into their bid. MRC will be asked to support the contracts at its meeting on Monday and Casella as operator at Old Town. A resolution to that effect will be coming shortly. The resolution also develops the cooperation concept with Casella."

[NB The resolution in support of Casella's bid was underway, with cooperation from Casella. In the table of documents not provided to me from MRC under the attorney/client rubric, is an e-mail from Don Meagher (Casella) to Dan McKay (attorney for MRC) then forwarded to Greg Louder, subject: "Suggestion for MRC Board Ressolve [sic]" -- yes, this time the [sic] is in the document I am citing.]

[NB Though they expected their agreement, "this agreement" to be part of the proposal, it seems that the inclusion of their Resolution, cover letter and the section "Public Private Partnership" came as something of a surprise to the MRC; see message of 2003.07.16]

2003.07.07: MRC BOARD PASSES RESOLUTION SUPPORTING CASELLA'S BID

The resolution crafted by Aronson and Bohlig, see 2003.06.27, was voted by the MRC Board 2003.07.07. The next day Louder wrote to MacDonald, including "After giving the issue serious thought and consideration, the MRC Board decided not to submit an independent bid on the landfill operations. Instead the MRC Board took a position supporting the extension of PERC's contract with Casella for disposal services based on the terms that PERC and Casella had reached. The contract extension is conditioned on Casella being selected as the contractor in Old Town."

2003.07.09: BIDS FOR OPERATING AGREEMENT OPENED

[NB The Casella Proposal was only available to me at the time of distribution of the Record prior to BEP hearing of appeals.]

Casella's proposal includes letter of support from the MRC, as well as an attachment titled "Public/Private Partnership" that seems to include the MRC as a partner in this deal. This section includes a letter dated June 30 from Meagher to Louder outlining the history of their discussions, beginning in March 2003 around the Dolby facility controlled by the GNP mills.

[NB But see MRC communication of 2004.02.12, when informed that this partnership is referenced in the Operating Service Agreement, asserts it "references a 'Public / Private Partnership agreement' that doesn't exist."]

[See also Waste Management letter submitted in lieu of a bid, 2003.07.09.]

2003.07.09: WASTE MANAGEMENT LETTER

Instead of a bid, Waste Management wrote that it could not submit a bid "consistent with the minimum bid requirements outlined in the RFP for the Georgia-Pacific landfill (GP landfill) operating agreement. The minimum landfill purchase price of \$12 million, coupled with the requirement to provide long-term disposal for Georgia-Pacific's proposed biomass boiler at substantially below market rates for thirty years, make involvement in the project economically infeasible for Waste Management."

[NB The "purchase price" eventually became \$26M, or up to \$31M if the final \$5M cash offer from Casella is included].

[NB This letter did not reference the \$50,000,000 performance bond, nor the \$10,000 non-refundable bidder's fee. However, their reference of the "disposal for ... proposed biomass boiler" sort of conflates the two other important clauses, providing fuel and disposal capacity. It needs to be asked if Waste Management attained full understanding of the whole deal during the pre-bid process. The difficulty MRC had in getting information, and the reference in Eric Higgins' letter of April, 2004 that "Presumably, Casella, as the only bidder, had information that mitigated that risk" indicate a general feeling that only one bidder was in a position to succeed with this particular deal.]

2003.07.16: "CASELLA ... SOLE BIDDER"

Louder wrote to the MRC Board, "Casella wound up being the sole bidder on the operations of the Old town [sic] landfill. Casella informs me that their proposal included our resolve and mention of the executed contract extension between them and PERC. The Casella proposal will be made available to us if / when they are the selected bidder. The outcome there may be known within the next 2-3 weeks. I have also confirmed that the Residuals and Incoming MSW Agreements (the 'Agreements Addendum') was executed by both PERC and Casella.'

2003.07.22: MEETINGS ON FINANCING, BID, DEP SCHEDULE

A NEWSM chronology sent from Meagher via Doyle to Cashman 2003.09.18 showed two meetings, one with Cashman, FAME and Bohlig "to discuss process of issuing state revenue bonds," and the second with Cashman, Bohlig, Meagher, Benoit, and MacDonald "... to discuss bid award schedule."

See one of MacDonald's reactions at 2003.07.24.

2003.07.22-23: JOHNSTON / ARC CONTACTS MRC

An exchange of e-mails between Lynn Johnston [ref-fuel.com and ARC] inquiring about the RFP process, wondering if it is a "threat to the future of the private / semi-private facilities" and concluding "I hope it isn't too late for ARC to participate in the RFP process. We to have [sic] a landfill operation and look at the LF as being integral to the WtE business." [NB A web search for ref-fuel.com found that this company operates waste to energy facilities in PA, NJ, NY, CT and MA. It does seem that the OT project would not be of much use to them, barring significant stretching of the understandings related to out of state waste.]

2003.07.23: LOUNDER EXPLAINS THE DEAL

In a letter to the MRC Board in advance of the next meeting, under the heading "MRC and PERC work to secure favorable arrangements for disposal of PERC residues" he writes in part, "The MRC and PERC positioned themselves in the bid process in fasion [sic] that best supports the MRC mission. In advance of the deadline for bid responses, an agreement between PERC and Casella Waste Systems was reached on the extension of the present residuals arrangement between them. This agreement is premised on the company being the successful bidder to the state Request for Proposals 'RFP'. The outcome of the RFP process is still pending at this time."

[NB For a statement of the financial benefits of this deal to MRC, see 2004.02.03 letter of support from Farrar to Darling in support of the amendment license.]

2003.07.24: QUERY ON PERFORMANCE BOND

This was sent from MacDonald to Adams 2 weeks after the Proposal from Casella arrived [NB This is two days after initial meeting on bid acceptance process], and begins with the sentence, "I know you can't be involved in this project once we make the award..." [ellipses in original] It repeats the language from the RFP, and raises the question: "I believe we had intended bidders that do not meet the minimum financial rating to actually secure the performance bond, but that is not was was [sic] written.... [ellipses in original] [new par.] "If a bidder does not meet the bbb rating, and their proposal does not include providing a \$50 million performance bond, have they properly responded to the RFP?"

2003.07.29: CASHMAN TO ADAMS, "WHAT MAKES YOU THINK?"

Adams had forwarded to Cashman a message from Betty Lamoreau of Division of Purchases, with comments on the purchase agreement, term sheet.

Cashman was mightily irritated for some reason in receiving this, and replied: "Why are all these people reviewing this? Why do I care what they think? What makes you think I should respond to this? What makes you think you should not respond? What makes you think?"

2003.08.14-18: CASELLA'S BID ACCEPTED BY SPO

Two letters of acceptance were issued, the first apparently rejected by Casella.

[NB Why was the first acceptance letter refused? Some clue to this is given in Michael High (Drummond Woodsum, representing SPO) memo of October 8, who refers to outstanding issues related to a \$50,000,000 bond. See 2003.10.08 for critical points. The first acceptance letter was received by fax from George MacDonald at WTP request. The provision of interest reads: "(2) Casella Waste Systems, Inc. will obtain in a form acceptable to the State a performance bond of not less than \$50,000,000, to secure performance of Casella's obligations under the contract. Upon hearing from you that you accept this decision, the process of drafting such a contract may begin." See especially MacDonald's comments in message to High of 2003.10.08, "... the first award letter was refused by Casella, and they refused to talk about the need for a performance bond until they received an award letter that did not reference that (meeting that Betty and I had with Casella et al after they refused the first award letter)... (ellipses in original) it was based upon Casella's stance that the performance bond could not be discussed until an award had been made.... (ellipses in original) That led to the second award letter and now they say this????]

2003.09.02: OLD TOWN, DEP PERMIT SCHEDULE MEETINGS

See timeline sent from Casella to Cashman 2003.09.18. On this date two meetings were held, one with Lord, Doyle, Curtis, Douglas, Meagher, and MacDonald, to discuss "...Old Town role and participation in transaction and process" and another with Doyle, Booth, Drew, Curtis, Douglas, Meagher, Darling and Clark "to discuss DEP permitting schedule."

2003.09.03: OLD TOWN ASSERTS RIGHTS

E-mail from Doyle to Meagher, Douglas, Curtis, Delahanty, Howard, Hiltner, Bohlig, and Ahrens, also forwarded by Doyle to Cashman, requests statement of known legislative intent of the Resolve, since Bob Miller, Old Town's attorney, asserted that the Resolve did not take away all of Old Town's planning board control, particularly since their ordinances controlled "generator owned" landfills, and the facility was still generator owned.

Doyle particularly asked "Don and John, I know one or both of you were in the thick of this when Treat's amendment was offered late in the process. Any assistance you can provide from the process documenting that the Resolve's Section 5 was not intended to allow the City to have a separate transfer approval process for the City permit?" He concludes that he has not shared this with MacDonald, but "... we may want to let Jack Cashman know of this development ASAP."

2003.09.09: OSA, P&S DRAFTS TO HIGH

See Casella timeline of 2003.09.18. These documents "...sent to State's outside counsel."

2003.09.13: RESOLVE GOES INTO EFFECT

[received from Law Library, 2004.09.22]

Thank you for contacting us with your question regarding the effective date of LD 1626 from the First Regular Session of the 121st Legislature. This LD was enacted as Resolve 2003, Chapter 93. The effective date when the law went into effect was September 13, 2003.

If you would like to read the full text of the Resolve, please click on the link below:
<http://janus.state.me.us/legis/ros/lom/LOM121st/Res51-98/TableofContents.htm>

Next, scroll down to and then click on Chapter 93 to retrieve the full text.

We hope this helps.

Sincerely,

Mark Knierim
Reference Librarian
Maine State Law and Legislative Reference Library
Augusta, Maine 04333
207 287-1600

[NB at issue is whether the various RFP and proposal activities, including whether the acceptance and award of 8/18, were allowed since the Resolve did not go in to effect until 9/13. See for instance 9/25 letter from Drummond, Woodsum on "operative agreements" that speaks of Acquisition Agreement and Casella agreement. At point 11 "The State expects that Casella would sign the Operating Services Agreement." If this had not been signed, but only accepted, until after Sept. 13, would this make the proposal process legal under terms of the Resolve?]

2003.09.17: RAND TO CASHMAN ON PROCESS

Rand (BSSN, Casella) assures Cashman they are making all efforts to meet schedule, "...with due diligence to make the expansion permittable by December 1." DEP is "being very conscientious" and this is the right way to proceed with them. Also, "... would it have been better if we could have been going through this process in July? Yes, but we both understand the importance of having gone out to RFP, which added three to four months to the timeline."

[NB This is interesting -- a representative of one of the private parties is cautioning the leading representative of the State to be more cautious and considerate of process.]

2003.09.18: CASHMAN, GALLAGHER MEET ON TIMELINE

This meeting was held to clarify the constraints DEP had in the permitting process.

See also e-mail from Doyle to Cashman, copied to Meagher, offering documents that might be helpful "... in advance of your 1 p.m. meeting today." A two-page chronology was attached, beginning with bid opening and ending with a Dec. 1 "Final Commissioner Order."

[NB How are we to interpret this activity of Cashman, carrying GP and Casella's expectation for presentation to Gallagher?]

See also note for 10/6. The 9/18 date comes from 10/21 memo from Stearns to Baldacci and Lincoln. (see that date)

[NB The timeline's "Projected future schedule" is interesting: Oct. 30, public notice of intent to file application; Oct. 31, submission of application; Nov. 1-20, DEP review; Nov. 21, draft order; Nov. 24-28, public comment period; Dec. 1, "Final Commissioner Order."

2003.09.19-22: CONCERNS RAISED ABOUT P&S

Beginning with messages from Jim Smith and Toni Kemmerle [Jim Smith is chief counsel for Maine Dept. of Transportation; Kemmerle works with Parr and Adams] concerns are raised about the draft agreements that were sent out for review. Among other issues, one stands out: "4. the fact that the grantee, State Planning Office, has no authority to acquire or hold real estate." They note an upcoming meeting with Michael High scheduled for 2003.09.26, but since Laubenstein will be out of town, they suggest a delay in this.

Alan Stearns replied 2003.09.21: "I'm not entirely sure why I was copied on this. I'd caution that the schedule and completion of this deal is a priority. Counsel's decision to raise concerns and proposed delayed schedule [NB apparently referring to suggestion of delaying a meeting until Laubenstein's return] should be undertaken with clear guidance from decisionmakers closely involved in this deal. Counsel to MDOT was invited to voice concerns by whom? With what understanding of the context and what client's interest?"

On 2003.09.22 Adams replied with his understanding, noting that he is conflicted out of the "Casella piece" due to his former firm's representation of Casella, but that he can comment on the "GP piece if that would be helpful. From the description of the P&S Toni provides below, it seems to me that Pierce Atwood overreached again. Here are my thoughts based only on Toni's comments below:"

He addresses the several points, including that "Under the term sheet and the resolution passed by the Legislature the State of Maine is the grantee." He concludes:

"The term sheet was negotiated over several months. It was painful and often times extremely confrontational negotiation. Pierce Atwood was very unpleasant to deal with. Going forward I would advise you to stick close to the term sheet and watch your counterparty closely -- they have a history of overreaching.

"Remember, this is an arrangement that will save 500 jobs, provide GP with capital to invest in Old Town to make the mill more competitive, and give the State much needed landfill capacity, all of which is paid for by a third party. The Governor is committed to the transaction and wants to see it consummated. Do the best you can to close the deal in keeping with the term sheet."

[NB All of this verbiage about "revenue neutral" and "paid for by a third party" obscures the fact that we all pay for this in the long run, including all of the dollars that will go to Casella. "They" aren't paying; they are the ones who are profiting.]

2003.09.25: PUBLIC NOTICE OF LICENSE TRANSFER

See Casella timeline, given to Gallagher 2004.01.22. Public notice published in BDN and certified mail notice to abutters. [** verify]

2003.09.26: DRUMMOND, WOODSUM (SPO) LETTER ON "THE OPERATIVE AGREEMENTS"

There is a clean copy obtained from DECD, along with various e-mails among the parties and distributing the letter, including a reply 2003.09.25 from Gleason [BSSN, Casella] to High: "Thanks, Mike. We will need some time to digest this. I am available the afternoon of October 1, but I would suggest you hold off on redrafting the documents until we have had an opportunity to talk issues and concepts; a 'battle of the forms' at this juncture strikes me as premature."

I have another copy with notes perhaps in Lincoln's hand (cf. "Casella" on notes of 5/21).

BSSN is identified as "Casella," PA is identified as "Both."

At point 10: "The State expects the performance bond as per the RFP."

At point 11, "The State expects that Casella would sign the Operating Services Agreement." This implies that the agreement was not final at this time -- perhaps making the issue of the Sept. 13 effective date for the Resolve a non-issue.

Howard of PA replied on Sept. 30.

Still at issue is "indemnity" required by GP, that they first attempted to secure in language waiving the State's sovereign immunity in the Resolve (not agreed; see exchanges of 6/10-11/03. "... GP will not proceed without the indemnity."

[NB This issue has come up several times ... exactly what are they protecting themselves from if they think the dump is ok i.e. not leaking while under their management?]

2003.09.26-10.16: PUBLIC COMMENT PERIOD FOR TRANSFER

See Casella timeline given to Gallagher 2004.01.22. "20-day public comment and request for public hearing period on transfer application. No written comments or requests for public hearing received."

[NB The public meeting held with the Old Town Council, where "less than a handful" of the public was present and which was convened early due to the baseball playoffs, was held the last day for public comment on the license transfer. Is it any surprise that no comments were filed regarding the transfer?]

2003.10.02: NOTES ON FINANCIALS

Handwritten notes, indicate that Fleet Ryder (Finance), Dave Cyr (Risk), Chris [Parr] (Deputy Counsel), Charlie Speiss and George MacDonald attended this meeting.

Among the notes:

"Performance Bond awkward because of various rights of Casella, vs. letter of credit maintained in contract upon default of debt service"

Various notes on FAME, tax exempt bonds, "would require different accounting."

