STATE OF MAINE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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IN RE: STATE OF MAINE BUREAU OF GENERAL SERVICES AND NEWSME LANDFILL OPERATIONS, LLC JUNIPER RIDGE LANDFILL AMENDMENT APPLICATION TO ACCEPT MUNICIPAL SOLID WASTE FROM MAINE SOURCES Old Town, PENOBSCOT COUNTY, MAINE #S-020700-WD-N-A

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PUBLIC HEARING

HEARING OFFICER: HEATHER PARENT

This hearing was held pursuant to Notice at the Governor Hill Mansion, 136 State Street, Augusta, Maine, on **April 10, 2013**, beginning at **9:00 a.m.**

(This hearing was held before Heather Parent, Hearing Officer, at the Governor Hill Mansion, 136 State Street, Augusta, Maine, on April 10, 2013, beginning at 9:00 a.m.)

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HEARING OFFICER: Good morning. I now call to order this hearing of the Department of Environmental Protection on the application from the State of Maine Bureau of General Services prepared and submitted by its operator and agent NEWSME Landfill Operations, LLC, to Amend Department Order S-20700-WC-N-A in order to accept municipal solid waste from sources within the state of Maine at the Juniper Ridge Landfill as a result of the closure of the MERC energy facility in Biddeford. My name is Heather Parent. I am the policy director of the Department of Environmental Protection and I will be the presiding officer at this hearing. Other persons present with me today are Nancy Macirowski, Assistant Attorney General and counsel to the Department; Melanie Loyzim, the director of the Bureau of Remediation and Waste Management; Paula Clark, the Director of the Division of Solid Waste Management; and DEP staff Cyndi Darling and Michael Parker. Our court reporter is Joanne Alley of Alley & Morrisette.

This is day two of the hearing. Today we will begin with the summary testimony of PERC. We plan to break at approximately 12:00 for lunch and we'll make a determination as to how far we get before we break for lunch as we move into the morning session.

If there are any members of the public here today that would like to ask questions of the witnesses, you must submit your questions to me in writing. Paper can be made available to you and you would present those pieces of paper to me and I will review those questions and make a determination as to their relevance and that they are not repetitive and I may ask those questions as time permits.

At this time I would ask everybody who has cellular telephones and other electronic devices to make sure that the sound is off from those devices.

At this time I ask that all persons testifying who have not already been sworn in stand and raise your right hand. Do you affirm that the testimony you are about to give is the whole truth and nothing but the truth?

(Witnesses respond in the affirmative.)

HEARING OFFICER: Thank you. Are there any questions before we begin? All right, so we will begin with the summary testimony by PERC. You will

have 15 minutes to present your summary testimony.

MR. MAHONEY: Good morning, Madam Hearing Officer, Members of the Panel. Welcome back. In some ways I feel like I never left. My name is Mike Mahoney. I'm an attorney with Federle and Mahoney here in Augusta and we are here today on behalf of Penobscot Energy Recovery Company, better known as PERC. With me this morning is Kevin Nordby from PERC, and per the Hearing Officer's instructions, Mr. Nordby will be providing a summary of his pre-filed testimony and certainly will be available for cross examination. So with that, I introduce Mr. Nordby. Thank you.

MR. NORDBY: Good morning. My name is Kevin Nordby and I think, first of all, I'd like to apologize for the snow that's headed your way from snowy Minnesota when I left it last night. As I said, my name is Kevin Nordby. I'm president of PERC Holdings, one of the private partners in the PERC project. I've been involved with the project since the year 2000 -- excuse me -- I've got a background in the solid waste industry for approximately 30 years. I've operated companies on several levels, recycling facilities, waste-to-energy, medical waste incineration, solid waste collection, et cetera.

PERC is a combination of two private partners and the MRC which includes 187 Maine communities. As I said, we've been involved with that since 2000. PERC, as you hopefully know, is a waste-to-energy facility in Orrington, Maine. We produce approximately 25 megawatts of renewable power and process approximately 300,000 tons of solid waste annually. We've worked with the MRC and the partners to try to provide the most environmentally responsible waste disposal services to our members. We believe our unique ownership structure of PERC including a substantial financial investment by the towns ensures a high degree of cooperation toward our shared objectives. Maintaining stable costs and reliable service is dependent on both the application, state and local waste management policies and ongoing reasonably priced disposal of waste-to-energy facility residual -- residue rather.

To get to the agreement, I'd like to clarify in my testimony one part, Section 5. We entered an agreement with Casella Waste Systems as part of a consolidation of existing agreements. Part of that agreement was to provide for the delivery of 30,000 tons of in-state waste. In that agreement -- it's a larger picture agreement. In that agreement, Casella

had committed to up to 100,000 tons of municipal solid waste per year to PERC from various sources, a substantial portion which would originate from in-state sources. Specifically, of the 100,000 tons, at least 30,000 will be in-state municipal solid waste that was formerly going to the MERC facility in Biddeford, which closed in December 2012.

We believe the infusion of this new municipal solid waste to PERC is beneficial in multiple respects. First, it provides PERC with a waste stream sufficient to allow us to operate at or near capacity on a year-round basis; second, the 30,000 tons in the in-state municipal solid waste will allow PERC to displace a portion of the out-of-state municipal waste that we are receiving; finally, the 30,000 tons of in-state municipal solid waste will have a large financial impact on the operations of PERC.

As I said, there's three partners. The main -- the main reason for that was by displacing the lower-priced out-of-state waste, it helps -- it helps the project perform at a higher level. More broadly, the Casella/PERC agreement will reduce the amount of solid waste -- municipal solid waste that would be disposed of at Juniper Ridge Landfill by at least the

stated 30,000 tons per year should the pending application be approved. This reduction will also result in decreased truck traffic in and around the Juniper Ridge Landfill. In addition, the Casella/PERC agreement is consistent with Maine's solid waste hierarchy which, among other things, favors recycling and waste incineration over landfilling.

First, the agreement redirects at least 30,000 tons of municipal solid waste to PERC that would have otherwise been landfilled at Juniper Ridge, again, assuming the pending application is approved; second, the agreement contains a rather unique recycling section which provides for a robust recycling opportunity to our communities within the MRC. For every time that the communities recycle through the -- through a Casella facility at current levels, Casella will backfill an equal number of tons of municipal solid waste to PERC. This keeps PERC operating at or near capacity and at the same time allows the MRC communities to aggressively pursue recycling without fear of falling below the minimum solid waste tonnage thresholds that they have under the PERC contract.

That concludes my initial testimony. Just

to go on to the rebuttal testimony, I just wanted to address some of the issues that came up. I'm submitting the following testimony for two issues; first, I'd like to clear up the apparent misunderstanding that was expressed by the Sanborns in their direct testimony regarding the PERC/Casella agreement. Specifically the Sanborns assert that the agreement will somehow result in additional out-of-state waste being delivered to PERC; second, I'd like to respond to the claim by multiple intervenors, ecomaine, MMWAC and Mr. Spencer, that Maine's solid waste hierarchy somehow mandates MSW previously delivered to MERC should now be utilized to keep incinerators at capacity before being allowed to go to JRL. The Sanborns' assertion regarding the apparent -- regarding the agreement is false. Beginning in 2001 pursuant to a separate contract between PERC and Casella, a total of 17,500 out-of-state waste tons were delivered to PERC by Casella on an annual basis, that tonnage category 4 MSW in the agreement. In reference to the agreement, this tonnage is merely a recognition of the ongoing obligation of Casella to PERC.

In order to maintain full capacity and honor our electrical output obligations PERC has been

forced to import out-of-state MSW for incineration. In the past year, PERC has contracted with various entities to supply this waste. Under the agreement, Casella agreed to make commercially reasonable efforts to deliver an additional 32,500 tons of out-of-state waste to PERC. That tonnage from Casella, called category 5 MSW, would displace the other out-of-state waste that PERC already brings into Maine in order to keep its operations at full capacity. In no way does this result in more out-of-state waste being delivered to PERC than was delivered absent the agreement. It is nothing more than swapping one source of out-of-state waste for another.

The assertion of Maine's solid waste hierarchy is likewise misguided. Since its inception, PERC has operated with the understanding that municipalities and other MSW generators are free to choose between the incinerators and the landfills to meet their specific disposal needs. The hierarchy does not and should not automatically entitle incinerators, including PERC, to receive available MSW over landfills. If that were the case, landfills across Maine would now lawfully accept raw -- that now lawfully accept raw MSW would be barred from

doing so and Maine's incinerators could charge municipalities and other waste suppliers any price of their choosing; rather, the hierarchy recognizes that PERC and the other incinerators must compete in a marketplace in order to secure adequate supplies of MSW. The present case is a good example that incinerators can still ably compete.

PERC recognized early on that the closing of MERC presented an opportunity to secure additional in-state MSW for our needs. We then entered into negotiations with Casella and successfully secured a position for more MSW to go to our facility. Maine's other incinerators have throughout the last few months been free to do the same. Not quite 15 minutes but that's my testimony as submitted.

HEARING OFFICER: Thank you, Mr. Nordby. We'll move on to cross examination of PERC and first is MMWAC who has identified ten minutes of cross-examination, followed by ecomaine with five minutes of cross examination.

MR. BOWER: Thank you, Madam Hearing Officer. As with yesterday, I would request to combine the time of ecomaine and MMWAC together for a total of 15 minutes.

HEARING OFFICER: You have a total of 15.

MR. BOWER: Thank you. Again, my name is Mark Bower. I'm an attorney from the law firm of Jensen, Baird, Gardner and Henry, and I represent ecomaine and MMWAC in this matter. Good morning, Mr. Nordby.

MR. NORDBY: Good morning.

MR. BOWER: I just have a few questions about the disposal agreement. I assume from your testimony that you're familiar with that agreement?

MR. NORDBY: I am.

MR. BOWER: Although you were not a signatory, you didn't sign the agreement, but you are familiar with the terms and conditions of it?

MR. NORDBY: Yes, I am.

MR. BOWER: Isn't it true that under Section 7.4 of that agreement PERC is obligated to publicly support Casella's -- the applicant's pending application?

MR. NORDBY: Is that a term of the contract?

MR. BOWER: Yes.

MR. NORDBY: Yes.

MR. BOWER: And under that Section 7.4 it provides "such reasonable public support shall include without limitation the attendance at and support of such expansion efforts at as many public

hearings as the representatives of PERC can reasonably attend and the delivery of a reasonable number of supportive communications with legislators, the Commissioner of the Maine Department of Environmental Protection, the staff of the Governor of Maine and with officials and administrative bodies of the relevant localities." Is your testimony today consistent with that section?

MR. NORDBY: Yes, it is.

MR. BOWER: And turning to your direct testimony, on page 3, I think it was in Section 5 that you referenced earlier, you state, quote, "the agreement will become effective only if the pending application to allow municipal solid waste at Juniper Ridge Landfill is approved." Isn't it true that only Section 3.1(c), which provides the 30,000 tons of MERC waste, that's the only section that's conditioned upon the pending application, correct?

MR. NORDBY: That is correct.

MR. BOWER: The sort of -- I think you described it as the unique recycling section of the agreement. That whole section is not contingent on the approval of this license amendment, correct?

MR. NORDBY: No, it's not.

MR. BOWER: And the other categories of

waste including up to 50,000 tons between category 4 and 5, that's not contingent on the Juniper Ridge Landfill amendment, correct?

MR. NORDBY: That's correct.

