

## **Request for OPEGA Review of the Operation of the Juniper Ridge Landfill**

### **Summary of Limited Background Research conducted for the Government Oversight Committee in its consideration of this request**

- The State of Maine owns the Juniper Ridge Landfill as the result of an effort to keep the Georgia Pacific Paper mill in Old Town open in 2003 and to further the policy objective associated with legislation passed in 1989 that limited future development of commercially-owned disposal capacity by having the State as owner/provider of solid waste disposal capacity.
- The State Planning Office (SPO) oversees the operation and management of JRL for compliance with the Operating Services Agreement (contract). SPO reviews reports, manifests, complaints, inspects/visits the landfill, participates in the JRL Advisory Committee, and works with State Police to monitor trucks.
- The Request for Proposals for the Operating Services Agreement (OPA) was created by staff from Governor Baldacci's office, the Bureau of Purchases and SPO and issued in 2003.
- The 30-year Operating Services Agreement, similar to a contract, was negotiated between the State (represented by Drummond Woodson), Casella (represented by Burnstein Shur) and Georgia Pacific (represented by Pierce Atwood). The agreement was signed in February of 2004. Casella paid \$26 million directly to Georgia Pacific, and the State assumed ownership of JRL.
- The State does not receive any revenue from JRL other than the handling fees levied by the State on the generators of certain wastes that are collected by the landfill operator and forwarded to the State. The handling fees collected at all landfills are deposited into the Maine Solid Waste Management Fund and used to support solid waste management programs at the SPO and the Department of Environmental Protection (DEP).
- SPO described the benefits of the State of Maine owning JRL including delaying the development of other landfills in the state, providing capital to Georgia Pacific in an attempt to keep the Old Town mill open, and contributing to the State's goal of limiting commercially owned landfills in the state. Additionally, as owner of the site, the State can restrict the types and sources of wastes accepted at JRL including prohibiting the disposal of solid wastes generated out of state.
- The OSA includes termination provisions, and these provisions also make reference to compliance with the terms and conditions under which the landfill is permitted and licensed.
- The Maine DEP licenses and monitors JRL, and regulates solid waste activities in the state. The current licensee is the "State of Maine, Acting Through the State Planning Office". The decision granting the license was appealed to, and upheld by, the Board of Environmental

Protection and then the Penobscot Superior Court. Casella is responsible for obtaining the permits and licenses necessary for JRL which must be obtained in the name of the State.

- One required component of the overall license is an Environmental Monitoring Plan, which is a detailed and lengthy document separate from the license. Any changes to the Monitoring Plan must be approved by the DEP. As part of this Plan, Casella performs sampling at the site and sends those samples to independent labs that report results directly to DEP. These reports are reviewed by DEP. DEP does some spot sampling as well. A DEP team (engineer, geologist, project manager) also performs periodic on-site inspections of different facets of the landfill and reviews records and reports from JRL. Casella is required to produce monthly and annual reports summarizing activities; in addition each vehicle bringing waste to the landfill is required to complete arrival and departure forms showing the type and quantity of waste. DEP may also spot check these reports by cross checking generator data, which the Department also receives.
- There have been two amendments to the OSA, both in 2006. The first amendment changed the required date for an expansion application. The 2<sup>nd</sup> amendment was a change to the “Fuel Supply Agreement” which resulted in certain types of out of state waste used in the fueling process for trash to energy facilities to be disposed of at JRL. This amendment proceeded with no public involvement, which led to the creation of SPO Rule Chapter 480: Requirements for the State Planning Office to Accept Public Comments Before Amending a Solid Waste Disposal Operating Agreement. No other OSA amendments have been proposed.
- Maine statute was changed in 2007 to clarify the out of state waste issue, and now contains a specific definition of waste generated within the State (Title 38 §1303-C.6), which states: "waste that is generated within the State includes residue and bypass generated by incineration, processing and recycling facilities within the State." Complete prohibition of importation of out of state waste has Interstate Commerce Clause implications, as per memo from the Attorney General's Office in the 2010 interim report.
- There is a DEP process for possible expansion of JRL currently underway that provides for public input. The first phase of the process, which requires DEP to make a Public Benefit Determination regarding an expansion, is currently in progress. The DEP has issued its determination and three appeals have been made to the Board of Environmental Protection. The Board is expected to hear and render its decision regarding whether the three appellants have standing to appeal on May 3<sup>rd</sup>. If the BEP decides any of the three have “standing” to appeal then the license applicant has 30 days to respond to the appeal before the BEP schedules a meeting to deliberate and decide on the appeal(s). After the Public Benefit Determination phase is complete, the applicant must then file for an actual license amendment for expansion of JRL which also is a process that provides for public input.

- The Environment and Natural Resources Committee has had many discussions related to solid waste management issues in general:
  - Conducted the “Interim Study of Solid Waste Management Issues” during the interim in 2010, which included a presentation and discussion of JRL.
  - Bill Laubenstein from the AG's Office has appeared before the committee regarding Casella's Operating Service's Agreement with the State a number of times.
  - Each year SPO prepares and presents to the Committee an annual "Solid Waste Generation and Disposal Capacity Report" that includes information on Juniper Ridge.
  - Legislative resolve created the Blue Ribbon Commission on Solid Waste Management in 2006, which looked at host community benefits, solid waste management structure, construction/demo debris and the waste management hierarchy.
- The State and Local Government Committee has not been involved in this issue.
- Other opportunities for public involvement:
  - The Joint Citizen Advisory Committee for the JRL, whose membership includes five members from Old Town, two members from Alton, and one member from the Penobscot Nation. The Committee meets approximately four times a year. The members of the Committee receive a monthly report that includes an overview of the past month’s operation of JRL, a benefits “to-date” summary, information on waste deliveries and other information.
  - Public Meetings regarding the Public Benefit Determination process.
  - There is a Host Community Benefit Agreement with the City of Old Town and a Community Benefit Agreement with the Town of Alton, which include monetary payments which Casella makes. These agreements include such things as an annual impact fee, payments in lieu of taxes, per ton payment to the town for certain wastes, free disposal of municipally generated waste, and water testing and/or water filtration for local residents. Citizens claim that a clause in the Host Community Agreements make it unlikely that the Town’s themselves will intervene in any proceedings on JRL as they are dependent on this revenue source. OPEGA reviewed the HBA for Old Town which does include a clause that allows Casella to stop making payments during an appeals period to the City if the City appeals any federal, state or local permit, license, approval or determination related to the operation or expansion of JRL.