" -- issue, when Casella has secured DEP permit. October 17th or October 20th expected DEP response on vertical permit."

" -- December 1 is goal to close < something solid

" -- will provoke Casella before then, may provoke GP

" -- Jack 100% clear, no risk, his concept of a 'performance bond'

" * What Are Kurt's Limits"

Then several lines related to FAME.

" * due diligence / reinsurance even if ink not dry on December 1, even though trying like hell, just got docs in last weeks, draft operating agreement just ten days ago.

-- Fleet will call Casella. Alan will attend. Get Jack's impression in writing."

2003.10.04: BORALEX SETTLEMENT

A Morning Sentinel (Waterville) story of 2003.10.04 describes a \$283,000 fine levied against the Athens biomass boiler, part of which would be spent on "studies on alternative uses of solid waste and arsenic and dioxin in demolition debris." In part the fine was due to a "stubborn fire in the plant's fuel-wood pile that blanketed the area with noxious odors." There was no mention that this plant was planned to be moved to Old Town. "A Boralex official said this week that the company is in the midst of a reorganization and it will likely be months before the fate of the Athens plant is known."

2003.10.06: GALLAGHER, CLARK, CASHMAN MEET ON TIMELINE

This is an approximate date. See 10/20 e-mail from Gallagher to Clark and Stearns: "First, Alan, we met with Jack about 2 weeks or so ago, and talked about the timeline." They "have always made it clear" that a December date cannot be met.

It is possible that the date for this meeting actually was Sept. 18, 2003 (see note for that date) However, that would be quite a bit more than two weeks before.

2003.10.06: MEETING ON PERFORMANCE BOND

MacDonald writes to Stearns, Cashman, Sosnaud, Laubenstein and Lamoreau, copying to Andrea Smith, announcing a meeting to be held in the Cabinet Room. "The topic of discussion will be 'how do we manage the performance bond that is related to Casella's proposed financing and operation of the West Old Town Landfill', so that this project continues to move forward...." [ellipses in original]

There is an annotated chart showing relations among the various corporate and state entities.

Among the handwritten notes accompanying is, "Risk / reward (Casella is making a ton of money)" and "GP got an extra \$12.5M"

2003.10.07: LAMOREAU TO WYKE

Lamoreau wrote to Wyke expressing concerns about the RFP. See notes at 2003.10.08.

2003.10.08: MEETING, MEMO FROM M. HIGH

A file memo from MEH (Michael High of Drummond Woodsum acting as counsel to SPO) offers thoughts to "George and Bill" (presumably MacDonald and Laubenstein) regarding a meeting to be held this date, Oct 8.

The first two points in the memo are:

"1. As we know, Casella has stated that the requirement of a \$50,000,000 bond is off the table. The State has maintained, to date, that the bond was a requirement of the RFP. Please note that Casella is attempting to use against the State the second award letter wherein the reference to the \$50,000,000 bond was deleted.

[NB It appears that the second letter, with deletion of this provision, was demanded by Casella.]

"2. If the State agrees that a \$50,000,000 performance bond is not required at this time, does relief from this requirement trigger any type of obligation to rebid, given that at least one other potential bidder indicated a willingness to bid but for, among other matters, the requirement of a \$50,000,000 performance bond?"

[NB What bidder was this? We don't seem to possess direct documentary evidence of this.]

There also is mention of the issues of timetable, with permitting not available until 2004 while GP needs the deal done in 2003, at 2003.10.08.

Handwritten notes, 2003.10.08, indicate that Cashman, Sosnaud, Lamoreau, Stearns, Laubenstein and MacDonald attended. There is a list of figures, subtracting: 50 required + 10 M enviro required - 12.5 cash = 37.5, Betty's bottom line, "otherwise put out to bid." - 12.5 FAME bond = 25M operations & other risks, + 10M "enviro, disposal of GP's risk upon cessation of operations."

"Jack: legislature made decision that only the state is involved in commercial landfills, thus [three dot triangle, nothing follows]

"Jack: -- no purpose in going out to bid; -- Wast Mgmt did not state that bond was reason for no bid; -- Cianbro had no interest; -- Casella would sue upon rebid; -- Betty disagrees that Casella would win upon suit"

"Jeff: \$50 M was out of thin air based on unknowing

"Betty: language of RFP is unique."

Then at a marginal note "Read aloud" follows: "The AG would defend a decision by purchases to award this contract even absent \$50M / equivalent. [end of page, note says "(continued)"] "but the AG opines that it flies in the face of Statute X, [then between two sets of double horizontal lines] "John B will call Pete Correll (upon Jack's phone call) to let Dec. 1 slip."

Then there are various notes on risk of shutdowns, and GP position on performance bond.

"Conclude: High (Laubenstein) will communicate ASAP willingness to Phil Gleason [Casella attorney] to consider something other than \$50M. Open channel of communication. We expect straight face counter soon. Jack/Jeff."

See also memo of 2003.10.07 from Betty Lamoreau to Rebecca Wyke, with subject "Potential issue." The memo reads:

"I will be meeting tomorrow afternoon in the Cabinet room with several folks interested in the contract with Casella Waste Systems for the operation of the Georgia Pacific landfill in Old Town. The RFP put out by the State Planning Office and approved by Purchases required that bidders have a Standard and Poors rating of at least 'BBB.' If not, they were to provide evidence of the ability to secure a performance bond of \$50M in order to bid, and would have to actually secure said bond before execution of a contract, if they were the selected bidder.

"Casella's S&P rating is 'BBB-', which is a 'speculative grade' considered 'questionable.' (The required BBB rating is an 'investment grade' considered 'adequate.') Casella's attorneys are arguing that we didn't really mean that they'd have to secure [underlined] a bond, only that they had to show proof that they could [underlined] secure one. I disagree with that stance, as does Bill Laubenstein. Because Casella put \$12.5M up front, Bill and I agree that a bond of \$37.5M would be acceptable. Anything short of that would be a significant variance from the terms of the RFP, and against the law.

"I've been told that Commissioner Cashman may be prepared to 'give' on this issue, and push for a bond somewhat lower than \$37.5M. In good conscience, I can't agree to that. 'Just wanted you to know that this may become an issue. I'll be happy to talk to you at your convenience, if you like."

2003.10.08: PERFORMANCE BOND

Laubenstein to Stearns, Cashman, MacDonald, Lamoreau, Sosnaud: "I have spoken with Phil Gleason [Casella attorney] and conveyed to him our willingness to discuss an alternative to the \$50M performance bond and that we would like a proposal within the next week to address the State's concerns over environment risk above its insurance and the risk of a shut-down of the landfill. I indicated that FAME would be addressing security for the revenue bonds in tomorrow's meeting."

On the same day, 2003.10.08, MacDonald responded to Michael High, who apparently had sent the Laubenstein note along to MacDonald for his own comment: "Michael - Thanks for the summary... [ellipses in original] In response to item 1, the first award letter was refused by Casella, and they refused to talk about the need for a performance bond until they received an award letter that did not reference that (meeting that Betty [Lamoreau of Purchases] and I had with Casella et al after they refused the first award letter)... [ellipses in original] it was based upon Casella's stance that the

performance bond could not be discussed until an award had been made....
[ellipses in original] That led to the second award letter and now they say
this?????"

[NB It is not clear what was being said by Casella; it was apparently in an
attachment sent by High to Laubenstein and MacDonald, "Some talking points for
tomorrow's meeting." Included in an attachment MEH memo 10-7-03.doc.]

2003.10.09: NEGOTIATING MEETING

See 2003.10.08 memo from Michael High outlining major outstanding issues.

Handwritten notes, indicate that Mahar [sic], Kay Rand and Phil Gleason
attended for Casella, plus Laubenstein, Stearns, MacDonald, and 3 from FAME.
Various notes, including "Casella has some paperwork to deliver to FAME,
requested two weeks ago."

Of special interest is a marginal note: "OT City Attorney has issue re OT
jurisdiction, Bob Miller, planning board review issue; Jeff Sosnaud will try
to build consensus between Tom Doyle and Bob Miller." From this, a broad arrow
points to, "Ball is in Gleason's [Casella attorney] court, in next two days."

2003.10.10: DOYLE LETTER TO LORD

This is the detailed argument against Old Town's emerging claim that it still
retained authority to control transfer of the facility given its ordinance
related to the generator owned facility. Letter is included in an e-mail from
Stearns to Sosnaud, 10/10.

2003.10.16: BSSN LETTER TO LAUBENSTEIN, LIABILITY, CAPACITY RISK

This letter responds to what Gleason states are the State's principal
"concerns" [in quotes in letter], liability if this becomes a Superfund site,
and guarantees from Casella to provide disposal capacity to GP. On the first,
given the requirements and State supervision in construction and operation,
doubt this would become a Superfund site. On the second point, there is plenty
of capacity reserved and if Casella is removed as operator this capacity would
be under control of the State.

2003.10.16: MEETING OF OLD TOWN COUNCIL WITH PRINCIPALS; MACDONALD CONCERNS ON
TIMELINE

This was reported Oct. 23 Penobscot Times. Oct. 16 was also the closing date
for public comments on the license transfer.

"Less than a handfull of residents attended the 6:30 p.m. meeting, which had
begun a half hour earlier than scheduled due to the television airing of game
seven of the baseball playoffs." [N.B. Notes from the meeting indicate it
adjourned at 8:05.] "The board itself had few questions."

"Noting that Dec. 1 was just a short time away, Councilor Alan Stormann asked
how Casella expected to get approval so soon, but was told by Meagher that the
DEP had been very cooperative and that although the permits weren't going to
be filed until Nov. 1, his company had been in pre-application reviews for a
while.

"'We have a commitment from the governor on down,' said Meagher."

Also, that there is no need for public hearings in Old Town on this issue.

"Council Chair Reynolds said he was pleased at the presentation.

"'I thought it was great,' he said. 'I think it's going to be a workable thing. I think it's going to be a benefit to everyone.'

"Reynolds said he didn't believe any local public hearings were needed on the matter, since public hearings, which he attended, were held in Augusta this past May and June." [NB There were no hearings in May.]

"Attorney Doyle confirmed that was the case.

"'It (the landfill permit transfer) does not require a public hearing in Old Town on the matter,' he said."

[NB First, not only the transfer permit was at stake, but the license amendment -- there is some trimming of the facts here. In addition, there were no hearings in May, to my knowledge -- the public hearing on the Resolve was June 3. I am still not sure when the Committee workshop was held; the Resolve was reported out of Committee on 2003.06.04.]

A memo from George MacDonald the following day (10/17), to Clark, Darling, Stearns, Sosnaud and Laubenstein, noted that at the meeting "Don Meagher said that Casella would be submitting the license amendment package to DEP on October 31 and expected approval by December 1. I did not question this in the public setting, but I was under the impression that DEP would need a few months to complete their review of the project. This timing issue has been discussed in the past and I was surprised at Don's statement."

In addition MacDonald reproduces a "milestones" document distributed by Phil Gleason [BSSN representing Casella] at a "meeting held in the Cabinet Room" today [2003.10.17] and stated "the DEP issuing the license amendment the week of 12/1/03, which I do not believe is what DEP has planned for" [ellipses in original] "I am concerned that the continued use of this approval date is going to cause difficulties in meeting the actual closing date ..." [ellipses in original]

In addition, MacDonald states his understanding that the land transfer must be complete before the DEP can begin to consider the license amendment; he wants advice on this from Stearns, Sosnaud and Laubenstein.

[** Verify in Rules what the terms for accepting the application are.]

[NB It is not clear how this requirement was met -- there was apparently a signed agreement given to DEP in late November, though the final sale was not completed until 2004.02.05.]

2003.10.17: NEGOTIATING MEETING, ALL PARTIES

This meeting is noted in an e-mail from Gleason [BSSN lawyer for Casella] to High [Drummond, Woodsum lawyer for SPO] who did not attend the meeting. Gleason explained that no written response to an earlier letter would come until an agreement on the performance bond issue and the timing of closing had been resolved. He briefly outlines points of discussion related to Casella, including: "10. We understand the State is not requiring a \$50M performance bond and spent a good part of this morning discussing the State's security

concerns and how to address them. I gather from your voice mail there is a meeting among the various State participants on Monday morning @ 9am [2003.10.20] to consider these issues further. We look forward to hearing the results of that meeting."

2003.10.17-20: CLARK AND GALLAGHER MEMOS ON TIMELINE AND P&S AGREEMENT

This set of e-mail exchanges, beginning with MacDonald's reflections on statements made at various meetings (see 10/16 notes) are critical documents regarding the time pressure the DEP was under. In addition to MacDonald's comments about what was said in Old Town as well as at a meeting in Augusta, there is Clark's "barring any currently unforeseen problems or issues (such as a public hearing request from the outside)" and the fact that "the Department has however, started substantive review of certain aspects of the project as requested by Casella" (10/19).

In addition, Clark's e-mail addresses the issue of a signed P&S agreement directly. "In order to find the amendment application 'complete for processing' we must have demonstration of sufficient title, right or interest in the property. A signed purchase and sale agreement would satisfy this requirement. The determination that an application is 'complete' is significant since the review clock actually starts ticking at that point. As you know, the Department has however, started substantive review of certain aspects of the project as requested by Casella. Staff have been meeting weekly to provide early comment as the application is being developed."

In addition, there is an e-mail from Chris Howard of PA stating Cyndi Darling's assertion that Feb. 15 is a likely earliest date for approval, with Howard concluding "This is obviously a problem we need to address ASAP."

2003.10.21: CASELLA'S OFFER ON BONDING ETC.

This "Summary" is from High to Laubenstein, forwarded to Stearns.

"1. Casella substitutes its bond for GP's to cover closure and post-closure monitoring and maintenance.

"2. Casella maintains environmental insurance on this project for the term (do you want a tail -- e.g., term plus 6 years) in the amount of \$10 million or the amount required by DEP for comparable facilities, whichever is greater. The face amount of the policy will increase with the CPI throughout the term.

"3. Casella provides whatever security FAME requires to secure repayment on the bond, presumably a declining balance letter of credit.

"4. Casella pledges \$15 million of cash collateral in favor of the State. The State will have a perfected, first priority security interest in the pledged assets to secure Casella's obligations under the agreement. The pledged collateral can be reduced annually by \$1 million per year [sic] beginning on the first anniversary of approval of the horizontal expansion to a floor of \$5 million plus CPI from the closing date.

"5. Casella will covenant in the agreement to maintain some minimal bond rating? -- in lieu of financial covenants consider this as an indicator of financial health."

See also memo of this date from Laubenstein to Stearns, "Casella / GP Landfill Transaction / Risk Scenarios"

Lots of notes by hand are added to this. Various notes indicate they see problems with the scenarios that have been proposed. [NB Again, mostly

uninterpretable by me.]

There is an intriguing note on a separate lined page of notes: "Paula: scenarios for failure of horizontal -- conceptually pre-permitted?"

[NB Does this have a bearing on the issue I raised in my appeal, related to the separation of what amounts to a single permitting process into three separate parts?]

2003.10.21: DEP ISSUES LICENSE TRANSFER

See also timeline given by Casella to Gallagher, 2004.01.22. "DEP License Transfer Approval. No comments received. No appeal filed within public appeal period."

2003.10.21-24: STEARNS UPDATES

A memo was sent 10/21 with followup 10/24 from Stearns to the delegation in Ireland, mentioning that Chris Howard [of PA, representing GP] is also with them. At issue is lack of mutual agreement on a workable timeline. Stearns refers to a Sept. 18 meeting between DEP and Cashman (see note for that date). The issue is that GP still needs a final decision by 12/31, while mid-February is the earliest the DEP can deliver, in best of circumstances.

In the follow-up, a meeting between Baldacci, Gallagher and Stearns on this issue is scheduled for 10/27. A conference call of 10/22 was reported, at which Casella supported DEP's position on timeline. Further meetings are scheduled for 10/28-30. The Governor is available for further negotiations but at this point "no such meeting is scheduled or advised."