MR. BOWER: And on pages 3 to 4 of your testimony, you stated the 30,000 tons of in-state municipal solid waste will allow PERC to displace a portion of the out-of-state municipal solid waste that it historically has had to utilize in order to operate at capacity. What's the remainder -- so that will displace 30,000. What's the remainder of the out-of-state waste in terms of tonnage? If you could back up that 30,000, what's the -- that's not the entirety of the out-of-state waste that PERC accepts, correct?

MR. NORDBY: That's correct.

MR. BOWER: Do you have a figure for what the remainder is or would be?

MR. NORDBY: Yes, I do. I apologize for -- the 30,000 coming from the closure of MERC will displace out-of-state waste that has been delivered by a variety of different vendors. We've got an agreement with Casella in which they deliver out-of-state waste. We also deal with two or three other vendors.

MR. BOWER: I think one of Casella's exhibits was the 2011 DEP solid waste report and my recollection is that it was around 91,000 tons, does that sound about right, of out-of-state waste that PERC incinerated?

MR. NORDBY: I don't have that figure in front of me.

MR. BOWER: Okay, that's all right. I just wanted to clarify that that 30,000 is not going to satisfy your need for out-of-state waste; it will displace a portion of it but not the entirety of what you need?

MR. NORDBY: That's correct.

MR. BOWER: Okay, and under the disposal agreement, Casella will be providing up to 50,000 tons between categories 4 and 5, correct?

MR. NORDBY: That's correct.

MR. BOWER: In your testimony you also state that the -- you say "in addition, the Casella/PERC agreement is consistent with Maine's solid waste hierarchy which, among other things, favors recycling and waste incineration over landfilling." Would you agree that the issue in this proceeding is not whether the Casella/PERC agreement is consistent with the hierarchy but rather whether Casella's

application to amend the Juniper Ridge Landfill license is consistent with the hierarchy?

MR. NORDBY: I'm only here to really talk about the PERC/Casella agreement so I don't really know if I'd have an answer for that.

MR. BOWER: Okay. Turning back to the disposal agreement, in Section 8 is the termination -- now, just to clarify, the only signatories to this contract are PERC and Casella, correct? Those are the only two parties to the agreement?

MR. NORDBY: I believe the operating company ESCO is also represented through U.S.A. and the general partner.

MR. BOWER: Okay. The state of Maine is not a party to the agreement, correct?

MR. NORDBY: This is a private agreement.

MR. BOWER: Section 8 is the termination provision and Section 8.1(a) provides that the agreement may be terminated by all parties hereto upon mutual written agreement. Is that your understanding as well of the termination provision?

MR. NORDBY: It is.

MR. BOWER: So in other words, the agreement really can be terminated at any time -- if Casella and PERC both agree to terminate it, it can be

terminated at any time and the state doesn't have any sort of say about -- the state doesn't need to consent to the termination of the agreement, correct?

MR. NORDBY: That's correct.

MR. BOWER: Finally, on Section 7.5 of the disposal agreement talks about support for the hierarchy, and in that provision Casella states that the solid waste hierarchy is, quote, structured so that the maximum amount of solid waste possible will be processed by facilities in Maine such as the PERC facility in preference to landfills in Maine such as the Juniper Ridge Landfill, and my question is, do you believe that this agreement provides for as much solid waste as possible being processed by waste-to-energy facilities such as PERC or could there have been more? You know, why -- how did the 30,000 ton figure come about?

MR. MAHONEY: Objection, Madam Hearing Officer. I think there's several questions there. If we could break them down one at a time.

MR. BOWER: Sorry about that.

HEARING OFFICER: Please ask the questions one at a time.

MR. BOWER: Okay. I guess the first question is, do you believe that this agreement

provides for as much solid waste as possible being processed by waste-to-energy facilities such as PERC?

MR. NORDBY: I think your question has to be considered in a broader sense in terms of the economics that are involved with delivery of the waste to an appropriate facility; secondly, this was a negotiated agreement between PERC and Casella. We have to be able to operate on a standardized basis, we have to schedule workers, things like this. Casella had contractual agreements which prohibited them from being able to meet the obligation that we wanted in terms of quarter pay. If we're going to schedule the processing of waste, we have to know we're going to get it. So say we have a contract for 30 and only 5,000 show up, it becomes quite problematic. So in terms of that agreement, economics played a large part in the 30,000 and arriving at that final number.

MR. BOWER: So I take it you would have preferred more than 30,000 if the economics had provided for that?

MR. NORDBY: As a private businessman, I would prefer waste to the rafters, yes, I would.

MR. BOWER: And I think earlier in your comments this morning, it sounded like you would

prefer in-state waste to out-of-state waste if possible, correct, or am I mistaken?

MR. NORDBY: I don't think I represented that. I was trying to stress that this agreement as it is was beneficial in taking more in-state waste.

MR. BOWER: And so my question is, in what way is that bene -- please explain how that's beneficial in your view to be accepting in-state waste as opposed to out-of-state waste?

MR. NORDBY: I would think it would speak to your initial question as to the hierarchy. I don't think the hierarchy -- if we're taking waste in from out of state, I would think Maine and I know my communities are more concerned about handling responsibly in-state Maine waste.

MR. BOWER: At yesterday's proceedings there was a reference made to an interim agreement that's effective while this proceeding is pending for disposal of waste by Casella. There was some discussion that that agreement is about to expire, is that correct?

MR. NORDBY: The date on it is getting close to the expiration date. We would hope that it wouldn't.

MR. BOWER: What is the expiration date of

the agreement?

MR. NORDBY: April 30th.

MR. BOWER: So it's coming right up. Have there been any talks to extend the interim agreement?

MR. NORDBY: We've had general discussions about it. We haven't entered into negotiations formally.

MR. BOWER: And how much tonnage is PERC getting under the disposal agreement on a daily or weekly basis?

MR. NORDBY: It averages about 175 tons a day.

MR. BOWER: And not being able to do the math on the fly, is that more or less on a daily basis than the 30,000 tons under the disposal agreement?

MR. NORDBY: It's approximately 30,000 tons, probably maybe on a run rate of 140 -- I'm sorry -- 40 rather.

MR. BOWER: Okay. Just one moment, please. I have no further questions. Thank you.

HEARING OFFICER: Have you concluded your cross examination?

MR. BOWER: Yes. I said no further questions.

HEARING OFFICER: Thank you. Are there any other intervenors who wish to cross examine PERC at this time? Please do state your name.

MR. SANBORN: My name is Harry Sanborn. I represent my wife and I.

HEARING OFFICER: And for the record, your wife's name is?

MR. SANBORN: Laura, L-A-U-R-A.

HEARING OFFICER: Thank you. We have a transcription so we need to make sure it's on the record.

MR. MAHONEY: Madam Hearing Officer, just as a point of clarification, I'm not certain whether Mr. Sanborn was stated as a party who was intending to cross examine Mr. Nordby. Is there a time limit imposed on his cross examination?

HEARING OFFICER: That is a good question. I will be limiting your cross examination to five minutes.

MR. SANBORN: That's fine, thank you. Mr. Nordby, you represent in your testimony -- good morning, by the way.

MR. NORDBY: Good morning to you.

MR. SANBORN: -- that my wife and I have falsely misstated some of the representations. When

I look at your agreement, here's what I see. I see two problems with it; one being that the member communities over the last five years are all generating less waste; two, you agreed to let Casella introduce and market zero waste disposal to the member communities. They happen to do that fairly well.

HEARING OFFICER: Mr. Sanborn, can you --

MR. SANBORN: Now the question is -- I'm sorry, I had to bracket the question.

HEARING OFFICER: Yes, perfect, thank you.

MR. SANBORN: So the question is, if Casella markets to the member communities like they have to other communities, Holden, for instance, where they had a 24 percent reduction, you -- from in-state waste, 71 percent of everything you combusted last year came from in-state. If Casella takes out 24 percent of what they do, and I certainly hope they do because that's the way to go, under the contract they're going to backfill you with out-of-state waste. The in-state waste -- the inventory is going away. So how do you -- how do you represent to me your assertion that it's not going to be out-of-state waste?

MR. NORDBY: I'd be interested if you could

reference where it says they're going to backfill the PERC needs with out-of-state waste?

MR. SANBORN: I'll quote Mr. Doyle from yesterday. I think it's me asking you the questions now.

MR. NORDBY: Okay. I'll answer your question then. Your assumption or to use your words bracketing the question, again are false. There's no place in the agreement that Casella says or we require that they backfill waste with out-of-state waste.

MR. SANBORN: And when they are marketing zero sort as successful and you still need commodity, where do you intend to get it?

MR. NORDBY: As I'm sure you looked at the agreement, you saw that they will provide reasonable commercial efforts to backfill that waste.

MR. SANBORN: Thank you. You also said that you're taking in on a temporary basis 175 tons a day approximately from MERC, is that what I understood? Did I hear that correctly?

MR. NORDBY: I said I was receiving approximately 175 tons a day under the interim agreement.

MR. SANBORN: The interim agreement with

Casella?

MR. NORDBY: Yes, sir.

MR. SANBORN: Okay, and you operate 365 days a year?

MR. NORDBY: No, sir.

MR. SANBORN: How many days a year?

MR. NORDBY: Subtract approximately six or seven holidays out.

MR. SANBORN: Okay. So if I do the math quickly in round numbers that's over 63,000 tons, not 30,000 tons, which you seem to correlate the two.

MR. NORDBY: Again, Mr. Sanborn, I'd suggest you read the agreement where it says up to 175 tons a day.

MR. SANBORN: Again, I think I'm asking you, you're not asking me.

MR. NORDBY: Then I would ask that you clarify your question so it actually means something so I can answer it.

HEARING OFFICER: Ask him about the correlation.

MR. SANBORN: What is the correlation between what Casella can reduce through zero sort and where you're going to get it? Because they do zero sort with everybody, not just residences. They do

commercial. There's going to be less if they do what they've proven they can do. If we're producing less in the state of Maine, there's only one place to get it and that's from out-of-state. Is that a correct assumption?

MR. MAHONEY: I'm not hearing a question there, Madam Hearing Officer.

MR. SANBORN: The question was, is that a correct assumption based on his testimony.

HEARING OFFICER: And, Mr. Sanborn, I believe he responded that is not a correct assumption. So you have one more minute if you have any other questions to ask.

MR. SANBORN: How many more?

HEARING OFFICER: One more minute.

MR. SANBORN: Okay. I think I'll be done. Thank you.

HEARING OFFICER: Are there other intervenors who would like to cross examine PERC at this time? Seeing none --

MR. DOYLE: Madam Hearing Officer?

HEARING OFFICER: Yes.

MR. DOYLE: May the applicant ask questions of Mr. Nordby?

HEARING OFFICER: Yes, I actually wrote

other intervenors but it would be correct to have the applicant or other intervenors. Mr. Doyle, you will also have five minutes.

MR. DOYLE: Thank you. Good morning, Mr. Nordby.

MR. NORDBY: Good morning.

MR. DOYLE: Mr. Bower asked you about the provision 7.4 in the agreement about support for the application -- for this application?

MR. NORDBY: Yes, Sir.

MR. DOYLE: Why did you agree to that provision?

MR. NORDBY: PERC needs a landfill component like any other integrated solid waste management system. So our contract with Casella is going on probably 20 years, and I need their disposal capacity not only for ash, my glass and grit. We feel it's the best way to make sure the plant operated at a maximum capacity.

MR. DOYLE: And there was a question about the difference between in-state and out-of-state waste in the agreement. Don't you also get a higher price for in-state waste?