2003.10.22: ALL PARTIES CONFERENCE CALL

This was mentioned in Stearns e-mail of 2003.10.19 to Clark and Gallagher, copying to others, noting that issues raised by Clark regarding impossibility of meeting a December 1 license issuance, and the issue of needing signed P&S in order to begin processing, would be added to the topics to be discussed.

2003.10.22: LORD LETTER ON LEACHATE

Draft letter from Old Town manager John Lord stating that though studies still need to be performed, they expect that the waste water treatment plant will be able to accept leachate

2003.10.23: OT COUNCIL MEETS; TRANSFER ESCAPES REVIEW

E-mails from MacDonald and Douglas 2003.10.24 express great relief that the Old Town Council has not pursued its potential right to be involved in approving the permit transfer. MacDonald: "...but that now seems to be dead!!!!" Douglas: "Great news ... Bob Miller basically did not offer any opposition ... John indicated that he kept the idea of a City Resolve (T. Doyle document) to himself, since he got the Council position he wanted ..."

2003.10.24: MEETING WITH CASELLA

Apparently in Stearns' hand, "10/24 with Casella"

Bohlig, MacDonald, Meager attended, apparently. Detailed notes, many ending

mid-thought. Overall, Casella is arguing that it will run a safe dump, that the bond numbers are arbitrary, that they have put up most of the financial risk, etc. "Why put risk on Casella" "Casella already taking lion's share of permit risk due to \$25M investment"

[NB Overall, this would have to be read by someone who understands the many aspects of the financial requirements of this deal.]

2003.10.27: RATIONALE FOR LOWER SECURITY BOND

This note from Laubenstein to Stearns copying to MacDonald and High, outlines reasons why a lower bond may be sufficient, as well as a schedule for further reducing it over time.

See earlier concerns related to the \$50,000,000 requirement and its implications for revisiting the RFP process, note of 2003.10.08.

2003.10.29: "DEAL PROGRESS" CONFERENCE CALL

See e-mail from Chris Howard to many recipients of 2003.10.28. Also at this time, because "The State did not finish reviewing the State / FJ agreement in time to make today's drafting session" this would be rescheduled for "Thursday" presumably 2003.11.06.

2003.10.30: AMENDMENT APPLICATION SUBMITTED

See Casella timeline to Gallagher 2004.01.22. See also debates on when this can be considered "complete for processing."

2003.10.31-11.05: EXCHANGES OVER "COMPLETE FOR PROCESSING"

At issue here is GP's need to push the process along so that the \$25 million they needed would be available by the end of the year. The final message, from Douglas to Stearns, Doyle, and Howard (11/5), "Our corp folks are adamant [sic] that we find a way, even without the vertical amendment, to get closed for \$25MM in December..." [ellipses in original]

The exchange got going with a message from Doyle at 3:22 p.m. 10/31 stating that he had just met with Cyndi Darling, who had replied "no, not yet" as to whether the application was "complete for processing." She said negotiations were going well, that there had been a meeting 10/30 "between the State and G-P and it was "very productive" and that there would be another meeting "next Wednesday" (11/5).

Doyle's concern is that completeness determination is what gets the clock going the the "20-day comment/request for public hearing period." This is what they want to get over with as soon as possible. The sticking point is that the regulations, apparently, require that the sale be complete before the application can be considered.

However, as Stearns says in an 11/4 message to Douglas, Doyle, Darling and Clark, "... DEP is already reviewing the permit application and a determination of completeness will have no impact on the ultimate schedule of the permit. What Tom is asking DEP to do is to break from the clear intent of rule, and break from practice, for the sole reason of shifting the public comment window. [...] Tom's blunt conclusion that there is no legitimate reason to await the P&S seems to overlook the genuine interest in squeaky

clean attention to procedure which will in fact allow us to defend the accelerated process in the event of any public scrutiny, or request for elevated public process."

"Tom's blunt conclusion..." was given in the form of what sounds like a challenge at the end of his opening e-mail of 10/31, "In my view, there is no legitimate reason to delay the application's 'completeness' determination. The parties need to decide whether they want to escalate this to a higher level or wait till next Wednesday."

Laubenstein suggests they stop arguing about whether or not a signed P&S is needed, in order to work on completing the deal. On 2003.11.05 Rick Douglas [GP Old Town] write: "I agree to move forward, albeit somewhat still concerned about the position the DEP is taking on this TRI issue... [ellipses in original] The most substantial issue in front of us is the agreement to a closing date, and that is part of the P&S [ellipses in original] Our corp. folks are adamant [sic] that we find a way, even without the vertical amendment, to get closed for \$25MM in December..." [ellipses in original]

2003.11.05: FAME ISSUES

On top of the anxiety being caused by the DEP in not accepting the application as being complete for processing there were delays on the part of Casella in getting needed financial information to FAME in time for a November board meeting -- thus pushing consideration to December, with no possibility of issuing a bond until January, since there is an appeal period required. See e-mail from Christopher Roney of FAME, 2003.11.05. This prompted a plea from Rick Douglas for Roney to reconsider given "the impact of the delay in information from Casella." Douglas later in the day, 6:05 p.m., said that Jim Bohlig said the required information was being forwarded that night, to arrive 2003.11.06. It seemed the crisis was over. [NB Yet, the financing did not come via FAME, in the end -- or did it?]

2003.11.06-07: MEETING AND MEMO ON OSA

An e-mail from Gleason 2003.11.07 mentions a meeting "yesterday" on the OSA. Issues included limits on State's opening "a competitive landfill," and the "risk issue." Regarding that, he writes: "... On the other hand, if the closure results from some action by Casella (e.g., the failure to apply for and diligently pursue the horizontal expansion permit), then the State should have recourse against Casella in the form of the 4M performance bond and the right to retain the improvements made to the landfill by Casella."

2003.11.07-08: LAUBENSTEIN MEMOS ON OPERATING AGREEMENT

Laubenstein wrote two memos, one to "file" and one without any recipient indicated, outlining issues raised by "Casella's response to our draft of the Operating Agreement ..."

Nov. 7:

Of top importance is conditions under which Casella might be allowed not to pay "the operator's fee (the repayment of the revenue bonds) ..."

[NB at this time they were still under the assumption that state bonding would provide financing for this deal]

A second issue is the State's obligation to repay Casella for improvements if for some reason the agreement is terminated.

There is also "a very expansive definition for force majeure." [My understanding is that this is a legal term for acts of God over which the parties to the contract can have no control -- PCS] Their definition includes any governmental orders limiting their contract, affecting their permits, or "the commencement of any action by anyone seeking to delay or prevent any aspect of the development or operation of the landfill." Laubenstein: "We think, as does FJ, that this is overly broad."

In addition "Casella wants the State to agree not to establish another solid waste landfill during the term of the Agreement." Laubenstein thinks this might be necessary. [NB Why would Casella want this -- the only reason I can think of is that they would become a perpetual monopolist on landfill capacity in the State.]

The Nov. 8 memo is more formally written:

Its first line is "Response to Casella risk analysis dated November 7, 2003" and this memo may have been forwarded to Casella [?].

In background paragraphs, Laubenstein states, "As Casella has said many times, there is very little risk that the DEP will not grant a permit to increase the vertical capacity and will not grant a license to increase the horizontal. Also, according to Casella, there is also very little risk that the State will adopt a policy that bans the disposal of municipal waste in a solid waste landfill; no state has ever adopted such a policy." Laubenstein then goes on to estimate that Casella will take in "between \$20,000,000 and \$25,000,000 a year."

[Two points on this. First, the door seems open to MSW. Given the potential closure of MERC, and the eventual closing of PERC and Pine Tree, how many years will pass before Old Town is accepting MSW from everywhere in Maine. Second, the figures are realistic, even as net revenues. According to my own calculations, Casella stands to make in the range of \$25M per year clear for 30 years, across all related operations.]

[NB This does not include what Casella will be making on tipping fees for construction debris that they accept and then sort -- let's say, 400,000 tons / year, at \$100/ton, = \$40,000,000 more per year, perhaps minus what they charge themselves to deposit it at the landfill, plus what they sell for fuel -- let's say approximately doubling the figures given by Laubenstein. At that figure we easily get to the \$1 billion figure over 30 years as portrayed in the Daily News articles]

Laubenstein continues: "Under the terms of the proposed agreement between the State and Casella, Casella will pay the purchase price for the landfill, determine how the site will be developed, be responsible for licensing and development and retain all revenues from operation of the landfill. Thus, for all intents and purposes, Casella is in the position of the owner. Title to the property is the only indicia of ownership not present."

[NB This is an important point, raising again the questions of why the State is involved in this. See also McClintock memo, "hybrid" facility, 2003.06.09.]

Laubenstein goes on to outline why the terms Casella is seeking are flawed: by

virtue of State ownership the firm would be in a better position than they would if they owned the site themselves.

The two legal issues raised:

"Whether Legislative Resolve authorizing the State to purchase a landfill in the City of Old Town authorized the State to undertake to pay any portion of the purchase price?

"Whether the State Planning Office can enter into a contract in which the State undertakes to compensate the contracting party if there is a Legislative change in State policy?"

2003.11.11: NOTES ON DRAFT OPERATING AGREEMENT

Notes in an unknown hand, possibly Roney's of FAME, outline a complete set of expectations related to commitments on the part of Casella, in case of various outcomes related to horizontal expansion, volume of disposal available to GP, obligations on bonds and application for horizontal expansion.

This date is a Tuesday, and a later e-mail from Laubenstein to Gleason, Howard, High, Stearns, Cashman, and Roney begins "I am sure you are looking closely, as I am, at the document prepared by Chris [Roney of FAME?] at the end of our meeting on Tuesday." He continues "I am not sure that paragraph 3 clearly states our agreement." This paragraph is about State obligation related to revenue bond payments. "In other words, as long as Casella can operate the landfill, then it could not terminate the operating agreement and look to the State for help on the revenue bonds."

Paragraph 3 of the document states: "Casella obligated on bonds, come hell or high water. State has 'moral ob' to Casella to reimburse it for pmts on bonds under the same circumstances that require GP to contribute its capacity."

[NB It was apparently this meeting referred to in an e-mail from Gleason of BSSN -- part of header information missing, but subject line "West Old Town Landfill" and partial list of recipients is Meagher, Howard, Grimes, Rand, and Waneta Drew. Issues discussed in that message included comments about the possibility that the state might open a competitive landfill, risk of premature closure or lack of expansion permit, including mention of "the \$4M performance bond." A date for this message was derived from its text, which requested a meeting "... next Tuesday morning, November 11th."]

2003.11.14: STEARNS ON EXPANSION BENEFITS

Stearns sent an e-mail to a huge list of people involved in this deal: "Keith McKeen just asked me to respond to Hampden citizens concerns that the Old Town expansion would lead to more out-of-state waste in Hampden. I presented him with the win-win-win opportunities we are bringing to closure."

2003.11.17: MACDONALD LETTER TO ALTON

In this letter addressed to Ron Borja, Chairman of Alton Board of Selectmen, responding to an Alton request for information on the landfill, MacDonald suggests a meeting "... to fully address the questions and concerns you raised. In order to focus on the issues you identify in you [sic] letter, I suggest that this meeting be limited to the three Selectmen, representatives from Georgia-Pacific, the intended landfill operator (Casella Waste Systems, Inc.) and their engineers, and myself."

[NB This is a typical indicator of their approach to public involvement.]

2003.11.20: ACQUISITION AGREEMENT

The "marked and signature copies" are ready, see message from High to Howard, MacDonald and Laubenstein. "Would you also call to advise that it is on its way as we are trying to get it delivered to DEP by 4:00."

The e-mail from Laubenstein is headed, in bold: "Good News: the GP Acquisition Agreement has been signed and will be delivered to the DEP today."

2003.11.21: ACCEPTED FOR PROCESSING

Letter from Darling to Meagher. [Record List XV.A.1]

"As you know, staff began the substantive review of the application at the same time we completed the preliminary review of the application." [NB what date was that? One perspective on this is based on a transparency argument, that the public should get a shot at its own 'review' when the DEP begins its own review.]

"In order to meet the February 13, 2004 processing timeline set for the Department's decision on this project, it will be critical that both Casella and its consultants, and Department staff respond as quickly as possible to information provided by the other party. Department staff have committed to completing our review of the application, as submitted, by the end of December."

[NB Again, the compressed timeline. Exactly where did the 2/13 "processing timeline" come from?]

2003.11.21-12.11: PUBLIC COMMENT PERIOD

See Casella timeline to Gallagher 2004.01.22.

2003.11.26: ACQUISITION, PERMITTING SCHEDULE

Laubenstein to Cashman, Stearns and Sosnaud, forwarding the "GP Acquisition Agreement."

"We are getting some pressure from Jim Bohlig to rush to a signing. Our response has been that this is a complex arrangement and we need to take our time to make sure we have the best agreement we can. [new par.] Both GP and Casella are content to live with the fiction that the DEP will issue a permit in December and are unwilling to begin discussions about a back up [sic] plan to close the deal. We have suggested they start negotiating now so that we do not come to December 30 without an agreement how to complete the project."

2003.11.26: TRUCK ISSUE EMERGES

Message from Landry of Maine DoT to Stearns, "I apologize if the meeting I had concerning the landfill caused so many problems."

[NB No indication of when that meeting was, no earlier messages referring to it.]

"The intent of our meeting was to meet with the communities where we (MDOT)

perceived to be traffic problems. We found three areas on the proposed haul route to be problematic; One in Bangor, one and Brewer [sic] and one in Old Town. Brewer was not notified of the meeting up front, oversight on our part and I have apologized to Stephen Bost for the oversight. [...] The major problem is that Brewer said they had no idea the landfill was even proposed and that trucks would be going through their community."

Goes on to mention relatively small number of trucks from DoT perspective, upcoming meeting with communities.

"The problems in these communities are perceived problems and ones that just educating the people isn't going to solve. The bottom line is I think that some town along the haul route will ask for the Board of Environmental Protection to take jurisdiction on this project and there will be no way that this will finish this year."

On Sunday, 2003.11.30, David Cole replied, also copying to Stearns, Umphrey, Cashman and Ibarguen. "Alan, I assume that getting this done without delay is important to the GP deal. What are the consequences of delay? I'm not sure the impacted communities understand the role of this landfill deal in saving jobs at GP in Old Town. I agree with Steve that some of this goes beyond the 'numbers', and issues of perception (impact and equity) enter into the picture. We need to strategize on this early this week. I think that any of the impacted communities would think long and hard before adversely impacting th GP deal in any way, if that indeed is the case."

On 2003.12.01 Stearns replied, copying also to Clark, Darling and Gallagher. "I continue to hear that GP and Casella are operating under the assumption of a DEP permit by December 31st. I trust Dawn and Jack are talking to manage that issue, irrespective of any traffic flare-ups." He goes on to distinguish between a DoT permit and a DEP permit, and the best thing to do is convene the meetings and get a factual report in front of the DEP. "Both GP and Casella will be at the December 8th meeting to make the case for timely action on a regional priority. They will point out that if the Old Town landfill proposal fails, the Lincoln / Carpenter ridge facility will need to be opened, and the traffic issues will be identical." *Not quite*

See also MacDonald message of 2003.12.04.

2003.12.04: TRAFFIC AND PROCESS

See also messages of late November on emerging traffic issues. MacDonald now is alerting others to the news articles on traffic issues. Concluding sentence: "A common feeling among people calling DEP is that this process has been kept out of the light and that is not 'sitting' well....." [ellipses in original]

2003.12.08: TOWNS MEET WITH DOT, DEP

This was called to address traffic concerns mainly raised by Brewer. The meeting was held in the DEP offices in Bangor.

We have handwritten notes from John Lord. The estimates they were given were 45 vehicles across a 14 hour day = 3.2 vehicles per hour.

On John Lord's copy of the agenda, there is a list:
Brewer: Verrill & Dana, S. Bost, D. Sacks, F. Higgins, L. Johns, S. Barker.

There is also a post-it with George MacDonald's name and number, and a note in the same handwriting signed "Jack": "We need to begin working out the details of this agreements." On the note in Lord's writing is "call Mon. p.m."

2003.12.09: CASELLA MEETS IN ALTON

This is referenced in a 12/18 letter from Casella to Darling replying to questions and concerns raised about traffic, particular reference to Lyman Feero.

Apparently MacDonald was also there, since reports on this in a 2004.02.18 e-mail to Stearns. A community benefit agreement was offered, and Alton made a counter-offer. "The Town has since retained the services of an attorney and she has asked us to wait before setting up another meeting, in order for her to become familiar with the situation."

2003.12.09: LANDRY MEMO ON BREWER

Replying to a message from Stearns, "How'd it go yesterday?" Landry wrote his outraged e-mail in response, copying to Bruce Ibarquen and David Cole.

The whole problem was laid out, including Brewer's demand that the trucks go to 80,000 lbs., and how this would shoot down the RFP; also, that the DEP standards of safety are vague, that what is being asked for (apparently just to get them out of the towns) discriminates against one kind of hauler, and can't be allowed. It does state Brewer's position well, however: that "this thing was pushed out way to [sic] fast" and that "all the towns in the area should have been consulted prior to putting out the RFP for the facility and that the state as the owner should have required more stringent control over the traffic and where it could go."

[NB All perfectly valid positions, and now they will have more problems than if they had just held the hearings at that time.]

Landry mentions a Friday deadline (12/12/03) to get alternatives to DEP, and part of it is getting crash records up to date which was insisted on by Brewer.

2003.12.09: LETTER FROM LORD TO DARLING REQUESTING THAT NO PUBLIC HEARING BE HELD

2003.12.11: REP. ROGERS WRITES BALDACCI

Will T. Rogers of Brewer wrote a letter of concern to Baldacchi about "the planned transport of 540,000 tons of solid waste through Brewer and other surrounding communities. [...] The location of the dump is a very short distance from the exit of I-95 and that should be the primary reason for planning to use the Interstate route."

2003.12.12: DOT TRAFFIC REPORT TO DEP

The report written by Steve Landry was submitted to DEP on 12/12. He outlined the "proposed haul route" from Hampden, over Chamberlain Bridge, via Bradley and Milford to Old Town. This report also outlined 2 alternatives, the first of which was preferable (the second, via Route 2 through Orono, was thought to have too high a crash rate).

A draft was sent late the previous day to Alan Stearns, who commented at 8:59 a.m. 2003.12.12. He provided five bullets headed "Isn't there a larger context?" These included observation that the added trucks would not even trigger a DOT review, routing is voluntary, issue of trucks from origins other than Hampden, smaller trucks would increase trips in some communities, and difficulty of enforcement of trucks coming from the north.

2003.12.12: P&S MEETING IN OLD TOWN

A meeting and call-in was set for 10 a.m. Friday 2003.12.12, to "...finalize the structure of the closing transaction..." per Douglas e-mail. "It will likely involve an amendment to the P&S given the expectation of the DEP license amendment not issuing prior to closing... [ellipses in original] and the associated issues which will have to be worked out."

[NB It is still not exactly clear what was given to the DEP, given that the final agreement was not signed until 2004.02.05.]

2003.12.12-14: "... ANY PETITIONS?"

Stearns initiated a set of e-mails with the question, "Other than Brewer's letter, any petitions?"

Darling replied 12/13 yes: Sidell, on traffic; Lippincott; Maine People's Alliance. "I assume you know that the City of Brewer requested several things: that the 20 day comment period be extended to 12/31/03; that the Board of Env. Protection assume jurisdiction; and that a public hearing be held. [new par.] a [sic] first for me - the City of Old Town requested that the Department not [underlined] hold a public hearing."

In his reply to this, Stearns on 12/14 (Sunday morning) stated "Dawn Gallagher told me the Town of Alton requested a public hearing? True?"

2003.12.15: PAYMENT AND CLOSING AGREEMENT

Laubenstein announced to Stearns, Cashman and Sosnaud that "Casella has agreed to pay and GP has agreed to accept \$12.5 million in December in order to close before the end of the year." Projected closing date: 12/22. Aiming at a meeting 12/18 Thursday to go over the agreements. In part this depends on a "sign-off on the Operating Agreement."

[NB Yet see 2003.12.22, closing was postponed.]

2003.12.16: BEHR MEMO ON LEAKS

The memo from Dick Behr was reported in a Penobscot Times article 2004.01.22, one day after it was discussed during the first Elks Club meeting. It was quoted as saying there are "statistically significant water quality changes" and that another memo from Behr 2003.12.22 "...takes issue with hypothetical leakage scenarios as presented by SME." Also, a 2003.12.30 letter to Darling from Behr recommends "an updated environmental monitoring plan (EMP)."

[NB It is telling that none of this was public -- or even known within the DEP -- until after the period for requests for public hearings based on conflicting technical information had already closed.]

2003.12.16: GP CONFERENCE CALL

Stearns notifies Baldacci of a 1:45 12/16 conference call involving Cashman, Douglas and Ralph Feck (in Atlanta) to go over certain cutbacks at GP (fewer projected jobs, shutdown over Christmas) and status of sale.

"It is likely now be timely for the Governor to call GP in Atlanta: concern regarding downsizing, good news regarding Casella closing, encouraging progress on landfill permit, solid commitment to business climate and future of pulp & paper in Maine."

With this was a GP "Confidential" presentation (Power Point) "Old Town Facility Cost Structure Review December 16, 2003." This pointed to weakness in the tissue market, increasing competitiveness, higher costs at OT, possible savings via biomass boiler. The overall picture does not seem very good for the OT mill.

2003.12.16: TEAM MEETS WITH BREWER

[NB This meeting was unknown to me until the record was distributed. In the record list, at X.5* it is stated "DEP project manager responded orally at a 12/16/03 meeting that 06-096 CMR Chapter 2 sets the time frame for requesting BEP jurisdiction.]

At Record List X.6, not copied for Board, are Darling's notes from that meeting. The copy is not good, but there was discussion of costs of transport from PERC and perhaps other sites; and there is a line that states: avg. unc. "cost = \$4 M / y." [NB This is the cost that was floated in the papers that represents sending the trash in smaller trucks over the Interstate.] The notes are fragmentary, but seem to say that if there is additional truck traffic, Brewer will oppose the license. The notes conclude with a line referring to a "DG decision" [Dawn Gallagher] that would allow time to resolve "Brewer, et. al traffic concerns."

Handwritten notes from office of the Governor (4 pages) are more detailed and legible than Darling's. Attending: Doyle, Meagher, Drew (for Casella), Bost, Sachs, Stearns, Darling, Landry, Barker (Brewer PD), Higgins (Brewer DPW)

Casella's position is stated thus: "Meagher: back of the envelope; -- 20,000 payload = 30% increase in trucks; -- 50% of customers are contractual -- MERC, PERC, RWS: bids from Casella assume 100K as part of combined transport / disposal -> Casella would eat, and / or would lose low bid upon rebid; -- (85% of traffic = 100K); -- 50% is spot market, Cassella [sic] unable to measure cost, determine whether business would go elsewhere."

[NB Is this process about protecting Casella's competitive position? Should the fact that they would be underbid in a process that protects the public interest be cause for ignoring that interest?]

Some marginal figures reflect the \$4 M / year added costs. "\$125M over life of facility + revenue loss from competition" [NB This is within a drawn box.]

"PD: -- Wilson & Union is high crash; -- hit and run (non-deliberate) trucks; -- jake brakes, clipped signs, Route 9, Route 46; -- intersections are marked; -- trucks don't understand synch at Bridge Hill; -- Penob River bridge is somewhat better"

Sachs adds "This traffic is new pattern, new turn." Bost adds "Possible / likely increase in traffic with expanded permit." Meagher counters, "Limited

to state of Maine waste, defined market." Bost: "NH waste turned to ash becomes Maine waste."

Brewer PD: "No [arrow up] trucks period." Sachs: "Brewer would oppose Eastern Fine expansion that affects North Maine. Ec Dev = quality of life. 80K can be done legally."

Doyle: "This is least congested route; -- safest route; -- economic route; -- not talking a lot of traffic - 5 trucks peak hour; -- keep it in perspective."

I-95 was discussed. Alan: "Impasse on I-95 -> procedure." Meagher: "Procedure -> GP"

Under "Follow Up" first point is: "Ratchet up Federal --> Chiefs of Police Assoc. --> BDN --> Snowe & Collins. -- Focus on I-395"

Canadian trucks were discussed, US v. Canadian inspection, "10x noise from Canadian trucks"

Discussion of DEP requirements, "must act by Jan 5 (+ / -)"

Overall outcome of the meeting: "Goal: Build confidence in DEP jurisdiction and ability of this room (and other towns) to build com"

2003.12.17: LAUBENSTEIN MEMO ON AGREEMENTS

This memo for file outlines basic acquisition and operating agreements.

It expresses confidence that this round of permitting will prevail, though perhaps not the expansion. A provision was written in to "share the risk that the horizontal expansion is unobtainable". The expected present permitting will give 10,000,000 cu. yds. If expansion is not allowed, GP is only guaranteed 15 years of disposal capacity.

Discussing the operating agreement, the section on "Acceptable Waste" states: "Casella requested to be permitted to buy processed C & D fuel for the GP biomass plant from out of state vendors and to bring the related residue to the landfill for disposal. We refused this request since we have repeatedly told stakeholders that there will be no out of state waste at the facility. Casella is allowed to dispose of residue from C & D fuel that is processed in the state."

[NB Casella's proposal is quite telling -- apparently what they had in mind was to operate a facility somewhere out of state, and then to bring all the fuel and the waste to Maine!]

Under Operating Agreement, point 6, "We have not reached agreement on the terms of the \$4,000,000 performance bond to secure Casella's obligations. I believe the parties agree that the bond must provide for immediate cash payments to the State to enable the State to operate the landfill."

2003.12.18: LAUBENSTEIN ON "LATEST DEVELOPMENTS"

A message to Stearns, Cashman, Sosnaud, MacDonald, states "I thought it might be helpful to put down some issues presented by the latest developments."

[NB What are these developments? We could assume they have to do with Stearns']

message on investment and taxation options for the Old Town Mill, and looking forward, to the GP decision to postpone the 2003.12.22 closing.]

The message has six points:

"1. Is there a need to close in December? Can we not wait until the license amendment is granted and all appeals exhausted? The reason GP put forward to close in December throughout the negotiations was revenue recognition. GP now claims it needs to get cash for the biomass facility. Yet, no work can be done on the facility until construction season begins next year. In addition, why would GP invest \$12.5 now if there is even a remote chance the remainder would not be realized? Michael recommends we do not close in December under the current set of circumstances."

Point 2 is on the reverter option. Point 3 related to term of contract, suggesting that shorter than 30 years would be "more realistic." Point 4 is: "Should we amend the Acquisition Agreement to require investment of the purchase price in a biomass facility? In the Acquisition Agreement GP has agreed to construct a biomass facility, but has the option of investing the purchase price in a biomass facility or 'other capital improvements of the Old Town Mill site, or a combination of both.'"

The final two points are:

"5. Would any changes in the structure of the transaction affect the RFP process? George believes that there are features of the transaction that other potential bidders found too daunting to be willing to bid. These include the 30 capacity commitment at \$10 a ton for 500,000 tons a year and the C & D fuel obligation. If either of these substantive provisions were to be changed, then we would probably be required to go out to bid again.

[NB This figure may be in error. We believe the capacity commitment at \$10 was for 50,000 tons per year.]

"6. Has there been such a substantial change in circumstances that there is no longer a meeting of the minds and therefore no contract? If there is a consensus that GP latest disclosure is a change in how the transaction is to be viewed, we should consider closely examining the Acquisition Agreement for provisions that have been included because of the prior understanding about GP position. In some respects, we could consider two transactions with GP: one for the acquisition of the landfill and another for the disposal of waste."

[NB Again, what is "GP latest disclosure"? And, though the final OSA and P & S do not mention it, aren't the disposal and fuel commitment terms as suggested in the additional \$5 million offer from Bohlig 2004.01.12 a change in substantive provisions? Those provisions would significantly raise the fuel and disposal prices after 5 years. Wasn't the low price for those a competitive barrier that deterred potential bidders? See letter from Waste Management, 2003.07.09.]

In a reply message 2003.12.22, 8:31 a.m. [NB this turned out to be the day intended to be the closing, postponed by GP -- when?] Sosnaud writes: "I think Bill's #6 (below) captures it. Without a commitment to Old Town -- which is probably ephemeral unless the Plattsburg to Old Town consolidation occurs -- everything needs to be reexamined."

2003.12.18: MEETING ON AGREEMENTS

Laubenstein message 2003.12.17 to Stearns, Cashman, Sosnaud, MacDonald and Adams confirming meeting for 2003.12.18 "... to discuss the status of the landfill transaction and the negotiated terms of the Acquisition Agreement and the Operating Agreement." Attached was "...a memorandum outlining the major negotiated provisions of both agreements." [NB This was four days before the scheduled closing, that was postponed.]

2003.12.18: STATE OFFERS PACKAGE TO GP

This "Proposal from The State of Maine" was forwarded by Nimon to Douglas, copied to Cashman and Thaxter Trafton, in a note headed "GP Expansion." It assumes "you would invest \$35 million all at once and that you would hire 100 net new employees. I also arbitrarily set the employment baseline at 450 - we'll need to review this number together to make sure it is the one required by statute."

[NB Compare this draft with the one distributed in January; see 2004.01.09. See also the difficulty in the way GP was counting jobs, necessitating a proposed special law exempting this deal from existing job baseline statutes; see Nimon e-mail of 2004.01.08.]

Through various tax breaks, this proposal offers a total of \$16,477,380 in benefits to GP over 20 years, plus \$6,645,800 in reimbursement for "all property taxes paid on eligible business property." This apparently was supplemented with a \$3-4M / yr. offer in January, plus two one-time cash offers; plus the accrued value of below-market prices for sludge disposal and biomass fuel.]

2003.12.18: STEARNS THOUGHTS ON GP UPGRADES

Headed by "Download of thoughts, conversations:" this was addressed to Cashman and Nimon, headed "Old Town Tissue Machines." It explored the feasibility of moving "a machine" vs. moving a "towel line," seen as more "realistic." "\$5M to \$10M to restart machine #1 and move lines from NY."

[NB The conversations these comments represent may be the origin of the enhanced offer from Casella, adding \$6M to their commitment if GP were to complete certain plant improvements.]

Further discussion of transport and energy costs, as well as comments on marketplace for tissue products: "KimClark & ProctorG are huge competitors. Honestly, both OLD and NY could both [sic] die, GP could supply NE from south."

2003.12.22: GP POSTPONES CLOSING

Laubenstein e-mail informs Stearns, Cashman, Sosnaud and MacDonald, reporting also conversation with Chris Howard: "... it is our understanding that GP has not fully disclosed the facts leading up to GP's decision to postpone a closing."

An issue around what Howard (PA) could disclose to Casella. "He said he was not a [sic] liberty to disclose anything to Casella or Casella's attorney." [NB See ahead to exchanges of 2004.01.07]

[NB What was in their minds? I can only imagine that GP was either imagining or threatening that they would close the mill, and this was being used as some

sort of leverage on the whole deal. See also e-mails of late Oct., early Nov., on "complete for processing."]

2003.12.29-31: HOWARD (GP) TALKS TO BOHLIG (CASELLA)

The exact date of this conversation is not known. See Howard e-mail to Laubenstein, 2004.01.06, "Bohlig knows everything. I spoke with Jim myself at length between Christmas amnd [sic] New Years."