HEARING OFFICER: Mr. Doyle, be careful not to lead the witness too far.

MR. DOYLE: This is cross examination.

MS. MACIROWSKI: It's not cross examination of a hostile witness though.

MR. DOYLE: Do you get a higher price for in-state waste --

MR. NORDBY: Yes.

MR. DOYLE: -- than you do for out-of-state waste?

MR. NORDBY: Yes.

MR. DOYLE: Thank you.

HEARING OFFICER: At this time we'll have redirect testimony by PERC limited to five minutes.

MR. MAHONEY: Just very quickly, Madam Hearing Officer. Following up on some of the issues you were asked about on cross examination, Mr. Nordby, would it surprise you to know that in the month of March under the interim agreement PERC received only 111 tons of MSW from Casella?

MR. NORDBY: Yes, it would.

MR. MAHONEY: And the agreement, however, you indicated only allowed -- only provides that it's a figure up to 175 tons per month?

MR. NORDBY: Yes.

MR. MAHONEY: So could it be less?

MR. NORDBY: Yes.

MR. MAHONEY: And in the winter months in Maine, in your experience is there less MSW that is sent to facilities like PERC?

MR. NORDBY: Dismally less, yes.

MR. MAHONEY: So is it possible that in the month of March only 111 tons would have been sent up to PERC under the terms of the agreement?

MR. NORDBY: Yes.

MR. MAHONEY: Okay, and one other question. Under the zero sort recycling, the backfilling provision that was referenced on cross examination, under the agreement is it your responsibility to determine from what sources in-state or out-of-state that tonnage comes?

MR. NORDBY: No, it is not.

MR. MAHONEY: Whose responsibility is it?

MR. NORDBY: That would be the other member of the contract, Casella Waste Systems.

MR. MAHONEY: Thank you. I don't have anything further on redirect.

HEARING OFFICER: Thank you. There is now an opportunity for what is called recross of PERC. If you have additional cross examination questions that have arisen as a result of the redirect testimony, you would have an opportunity now to

recross. Does anybody wish to recross at this time?

MR. BOWER: I have nothing further. Thank you.

HEARING OFFICER: Thank you. We have DEP staff questions of PERC.

MR. PARKER: Good morning, Mr. Nordby. I'm Mike Parker, the DEP Project Manager for the application.

MR. NORDBY: Hello.

MR. PARKER: A couple questions. Is there a no compete clause in the contract whereby PERC couldn't actively solicit the MERC communities for the waste?

MR. NORDBY: I'm sorry, that PERC can't solicit the MERC communities?

MR. PARKER: Yes.

MR. NORDBY: No, sir.

MR. PARKER: So you could actually go out there and essentially undercut Casella, if you will?

MR. NORDBY: Yes, we could.

MR. PARKER: I asked this question yesterday and I'm not sure I got the complete answer, but I'm going to blame Mr. Lounder for this because he said to ask you this question.

MR. NORDBY: I'd like to thank Mr. Lounder

then.
MR. PARKER: In simplistic terms and some of the other testimony this morning brought this out, if 30,000 tons is good, is 90,000 tons better in that it would make you -- you're displacing more out-of-state waste up to the 90,000 that you're currently taking from out-of-state, is that correct?
MR. NORDBY: At the risk of backtracking a little bit, if the 30,000 was derived from the economic factors involved with the negotiation, you know, in a vacuum is 90,000 better than 30,000? The answer would be yes, but in terms of the constraints, whether it's transportation pricing, such like that, PERC and the MRC feel pretty good about our negotiation to capture that additional in-state waste. So in terms of a business transaction, financially it was very advantageous to the project and we feel it was within the benefit of the hierarchy also.
MR. PARKER: Thank you. You pre-answered one of my questions in follow up from yesterday which was what are the roadblocks to that, and you've answered those for me. Thank you. No further questions.
HEARING OFFICER: Melanie.

MS. LOYZIM: Mr. Nordby, you had indicated that the interim agreement will expire at the end of this month?
MR. NORDBY: Yes.
MS. LOYZIM: And did you indicate that you have an interest in pursuing a continuance of that agreement with Casella?
MR. NORDBY: If I could, I would say the purpose for that interim agreement was to start the beneficial impact of being able to take that waste at PERC immediately, so, yes, we would be interested in continuing some form of agreement to carry that forth.
MS. LOYZIM: And the PERC agreement that's been provided to us as part of the record, that is -- the PERC/Casella agreement that's been referenced, that's in effect currently?
MR. NORDBY: Yes.
MS. LOYZIM: And so the -- you would not then have a -- would there be a scenario where the interim agreement could be continued and the current existing PERC and Casella agreement could exist in addition to that?
MR. NORDBY: Candidly, the interim agreement would not be beneficial for us to continue long-term

due to the temporary pricing that's involved with those tons.
MS. LOYZIM: Okay, thank you.
HEARING OFFICER: Thank you. That concludes the testimony and examination of PERC. I would ask -- thank you, Mr. Nordby. I would ask whether the Citizen intervenors are prepared to present their summary of testimony? Please step forward and we will begin the summary of the testimony of the Citizen intervenors.
MR. PARKER: Mr. Coffman, are you coming up front?
MR. SPENCER: Do I need a microphone?
HEARING OFFICER: You have pretty good volume but there might be others, so perhaps we can take the hand mike and just pass it around. You will have 45 minutes for the panel of Citizen intervenors to summarize your testimony. Thank you.
MR. SPENCER: To begin with, I'm going to briefly read. My total testimony is about two and a half typed pages so why don't we just go through it.
The first part of it is titled "Municipal Solid Waste to Juniper Ridge Landfill, Methane Threat." We are presented information concerning the greenhouse gases produced by trucking MSW,

specifically carbon dioxide, although I understand that's not a part of this procedure. There should also be concern of the amounts of methane that will be emitted during the lifetime of landfilled MSW. Methane is produced by the anaerobic decomposition of organic waste. MSW is over 50 percent organic. We have all heard that methane is a far more dangerous greenhouse gas than carbon dioxide when considering climate change. It is commonly said that methane has on the order of 23 times the warming potential of CO2. This number is derived from a 100-year time period. Over a 20-year span, methane poses as much as 72 times the negative effects of CO2. This is because while CO2 in the atmosphere lasts over a century, methane only persists in the atmosphere for 12 to 13 years; therefore, reducing methane emissions now or before they begin can have a large positive impact over a relatively short time span, thus, greatly reducing man-made climate change.
Landfills are the single largest source of man-made greenhouse gases in North America. Since MSW has a much higher organic content than most of the other wastes coming into Juniper Ridge, introducing massive amounts of curbside garbage would produce much more methane. Once MSW is unloaded at

JRL, it will be covered by other waste and begin to decompose in the anaerobic environment, thus, producing methane.

Casella says in their application that with their management techniques they capture on the order of 85 percent of methane emissions at JRL and flaring the gas turns it into less harmful CO2. EPA assumes landfill operators capture on average 75 percent or more of methane emissions. The best current information available to me says that Casella and the EPA are mistaken on the amounts of methane captured.

The following is an excerpt of a paper presented by the Center for A Competitive Waste Industry to the California Air Resources Board in 2007. It starts executive summary, conventional wisdom based upon statements by the Environmental Protection Agency assumes landfill operators capture 75 percent or more of the methane gas, CH4, that is generated at their facilities. Because of that assumption of high collection efficiency, landfills have been thought to be responsible for only two to three percent of man-made greenhouse gases. This comment explains why the EPA assumption is demonstrably wrong, why the best available evidence does not support a value greater than 20 percent and

why the appropriate remedies that follow from this correction involve more diversion better than a landfill; specifically, there are no field measurements of the efficiency of landfilled gas collection systems. The EPA's assumed 75 percent gas collection efficiency has no factual basis, is based upon fundamentally incorrect definitions and uses bias selection from unsupported and self-serving guesses as the basis for its assumption.

The best evidence of typical lifetime capture rates based upon correct definitions does not support a value greater than 20 as further attested to by the International Panel on Climate Change. Correcting the capture rate from 75 to 20 percent increases the landfill's responsibility for man-made greenhouse gas emissions from approximately two to three percent to eight to nine percent or more. Because gas collection is actually very poor, the case for diverting decomposable discards from the landfill becomes clear.

Okay, that's the end of the quote from that paper, but the paper goes on to explain that the high percentage rates come from a one-time snapshot of a landfill at its most functional point. There is a lot of methane emitted before the landfill is capped.

The larger threat comes after the useful life of the gas extraction and is referred to as a second wave. After the landfill is decommissioned, there is settling and deterioration of the cover. This allows more rain to enter the pile and the added moisture accelerates decomposition and the gas escapes through breaches in the cover or liner. Remember, all landfills eventually leak, and that's from below as well as above. When you consider the total environmental effect of Casella's plan to truck southern Maine's MSW to Juniper Ridge in Old Town, it reinforces the wisdom of our waste hierarchy and that incineration is far preferable to landfilling MSW. Far more energy is extracted from incinerating a ton of garbage than from putting it in a pile and making electricity with the methane produced and likewise fewer greenhouse gas emissions are released by incineration per unit of energy production.

It bears mentioning that Casella's plan to heat the University of Maine campus with gas from the Juniper Ridge Landfill has not progressed since proposing it many years ago and shows no sign of happening any time soon.

Once again, the best solution for disposing of the former MERC's MSW in Maine is to redistribute

it to our other waste-to-energy plants.

How am I doing on time, by the way?

HEARING OFFICER: You've gone about seven minutes or so.

MR. SPENCER: Okay, good, good. This one is slightly shorter. That's it for the methane threat. The second part of my testimony is titled, "From the Beginning, The Waste Hierarchy and Juniper Ridge Landfill." We have included the statutes which lay out the state of Maine waste policy and waste hierarchy. When the process began in 2003 to change the West Old Town Landfill owned by the local paper mill and restricted to that mill's waste stream into a state-owned multi-waste landfill, it was clear from the beginning that our waste hierarchy was to be followed. In testimony by George McDonald who was the manager of Waste Management and Recycling at the State Planning Office at that time, he told the Natural Resources Committee, this was in 2003, what the intent was of SPO in owning this landfill. One of his bullet points, quote, support the waste management hierarchy in the state to the greatest extent possible, end quote. Like I said, that was on June 3rd, 2003 at the hearing here in Augusta for LD 1626 which authorized the state to own what became

known as Juniper Ridge Landfill.

On June 13th, 2003, SPO issued a request for proposals to contract for landfill operators. On page 4 of that RFP under scope of services, at the very top it said, quote, the scope of services under this contract will include those listed below. The landfill will be operated on a basis consistent with the state's waste management hierarchy which establishes the following priority for the management of waste: reduce, reuse, recycle, compost, incinerate, landfill, end quote. Casella was the sole bidder and became the JRL operator. The point is, it was known to them before they bid that the waste hierarchy was to be vigorously applied. The Operating Services Agreement between the state and Casella was signed on February 4th the following year. On page 24, Section 2.13, quote, waste management hierarchy, Casella agrees to use its best efforts to achieve the following goals, A, to operate the landfill following the state's solid waste management hierarchy, end quote. On page 37 of the same agreement it reads, quote, 13.5, Casella covenants and agrees to operate the landfill and otherwise conduct all aspects of its business at the landfill in compliance with all applicable laws and

regulations and permits, end quote. Certainly Casella knew that the state statutes on hierarchy would apply here.