[NB One has to wonder what the relationship is between the closing postponement, the letters from Bohlig of 2004.01.12 offering the cash enhancements, and bringing the deal to a close.]

2003.12.30: BEHR MEMO ON EMP

Dick Behr sent Cyndi Darling a memo on the Environmental Monitoring Plan. This is a set of comments toward drafting an EMP.

[NB Why are they still evaluating the data and crafting a plan when the period for public to request hearing based on credible conflicting technical evidence is already closed?]

"Based on my recent reviews of the facility's water quality data, additional downgradient monitoring wells are certainly needed."

Since Woodard & Curran's baseline report shows TKN and TOX in leachate, "At a minimum, TKN and TOX should be added to the parameter list."

A critical sentence, p. 2: "However, the detection of a variety of volatile organic compounds and several elevated inorganics and indicator parameters indicate the primary liner may be leaking." (Citing Woodard & Curran, 2003)

2004.01.01: DARLING TO DOYLE ON BREWER

This note sent Jan. 1 [!] from Darling to Doyle [NB again, who are the regulators working for?] in part: "Happy New Year - I just read a letter from Edward Gould from Gross, Minsky & Mogul making Brewer's 'conditional' request for BEP jurisdiction 'definite'. [new par] I tried contacting Steve L. [Landry] this week to see when he wanted to set up a meeting with Brewer, but he's out. I tried calling George MacDonalld about setting up a public info meeting, but he's out....." [ellipses in original]

[NB It is, after all, Jan. 1]

In a reply addressed to Landry, Doyle, Darling, Clark and Macdonald, and copied to Gallagher and Cole, Stearns writes:
"Tighten this up, ASAP. [that sentence both bold and underlined] At our last meeting there was a clear expectation of a follow-up meeting with Brewer before January 5th. Steve Landry or Cyndi Darling -- make the meeting happen. I want to know by Monday noon that a meeting has been scheduled with Brewer. [NB this sentence bold and underlined] Call me if you need assistance. [new par.] Cyndi / Paula: please keep me in the loop, especially re planned legal-ish response. Must you make a preliminary decision on January 5th? Does this latest Brewer letter mean anything legally?"

[NB This amounts to direct orders from the Governor's office to the DEP. Where does this leave the often claimed independence of the DEP?]

2004.01.05: OT COUNCIL

The 2004.01.05 Old Town Council meeting was reported in the Penobscot Times 2004.01.08. This was the meeting at which residents made known their dissatisfaction at lack of information. Ed Spencer was quoted, "No one in this town ever had a chance to get information." "Spencer asked that a public information hearing be scheduled so residents could understand what was going on. He said that the dump in its present state already smelled bad, adding, 'This process smells worse.'" To requests for a hearing, Lord said that public comments would be accepted by the DEP until mid-February, but that the period to request a full public hearing ended Dec. 11.

2004.01.06: PROGRESS WITH GP

Stearns to Laubenstein, "Dialog with GP advancing. I'll know more tomorrow after 11 a.m. Governor will try to close deal with Atlanta within a week. I optimistic, others are pessimistic."

[NB What is going on? This all becomes coherent when the development package of December, "no home runs" according to Douglas, is combined with the new offers of January, including the cash enhancements from Casella.]

2004.01.07: CRITICAL NEGOTIATIONS

A set of e-mails, meeting notes and a new "Proposal from the State of Maine" [see 2004.01.09] surround the terms of the transfer of the parcel. There are also issues related to negotiations with Casella.

Of particular interest is what "Bohlig knows" [President of Casella] -- see previous, 12/22 postponement.

[NB There seemed to be something that GP knew or was doing, that the State knew, but that (perhaps) Casella did not.]

In an 2004.01.06 message from Laubenstein to Howard (PA), he said "It is my impression that Bolhing [sic] knows no more now than he did before the holidays." In his reply, Howard replied "Bohlig knows everything. I spoke with Jim myself at length between Christmas amnd [sic] New Years. Jim wants to 'will' this one over the finish line and one way to do that is to build your own reality and hope everyone follows along ..." Howard continues, "That said, if we can get GP and the State to an economic package that works for both, then Jim's deal can happen and will be an integral part of the solution. So maintaining some momentum there is important. Casella is proceeding with the DEP process. I think we need to support that process and not create the impression that there is no reason for DEP to push ahead on their 2/15/04 schedule. [new par.] We should execute an extension to the P&S. It expired 12/31/03. Let's do that in the next few days."

To this Laubenstein replies "I do not recommend that we either extend the deadline on the acquisition agreement or continue discussions with Casella at this time. My reasons (and you may have others) are that a new deal may require a new RFP; there are some provisions in the term sheet (such as sovereign immunity, indemnity, guaranteed commitment by GP to stay in Maine, C & D fuel, cost and length of commitment to take GP waste, reversion of real estate and ownership of biomass facility if GP leaves the State) that should be revisited."

[NB This seems to be a critical moment. See forward, Bohlig letters of 2004.01.12, offering a total of \$6 million in enhancements to their Proposal. The question needs to be asked: isn't this "a new deal [that] may require a new RFP"? Exactly under what circumstances would a new RFP be required? This was the central question I asked Francis Ackerman in conversation 2004.10.15 and in cover letter of the next day.]

2004.01.08: ETIF JOBS BASELINE

Nimon e-mail to Stearns, copied to Cashman and Sosnaud, titled "G-P ETIF." Says Douglas is "... worried about overstating benefits that may not pan out. Just so we're all on the same page: ETIF is a high quality job creation incentive. The law on the books today would not permit one penny of reimbursement for the 100 jobs because of the need to establish a job baseline from the higher of 12/31/03, or the average of the 3 previous 12/31's. To illustrate, G-P has a workforce of 450 as of 12/31/03; the figure balloons to 552 when averaged over three previous year ends, wiping out the 100 jobs in the proposal. One remedy is a private & special law that authorizes the department to alter the ETIF definition of 'base level of employment' for its review of G-P's CY2004 development program. Jack just told me by phone that if all other pieces of this deal come together as planned, he and Governor will seek legislative support for the P & S law. [Private and Special Law -- not to be confused with the Purchase and Sale agreement.] I'll let Rick know generally about our plans for support but won't be sharing specific language yet (see attached draft). He and I will be reviewing the latest G-P proposal draft this afternoon (G-P prefers powerpoint, so we're re-formatting). Let me know if you have questions."

The attached "private and special law" after several "whereas" clauses, reads in full: "Sec. 1. Authorization to adjust the definition of base level of employment. Notwithstanding the Maine Revised Statutes, Title 36, chapter 917, for the purposes of approving Georgia-Pacific of Old Town's CY2004 ETIF development program, the Department of Economic and Community Development may define 'base level of employment' as the total employment of a business as of the December 31st immediately preceding the approval of the employment tax increment financing development program."

2004.01.09: CASHMAN, "JOBS VERY MUCH UP IN THE AIR"

In an exchange of mails related to setting up the Elks Club public informational meeting, Cashman sent an e-mail to Stearns and MacDonald, copied to Laubenstein and Sosnaud, that reads in full: "It needs to be pointed out at this hearing [sic] that the decision on landfill permits is based on environmental data not on public opinion. The statement relating to the value to the state should come from your office George because the value is in relation to our obligation to provide [sic] capacity and the advantages to [sic] this site over our alternatives. The value as to its relation to jobs is very much up in the air and at this point its [sic] a tough thing to talk about."

[NB This statement should be read in relation to the postponement of the closure in December, and the resolution following Casella's new offer of 2004.01.12]

2004.01.09: LETTER ON BEP JURISDICTION

See also Darling's message of 2001.01.01, mentioning reading original of this

letter.

On 2004.01.09 Gould of Gross, Minsky and Mogul, representing Brewer, wrote to Alan Stearns, apologizing for not sending a copy of "the City's request that the Board of Environmental Protection assume jurisdiction over this application" to him. In addition, the letter responding to Doyle's objections to their request is also included. [NB neither the original nor the objections and response letters are included.]

2004.01.09: NEW STATE OFFER TO GP

A new "draft" economic proposal from the State to GP was circulated 2004.01.09. Difficult for an outsider to understand in full, this is offered "In addition to the measurable, financial enhancements from actions launched last year, notably the landfill and boiler initiatives..." [ellipses in original] [NB These are the \$16.5M and \$6M offers from December, 2003.]

"The State is pleased to offer a Retention-Expansion package with annual benefits of \$3-4 million to GP Old Town." These included an initiative to bring down wood costs per an Executive Order initiating a wood supply task force, various local tax breaks, and "Governor's Commitment -- \$1,000,000 (year one equity injection" and "Governor's Personal Proposal -- Additional One-Time Funds (to be presented personally on Monday)"

[NB Monday would be 2004.01.12, the day that Bohlig came forward with his \$1M plus \$5M offer. The language of this proposal is interesting and vague. Could we be far wrong in imagining that this "additional one-time funds" of the "Governor's personal proposal" would be exactly the \$5M offered by Casella.]

In a reply to Douglas' message stating "a good collection of 'singles and doubles' ... no home runs and is a bit 'light' in terms of getting people excited" Stearns wrote to Nimon and Cashman: "I talked to the Governor, left voice mail for Jack. The Governor is very focused on extension of any and all Pine Tree benefits to this project -- even with stretching. Can more be done?" Nimon replied to Stearns and Cashman on 2004.01.06, "Just spoke with Jack. I'll let Rick know that should Atlanta come through we will have GP in PTZ [Pine Tree Zone]. Jack asked me to remind Rick that this designation will include corporate income tax exemption (as per PTZ law) for taxes attributable to OT expansion. Sounds like short of Governor going to legislature for special dispensation, this footnote on tax exemption will conclude our proposal to GP."

[However, within 3 days the \$1M plus "personal proposal" emerged, of which there is no sign in these earlier mails.]

2004.01.12: LETTERS FROM BOHLIG ON OPERATIONS CONTRACT

Casella President Bohlig wrote a letter and a follow-up clarification to Stearns and Baldacci on the topic "Contract for Landfill Operations." Two separate offers were made. The first is "an enhancement to its existing Contract Offer of a \$1,000,000 cash contribution which can be used by the Governor's Office in developing strategic resources for the Old Town Georgia Pacific paper making operation. This offer is a cash enhancement offer to our existing offer and would be paid at closing under all of the current conditions which have been negotiated between the parties."

The first letter continues: "In addition, we have examined our offer and believe that substantial front-end benefits will be realized by Georgia Pacific in locating paper making operations from other venues to the State of Maine through the reconfiguring of our existing offer for sludge disposal and biomass supply. [new par.] In order to incentivize Georgia Pacific to this outcome, Casella Waste Systems, Inc. is prepared to offer \$5,000,000 of Additional Cash Reimbursement (ACR) upon the completion of paper making conversion upgrades now contemplated by Georgia Pacific."

[...]

"In order to affect this ACR, Casella Waste Systems, Inc. would propose a modification of the biomass supply contract from \$4.00 to \$8.00 per ton beginning in year 6 and a modification to the sludge disposal contract from \$10.00 to \$25.00 per ton beginning in year 6. This ACR is designed to provide substantial additional improvement to the net present value of the original offer and is offered as an alternative should this assist in locating cash resources necessary to incentivize Georgia Pacific's decision to develop long term sustainable paper making operations in the State of Maine."

Because there was an ambiguity in this letter as to whether the \$5 million was in addition to or would replace the \$1 million, a second letter clarifying the first was sent, stating: "Casella Waste Systems wishes to clarify that the Additional Cash Reimbursement (ACR) of \$5,000,000 is in addition to the existing offer, including the \$1,000,000 enhancement discussed in the body of the above-referenced letter. Taken together, Casella Waste Systems, Inc. is offering \$6,000,000 of additional cash benefits associated with the Contract for Landfill Operation. \$1,000,000 of this is offered without condition to the existing transaction and the balance of the cash contribution (\$5,000,000) is tied to a reconfiguration of the biomass and sludge disposal supply benefits as discussed in the letter. [new par.] I hope this clarification assists you in your discussions with the other parties."

[Update 2004.09.28: After reading the letters again and checking the OSA, it seemed clear that the \$1 million mentioned in the letters was free and clear based on existing agreements, and it would only be after GP put the mill upgrades into place that the \$5 million extra would become part of the deal and Casella would ask for the higher fees]

[NB See memos at 2004.01.07, "Critical negotiations". Especially see Howard (PA) statement that "Bohlig knows everything" and that they had talked late in 2003. What is going on here?]

[See State offer to GP of 2004.01.09, and e-mails of Stearns to Bostic on Correll on 2004.01.14.]

2004.01.12: PUBLIC NOTICE OF ELKS CLUB MEETING

See Casella timeline to Gallagher 2004.01.22.

"Public notice in BDN and Penobscot Times of MDEP Public Information Meeting in Old Town. U.S. mail notice to persons who submitted written comments during the 20-day comment period."

2004.01.12: STEARNS TRAFFIC MEMOS

This memo from Stearns to Baldacci outlined status of trucks and traffic

issues:

All issues will be discussed at scheduled 1/21 DEP "public workshop"; DEP will recommend against BEP jurisdiction "because the issues are not complex"; Brewer wants alternate routes, then Stearns asks sarcastically "(Bangor Mall? Downtown Orono?)" Designated route changed from Chamberlain to Penobscot bridge. All routes are voluntary. Truck weights and I-95 "is an impasse."

Also this date, Stearns wrote to Landry suggesting a route from Newport over Rt. 43: "If it's not posted and has good intersections, it might even be the preferred route for traffic coming from Skowhegan, no?"

[NB This is the route that would be of concern to Hudson and other communities in that direction. What is the reference to Skowhegan? Does he mean Norridgewock? If so, has Stearns yet come to a clear understanding of what this is all about? The same goes for the general idea that traffic to Old Town will somehow be originating at Pine Tree, not at Orrington and, presumably, Lewiston.]

2004.01.13-14: GP FINANCIAL DEAL SETTLED

See Stearns meeting log for Tuesday 1/13 6:30-7:00 p.m., phone conference between Correll and Baldacci with Stearns attending Tuesday, and followup e-mail to entire state team of 1/14 (MacDonald, Darling, Clark, Laubenstein, High, Cole, Gallagher, Sosnaud, Nimon, Spies, Rider, Roney, Adams, Lincoln, Umphrey, and Boucher).

This e-mail (Jan. 14) was titled "Georgia Pacific: Old Town" and reads in full: "Yesterday we received reassurances and commitments at the highest levels regarding all current jobs at the Old Town mill. The landfill closing documents and the landfill permit should proceed expeditiously with sustained confidence of win-win-win benefits for jobs. I'll be having conversations with Casella and GP today regarding some details, and additional opportunities."

[NB So what again are we to make of a message directly from the Governor's office to the DEP team (Darling, Clark, Gallagher), "... the landfill permit should proceed expeditiously..." See also Stearns reply message at 2004.01.01. Wasn't the process already in place and underway? What is the meaning here?]

Also on Jan. 14 are e-mails from Stearns to Bostic and Correll, then to Laubenstein and High, with query received back from Laubenstein:

Stearns to Bostic and Correll: "Mr. Correll: [new par] Following last evening conversations with Governor Baldacci, attached are documents which describe the additional \$1M and \$5M which we are eager to bring to the table. As the Governor mentioned, the \$5M is necessarily conditioned upon certain restructuring of terms with Casella Waste Systems, which we believe will be favorable to GP's interests. I look forward to working with your team to develop new jobs in Old Town, and we all appreciate your commitment to all existing jobs in Maine. Please don't hesitate to contact me or the Governor for any reason."