On April 9th, 2004, nine years ago yesterday, DEP issued a permit to SPO and Casella which amended the original paper mill landfill license when the state became owner. On page 50 of that document it says, quote, in signing the OSA Casella agreed, in part, to use its best efforts to operate the landfill following the state's solid waste management hierarchy, end quote. This is the license being considered for amendment now.

On page 59, that's that same document, DEP permit, it says, quote, 16, with regard to the acceptance of MSW for disposal, consistent with its proposal the applicant, A, shall not dispose of unprocessed MSW from any source other than bypass from the following sources: PERC incinerator in Orrington and the Maine Energy incinerator in Biddeford, waste delivered under an interruptible contract with PERC or waste delivered in excess of processing capacity at other MSW incinerators in Maine, end quote.

In summary, Casella knew well in advance of becoming the operator at JRL that the waste hierarchy

was to be the law of the landfill. Their contract with the state requires compliance as does their existing license. The state of Maine's only functional state-owned landfill should certainly be following our state waste policy. That's it.

HEARING OFFICER: Thank you. Continue to pass it down for the other pre-filed testimony summaries. Thank you.

MR. LINCOLN: My name is David Lincoln and I live within the umbrella or cut off umbrella for the landfill, and I'm not here to present testimony to relate to specific management policies in Maine nor the long-term environmental impacts of allowing disposal of additional unprocessed municipal waste, MSW. I'm here to represent Wanda as well, my wife. She's out of town. We will -- we feel we can present compelling testimony related to the nuisance factors we are subject to on a daily basis because of our proximity to the Juniper Ridge Landfill.

We are subject to odorous fumes from JRL throughout the year. We do not have the benefit of enjoying our home as others do; in fact, we've had to install air conditioning because during the warmer months we cannot open our windows due to the odor from the landfill as well as fumes and noise from the

trucks. We contend that approval of this application will -- our most valuable asset, our home, approval will further devalue our house and we are losing the value of it every day as time goes on. We further believe that bringing the incinerator ash to JRL does not -- does fit into the state of Maine waste hierarchy while bringing MSW to JRL does not.

In closing, we offer that regarding JRL, we can smell it and we can hear the -- we can hear it and we can hear the trucks and all those factors relate to the proximity of JRL. We believe we and other -- the other three residents living on the Old Bennoch Road in Old Town may be the most aggrieved or impacted residents in Old Town and none receive any benefit at all. We not only live closer to JRL than most other citizens and are, therefore, suffering a greater impact than any other party, group, corporation or individual and will suffer greater than any other interested party, group, corporation or individual should this application be approved. Thank you.

HEARING OFFICER: Thank you.

MR. SANBORN: A question on time?

HEARING OFFICER: We are at 10:00 now, so you have 31 minutes to complete your testimony.

MR. SANBORN: Thank you. Waste management in Maine, is there really a clearly defined policy or has a clearly defined policy been manipulated or overlooked or perhaps not even addressed at all? We'll attempt to suggest and prove that the latter is correctly the fact.

The Legislature of the state of Maine was very clear and succinct in its adoption of this sentence of intent when it passed the solid waste and recycling legislation; quote, it is the policy of the state to plan for and implement an integrated approach to solid waste management for solid waste generated in this state and solid waste imported into this state which must be based on the following order of priority, unquote. Title 38 goes on to explain what the intent of the Legislature was without any ambiguity at all. So what happens to the intent that the Legislature adopted and who owns the fault by not adhering to those policies and directives? Two state entities appear to be without much, if any, competition to shoulder that blame. These two are now the defunct Maine State Planning Office and the Maine Department of Environmental Protection. Few will argue that either has a history of more than a weak attempt at following the format of the waste

hierarchy that the Legislature had desired. The targeted 50 percent recycling rate set for 2009 is still below 40 percent even when including MSW buried in landfills under the guise that it was used in recycling. To date, the management of waste in Maine, particularly at JRL, has been largely accomplished through the manipulation of definitions. Why? Because the former SPO and the Maine DEP has stood by idle while the lobbying firm for the operator of JRL completed all the necessary paperwork, lobbied at the Legislature to accept their proposals and agreed to make changes by rule when the Legislature -- where the legislative approval was not needed.

Do we need to bury MSW? Certainly we do, at least some of it. No one could argue otherwise successfully; however, if we do, we should start looking at the waste hierarchy. Taking MSW from MERC and burying it at JRL should be our last and final option left on the table after all other options are exhausted.

Now, what does the document entitled Application of the State of Maine and NEWSME Landfill Operations, LLC, for Amendment to Accept Municipal Waste from Maine Sources at Juniper Ridge Landfill

accomplish? One, it moves much of the Maine generated waste from southern Maine down one category on the waste hierarchy from incinerating to landfilling; two, it appears from a high level to eliminate out-of-state generated waste but due to Maine definition, when that waste is moved to Westbrook, where it likely will be based on history, it will become Maine generated waste and also diverted to JRL. An even more blatant disregard and misrepresentation of the facts is the contract between Casella and PERC for diverting MSW to the PERC facility. While the owner may not have been a signatory to this agreement, the owner's representatives did sign the amendment to the application and is, therefore, also implicit in the misrepresentation of the facts and submission of misleading data. At face value and based on owner/operator statements, the contract appears to move MERC MSW to PERC; however, a careful read reveals that of the hundred thousand tons, 20,000 are already delivered to PERC by Casella, 30,000 tons are MERC diverted MSW and 50,000 tons are out-of-state waste. And even more blatant is that should PERC require further fuel, Casella will deliver it but contractually it's mandatory that it be out-of-state

waste. It opens JRL to yet another waste stream that was specifically included in the -- excuse me -- specifically excluded in the operating agreement. What could the application have accomplished had the owner really looked at the impact of landfilling MERC's MSW at Juniper Ridge and put forward a solution that adequately accomplishes what was purported in the first place, that being the management of truck traffic, reducing the waste stream consistent with the hierarchy and the elimination of out-of-state waste previously combusted by MERC. The owner could have accomplished exactly what was purported from the start had the owner focused on options instead of focusing only on landfilling, that being that it would take care of the MSW from the decommissioned MERC facility in ways that meet the waste hierarchy policy.

First, the owner could have proposed diverting a minimum of 80,000 tons and perhaps as much as 91,000 tons of MERC MSW to PERC keeping it at least at the same level of the hierarchy as it was at MERC, where it would have created 1.2 million dollars in additional revenue instead of the 450,000 for PERC at the 80,000 ton level and 1.37 million of additional revenue for PERC at 91,000 tons. It would

have also kept 80,000 to 91,000 tons of MSW out of Juniper Ridge and it would have also kept 50,000 tons of out-of-state waste where the owner and operator claimed it would be beyond Maine's borders. It would have also helped save 125 million dollars in future landfill development as the Maine Department of Environmental Protection states that we could do if we only recycled more.

We have seen too many secret agreements between the Maine DEP, Casella Waste Systems and the former SPO. We've heard too many times from the state and Casella representatives that few should not expect any more, only to find out that we actually got more, and we've heard too many times that Maine does not have a policy for management of waste; it has suggestions.

We can think of a few suggestions that would be helpful and fair to all concerned. One, let's get it right this time; two, let's do it without fuzzy definitions; three, let's do it without fuzzy math; and finally, number four, let's do it -- let's do the right thing for the environment and the people, not the operator of JRL. Landfilling of municipal solid waste at Juniper Ridge Landfill is a move backwards, not a move forward, in our management of waste

streams. The following quote from an EPA document sums up in simple, yet clear words, what landfills are. Quote, the basis of a good solid waste management system is the municipal solid waste, MSW, landfill. MSW landfills provide for the environmentally sound disposal of waste that cannot be reduced, recycled, composted, combusted or processed in some other manner, end quote.

What is the key that opens all of the options that may be better than landfilling MSW from MERC at JRL? The answer would be transportation. The owner in the initial application -- excuse me -- in the amended application the operator spent time pointing out two important factors. The volume of out-of-state waste handled by MERC and equal to about 170,000 tons would stay outside of Maine's borders; two, there would be a zero net increase in truck traffic to JRL. Both factors appear at face value to be desirable. Leaving 170,000 tons of MSW beyond Maine's borders is certainly good news. No increase in truck traffic is also good news, and then the owner/operator submitted an amendment with a document that they bring forth that Casella and PERC have also entered into an agreement to divert 30,000 tons of MSW that was destined to JRL in the initial

application to PERC in the amended application. The combination of the three documents, the initial application, the amended application and the contract between Casella and PERC allow for measurement -- excuse me -- measuring the transportation involved. The ability to measure is the key -- of the key performance indicators of transportation as they relate to the application and the alternatives available is made possible because of the data within the three documents. Including in the application -- including the application alternative -- there are only three alternatives. The first alternative I won't read in detail, we all know what that is. It's the one that's been presented. Number two, an obvious alternative would be to deliver the PERC -- to PERC, ecomaine and MMWAC all of the amount of MERC diverted MSW, make it equivalent to their combustion of out-of-state waste. This alternative has some inherent problems and it requires more negotiations in the assumption that all the entities are willing to negotiate. It would, however, look like this if it happened, 91,000 tons of MERC diverted MSW would go to JRL, 100 tons of MERC diverted MSW would go to MMWAC, 2,900 tons of MERC diverted MSW would go to ecomaine, 29,000 tons of MERC diverted MSW would go

to JRL, 123,000 tons is what that totals and it matches what the owner/operator has targeted for tonnage.

A third, what we call a compromise solution, it is somewhere between number one and number two, affords that all 123,000 tons of MERC are taken care of as the owner/operator expressed as the focus in the application. This alternative would look like this, 91,000 tons of MERC diverted MSW would go to PERC, 32,000 tons of MERC diverted MSW would go to JRL. That totals 123,000 tons which is what the owner/operator state as the target tonnage. The third, or compromise scenario, pays use dividends and it not only places the 123,000 tons of MERC diverted MSW in the most advantageous locations, it also has huge impacts on reducing truck traffic and reduces mileage. By the numbers --

MR. RAYBACK: Objection. Those elements of his testimony had been struck.

MR. SANBORN: I didn't read anything that was struck.

HEARING OFFICER: Those elements have not been stricken.

MR. RAYBACK: The issue of truck traffic and miles have been struck. In the version that I'm

looking at from Mr. Parker, those have been struck through.

HEARING OFFICER: As you may recall, after my third Procedural Order there was an appeal. The Commissioner upheld my order in part and upheld the appeal in part and the portions of the testimony related to truck miles were not stricken after the Commissioner's response to that appeal.

MR. RAYBACK: So if I can clarify, mileage is acceptable but costs, diesel costs, diesel fuel consumption has been struck still?

MR. PARKER: That's correct.

HEARING OFFICER: Yes.

MR. RAYBACK: Thank you.

MR. SANBORN: By the numbers, the compromise scenario accomplishes the following; one, it places 123,000 tons from MERC into the most advantageous locations; it eliminates 50,000 tons of out-of-state waste as the application warranted would happen; three, it reduces the annual truck load count to JRL by 1,818 trucks per year and it reduces the annual mileage driven by truck drivers by 701,000 miles. It also increases the new -- increases a new revenue stream to PERC from the reported 450,000 annually to 1.2 million. There is, however, one loser in this

compromise scenario and that would be that Casella wouldn't be afforded the opportunity to bring in those 50,000 tons of out-of-state waste to PERC. It's important to note that Casella and the owner never claimed in their applications to bring in out-of-state waste. What they did do was promise to leave 170,000 tons beyond Maine's borders. The compromise meets and exceeds everything the owner has stated as objectives in their applications.

We offer to give the owner/operator exactly what they asked for, addressing 123,000 tons of MERC diverted MSW and because the owner and the operator fail to address reduction of -- or any other aspects of the hierarchy, we also offer reductions in truck traffic. An added benefit is that it helps reach that 125 million dollar savings in future landfill development that the Maine Department of Environmental Protection has pointed out in their 2010 annual report.

It is time, it is actually past the time, when we should be addressing Maine's waste problems with the thoughts and plans to address it correctly. Simply moving everything down to the very last level of the hierarchy is less than professional and only proves that the State Planning Office, the Department

of Environmental Protection, Casella and now the Bureau of General Services are not good stewards and certainly not good managers of the waste stream.

A reduction in truck traffic is not only important to the citizens of Maine and Maine's environment, we see and hear every truck entering JRL, many with loud exhaust systems, many using engine retarder systems, some even on upshifting, seven days a week starting as early as 3 a.m. to 4 a.m. and continuing through to as late as 11:00, 12:00 at night. We've lived with the noise, we've lived with the nuisance, we've lived with the landfill machinery noise, we've lived with the smell and we've lived with the disregard for neighbors and community for years. It's time to get it right.

We ask that you measure it accurately so that you can manage it properly. There are only two alternatives in regards to this application, one, withdraw it, fix it and resubmit it; or, two, negotiate an alternative that meets policies and hierarchy and treats all parties fairly and equitably.

HEARING OFFICER: I am only able to accept the summaries of pre-filed testimony. Is there any other summary of pre-filed testimony of the Citizen

intervenors? Seeing none, I believe now would be an appropriate time to take a break prior to the cross examination of the Citizen intervenors. We will reconvene at 10:45.

(OFF RECORD)

HEARING OFFICER: Good morning again. We have resumed the hearing after a brief break. Before we proceed to the cross examination of the Citizen intervenors, we do have a procedural item that we want to present before we move on to the cross examination. Nancy Macirowski will be introducing that procedural information.

MS. MACIROWSKI: As part of the session last evening which was designated for testimony from the public there were several individuals who testified who have an affiliation with intervenors or other parties and that is not a problem in and of itself and, in fact, during the prehearing conference during a discussion about grouping the Citizen intervenors, the hearing officer expressly told the intervenors that they could also testify in their individual capacities during the public comment session; however, after that prehearing conference and before this hearing began, Chapter 3 of the Department rules went into effect. Those rules at Section 19, Part C,

discussed testimony from the public, and it states "in circumstances where a member of the public is affiliated with a party to the proceeding, the member of the public shall speak on his or her own behalf and shall not provide evidence that should have been provided by the party as part of the case in chief" and, again, I think this is a nuance that was not fully explained previously. So one of the intervenors, there's one portion of an individual's testimony which spoke to an applicant's witness' testimony, and I think that arguably that falls within something that was evidence that should have been provided by the party as part of their case in chief. So to cure any potential issue with this before the close of the record today, if they choose to do so, the applicant has the opportunity to offer redirect testimony by this particular witness. So I just wanted to clarify that.

HEARING OFFICER: Thank you, and now we move on to the cross examination of the Citizen intervenors beginning with the applicant who has been allotted 30 minutes. Consistent with our discussions yesterday, as you end the -- as you near the end of your 30 minutes, if you do need more time, please indicate that to me as well as the substance of the

types of questions you will be asking if you are afforded more time.

MR. RAYBACK: Thank you. Is this on? Can you hear me okay?

MR. DOYLE: No.

MR. RAYBACK: How about now?

MR. PARKER: You have to get closer to it.

MR. RAYBACK: Okay, how about that? Good morning. My name is Brian Rayback. Thank you, Madam Hearing Officer and members of the panel. I am here on behalf of NEWSME Landfill Operations. Good morning. I'd like to start with asking the Sanborns some questions and I'm happy for either one of you to answer these as you see fit. You live at 2845 Bennoch Road in Alton, correct?

MR. SANBORN: Correct.

MR. RAYBACK: One of the concerns you mention in your pre-filed testimony relates to the truck traffic into and out of JRL. If trucks are traveling on I-95 north coming to the landfill, they probably get off at the exit on Bennoch Road which is Route 16, correct?

MR. SANBORN: Number 199.

MR. RAYBACK: And 199 is the Bennoch Road exit?

MR. SANBORN: Correct.

MR. RAYBACK: Would you say that most trucks use that route going to the landfill?

MR. SANBORN: I would say that most trucks come from that southerly direction, yes.

MR. RAYBACK: Okay. Once they come off at the exit, they turn left to head north onto Bennoch Road, correct?

MR. SANBORN: Correct.

MR. RAYBACK: And then they travel, would you agree, about a tenth of a mile on Bennoch Road to the JRL access road?

MR. SANBORN: That would be close enough for what we're talking about today.

MR. RAYBACK: Approximately?

MR. SANBORN: Yup.

MR. RAYBACK: Do they go past your house between the --

MR. SANBORN: No, they do not.

MR. RAYBACK: -- exit and the access road?

MR. SANBORN: No, they do not.

MR. RAYBACK: They do not, and after the trucks make the turn on the access road and then they head toward the landfill, are they getting closer to your house or are they getting farther away?

MR. SANBORN: They are getting farther away.

MR. RAYBACK: On page 4 of your testimony, and you mentioned it again this morning, you suggest that sending 80,000 tons to PERC as a compromise scenario would create 1.37 million dollars in revenue for PERC rather than just the $450,000 that Mr. Nordby talked about earlier today. Are you assuming when you make that calculation that PERC would get the same rate, the same price per ton?

MR. SANBORN: Yes. The number was reached by dividing 450,000 tons -- coming up with $15 a ton. That was a correct assumption.

MR. RAYBACK: Do you think Mr. Nordby would have negotiated for that if he could have gotten it given what he said this morning about wanting MSW to the rafters?

MR. SANBORN: That is a question better asked of Mr. Nordby and not me.

MR. RAYBACK: And if this application is denied, do you think that will necessary result in Casella negotiating for a new contract with PERC on that issue? In other words, can DEP mandate Casella to --

MR. SANBORN: That's a question better asked to Casella, who you represent, and not me.

MR. RAYBACK: Thank you. Mr. Spencer --
MR. SPENCER: Yes.
MR. RAYBACK: -- you express concern in your pre-filed testimony about methane emissions from landfills. One of the issues you raised relates to how efficiently landfills can capture landfill gas, correct?
MR. SPENCER: Yup.
MR. RAYBACK: One of the papers you cited is a chapter written by a number of authors for the Intergovernmental Panel on Climate Change. That's the one whose lead author was Jean Bogner, correct?
MR. SPENCER: Yup.
MR. RAYBACK: It looks like you have it in front of you?
MR. SPENCER: Yes.
MR. RAYBACK: As Ms. Webb testified yesterday, the Bogner paper includes a statement that lifetime capture efficiencies for landfill gas may be as low as 20 percent in some cases, correct?
MR. SPENCER: Correct.
MR. RAYBACK: And that's the basis, I assume, of your concern about -- or that's one of the bases for your concern about capture efficiencies here?

MR. SPENCER: Not so much the 20 percent but the fact that there's a large variation from the reported -- commonly assumed reported by EPA of 75 percent.
MR. RAYBACK: Okay. I assume you were here for Abbey Webb's testimony yesterday. I believe I saw you sitting in the audience?
MR. SPENCER: Yes.
MR. RAYBACK: Where she discussed the rest of that quote from Bogner, correct?
MR. SPENCER: Um-hum.
MR. RAYBACK: The one that says "implementing an active landfill gas collection system is the single most important mitigation measure to reduce emissions," right?
MR. SPENCER: Correct.
MR. RAYBACK: And you heard her testify that Bogner goes on to say that measures to improve collection efficiencies include the installation of horizontal gas collection systems concurrent with filling and frequent monitoring and remediation of leaks, true?
MR. SPENCER: Correct.
MR. RAYBACK: And, again, you've seen Ms. Webb's testimony in her pre-filed testimony that JRL

does both of those things, right?
MR. SPENCER: Yes.
MR. RAYBACK: When you filed your pre-filed testimony, did you realize they were taking those steps at JRL?
MR. SPENCER: I realized that they have a gas collection system that they flare and, yes, to an extent. I don't know the details, how far apart the horizontal pipes are, et cetera.
MR. RAYBACK: Bogner goes on to say that other measures to reduce methane emissions include installation of geomembrane composite covers, correct?
MR. SPENCER: (Nods).
MR. RAYBACK: And, again, Ms. Webb testified that JRL uses those synthetic geomembrane covers, correct?
MR. SPENCER: Yes.
MR. RAYBACK: Were you aware that they did that when you submitted your pre-filed testimony?
MR. SPENCER: Sure, yup.
MR. RAYBACK: All right. Let's turn to another one of the exhibits that you included in your pre-filed testimony. That's the Sierra Club report on landfill gas to energy. One of the problems

identified in that study with landfills that are used as gas-to-energy plants is that many operators use something called the wet cell method in which landfill operators actually increase the moisture content in the landfill to increase methane generation, is that right?
MR. SPENCER: I've seen that, sure.
MR. RAYBACK: Are you familiar with the air license that has been issued by DEP for JRL back in November of last year?
MR. SPENCER: I am to an extent, yes.
MR. RAYBACK: I'd like to take a look at a provision in that license. This was included in BGS/NEWSME Exhibit 18 and if you don't have it in front of you --
MR. SPENCER: I've got it right here. What page?
MR. RAYBACK: Let's take a look on page 25, please.
MR. SPENCER: Okay.
MR. RAYBACK: Under specific condition one, there is a provision there -- and let's make sure I get this right -- "Juniper Ridge Landfill shall continue to use good operating practices to minimize the formation and release of the TRS laden landfill

gases. These practices include, but are not limited to, minimizing landfill waste moisture and ambient landfill gas releases through the use of synthetic intermediate cover or approved equivalent, the appropriate use of daily cover and the proper design, installation, maintenance and operation of landfill gas management system infrastructure in accordance with the solid waste management regulations." Did I read that accurately? Were you able to follow along? It's a mouthful.

MR. SPENCER: Yes, except I think we should clarify what TRS stands for.

MR. RAYBACK: Please do.

MR. SPENCER: Total reduced sulfur which seems to be the focus of the air license.

MR. RAYBACK: Okay. You think that this provision has to do with TRS but do you see it's talking about TRS laden landfill gas?

MR. SPENCER: Yes.

MR. RAYBACK: The gas is all combined together, isn't it, or do you think there are separate gas streams?

MR. SPENCER: I think they have different atmospheric waste so they might combine for a time. Something I neglected to say, for example, is that

methane can mix with a liquid and become part of, in effect, a landfill gas escape but just not into the air. Perhaps, if there's no leaks which I assume, through the leachate but I never checked to see what the -- if there's a methane component in JRL's leachate, if you follow me.

MR. RAYBACK: I think I do. So do you know whether that's happening? You don't know whether that's happening at JRL?

MR. SPENCER: No, I'm just saying that -- I'm giving as an example of whether gases are all together or what, but if your question is --

MR. RAYBACK: I wanted to start with did we get the provision right?

MR. SPENCER: Yes.

MR. RAYBACK: Okay. So I'll ask you the follow-up question. So it seems to me, I read this provision to say JRL has to minimize how much moisture is getting into the landfill and then they have to minimize landfill gas releases by using cover, both intermediate and daily, and the landfill gas management system. Would you agree that's what the license is saying?

MR. SPENCER: Yes.