Stearns to Laubenstein and High: "I've had calls today with both Casella and GP. We're ready to roll on a closing. They'll be calling you all to set up meetings. The rough outline that appears to have agreement is: [new par.] -- \$1M from Casella upon closing (see attached letters) in escrow or some other

form, at the Governor's control, based on the Governor's interests to flirt with GP. [new par.] -- \$5M referenced in closing documents with contingencies many months or years out, allowing an eventual side agreement between GP and Casella, I flagged the likely need for state concurrence. [new par.] I know that's vague. Frankly, the conversations were vague and we'll rely on your expertise and advice. All parties seem to have considerable common interest and good will to make this happen. I'm at your disposal."

Laubenstein to Stearns and High, with Stearns' replies in caps: "Alan, [new par] Are we to assume that all other provisions of the Term Sheet remain in place? YES. Or have some the terms [sic] been re-negotiated, such as reversion, ownership of biomass facility, commitment by GP to retain jobs, term of the agreement and indemnity. NO. [new par.] I recall that Jack wanted the acquisition agreement changed to require GP to invest the \$25 (26) million in the biomass plant and not in other capital improvements. YES. [new par.] Certainly, a conference call with you before we enter negotiations would be extremely helpful."

Also, see Cashman memo to Landry of 2004.01.09, cautioning him to emphasize landfill capacity benefits over jobs benefits.

2004.01.14: RWS CONSIDERS OT DISPOSAL OPTION

A PPH article 2004.01.15 reported a meeting the previous day of the RWS finance committee, exploring options for future disposal of ash from their incinerator, that is "owned and used by 21 southern Maine communities" and that is one of four trash-to-energy plants in Maine. The choices seem to be to expand their existing landfill, managed by L.R. Higgins, in order to provide longer term disposal for their ash as well as added commercial space for other waste sources including Massachusetts, or to enter into a contract with Casella for long term disposal at the Old Town facility. It was expected that the RWS (Regional Waste Systems) landfill had only 10 months of remaining capacity.

"Another proposal, from Casella Waste Systems Inc., owner of the Maine Energy Recovery Co. incinerator in Biddeford, would send RWS ash to a state-owned landfill in Old Town that Casella has a contract to operate. Casella's 20-year proposal would add \$5.02 to \$5.86 to projected trash-burning fees through 2025."

[NB In fact, the "contract to operate" was not signed until the following month, on 2004.02.05.]

See also letter from Higgins to the Phoenix at 2004.04.16.

[Update 2004.10.16: there is word that RWS will not expand in Scarborough, and that RWS ash will go to Old Town.]

2004.01.14-21: SANBORNS CONTACT BALDACCI

Sanborns contact Governor about Alton's relationship to this facility, numbers of abutters, location of entrance road, volumes of trucks. This was forwarded from Mullen to Stearns to MacDonald, who replied with details about how the host community benefits agreement works.

On 1/19 Mary Cathcart sent a message including the line "Help!!" to Stearns saying she had scheduled a meeting with Laura Sanborn for 11 a.m. Wednesday

(1/21) and that "a man named Stan Levitsky(?)" is also organizing a bus and press conference in Augusta for that date.

2004.01.15: DEP, BEP DENY BREWER REQUEST

Reported in BDN 2004.01.21, Dawn Gallagher denied Brewer's request and "informed" the BEP of her decision at their 2004.01.15 meeting. Whereas an earlier article had stated that the BEP had denied the request, a correction clarified that the DEP denied it. Brewer was quoted as having serious problems with this decision. "'The state should not be reviewing itself,' said Bost. 'It's kind of like a code enforcement officer giving approval for electrical work he's done,' said Sachs." The report also quoted from a letter from Tom Doyle representing Casella and responding to Brewer's request: "'Although others have commented on the amendment application, it has not generated substantial public interest of the nature warranting Board jurisdiction,' Doyle's letter states. Doyle goes on to state, 'There should be no discrimination against the trucks carrying waste to the West Old Town Landfill simply because they are transporting solid waste rather than another type of product or raw materials.'"

[NB Was the Board simply "informed" or did they act on this? Was Wardwell acting as Chair of the Board at that meeting?]

2004.01.16: DRY RUN PUBLIC MEETING

MacDonald reports on rehearsal for the Elks Club meeting and gives draft outline of what the presentations will cover.

[NB Of particular interest, perhaps, is the line, "Structure of meeting -- 1 1/2 hrs presentation, please hold questions to end" -- a projected format that did not survive the realities of the meeting.]

2004.01.21: AUGUSTA GATHERING

According to handwritten notes, the following attended: Bell, Lutz, Deb Gibbs, Spencer, Drummond, L. Feero, L. Sanborn, Peavey Haskell, Treat, Twomey, Kauffman, Cathcart, Martin, Makas [Stearns, notes], and in box to the right, Elizabeth Schneider.

Notes:

"Treat -- money to Alton to assist with permit review; -- encourage a public hearing"

"Martin -- if selectmen say they didn't know, they're lying; -- on expansion, their [sic] should be a hearing"

"Cathcart (Makas) -- whether DEP promised a public hearing"

[NB This last line is significant -- at the Natural Resources Committee meeting 2004.02.04, it was emphatically asserted that David Lennett had promised a public hearing, as part of the Resolve.]

2004.01.21: ELKS CLUB "PUBLIC INFORMATIONAL MEETING"

This meeting was reported in the Penobscot Times, 2004.01.29.

The tone of the meeting is given in parts of the account: "'Stop the nonsense and get to it,' shouted someone else. The meeting, which had been planned as an hour-long presentation interspersed with five 15-20 minute public comment

sessions, soon gave way to hours of public comments and questions, interspersed with responses from DEP, Casella, G-P and state officials."

"Bruce Sidell of Old Town asked why Casella couldn't run smaller loads and pass the cost on to the generators of that waste, but was told by Bohlig that the company had to guarantee the state a ceiling on prices and that there was a need for long-term stable prices for solid waste disposal."

[NB Other than prices guaranteed to GP, what prices were guaranteed to the State? Bohlig's comments do not reflect the truth as stated by Meagher at 2003.12.16, that if Casella would have to bid on smaller loads, they would not win the contracts.]

A 7-page set of notes from this meeting were received as part of the official Record, 2004.09.17.

Most of the questions and answers are what have been heard many times in this process, for instance: "after Rick Douglass' presentation: does G-P guarantee that it will keep the mill open if the landfill sale goes through? he's sure that if it does not, the mill will close; the sale gives the best chance to keep the mill open, but he didn't give a guarantee" [all lower case as in original]

There was an interesting comment on truck count for that day -- 54. Answer was that GP hauls leachate "periodically instead of routinely." [NB ** if so, what are we to make of all the "peak hour" calculations, since they can be out of synch with the reality of hauling schedules?; i.e., true peak hour statistics.]

As to "what about Casella's record?" MacDonald replied, "described bidding process; 5 weeks of due diligence and went with Casella."

PCS question was commented this way: "what was Pierce Atwood's role in this deal? T. Doyle -- the 'deal' was between the Governor and G-P; the Resolve was done by the Legislature; PA is paid by Casella" [And where is the fact that PA was paid by GP during the preliminaries and through the passage of the Resolve?]

2004.01.21: STEARNS SUPPORTS SPECIAL RATES

This is a letter to the Public Utilities Commission in support of better electric rates for GP. In explanation, part of the overall deal is "the negotiation of a long-term power contract with Bangor Hydro to optimize the economics of the combined projects."

"These various agreements are mutually inter-dependent and were developed so that the long-term operational and production costs will keep the mill viable for the mid term." [NB which is it, long term, mid term, short term or no term?]

The second page of this letter starts mid-sentence -- must be an error. "I believe we barely averted the permanent loss of even more jobs in the recent past, and that unnecessary delay and continued uncertainty should not be considered an option. Rather, we are working daily to send a clear message to Atlanta that Maine's business climate is competitive such that GP should consider permanent retention and in fact expansion of GP's Maine operations."

2004.01.22: CASELLA TIMELINE TO GALLAGHER

Meagher sent "the inforamtion [sic] you have talked to Jim Bohlig about." A document was attached, "Public Participation in West Old Town Landfill Process."

This includes the line: "June 2003 Old Town City Council public meeting resulting in Resolution supporting legislative Resolve."

Also: "August 18, 2003 Bid award selecting Casella as Landfill Operator. No appeal filed within public appeal period."

2004.01.22: CASELLA WON'T USE FAME

Laubenstein informs Cashman that "Casella is not necessarily going to use FAME, but wants to leave the option open for post-closing financing." This will have impact on state exposure for debt service under certain circumstances. "If Casella finances at some unknown time after closing, and we are on the hook after year 15 of the agreement, our maximum exposure could increase significantly. One option is to say we will no longer pay any debt service (since Casella obviously does not need FAME); or we could agree to only pay debt service for 5 years or some other period of time."

2004.01.23: BELL LETTER TO GOVERNOR

Pam Bell's e-mail demanding an explanation was forwarded by Mullen to Stearns, who said: "I recommend no response..." Mullen's reply, "...and no response it will be."

2004.01.23: STEARNS EXPLAINS "OUT OF STATE TRASH"

Umphrey says he is getting calls on out of state trash.

Stearns replies: "The issue was openly and frankly discussed Wednesday night. [new par.] Out of state trash is prohibited at a state-owned landfill. The definition of out-of-state trash is a term of art, however. Ash coming from a Maine incinerator, even if the trash which generated the ash is out of state, is defined as in-state ash. [new par.] The related issue is that the capacity at the state-owned landfill (Old Town) for in-state trash will free up space at the Private landfill (Hamden) [sic] for out-of-state trash. Regardless, Hampden will be full within a matter of years, with or without Old Town, and Maine needs landfill capacity for Maine businesses, Maine municipalaitys [sic] [new par.] George MacDonald, SPO, able to speak to this issue."

[NB This clearly states the issue, but only part of it. At all points in the public discussion, until questions about C&D were raised at the March 29-30 meetings, out-of-state waste was discussed exclusively in terms of incinerator ash. The idea that the same logic would apply to C&D was never discussed -- though the promoters were well aware of this, see pre-bid questions related to out of state sources for fuel supply, 2003.06.23.]

2004.01.25: CASHMAN DEFENDS LANDFILL

Cashman sends e-mail to Gallagher and Stearns containing text of the op-ed he submitted to BDN and Penobscot Times. In his note to them he states that the "Mayor of Old Town" would be willing to sign a letter expressing "that he was embarrassed by the actions of those in attendance last Wed. and that a further

public hearing would only serve to bring out the same people who are less interested in hearing facts than in throwing personal insults to the DEP." He asks about appropriateness of this and "let me know what your plan is for the next step."

[NB Certainly the next step would not be to take a step back and perhaps have a public hearing. This also is an example of sending orders from above to DEP.]

2004.01.26: LESSARD LETTER TO GALLAGHER

This letter, copied to Stearns and Cashman, expressed grave concerns about the conduct of the Elks Club meeting, and stressed that "If this is allowed to be decided on emotion and dragged out long enough to kill the deal that the State has with Georgia Pacific, it will be virtually impossible for the State to ever approve a landfill siting / expansion of any type again." She says it must be approved "...unless the information submitted for review to DEP on the West Old Town Landfill application reveals aspects of the license amendment that do not satisfy the standards in law ..."

In her e-mail to Stearns and Cashman, she states: "I am very concerned over the snowball-going-downhill manner in which the West Old Town Landfill licensing amendment is being morphed into something totally unrelated to the original intent of the legislative resolve and the reality of what would be located at the site."

In a follow-up message from Cashman to Stearns (replying to Stearns memo on 1/27 conference call, see below), he states, "The e-mail from Sue Lessard is right on target. If anyone needs to have a reason why there should not be a public hearing all they need to look at is the action from last week."

2004.01.27: CONFERENCE CALL ON STRATEGY

Stearns on 1/26 (Monday) announced a meeting / conference call for 1/27 including: Clark, MacDonald, Darling, Bohlig, Benoit, Doyle, Meagher, Feck, Douglas, Landry, Sosnaud, Gallagher, Cashman and Garrett.

The meeting would be at DoT with others calling in.

"AGENDA

- "1. Resolve whether any additional public sessions are advised
- "2. Discuss press strategies for Wednesday Jan 28
- "3. Press strategies beyond Wednesday
- "4. Other pending issues (if any)

"I am not inviting various supporters to join on this call. We can reach out to them once we have arrived at decisions."

[NB Again, exactly why is the Governor's office in the lead on decisions affecting DEP process?]

In a related e-mail from Stearns to Cashman, the following: "Call me. [new par.] Bohlig and Bostic are meeting with the Governor Tues (tomorrow) at 5:30 pm. Join us? [new par.] No one is arguing for a public hearing. Dawn is still arguing for a public workshop, which will delay the permit a week or so, and will thus delay Bostic's interest in a closing for a week or so. Dawn argues

strongly that some public transparency (workshop) is necessary for (1) credibility (2) defense against anyone who storms the BEP asking for BEP jurisdiction. I can't imagine that a week really makes a difference to Bostic, but he's on a tear and Bohlig won't cough up pre-closing cash until he agrees with Dawn's strategy."

A memo from Stearns to Baldacci dated Jan. 27 and titled "Jan 27 5:00 meeting with GP & Casella" reviewed the results of the morning conference call and apparently is intended to prepare the Governor for the meeting later in the day. The two parts of this memo are titled "Issue # 1: Landfill Permit" and "Issue # 2: Closing on the \$25M deal (boiler, sale)". [NB Yet, by this time it was known as a \$26M deal, or more.]

Regarding the permit, all agreed "begrudgingly" to go along with Gallagher's call for another public meeting, "The public forum has risks PR and will result in one to two weeks delay in final issuance of the permit. The public forum has the benefit of 'transparency' of state government process, and best 'innoculating' [sic] DEP since the permit process will likely be an issue before the BEP."

[NB Stearns' putting the words transparency and inoculating in quotations indicates that they all knew this was a formal gesture, not a substantive effort toward open public process.]

Cashman urged GP to "defer to Gallagher's judgment" [Stearns] because "the Governor has stuck his neck 20 miles out" [Cashman] "for GP and this landfill and two weeks delay in the permit is not unreasonable."

Further, it was noted that Gallagher would release her "reasons for denying an adjudicatory public hearing" the following day [Jan. 27]. [NB Exactly why was this decision delayed until this time -- that is, when after Dec. 9 could she have announced this? -- and was it appropriate for her to be part of this spin-crafting meeting as a preliminary to her decisions on the hearings?]

Regarding the closing, point 2 states that \$25 million are needed for the boiler, with "... the original plan was \$12.5M by 12/31/03 and \$12.5M upon permit issuance (2/13/04). That schedule was slowed by GP's uncertainty around the holidays."

[NB 2004.09.01 PCS: still unknown exactly what was going on at that time, that caused such angst among all parties, especially Casella]

Point 4 states: "An additional \$1M is set aside pending future job expansion discussions." [NB This is the \$1M, first installment of \$6M, offered by Casella's Bohlig on 2004.01.12. This money was not in the original Proposal submitted July 9, but was put into an escrow account according to the 2004.02.05 operating service agreement and purchase and sale agreement.]

Four recommendations are given by Stearns, all of which "err entirely on the side of GP's interests." [NB Again, GP is the driver of this process.] The first three points relate to Casella's coming forward with the cash, and accepting risk of successful appeal, since "It's a good permit, it will withstand appeal, the permit and appeal are Casella issues."

The fourth recommendation, in full: "All parties should focus on a full-court strategy before the BEP. Risk of appeal and date of issuance (risk of elevation to BEP) are entirely dependent upon 'best foot forward' to BEP."

Managing risk / reducing risk is more important than assigning risk."

2004.01.28: NEW TRUCK ROUTES ANNOUNCED

Landry informs Stearns that 5 routes will be announced 2004.01.29 in the BDN. "The alternate routes will hit the paper tomorrow. Are you ready for the backlash from the other communities who weren't originally involved?"