MR. RAYBACK: When you submitted your

pre-filed testimony, were you aware of that provision requiring them to do those things?

MR. SPENCER: No, but I was aware that basically -- I knew that they had applied for a change in their air license and I knew that they were basically in compliance with their air license.

MR. RAYBACK: Would you agree that these steps that we've been talking about, intermediate cover, daily cover, a gas management system preventing moisture from getting into the landfill, those are some of the steps that Bogner and the Sierra Club were talking about as the best practices to reduce emission of methane?

MR. SPENCER: Yes, yes, no argument.

MR. RAYBACK: Thank you. No further questions.

HEARING OFFICER: Thank you. Is somebody from MRC available to conduct their cross examination?

MS. McBRADY: Good morning. I feel like a talk show host with this. My name is Nancy McBrady. I'm an attorney for MRC. I just have a few questions this morning. Thank you for being here. Mr. Spencer, you live in Old Town, is that correct?

MR. SPENCER: Correct.

MS. McBRADY: And you dispose of your household waste in Old Town, I'm assuming?

MR. SPENCER: We participate in the pay to throw currently in place in Old Town. It's picked up on the Kirkland Road and taken, I hope directly, by Casella to the PERC incinerator in Orrington.

MS. McBRADY: Well, that was my next question and I wanted to know whether you were aware that the town of Old Town's MSW does go directly to PERC?

MR. SPENCER: Um-hum.

MS. McBRADY: Thank you. Are you aware that in 2013 the net disposal cost for Old Town to dispose of its MSW at PERC is about $51 per ton?

MR. SPENCER: I was aware of that being the ballpark figure, sure.

MS. McBRADY: Okay, and in 2017 are you aware that that cost will increase to about $67 per ton?

MR. SPENCER: I -- no, I would not have known that.

MS. McBRADY: Okay. Based on your testimony, your pre-filed testimony and your testimony today, you are in support of the solid waste hierarchy, correct?

MR. SPENCER: Correct.
MS. McBRADY: And your preferred method of disposal for your town's MSW would be to continue to go to PERC, is that right, after reducing and reusing and recycling?
MR. SPENCER: I see that as the best alternative for our town into 2018.
MS. McBRADY: Okay, and would you still see that as the preferred alternative for your town if those net disposal costs were to increase, say, by $20 a ton?
MR. SPENCER: May I qualify?
MS. McBRADY: Certainly.
MR. SPENCER: There's not just a fee for picking up the waste and taking it to PERC. There's also a fee involved to the town for doing the zero sort recycling which has just begun in our town.
MS. McBRADY: Okay.
MR. SPENCER: So there are other considerations, not just PERC, but I think to me personally if there's an additional cost and it can be proven that this is the best available, you know, disposal for our waste as a community, yes.
MS. McBRADY: Is there a limit to what you would pay for that best disposal means for your

community?
MR. SPENCER: I would say no and this is why, because I have a commitment. We don't put out much waste, okay? One pay to throw bag every other week might be an average. So before it's an issue to me and my family, you know, my personal feelings are likely to be irrelevant because there's other people who are going to produce a lot more waste. The idea is to reduce the waste stream.
MS. McBRADY: And do you feel that your preferences are representative of other members of your community at home?
MR. SPENCER: Yes.
MS. McBRADY: Thank you. I don't have any other questions.
HEARING OFFICER: Thank you. Are there any other intervenors who wish to cross examine the Citizen intervenors at this time? Seeing none, I would ask the Citizen intervenors do you need a few moments to discuss things as a group before we move on to the redirect testimony or are you prepared to proceed to your redirect at this time? If you need a moment to confer, I will provide you that moment.
MR. SPENCER: Yeah, why don't we.
HEARING OFFICER: It is currently 11:04.

Let's reconvene at -- let's just say 11:15 and give you the opportunity to confer and get back in our seats at 11:15, please.
(OFF RECORD)

HEARING OFFICER: We are back on the record and reconvening to do the redirect by the Citizen intervenors. You've been allotted 10 minutes for redirect which is testimony that gets at the issues that were raised on cross examination. Please proceed.
MR. SPENCER: I'll start. Number one, my testimony basically assumes that more MSW in the JRL will equal more methane potential released; number two, at JRL, the quarterly test procedures of the covered part of the landfill does not accurately reflect the methane escaping. Waste-to-energy beats incinerating by every scientific study that I've seen; and, lastly, on page 14 of that same JRL air license it says, quote, AP-42, Section 2.4 also estimates that active gas collection and control systems have capture efficiencies of 60 to 95 percent -- I'll repeat that -- 60 to 95 percent and flares typically destroy approximately 98 percent of the collected NMOCs, VOCs and methane. So I just

wanted to say that because it shows 60 percent as a -- as opposed to, you know, 85 percent or whatever the landfill says.
HEARING OFFICER: Thank you. Is there other redirect testimony?
MR. LINCOLN: Yes. The truck nuisance was brought up and we also get truck nuisance. My previous testimony was stricken because of that, but we do get truck noise nuisance from the jake brakes coming off of 95 and if that is allowed to bring in more MSW, that means more truck traffic and more noise coming off 95.
HEARING OFFICER: Thank you for that note. I would make sure that you understand that there is a difference between truck trips in miles and the truck noise. So I would ask you to look to our previous procedural orders to determine whether or not those are relevant.
MR. RAYBACK: Objection, and we move to strike that testimony. He didn't testify the first time around so he can't offer redirect testimony now, and I'm sorry, nobody crossed him either, excuse me.
HEARING OFFICER: That testimony will be stricken.
MR. SANBORN: Is Mr. Coffman allowed to

speak under the redirect?
HEARING OFFICER: He is not because he did not provide pre-filed testimony and this would only be with respect to pre-filed testimony and cross examination of that pre-filed testimony.
MR. SANBORN: Okay, thank you. Mr. -- I can't read the name from here and I didn't write it. I think it's Rayback.
HEARING OFFICER: Rayback.
MR. SANBORN: Thank you. He brought up the question of where my wife and I's home is located within proximity of the egress to the interstate, and I want to address that. He asked the question, the trucks get off the interstate and would you agree they only travel a tenth of a mile until they get to the entrance of JRL. He never asked me how far my house was from the entrance to JRL. It's less than a tenth of a mile. I also have a piece of commercial property between my house and the entrance to JRL. That's considerably less than a tenth of a mile. We see every single one of those trucks. I can walk out to get the newspaper every morning at 5:30 and I can count three to five trucks. My driveway is 85 feet long.
The other thing that I'd like to address,

they don't all get off from I-95. Many of them get off at Exit 197 and then come up Route 16. It all depends on when the commercial vehicle trucks are on the interstate, but when they get off there, they're traveling by David's house, they're traveling by Ralph Coffman's property, they see it, they hear it, they can't enjoy their property. So I just wanted to clarify that while I do live on the other side, there's no imaginary line between me and the entrance to JRL. We still see it, we still hear it, there's still noise. Thank you.
HEARING OFFICER: Thank you. Is there any other redirect from the Citizen intervenors at this time? Seeing none, we will move on to the recross of the Citizen intervenors.
MR. RAYBACK: Mr. Spencer, you pointed us to page 14 of the air license where you read off the provision about the AP 42 factor that EPA uses for estimates of gas collection. Did I hear correctly and am I reading this correctly that it's a range of between 60 and 95 percent?
MR. SPENCER: Correct.
MR. RAYBACK: You focused on the 60 percent but it could be as high as 95 percent according to that AP 42 factor?

MR. SPENCER: At the instant that it is being measured, which at JRL is quarterly over a covered surface.
MR. RAYBACK: Were you here yesterday for Ms. Webb's testimony about capture efficiencies on a lifetime basis?
MR. SPENCER: Sure, yes, I was.
MR. RAYBACK: Do you recall that she concluded that the lifetime collection efficiency in her exhibit, BGS/NEWSME Exhibit 21, was 86.9 percent?
MR. SPENCER: She described a graph with her hand like this, steep to start with and then declining. I think there was a follow-up question on just what the lifetime, you know, equals and I can't really recall if she said it was 20 years, 30 years, 40 years, because what I'm saying and what Sierra Club and others are saying is look out for what they call the second wave of methane generation which is after the landfill is closed, the operator is gone, the state is still owner, there's settling, there's gas coming -- rainwater coming in, more water, okay, and more methane emitted.
MR. RAYBACK: So when that second wave occurs, is that -- that's sort of in the latter part of the landfill life, correct? That's what you're

talking about?
MR. SPENCER: It's beyond the active landfill life, from what I understand.
MR. RAYBACK: Do you recall Ms. Webb's exhibit had that represented as years 41 to 100 final cover with no gas collection which she explained was conservative; she said there was only 6 percent total generation lifetime occurring in that 60-year period. Do you disagree with that?
MR. SPENCER: I don't have the scientific basis to make a statement whether I agree or disagree with that. I just lack the knowledge, but it sounds very low to me.
MR. RAYBACK: Thank you. No further questions.
HEARING OFFICER: Thank you. Is there any other recross?
MS. McBRADY: No, there is not.
HEARING OFFICER: Okay. Does the Department have any questions?
MR. PARKER: No.
HEARING OFFICER: That concludes the testimony of the Citizen intervenors. Due to scheduling and that we are so close to the noontime hour, we're going to have an extended lunchtime.

We're going to recess for lunch and we will resume the hearing at 1:00, and at that time we will have the summary testimony of the cities of Biddeford and Saco at 1:00. So we are recessing for lunch and will be back here at 1:00 with the summary testimony of Biddeford and Saco.

(LUNCH RECESS)

HEARING OFFICER: Good afternoon. Again, my name is Heather Parent. We are back on the record for the Juniper Ridge Landfill Amendment Application public hearings. We are reconvening and starting with the summary testimony by the cities of Biddeford and Saco. I do believe that I will need to swear in those people who have not been sworn in yet. So at this time if you have not been sworn in and plan on testifying this afternoon, please stand and raise your right hand. Repeat after me, do you affirm -- do you affirm to tell the truth, the whole truth and nothing but the truth?

(Witness responds in the affirmative.)

HEARING OFFICER: Thank you. We will begin with the testimony of the cities of Biddeford and Saco, and if you are testifying, please come forward to the table. You will have ten minutes for your

testimony.

MR. KEITH JACQUES: Thank you. My name is Keith Jacques and I'm the --

HEARING OFFICER: Can you turn on your microphone, please?

MR. JACQUES: Good afternoon. My name is Keith Jacques and I am the city solicitor for the city of Biddeford and for the purpose of this afternoon, I am representing both the city of Biddeford and Saco. Speaking on behalf of the twin cities will be John Bubier who is the city manager for the city of Biddeford, who filed his pre-filed testimony a couple weeks ago.

HEARING OFFICER: And can you speak up a little bit, please?

MR. JACQUES: I'm done talking, how's that?

HEARING OFFICER: That's fine too. Thank you.

MR. BUBIER: Are these live or do I need this?

HEARING OFFICER: You will need the hand-held mike.

MR. BUBIER: Thank you. My name is John Bubier, and I'm the appointed city manager for the city of Biddeford, Maine. I've been the city manager

there for about eight years and prior to becoming the city manager for Biddeford, I was the city manager for Bath, Maine for eight years before that and have been in the profession for about 40 years.

The city of Biddeford offers the following comments in the matter of the amendment application to accept municipal solid waste from Maine sources. The city of Biddeford supports the application. The approval of the application provides several direct and indirect benefits, all of which are consistent with and support the Maine solid waste management policies.