2004.01.29: PROBLEM WITH CLOSING, TITLE

Chris Howard [attorney for GP] sends the following message to Bostic, Allen, Feck, Curtis, Doyle and Delahanty, which got to me because copied FYI by Bostic to Stearns:

"Just received a call from the Casella crew. They say the closing is supposed to be an actual closing where GP conveys title outright, no escrow closing. That means you give up title to the landfill for (a) \$12.5 million in cash and (b) a letter of credit for \$13.5 million. The letter of credit pays when appeal periods expire. GP takes the risk that if the permit does not go effective it must pay back the \$12.5 million and then go get its title back from the State and terminate the Casella [sic] operating agreement.

"I would prefer to structure this as a 2-step closing where \$12.5 million is paid in cash at First Close and docs are delivered into escrow together with a \$13.5 million letter of credit. Once the permit issues the escrow breaks (Second Close) and the LC is drawn and title passes. Bottom line -- I would prefer to see GP hold its title until it gets fully paid.

"Bohlig says that is not the deal. Specifically discussed with the Governor and we must have an actual closing. Bohlig says GP is comfortable with the risk the permit does not issue and it has to get its title back from the State.

"That so?"

2004.01.31: BDN EDITORIAL

On 2004.01.30, Umphrey informs Stearns and Cashman that Susan Young will write an editorial for the BDN: "Susan Young of the BDN is writing an editorial for tomorrow on the old town [sic] land fill [sic]. She is a former environmental reporter to [sic] she has some informed opinion on the whole deal. Can you call her at 990-8203. She has talked with Dawn."

[This was probably the editorial titled "Landfill Logic" from BDN 2004.02.03.]

2004.02.02: CONCERNS ABOUT MEETING CLOSING DATE

Bohlig and Casella lawyers express concerns that if other parties don't get actively involved, the work that needs to be done to close on Thursday (2004.02.05, the date that closing and operating services agreement were both signed) would not be completed in time.

2004.02.03: BDN EDITORIAL

This editorial, titled "Landfill Logic," had several points wrong, but had good intentions in suggesting that "...the state could do more to quell disapproval from area residents about this project." It mentioned the need to

preserve jobs, and also "the state's need for a new landfill," something that was taken on faith at that time, but that is not true. The traffic issues are mentioned, but the editorial suggests that "public discussion of the truck problems should be tempered with realism" in that changing I-95 weights is not imminent, and other types of heavy trucks also use state roads. The editorial is a bit misguided in thinking that the forums for listening as conducted by Gallagher might be better than formal hearings. The conclusion is, "Listening to and acting on citizen concerns could turn this good project into a better, if not a universally accepted, one."

2004.02.03: CONSTITUENT SERVICES CONCERNS

Colwell and Mullen of Governor's office of constituent services report that "paper mail and Email are WAY up and ... most of these people are looking for answers regarding the Governor's position and are not satisfied by us referring to DEP or SPO."

Reply via Stearns: Governor has given Gallagher independence in this matter, and "has also been clear that landfill presents win-win opportunities for job retention at the GP mill, and needed landfill capacity for in-state waste.... If the landfill permit is delayed or rejected, it ... will force the state to consider much more expensive options for landfill capacity."

2004.02.03: MRC SUPPORTS AMENDMENT LICENSE

MRC sent a letter to Darling supporting the amendment license application. In this letter there is a quantification of the benefits to MRC of the deal: "The expanded use of the West Old Town Landfill also holds great economic importance to the MRC communities. MRC conservatively estimates that the availability of this facility for residuals generated at PERC will save the member communities more than \$1.0 million per year, or \$14.0 million over the remaining life of the Charter Municipality waste disposal agreements, as compared to alternative disposal arrangements. [new par.] Landfill airspace utilization and its long term availability are a legitimate public concern. Fortunately, waste-to-energy facilities such as PERC greatly reduce the need for landfilling of waste due to volume reduction in the 60 to 70 percent range. PERC, in its first fifteen years of operation, has avoided the need for 3.4 million cubic yards of landfill airspace in Maine."

2004.02.03: STORMANN, STEARNS ON OPPONENTS

Alan Stormann, Old Town City Council Chair, wrote to Baldacci related to the Elks Club meeting. Accused the "environmentalists" [his quotes] of being there "to be disruptive to the folks trying to provide detailed factual information." "I spoke with Jack Cashman later in the week and asked the question as to why the DEP staff knew this folks [sic] by their first name. He advised that these folks travel all over the state to debate numerous issues." Some of the same people showed up at Old Town council, and he allowed those from Old Town to speak, who expressed concerns about leakage. "I expressed to these citizens that I have trust in our DEP and State of Maine professionals that the safety of our citizens are [sic] our primary concern and I am also convinced that the DEP wouldn't issued [sic] a permit to an 'unsafe' landful [sic]."

As was expressed by the constituent services staff, Stormann would like to "see some type of press release updating the process and how the process is going ..."

It was at this point that various drafts of the Governor's statement were crafted, "the landfill purchase and expansion..." An e-mail had also come from Aimee Dolloff of the Bangor Daily News requesting such a statement.

2004.02.04: NRC SPECIAL MEETING ON LANDFILL

This was the one-hour update given by Gallagher and Clark to the Natural Resources Committee on the status of the landfill process. It was at this meeting that Joanne Twomey and other Committee members claimed that David Lennett had promised a public hearing if the Resolve were to go into effect. They were basically told that since he no longer worked in that position (it sounded as if he no longer worked for the DEP) that the promise could not hold, and in any case he was in no position to make such a promise. This also was the meeting at which John Martin declared "over my dead body" would there ever be a public hearing on this issue.

2004.02.05: OSA AND P & S SIGNED

See also previous version of P & S, 2003.11.20, submitted as required for the application to be accepted as complete for processing.

2004.02.06: GOVERNOR'S STATEMENT

The Governor's statement, including the phrase "landfill purchase and expansion" twice, was issued at 12:18 p.m. via Joy Leach (public relations office?) An hour earlier she had asked two more questions of Stearns, "Did \$12.5 million get transferred from Casella (was this the firm) to the State to GP?" and "Is it true that the Federal EPA has no jurisdiction in this?" She said "Lee [Umphrey] thinks this will be bubbling up today..." and perhaps answers to these questions should be in the statement. These points were not in the statement.

2004.02.09: WTP AT ORONO COUNCIL

This was reported in the Penobscot Times 2004.02.12. Concerns were raised by Schroeder and D.Gibbs related to trucking and the volume and kinds of waste. Discussion from Council included statement by Gordon, "'We have to trust the state to do the right thing,' but added that the way the state was going about its business was creating problems." Most of the reported Council discussion involved the issue of increasing truck weight limits on I-95.

2004.02.12: CASELLA MEETS ABUTTERS

This is discussed in an e-mail from MacDonald to Stearns, 2/18, answering Stearns queries related to "impact of property valuations from abutters and proximity" and "Alton selectmen want more cash."

2004.02.12: FREEMAN DRAFTS OP-ED

Martha Freeman, head of SPO, circulated an op-ed she wrote: "Larry Benoit asked me to author an op ed for this weekend's, [sic] to tout the solid waste benefits of the Old Town landfill." [NB Larry Benoit represents Casella via BSSN] In another e-mail, she states "So Lee [Umphrey] says he can get it into the Sat. BDN."

The op-ed was basically the usual boilerplate on why this is such a great deal. One point that Freeman makes that puts a new slant on the logic of state

ownership of new landfills in relation to out of state waste policy. She wrote: "In 1989, the State adopted a hierarchy for waste management: reduce, reuse, recycle, compost, incinerate for energy recovery and volume reduction, and landfill. Landfills are a necessary component of municipal solid waste management. The policy of the State has been to provide for the disposal of wastes generated within the State. [new par.] To accomplish that goal, the State Legislature simultaneously banned the development of new commercial disposal facilities (incinerators and landfills) and directed the State to provide the disposal capacity that would be needed. The State Planning Office is to plan for the development of such disposal facilities and would own the property and provide for the facility's operation."

[NB Rather than framing the policy in terms of excluding out of state waste, which is constantly being objected to on grounds of interstate commerce, this framing of the policy places responsibility onto the State for providing for State needs, given the limited resources in the state for landfill capacity. This is a more legitimate framing of the policy goal, though in effect these remain identical in implementation. Given the huge window for out of state demolition debris at this landfill, imported under the rubric of being a "raw material" for the production of biomass fuel, we can still legitimately ask whether the State's policy of creating and preserving landfill capacity for the disposal of Maine-generated waste is being fulfilled through this implementation -- especially given the huge size and (supposedly) ideal geology of the site.]

[See also discussion of interstate waste flow control in the Ackerman / Townsend report on competition in the waste management industry.]

[NB Additionally, this op-ed mentions cooperation with the MRC in recycling initiatives, a cooperative arrangement that has not been reached with MRC. See Louder memo of 2004.02.12]

2004.02.12: MAINEWATCH

In an e-mail of Feb. 9, Gallagher asks MacDonald if he would participate in Mainewatch rather than she, since "I am to be a decisionmaker." Other participants would be Joanne Twomey, Laura Sanborn and "Don Mahar" [sic].

2004.02.12: MRC IN OSA

After being alerted by George MacDonald that the MRC is included in Casella's final Operating Service Agreement, Louder wrote a memo to the Board titled: "MRC Reference Contained in Operating Services Agreement between the State and Casella for operation of the West Old Town Landfill." This memo was also copied to one of their attorneys, Dan McKay at Eaton Peabody, and to their financial consultant George Aronson. The memo includes an attached excerpt from the OSA, with the following comment:

"Where the provisions of 2.13 (a) through (i) are only detailed as goals, that Casella would use its best efforts to achieve, they shouldn't present a high concern requiring immediate action. Nevertheless, the provisions have troubling aspects. First, we weren't consulted. Second, subsection [sic] (b) references a 'Public / Private Partnership agreement' that doesn't exist. Third, several subsections suggest that Casella has an obligation to work with our towns on a series of waste reduction and recycling initiatives. Should those words be used as a vehicle by Casella to initiate discussions with local officials on these topics, our members may not be particularly impressed with

us. [new par.] Enclosed is the resolve the MRC Board adopted which bears the closest relationship to all of this. MRC simply resolved (see Sec. 3. on second page) to consider specific proposals from Casella on initiatives to support the waste management hierarchy -- which makes complete sense. MRC should maintain an interest in hearing from anyone with a proposal to improve the WSW [sic] is managed. The trouble is, the words in the agreement could easily be construed differently. [new par.] I am interested in your thoughts on this item. I have asked Dan and George for their impressions as well."

[NB Of particular interest here is the "'Public / Private Partnership agreement' that doesn't exist." This was prominently featured as an appendix in the Proposal, which when read with Lounder's 2003.07.08 letter to MacDonald supporting Casella's Proposal, could be seen as an attempt by Casella to gain stature on the basis of discussions rather than firm agreements.]

2004.02.12: ORONO LETTER ON TRUCKS

In this letter Orono argues for reduction of truck weights until the Interstate limits can be changed, citing uneven distribution of costs related to the landfill. Also addresses perception of expedited process with little information coming directly to the affected towns.

[NB This is in line with Brewer's position. See also notes of 2003.12.16 meeting, at which Casella apparently said that their bids are based on 100K trucks, and if they had to bid with smaller trucks they would lose the bids.]

2004.02.13: MEETING BETWEEN PENOBSCOTS AND DEP

At this meeting the Penobscots got a 30 day extension of comments period and also Paula Clark mentioned the months of discussion that happened before the application was submitted.

The meeting dropped out of the blue onto the State via a message from Lynn Boutilier to Clark, Davis, MacDonald and Stearns, asking if they could attend a meeting with Donna Loring and John Banks, changed later to Barry Dana and Banks.

2004.02.16: LETTER FROM ROSALITA FEERO

This is the detailed letter in which the Feeros state their longstanding family connection to this property, and the history of its evolution into being a landfill.

2004.02.17: BDN, "TRASH INTO TREASURE"

This article, "Deal likely to turn trash into treasure," explained the difficulties in estimating the entire financial package, though "... Casella's revenues in west Old Town could total in the billions of dollars by the end of the 30-year contract."

2004.02.17: DOT, CASELLA, GP AT ORONO WORKSHOP ON TRUCKS AND DUMP

This meeting was reported in the Penobscot Times 2004.02.26.

I obtained the tapes from the Town and summarized the discussion; given summaries to Geoff Gordon and Terri Hutchinson 2004.09.17 (and perhaps earlier also).

In earlier e-mail of 2004.02.11 Landry said Orono "would like to negotiate like Brewer did. I told the commissioner that there wasn't anything to negotiate but we could go and talk to them. Basic talking points are trucks have a right to travel on Maine State and State aid highways, 5 alternatives are mentioned in my report but there are many others that aren't mentioned."

2004.02.18: SO GOES THE NATION

An e-mail from Elaine Scott, marketing manager at DECD, to Sosnaud, Cashman, the Thaxter Trafton reported on the So Goes the Nation show of this date and perhaps also to continue the next day. "They were telling people to call DEP today and to complain about the fact that there will be no hearings on the subject ... [ellipses in original] it was all negative and not very factual." This was forwarded from Sosnaud to Stearns.

2004.02.23: MRC BOARD, CASELLA

Meagher and Ed Laverty, representing Casella, and Cashman, representing the State by phone, spoke at the beginning of the MRC Board meeting, briefing them on the meeting to be held the next day and Bangor [NB What WTP have termed the "wine and cheese party."] An earlier message from Lounder explained Laverty's presence, "... who has been hired by Casella as part of the public relations team. Mr. Laverty is a professor in the MPA program at UMaine. He served at least one term on the Board of Environmental Protection, which may explain his connection to this topic."

At the Board meeting, "J. Cashman further told the Board the misinformation / misrepresentations out there that warrant a response from MRC. The facts need to be distributed to the public. [NB We fully concur.] MRC is in a position to get the real truth out there and clarify misconceptions in order to alleviate fears."

[NB Given the manner in which Casella included MRC both in its Proposal and in the OSA, they certainly have a good record at minimizing misinformation and misrepresentation.]

Cashman and Meagher go on for several paragraphs, noting the great lengths DEP has gone to properly monitor the site, the prolonged review, and that "GP is anxious because DECD is requiring GP to reinvest the profit from the sale into the Town." [NB Whose error is this -- is profit being required to be invested in the "Town"?] Cashman asked Board members to write op-ed pieces "or paid advertising in the newspaper to tell the facts." "D Meagher asked MRC to address the accusations of out of state wastes and the economic impact to communities."

On 2004.02.24 Aronson sent a lengthy letter with spreadsheet to Downeast Board member Yeaton outlining costs if the deal does not go through. Overall, tipping fees will rise from present \$3.83 to \$7.66 with many caveats. Overall with the new landfill savings would be in range of \$1M to \$2M per year, long term. See also 2004.02.03 letter to Darling.

2004.02.24: RAMADA "WINE AND CHEESE PARTY"

Otherwise known as a "dog and pony show," it was complete chaos under the name of a "public input session." First, it was understood that there would be a common session for questions and answers -- perhaps with parallel "rooms" devoted to various agencies and issues. Instead there was one large room, no

program, and random clustering for debate and questioning.

[NB This was a second attempt for the State to do what they were unsuccessful in accomplishing on Jan. 21, presentation of their case in the most favorable manner possible, this time through many glossy poster-sized maps and drawings. To my mind [PCS] it did nothing but cause more questions to be raised than answered, polarizing the parties and leading to more interest in the March meetings.]