The city of Biddeford is well aware of the larger policy issues surrounding the solid waste management having lived with the ramifications within the city of Biddeford, being a host community for the Maine Energy Recovery Facility, Maine Energy, since 1987. Maine Energy has served as the solution to a solid waste management disposal issue for Biddeford, for 13 southern Maine communities, as well as many other communities within the state of Maine for about 25 years. Unfortunately the facility has also served as the processor of approximately 170,000 tons of out-of-state waste and on November 30th, 2012, the city of Biddeford purchased the Maine Energy facility

and the facility ceased operations at the end of 2012. Beginning on January 1, 2013, Biddeford began transporting its waste to the transfer facility in Westbrook, Maine. Biddeford has a substantial interest in ensuring that the state-owned Juniper Ridge facility, JRL, available -- will become available to Biddeford and other southern Maine communities previously served by Maine Energy. The application proposes that Juniper Ridge will receive up to 93,000 tons per year of municipal solid waste which they previously disposed of at Maine Energy and at the same time, however, the amount of front-end processing residue and incinerator ash disposed at the Juniper Ridge Landfill will decrease by approximately the same amount.

Biddeford understands that the application will not represent an increase in the amount of the solid waste disposed annually at Juniper Ridge nor will it affect the design and life expectancy of Juniper Ridge.

Biddeford also has a substantial interest in the amount of municipal solid waste that is disposed at Maine facilities. In this regard, Biddeford has been an advocate for improving state-wide recycling and limiting the import of out-of-state waste for

Maine solid waste for many years. The application achieves these goals. The closure of the Maine Energy facility and the diversion of the state -- in-state municipal solid waste to Juniper Ridge will ensure that approximately 170,000 tons of out-of-state waste previously processed and combusted at Maine Energy will remain outside of the state of Maine's boundaries, thereby resulting in a significant source reduction in Maine's waste management system. It is Biddeford's belief that the application will further reduce the disposal of municipal solid waste by facilitating the development of municipal recycling programs -- additional recycling programs. In this regard beginning this July of 2012, Biddeford will commence a curbside single sort recycling program that it has sought after for the past ten years.

It is Biddeford's understanding that Casella Waste Systems and/or its affiliates are planning single sort recycling facilities in the Lewiston area and it is reasonable to assume through general conversation that as additional single sort recycling programs at facilities are made available and as contemplated by this application, other municipalities will increase their recycling efforts,

thereby diverting municipal solid waste from the Maine solid waste system.

The elimination of approximately 170,000 tons of out-of-state waste and the diversion of the in-state municipal solid waste through greater recycling efforts without a corresponding increase in the amount of solid waste disposed at the Juniper Ridge Landfill will have a positive implication for the citizens of Maine which is consistent with the Maine solid waste management policy.

The state's solid waste management hierarchy recognizes it as the policy of the state to actively promote and encourage waste reduction and from all sources to maximize waste diversion efforts. The application eliminates approximately 170,000 tons, as we said earlier, of state waste and actively encourages single sort recycling. A potential of up to 40 percent recycling may be reachable as a result of that.

In addition, an outdated and inefficient incinerator has been eliminated from the Biddeford downtown triggering significant economic development within Biddeford in specific terms and in southern Maine in general. These substantial benefits to Maine communities and to the state of Maine are

achieved without increasing the amount of solid waste disposal per year at Juniper Ridge and without impacting the municipal solid waste capacity for the state of Maine as a whole.

For those reasons, Biddeford supports the application. Thank you for your consideration.

HEARING OFFICER: Thank you. Now we're moving on to the cross examination of the cities of Biddeford and Saco with MMWAC and ecomaine. You are limited to a total of ten minutes.

MR. BOWER: Okay. Should I grab that microphone?

HEARING OFFICER: Yes, and Mr. Bubier, I would ask you to please project when you respond to the questions. Thank you.

MR. BOWER: Good afternoon, Mr. Bubier. Is it Bubier or Bubia?

MR. BUBIER: Bubier.

MR. BOWER: Okay. My name is Mark Bower and I'm an attorney representing ecomaine and MMWAC in this matter. I just have a few questions for you regarding your testimony, the remarks that you just gave, and as well the letter agreement between the city of Biddeford and Casella dated November 30th, 2012. Do you happen to have that letter agreement

that was part of the purchase and sale agreement with you?

MR. BUBIER: I don't.

MR. BOWER: Okay. It was attached as Exhibit A to Joe Kazar's testimony and so just for your reference, I'll give you a copy of that exhibit.

MR. BUBIER: Thank you.

MR. BOWER: Would you agree that this -- do you recall signing this agreement in the end of November last year?

MR. BUBIER: Sure, yes.

MR. BOWER: Would you agree that the purpose of this agreement was to waive certain conditions precedent to the purchase and sale agreement as it had been drafted?

MR. BUBIER: The original question that you're asking is -- are you asking what is the situation as it relates to the city and Casella with respect to support for their application?

MR. BOWER: Sorry, I probably didn't ask you a very good question. Is it your understanding that the purpose of this agreement was to waive certain conditions precedent to the purchase and sale agreement?

MR. BUBIER: The original purchase and sale

agreement had a section in it that required that the city support an application and movement forward. It was part of the contractual obligation. That obligation was released subsequent to the original signing of that letter and the current condition simply allows us to support the application essentially not as a requirement of the contract.

MR. BOWER: Okay. You're jumping to my next question but that's fine. I just want to confirm that this letter agreement from November 30th of 2012 waived the conditions that Casella obtain an amendment to the Juniper Ridge license as a condition precedent to that purchase and sale?

MR. BUBIER: If that's what this letter says, we did agree to that.

MR. BOWER: Okay. Now, you were anticipating my next question. On the second page, the second paragraph, it states, "seller acknowledges that seller shall be solely responsible for the satisfaction of terms acceptable to seller of the conditions set forth in Section 5.1, 5.2 and 5.7 following the closing, paren, if and to the extent seller desires to have the same satisfied, closed paren, except that buyer agrees that buyer will not oppose and will publicly and privately support

seller's efforts to satisfy the same." Is it your testimony that this is no longer binding on the city of Biddeford?

MR. BUBIER: The city is not bound to support an application. It does seem that as we go through the testimony that was delivered earlier that it is in our best interest for a number of reasons to provide for opportunities in a facility that was purchased with Maine funds and that has serviced the city, as I said, bypass materials have been sent there every year for the last 25 years I suspect, and we are no longer doing that but we are still suggesting that the amount of materials that we send there will be within that 93,000 cubic yard range.

MR. BOWER: Okay. My question is just is this -- this agreement was never rescinded or anything. This is still a binding agreement between Casella and the city of Biddeford, correct?

MR. BUBIER: The only agreement I think in terms of this subject that you're referring to is that the city in a letter has agreed that we will support to the extent that we can the issues that are surrounding this application.

MR. BOWER: Thank you. Your testimony on page 2 of your pre-filed testimony now, you state it

is Biddeford's belief that the application will also further reduce the disposal of MSW by facilitating the development of municipal recycling programs and then you talk about the fact that beginning in July of 2013 Biddeford will commence a curbside single sort recycling program. Was that comment referring to the recycling collection and disposal agreement between Pine Tree Waste and Biddeford that was signed as part of the purchase and sale agreement for the MERC facility?

MR. BUBIER: There is a part of the agreement that the city and Casella will work together -- Pine Tree Waste I should say, which is a Casella company, will work together to establish the curbside pickup and to establish a recycling program -- a single sort recycling program that we feel will elevate our current 7 percent recycling ratio upwards over a period of years to potentially in the 40 to 45 percent range.

MR. BOWER: Okay, and that agreement is not contingent upon an amendment to the Juniper Ridge license, is it?

MR. BUBIER: It is not.

MR. BOWER: And you also on page 2 of --

MR. BUBIER: But I would suggest as I've

said earlier --

MR. BOWER: I'm on to my next question, thank you. On page 2 of your testimony you state, "the application eliminates approximately 170,000 tons of out-of-state waste and actively encourages single sort recycling. Wouldn't you agree that the closure of MERC itself eliminates the 170,000 tons of out-of-state waste rather than the application that's pending before DEP?

MR. BUBIER: I'm not sure that that's the case. I'm not completely familiar with all of the documents that Casella would have had with the state on the one hand or other outside sources as a result of that. So I couldn't really definitively answer that. It does strike me that the sale of Maine Energy to the city was not something which specifically denies 170,000 tons from coming into the state. There may have been discussions with other state regulatory agencies that occurred to that, but that's not within my purview.

MR. BOWER: So what's the basis for your statement that the application eliminates 170,000 tons?

MR. BUBIER: As we understand it, that that 170,000 tons is no longer going to be allowed to come

into the state as a result of this facility.
MR. BOWER: As a result of the facility shutting down?
MR. BUBIER: As a result of the facility shutting down and negotiations with other agencies.
MR. BOWER: And finally, you make reference to the outdated and inefficient incinerator that has been eliminated from Biddeford's downtown. Hasn't the incinerator been eliminated regardless of the outcome of the pending application?
MR. BUBIER: I'm not sure I understand what you're saying.
MR. BOWER: At the end of 2012, the MERC incinerator was shut down, correct?
MR. BUBIER: Um-hum.
MR. BOWER: And regardless of what happens with the pending application before DEP, it will remain shut down, correct?
MR. BUBIER: That's correct.
MR. BOWER: No further questions.
HEARING OFFICER: Thank you. Are there any other parties who would wish to cross-examine the cities of Biddeford and Saco? Seeing none, I will move on to the redirect for the cities of Biddeford and Saco.

MR. JACQUES: We don't have any redirect.
HEARING OFFICER: Given that there's no redirect, we'll move on to DEP staff questions.
MR. PARKER: Good after, Mr. Bubier. My name is Mike Parker. I'm the project manager for this application. To use one of Mr. Doyle's terms, is there ability for the city of Biddeford to breach its current contract with Pine Tree Waste for the management of your MSW?
MR. BUBIER: Is there what? I'm sorry.
MR. PARKER: Is there an ability for you to breach the contract?
MR. BUBIER: To breach the contract?
MR. PARKER: Yes. Is there an escape clause, if you will, where if you're not happy with how Casella is managing your MSW, is there a way for you to breach that contact? Would you have to notify them at some point.
MR. BUBIER: I would assume that if the contract conditions and provisions were not followed either by one or the other or both of the parties, there would be an option to breach the contract. I'm not -- I'm not sure what the conditions are.
MR. PARKER: Okay. So you're not sure if there's a penalty in there if the city decides, say,

we're going to back out of this contract? Is there a penalty in that contract that you're aware of?
MR. BUBIER: There may be. I don't know.
MR. PARKER: Thank you.
MS. LOYZIM: Good afternoon, Mr. Bubier.
MR. BUBIER: Good afternoon.
MS. LOYZIM: Following up, just some clarifying questions regarding some of the questions posed to you a couple of moments ago. Is it your belief that the 170,000 tons of MSW that was incinerated at the MERC facility that had been brought in from out-of-state will no longer be brought into the state solely as a result of approval of the JRL application before us that's the subject of this hearing?
MR. BUBIER: Frankly, I'm not sure what the conditions were, not having been a party to those discussions, simply anecdotal discussions around the contract and around the 170,000 tons. So, again, my understanding is that there were discussions that were not on my watch but were on another set of agendas, that discussion of that out-of-state waste was had and that the out-of-state waste was conceded.
MS. LOYZIM: Okay, thank you.
HEARING OFFICER: Thank you very much. That

concludes the testimony of the cities of Biddeford and Saco. We will move right on to the summary testimony by the city of Old Town at this time. If you would please come forward.
MR. KATSIAFICAS: Hearing Officer Parent, Members of the Panel. My name is Jim Katsiaficas. I'm an attorney with Perkins Thompson representing the city of Old Town and here to present the pre-filed testimony for the city of Old Town is Old Town city manager, Bill Mayo, and shall I hand him the microphone?
HEARING OFFICER: Yes, please. Thank you.
MR. MAYO: Good afternoon. My name is Bill Mayo. I'm the duly appointed city manager for the city of Old Town.
HEARING OFFICER: Speak right into the microphone, please.
MR. MAYO: One of my duties as city manager is monitoring issues regarding the operation of the Juniper Ridge Landfill and advising the Old Town City Council of those issues.
The city of Old Town is a host community for Juniper Ridge Landfill. As a host community of JRL the city primarily is concerned with the health, safety and welfare of its residents and any impacts,

positive or negative, that JRL has on its residents; therefore, the city offers the following comments in the matter of the amendment application to accept municipal solid waste from Maine sources.