2004.03.02: MACDONALD ON FUNDING LOCAL EFFORTS

Responding to questions advanced from Dawn Gallagher via Stearns re: "... the availability of resources for the towns and/or the local advisory group to retain independent expertise to monitor landfill activities," MacDonald replied that the Resolve provided such funds in the form of the non-refundable deposit, of which only one was received totaling \$10,000. "We did expect more than one bid proposal. Expenses to date for SPO for outside counsel exceed \$46 K, so the \$10K that was submitted by Casella (the only proposal received) has already been used by SPO, as well as funds from the Governor's Office (\$20K) and balance (ongoing costs...) from SPO. [new par.] If we wanted to discuss a payment to Old Town and Alton to establish the citizen advisory committee, we can, but what would be the source of funds? Where the Resolve says the funds would be used to 'establish a joint advisory committee', it kind of sounds like it could be just a 'one-time- payment. If the payment were to be on-going, however, that appears to go beyond the term 'establish'. And, as stated above, current statute (38 MRSA Sec. 2171) does not provide for direct funding of a citizen advisory committee. We also need to keep in mind that the Resolve states that the acquisition and operation of the landfill shall be '...under such terms and conditions as are revenue-neutral to the State...'. "[ellipses in original]

2004.03.04-12: BORALEX NEGOTIATIONS

There is a complex set of e-mails and letters centering on the establishment of a "RPS" from the State. On March 5 Kurt Adams writes, "... if they get the RPS they are not going to do the deal with GP." An RPS is, apparently, a "renewable portfolio standard," which Boralex has already attained with Massachusetts and Connecticut. It seems this would allow sales of electricity from the existing biomass plants in Maine (Boralex owned 5 at the time) at higher rates, allowing them to be profitable, which at that time they were not. Apparently they were putting the GP sale at risk, and the State's position, written by Cashman on 2004.03.05, was "... frankly they need to know that to the extent that they screw up the GP deal they jeopardize any relationship with the State." Apparently, the relationship they were seeking was an entry into Maine's wind power industry under "the Governor's efforts to develop wind power, and have a relationship with officials at GE Wind that might enable them to assist us in efforts to get GE to locate their East Coast wind turbine manufacturing operation in Maine."

A note from Rick Douglas 2004.03.09 at GP expressed some concern, asking the State to be sure to push for agreement for purchase of the biomass at terms discussed "last Sept...(although not formally signed, etc)" [ellipses in original]; they are ready to pour concrete, "our air permitting assumes this boiler," and delays would reduce the gain from availability during winter months.

There was apparently a meeting 2004.03.12 between Boralex and the Governor, and all issues seemed to be straightened out, according to a letter of 2004.03.15 from Boralex. Mentioned in the letter are suggestions for "improvement in the public policy climate for biomass generators" in Maine. These include an RPS for existing plants, "improved transmission terms for renewable generators and the federal biomass production tax credit. Efforts to improve Maine's overall business climate, such as eliminating taxation of new business equipments, [sic] are also important to Boralex and other generators."

[NB Again, an operator seems to be withholding an essential piece of a deal, in order to potentially extract concessions of some sort -- I'm not clear what these are, beyond everyday expertise -- from the State.]

2004.03.09: PUBLIC MEETING ON BIOMASS BOILER

2004.03.12: AUGUSTA PRESS CONFERENCE, TWOMEY BILL, HEARING

2004.03.12: CATHCART SUPPORTS 'EXPANSION'

In an e-mail to Jonathan Daniels at EMDC, Cathcart writes:

"Thanks for your reply. [Initial messages not included] I agree it is important for the State to go ahead with the landfill expansion, as promised last year by the Governor and the Legislature. I think Gov. Baldacci and Commissioner Gallagher have come up with an acceptable compromise." [NB This is in reference to the decision to hold the March public meetings as a way to derail Joanne Twomey's bill that would require full public hearings.]

2004.03.12: ORONO LETTER ON TRUCKS

This letter from Conlow to Gallagher repeats Orono's suggestion that until the rules for the Interstate are changed, trucks operating to the dump should be restricted to 80,000 lbs.

2004.03.15: WTP MEETING WITH GALLAGHER

This was preparatory to the 2004.03.29-30 meetings. Intervenor status, schedule, order of questions, speaking under oath, place of written testimony, location were discussed. WtP was told that conditions can be placed on the license and that perhaps best would be to look for areas in which conditions might fruitfully be placed. DEP said that they could not mandate the best technologies. [NB This related to some of the suggestions forwarded by Kim Lommler, which apparently were the cause for at least one meeting held between DEP and Casella after the March meetings.] Of particular concern is the issue of timeline within which questions that were posed would be answered by representatives of the project.

2004.03.29-30: DEP PUBLIC MEETING "NOT HEARING"

[NB At this meeting, when PCS asked George MacDonald if siting requirements had been trumped by the Resolve, he said "possibly." Also, questions about trucks not answered, and question about who wrote Resolve not answered.]

2004.03.30: PENOBSCOTS SUBMIT COMMENTS ON LICENSE AMENDMENT

2004.03.30: PUBLIC WRITTEN COMMENTS SUBMITTED TO DEP

File contains comments submitted beginning 2003.12.17.

[NB Of particular interest here is that no written comments are in this file until the period for request of public hearing had already lapsed.]

[It was in this group that the file I submitted at the March 30 session is archived. This has been admitted into the record.]

2004.03.30: TRUCK TURNS OVER IN HAMPDEN

This was reported, with photo, in BDN 2004.03.31 issue. The truck was owned by Babiarz Trucking and driven by Michael Natola of Lynn, Mass., and originated "in Holliston, Mass., early on Tuesday." The driver was quoted as saying, "The problem is these trucks don't belong on these little roads. [...] They need to be up on the interstate between Augusta and Bangor. This little road is not designed to handle these trucks." The accident was reported at 6:50 a.m. Don Meaheer announced the accident at the beginning of the second day of the March 29-30 public meeting at the Elks Club.

2004.04.01: ALTON OLD TOWN LANDFILL COMMITTEE

2004.04.02-08: PHOENIX ARTICLE

Alex Irvine article in the Portland Phoenix, "Dumping Ground," see online at: http://www.portlandphoenix.com/features/top/ts_multi/documents/03719392.asp

2004.04.05: DISCUSSION WITH GALLAGHER

On 2004.04.05, Elmer Lommler and Paul Schroeder were in Augusta reviewing and copying documents provided by the Governor's office. A message sent soon after this event read, in part:

"Fortunately their person who does copies, Jamie, was out sick, so they offered to let us do it ourselves (without discount from regular 25c fee). So we were in the copy room and Dawn Gallagher came in. I cautioned her and perhaps myself that since the record was closed perhaps we should not be talking to her, but she stayed around for about 20 minutes. Among the other topics we covered (including that she was meeting with Casella the next morning to discuss technology issues) I stated that the most important fact to come out of the 2 days of hearings was that an unlimited amount of construction and demolition debris could come into the state from out of state, and just because it would be sorted by Casella in Lewiston or another site, it suddenly became in-state and could go to the landfill. I also stated that this amount would be a minimum of 300,000 tons per year, with no upper limit in place. I said that at a minimum coming out of all this that the state's definition of "out of state" needs to be revisited. She said, paraphrasing: Well, the way this is being applied in this case may itself be against the intent of the original law.

"I was somewhat shocked to hear this and don't think I [pcs] even said a word of reply - possibly I might have said "exactly" but Elmer would have to verify that."

My notes from that date state: "Points made to Dawn G.: -- volume of out of state waste (she: intent of original law --?); -- shrinkage of resources for gov't to do their job; -- closing of the record / vs. our conversation / vs. PUC; -- disposal of old computers -- mission of DEP / vs. no one else to do it; -- concerns of MRC then / now; -- theory on mill sludge [NB this was aimed at withdrawal of GP request to burn mill sludge in the biomass boiler, with the theoretical assumption that they no longer needed to burn when below-market disposal capacity was available to them]; -- my typed testimony; -- energy / emissions audit boiler vs. Bangor Hydro, corrected her on Hydro's 'coal fired generators.'"

2004.04.08: CLINTON DOES NOT SUPPORT LICENSE

Throughout most of March the MRC engaged in a concerted public relations effort to support the amendment license application. Among those efforts was a check-off form sent to member communities that they supported the MRC and the license. The Town of Clinton didn't take a position, but sent a message via the town manager Keith Trefethen, which reads in part, "The Board of Selectmen reviewed the materials sent to them but took no position or action on the subject other than to say that the Town of Old Town and its taxpayers should be heard and a resolution with them involved should be conducted. [new par.] The Clinton Board takes this position because of its own local issue related to the Land Spreading of Residual Lime Products from State Approved Facilities. This issue has created a lot of discussing and complaint from local taxpayers and the Board allowed the residents to discuss this issue and ended up resolving it within the community. They relate this issue to what is happening in Old Town even though one could argue they are not the same."

2004.04.09: DEP ISSUES ORDER

2004.04.09: DEP ISSUES RESPONSE TO COMMENTS SUMMARY

The copy I have, dated April 9, does have SPO responses. The BEP packet for July 15 meeting has the original version, also dated April 9, in which the SPO comments are not included. Question: What is the correct date for the final document -- I believe it was sometime in May and should be so dated. [NB The copy distributed with the Record indicates that the SPO comments were posted 2004.05.04.]

2004.04.14: ALTON OLD TOWN LANDFILL COMMITTEE

2004.04.16: HIGGINS LETTER IN PHOENIX

In the April 16-22 issue of the Phoenix, Higgins wrote:

THAT'S GARBAGE

I read with professional interest your article on the Old Town landfill (see "Dumping ground," April 2, by Alex Irvine). Our firm was one who attended the pre-bid meetings, sorted through the documents and chose not to respond to the State's RFP. The financial requirements were clearly arranged to bail out Georgia-Pacific; something we felt shouldn't fall on the shoulders of a Maine company.

The only way the landfill RFP made sense financially was to anticipate

receiving a DEP permit for a huge expansion of the landfill, thus increasing the potential revenue. The DEP and State Planning Office told us that issuing that permit was not guaranteed. We weren't willing to take the huge risk of paying \$25 million for a "possible" expansion permit. Presumably, Casella, as the only bidder, had information that mitigated that risk.

As an aside to your article, for four years now, Regional Waste Systems has been trying to permit a one-million-cubic-yard landfill expansion. RWS' permit still has not been issued. The Casella/Old Town expansion permit, which could not (or should not) have been submitted any earlier than last fall, was granted last Friday. Six months start to finish. That permit is for a seven-million-cubic-yard-expansion.

Eric Higgins

LR Higgins, Inc.

2004.05.04: SPO RESPONSE TO COMMENTS

2004.05.10: APPEALS SUBMITTED TO BEP

In the appeal I submitted by fax May 10 I said that further documents would follow. I added in-text references to these and submitted the new packet later that week. All were accepted into the record.

2004.05.17: ALTON VOTES AGAINST DUMP

A special town meeting in Alton resulted in an 83-5 vote against the dump, with 2 abstentions. This was reported in the Penobscot Times 2004.05.20.

2004.07.13: MRC ON TRUCK WEIGHTS

In a message from Louder to his Board, the following paragraph:

"First, two appeals of earlier rulings of the Presiding Officer to: a) deny SPO / Casella's request that the appellants appeals be dismissed; and (B) [sic] a denial of appellant Schroder's [sic] request to supplement the record with Pine Tree Landfill's Special Waste Activity Report for April of 2004. Its [sic] sure to make news. The report shows trucks incoming to Pine Tree, Hampden from PERC, with gross vehicle weights exceeding 100,000 lbs. On being made aware of this circumstance, Peter is aggressively investigating a proper role for PERC to play to in [sic] avoiding overweight trucks containing PERC residues. However, we need to careful [sic] not to improperly assume authority."

2004.07.15: BEP MEETING, HEARING REQUESTS FOR HEARINGS

Audio tapes of this meeting were obtained and a summary paraphrase transcript created.

2004.07.16-22: PHOENIX, "DON'T EXPECT PROTECTION"

A number of "citizen and environmental groups" are suggest that "... since Governor Baldacci took office and appointed Gallagher in early 2003, the DEP has become more business-friendly, less transparent in its decision-making, and much more beholden to political whim; and quite a bit of anecdotal

evidence exists to give their concerns credence."

2004.07.27-29: MRC / PERC POLICY ON OVERWEIGHT TRUCKS

This is the approximate time, according to Louder statement at Orono workshop on MRC, that a meeting of the "policy committee" of PERC owners formally resolved to ensure that trucks leaving PERC were not overloaded. [NB ** verify date]

2004.07.28: CASELLA PRESENTS AT MRC

Reported in the BDN 2004.07.29 and Penobscot Times 2004.08.05, Sam Zaitlin [former owner of a Scarborough recycling company bought by KTI, a Casella affiliate, and longtime Maine political figure] presented waste reduction and recycling efforts that will be in place with the West Old Town Landfill. Among other initiatives, according to the BDN: "Heat generated from the landfill would be pumped into a greenhouse and likely used to grow hothouse tomatoes. A similar system is being used in New York, where the landfill has a contract with a local supermarket chain."

[NB At the BEP meeting 2004.07.15, serious concerns were raised about the reduction and recycling elements in the Proposal and operating agreements, since no measurable performance standards accompanied them. In rules distributed before the 2004.10.21 hearing of appeals, the hearing officers ruled that reduction and recycling efforts could not be presented as part of the proponents' arguments in favor of the permit.]

2004.08.12: HUDSON VOTES AGAINST DUMP

At a special town meeting, Hudson voted against the landfill 18-0. This was reported in the Penobscot Times 2004.08.19.

2004.08.23: LOUNDER AT ORONO

This was reported in the BDN 2004.08.24. It was at this meeting that Louder reported that at a policy committee meeting at PERC in late July, a decision was made to more closely monitor weights of trucks leaving PERC. He also said at this meeting that tipping fees at PERC are lower for out of state shipments than they are for MRC communities.

The meeting was of the Orono Operations Sub-Committee of the Town Council. My notes of the meeting include the fact that on June 8, 2004, the May report, gross truck weights were included in the monthly Pine Tree delivery reports while the July report contained only delivery weights.

My notes do not include the date mentioned for policy meeting at PERC at which they decided to more closely monitor weights of trucks leaving the yard.

2004.08.25: LEONARD OP-ED

Titled "Old Town shouldn't be only landfill site" this op-ed by Ralph Leonard stated that the West Old Town facility was rejected as a site for PERC ash at the same time as Township 30, for perhaps better reasons including the high growth area it was sited in. He stressed that "... other sources of waste need to be screened very carefully to be certain that they are solving regional needs and are not going to use up valuable capacity and therefore compromise the Old Town landfill's ability to service the G-P needs and our regional ash

disposal needs for PERC." In addition, issues of fair compensation to Old Town are discussed.

2004.09.20: C. GIBBS SPEAKS AT BREWER

Charlie Gibbs spoke at the Brewer Council about the trash truck weights. This was reported in the Penobscot Times 2004.09.23 issue.

2004.09.22: BDN EDIT AND SNOWE LETTER ON TRUCKS

See also article 2004.09.17, "I-395 weight limit forces trucks into city."

[NB Our Initial reaction: discouragement at their position, lack of recognition of history of overweight trucks on I-395 as well as lack of interest in overweight trash trucks coming from out of state. However, we had predicted that the truck weight issue would be in "everyone's" interest to be used as ammunition for advancing the I-395 / I-95 weight exemption legislation. Regarding the study: exactly what is this a "pilot study" of, and how can they claim to be conducting a study when there is no baseline of legal transport to work from? All it might show is that if the trucks run at legal limits they are safer, which would make sense. Particularly galling is the blaming attitude toward those who would "want unsafe roads." The point is not that we want unsafe traffic; we want truckers to abide by the law. There has been no reporting of WtP's study of the history of overweight trucks. Where is their outrage at the fact that enormously overweight trucks have been using 395, and making out like bandits for years, and we have the facts?]

2004.09.23: TRUCKER MEETING IN BREWER

This meeting, which was several meetings in both morning and afternoon, was reported in BDN 2004.09.24. "Big rigs duty-bound to stay on city streets."

2004.10.05: CASELLA TOUR OF CLINTON COUNTY

See stories in BDN, 2004.10.06-07. This tour was announced in a BDN article 2004.09.09, "Group invited to tour N.Y. landfill."

2004.10.21: BEP HEARS APPEALS

DRAFT OF 2004.10.20 -- PCS.