The application proposes that JRL will receive up to 93,000 tons per year of municipal solid waste that previously had been disposed of at Maine Energy. This does not represent an increase in the amount of solid waste disposed at JRL but does represent a change in the nature of that solid waste and it is that change that concerns the city of Old Town.

Until the end of calendar year 2012, JRL received front-end process residual and incinerator ash as well as incinerator bypass MSW and soft layer MSW from both Maine Energy incinerator in Biddeford and the PERC facility in Orrington. The change in the nature of the waste stream proposed in this application which results from the closure of Maine Energy and its cessation of incineration of MSW means that the amount of MSW to be disposed of at JRL will increase from 22,400 cubic yards in 2011 to 81,800 cubic yards according to figure 1-1 in the applicant's December 2012 revised application. At the same time, the amounts of FEPR will decline from

103,300 cubic yards per year to 60,500 cubic yards per year and the amounts of incinerator ash will decline from 105,500 cubic yards to 55,600 cubic yards per year, thus the quantities of incinerator ash which is largely an inert material posing no odor or vector control issues would be reduced by half and the amounts of MSW that do present potential odor and vector issues will be nearly quadruple according to the applicant's submittals.

It is a potential for issues caused by the proposed change in waste stream that concerns the city. The city's specific concerns as are follows, transportation, existing haul routes as noted by the applicants in Section 2.4 of the revised application require trucks hauling waste to pass over Route 16 between the Interstate 95 interchange and JRL. While this distance is only a tenth of a mile, it still causes trucks loaded with MSW to be passing by residences. The noise of these trucks traveling at all time of day and occasionally using jake brakes for engine braking is disturbing to residents along that road. The city notes that the applicants propose fewer total loads per day and per year, although the number of trucks carrying MSW is proposed to increase from 813 in 2011 to 2,975 per

year in the future. The city understands that the overall reduction in truck traffic is attributable to the reduction in truck traffic necessary to transport FEPR, incinerator and MSW incinerator ash from Maine Energy. So long as the overall number of truck loads entering JRL does not increase, the city's concerns are addressed. Perhaps if DEP might attach a condition of approval that the number of trips per year or truck loads per year and per day not exceed certain numbers based upon past use would help assure our residents who live in that area that the granting of this application will not create any harm due to increased truck traffic.

Odor is another concern of the city. Odor complaints, like other landfill related complaints, regarding JRL are reported to the city and the city follows up with NEWSME and Casella Waste Systems, Inc., as contract operator JRL, to seek to have these issues addressed. The city's experience has been that NEWSME and Casella are responsive when odor complaints arise. At Sections 2.5, 3.5 and 4.8 of the revised application, the applicant's propose to continue their active measures in place to control gas and odor at JRL including a fogging system, operational changes, flare gas emissions and to use

landfill gas as a fuel for the University of Maine at Orono campus. So long as DEP is satisfied that these efforts are sufficient to address odor issues that might arise at JRL as a result of disposal of increased amounts of MSW, the city is satisfied with DEP's review.

Vectors and litter, because the application involves a reduction in the amount of relatively inert incinerator ash being delivered and an increase in the amount of raw MSW being delivered to JRL, the city has concerns about the way in which this MSW will be managed in order to minimize litter issues and access to birds and animals. Section 4.6 of the revised application proposes placement of daily cover over all areas receiving MSW, FEPR and other waste with odor generating potential. It also proposes the placement of intermediate cover when additional waste is placed for periods of six months or longer and Section 4.9 proposes waste compacting as well as daily cover and placement of litter control fencing to minimize litter.

Under Section 4.11 of the revised application, vector control includes that same placement of daily and intermediate cover to control access by vectors such as seagulls. Section 4.11

also indicates that JRL maintains a contract with Modern Pest Control to control potential rodents at the facility.

So long as DEP's review demonstrates that these actions are sufficient to control litter and vector exposure, the city is satisfied with DEP's review of these issues.

Noise, the Old Town residents who live near JRL do have occasional noise complaints. Section 4.2 of the revised application specifies standard hours of operation Monday through Friday, 6 a.m. to 8 p.m., Saturday and Sunday, 7 a.m. to 4 p.m., but it also states that delivery of some of these wastes may occur outside these standard hours of operation. The city asks that the applicant attempts to stay within the standard hours of operation to the greatest extent possible.

Leachate management, I won't read down through this because I believe yesterday one of the concerns we had with the city of Brewer, Jeremy Labbe dealt with that and that permit has been okayed. I guess to look at that, my only thing to say to that is that the city would ask that DEP review those leachate standards -- parameters closely to assure the public that there will adequate disposal

availability for leachate generating if the application is approved.

Out-of-state waste, a number of city residents have expressed concerns that capacity at JRL is being used to dispose of out-of-state waste. Their concerns arise because the Operating Services Agreement between the state of Maine and Casella prohibits the disposal of waste generated upstate at JRL and also because disposal of such waste lead to early filling of this landfill which is a state solid waste management resource; yet, MSW has had to be imported from out of state to ensure continuous operations of the Maine Energy waste-to-energy incinerator and the resulting ash, FEPR and incinerator bypass have been disposed of at JRL. While resulting ash, FEPR and incinerator bypass technically are considered in-state waste under Maine law, we're all aware that it results from MSW that originated out of state. The applicants state in the conclusion of their revised application that the closure of Maine Energy which is enabled by the requested amendment to the JRL permits and approvals will leave approximately 170,000 tons of out-of-state MSW currently processed and combusted at Maine Energy beyond Maine's borders, thereby resulting in

significant source reduction from Maine's waste management system. The city supports the concept of reducing the amount of out-of-state waste processed by Maine's solid waste management system and disposed of at JRL and asks DEP to ensure that this reduction in disposal of out-of-state MSW derived waste at JRL is part of any approval of the revised application.

Finally, I wish to make it clear that the city does not object to and is not opposed to the proposed application. Applicants NEWSME and Casella have been responsive to issues and questions that have arisen regarding landfill operation and have been a responsible community business contributing to civic organizations and events in Old Town; however, the city of Old Town represents all its residents, some of who are affected or may be affected by transportation, noise, odors, truck traffic, leachate, litter and vectors that could be impacted as a result of the change in the nature of the waste stream proposed by this application. It is for these reasons that the city presents these concerns with every expectation that DEP will ensure that the applicants satisfactorily address those concerns and with every expectation that the applicants will do so. Thank you.

HEARING OFFICER: Thank you. Are there any parties who wish to cross examine the city of Old Town? Seeing none, Department questions?

MR. PARKER: Good afternoon, Mr. Mayo. I'm Mike Parker, the DEP project manager. Are you aware of any instances where JRL or their staff have not responded appropriately to any odor complaints?

MR. MAYO: No.

MR. PARKER: Thank you.

MS. LOYZIM: Good afternoon, Mr. Mayo. It was stated earlier today I believe that there might be some cost to the city of Old Town associated with the zero sort recycling efforts in that town. Could you speak to that?

MR. MAYO: Not that I'm aware of.

MS. LOYZIM: What is the arrangement that the town has for zero sort?

MR. MAYO: We have a pay per bag municipal solid waste pickup right now at curbside and a zero sort program also. We -- we do get paid a fee for processing zero sort at our transfer station, but I'm not aware of us having a cost associated with that.

MS. LOYZIM: Okay, thank you.

HEARING OFFICER: And that concludes the testimony of our last witness, the city of Old Town.

I wanted to thank you all for your participation in presenting evidence, all of the parties for their participation in presenting of the evidence for the Department's consideration on the amendment application. We do expect that the transcript of the hearing will be ready by May 3rd. Provided that we receive it by May 3rd, the closing briefs by the parties are due May 17th. The reply briefs are due May 24th. The record at the conclusion of this hearing will be closed with the exception of the public comments that we can receive in writing to the Department, to Michael Parker by April 30th, and with the exception of the submission of the post-hearing briefs that I just described the schedule for. I may reopen the record at my discretion but I will only do so upon a demonstration of good cause for why the record needs to be reopened.

We will evaluate all the evidence in the record and make a licensing decision based on that evidence and any other evidence that the Department has.

MR. DOYLE: Madam Hearing Officer, a question?

HEARING OFFICER: Yes, Mr. Doyle.

MR. DOYLE: So the closing briefs that are

due on the 17th, this is based on the evidence in the record. There's no opportunity to present additional evidence, correct?

HEARING OFFICER: The closing briefs will be consistent with -- and I'm trying to find it here -- will be consistent with Chapter 3, Section 23, post-hearing brief and proposed findings. That section says that all parties have a right to submit briefs and proposed findings of fact in writing after the close of the hearing and the record, within such time as specified by me. In this case I am providing for an opportunity for all of the parties to submit their closing briefs by May 17th and I am providing all the parties an opportunity to provide reply briefs in reply to any comments made in the closing briefs by May 24th. So with the outline of the procedures set forth, this hearing is closed and thank you all again for -- this hearing was almost closed. Go ahead Mr. Katsiaficas.

MR. KATSIAFICAS: I apologize for keeping this open. There was a question asked by Ms. Loyzim of Mr. Mayo, and I think he misunderstood the question and we'd like to try to get a full answer to the question out of respect to the panel. Would that be appropriate?

HEARING OFFICER: You caught us right under the wire. Yes, Mr. Mayo.

MR. MAYO: I answered too quickly. Let me -- I misunderstood when you asked me about zero sort. Were you asking if we have a contract that we pay for?

MS. LOYZIM: Yes.

MR. MAYO: Yes, we do and we do pay for that. I thought you were talking about zero sort as far as processing it.

MS. LOYZIM: Thank you.

MR. MAYO: We do have a contract.

HEARING OFFICER: And just for accuracy, that additional piece of information will be part of the record. Are we all set? Okay, thank you. With that, I thank all the parties for your participation and this hearing in closed.

(Whereupon, the above-named hearing was concluded at 1:40 p.m.)

CERTIFICATE

I, Joanne P. Alley, a Notary Public in and for the State of Maine, hereby certify that on the 10th day of April, 2012, personally appeared before me the within-named witnesses who were sworn to testify to the truth, the whole truth, and nothing but the truth in the aforementioned cause of action and that the foregoing is a true and accurate record as taken by me by means of computer-aided machine shorthand.

I further certify that I am a disinterested person in the event or outcome of the aforementioned cause of action.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of May, 2013.

_____

Joanne P. Alley
Court Reporter/Notary Public

My commission expires: July 17, 2015

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