

## Rebuttal of PBD Draft of September 13, 2024

This Draft document is dangerous to the Public, especially citizens of Old Town, Indian Island, Alton and surrounding communities. It fails to address Environmental Justice concerns and requirements. The Department has refused to adequately review the true sources of wastes brought to JRL, thus rendering analysis of compliance with our State Waste Hierarchy incomplete. Parts of the document read as if they were written by Casella employees, and Public fears of regulatory capture are being reinforced. The Department has delegated critical governmental functions to the Operator of our first state-owned landfill and rendered the 1989 legislative intents to protect Maine from becoming New England's waste dump unfulfilled.

In the History section, it should say "Selective History". There is no mention of the first Expansion from 330,000 cubic yards to 10 million cubic yards without a Public Hearing, nor is there discussion of the 2006 (Secret) Amendments to the OSA that opened JRL to all residues from processing facilities whose professed purpose was to make clean fuel for Maine boilers. As a side note, there is little to zero CDD fuel being burned in Maine now. Another neglected and important event was the 2007 adoption of an industry written definition of Maine generated waste. Prior to that time, we relied on the common sense fact that Maine waste actually became waste in Maine. Currently, any waste that first comes to a so-called processing facility located in Maine is allowed into JRL. This is not what the landmark 1989 legislation was meant to achieve.

Page 3(C) does not mention that at least one of the Cells was constructed with its base below groundwater level. The PBD application was accepted as complete for processing on 6/24/24, but a detailed list of 23 questions was sent to the applicant on July 30, 2024. This whole process has been rushed which always hurts the local Public. On Page 4(A) it mentions requirement to "...consider those [Public] comments in making a decision." There is very little evidence that the Public's concerns were incorporated into this Draft. I attended both Public meeting sessions on July 16<sup>th</sup>, where there was unanimous opposition to granting a PBD expressed by the Old Town City Manager, two local state representatives to the Legislature, and every person who spoke.

The numbers on Page 6 add up to a majority of JRL inputs being Construction and Demolition Debris (CDD). 38% CDD plus 9% OBW plus 9% CDD fines equals 56% of all the wastes are CDD. Much of this was first discarded beyond Maine's borders, but what % of the total waste inputs this number actually is defies DEP consideration or explanation. The stated need for short-term capacity is based primarily on assuming that 90% of WWTP sludges from Maine will continue to come to JRL in their current primarily non-dewatered form that requires massive combinations with dry materials. If the Brunswick facility and/or

Norridgewock sludge drying operations succeed, the demand for short term capacity should disappear.

52% of total Maine wastes landfilled coming to one facility, JRL, is not sustainable or desirable. This gives Casella a near monopoly, which threatens our economy. Increasing amounts disposed at other Maine landfills by double would avoid the need for JRL expansion, although I am not advocating that eventuality. It is very troubling that the only sources of numbers used in this Draft are reliant on Casella, ReSource, and others who stand to gain from Expansion. If the State as Owner, BGS, actually complied with their OSA and reviewed all JRL contracts before they were implemented, we would have a better accounting of what is actually coming to JRL.

Speaking of the OSA and State as Owner, why is the DEP approving PBD capacity that will last beyond the OSA expiration date of February 2034? We are told there are 4 or 5 years of useful permitted space at JRL, and that if this proposed expansion is approved there would be an additional 11 to 13 years capacity increased. This makes 15 to 17 years of JRL space at projected rates, and would mean waste capacity from 2039 to 2041, which is 5 to 7 years beyond the end of the current OSA. Wouldn't it be more prudent, if Expansion were truly necessary, to limit the licensed amounts to the end of the 30 year agreement? And let's be clear here: there has been no Review of Casella's performance as Operator of JRL. The State as Owner, SPO/DECD/BGS needs to be held accountable for its absentee landlord approach and total deference to the whims of Casella.

Some of the underlying logic in this Draft rests on shaky ground. For example, on Page 10 it says *"Reducing the amount of CDD generated in Maine and requiring generators to separate CDD components at the site of generation is beyond the ability of the operator of JRL to control."* I challenge this statement. Many times I have asked DEP to answer two important questions about Casella's relationship with ReSource: The first is where the inputs at ReSource actually come from- specific towns in and out of state; and my second question has been and still is unanswered: What portion of the inputs at ReSource are from a Casella facility, handled by Casella, contracted or brokered waste by Casella, etc.? The answers would go a long way toward helping us understand the level of control by Casella. And by the way, these answers should be known by BGS if they fulfilled their OSA obligations.

There are also other logic-defying statements on Page 10: *"Discounting the space consumed by CDD processing fines used as ADC..."*. This assumes that Daily Cover in the form of CDD "fines" is more effective at odor reduction and landfill gas escape prevention than a tarp system would be. ADC is a scam that should be addressed by the Legislature. Casella pays zero in tip fees to Old Town or Alton on Daily cover. In addition, Daily cover, in

a bizarre abuse of common-sense language, counts as Recycled material in Maine. This classification system allows processing facilities to avoid actually having to meet their 50% recycling minimum threshold. What are the % of ADC at JRL and Crossroads compared to those at the Aroostook County or Hatch Hill (Augusta) landfills? It is laughable and sad at the same time to read that the northern Maine landfill or others in Maine are “...*not a viable option due to transportation distances.*” It is 200 miles from JRL to Kittery, and many more miles to the true source of much of the CDD coming to JRL, but traveling that same distance or less is somehow not viable if the waste destination is Aroostook County.

On Page 12 at the end of the Findings Section C it says “...*the lack of existing infrastructure to increase waste diversion.*” ReSource and the other processing facility(ies) mentioned in the Draft should be diverting waste; instead, they are increasing waste to Maine’s landfill! Infrastructure exists to fraudulently fill JRL with CDD from away, but somehow real diversion doesn’t exist in effective scale. This is a problem, and Casella is not the solution, in my opinion. DEP’s studies are okay, but have not led to any helpful diversion programs. The DEP’s questions of July 30 did reveal that Casella’s claim that BGS was helping municipalities deal with their wastes was a fraudulent claim.

Page 13 (D) raises more questions than it answers: It says that over 93,000 tons per year of recyclables are “*managed through these programs*” in reference to Casella facilities in Lewiston and Scarborough. Are all these materials originating in Maine? Do I recall a body from New Hampshire being found at a Maine facility? Just what are “brokerage operations”? Breaking down the 93,000 ton numbers would be helpful. What % of Casella’s single sort materials end up at JRL?

Page 14: “*The volumes of CDD delivered to the landfill from non-Casella haulers or transfer stations not owned or operated by Casella similarly are beyond Casella’s control to sort or reduce.*” Really? If most of the inputs at ReSource are actually Casella wastes, a statement I have made to them that has gone unchallenged, then Casella could certainly reduce the inputs at JRL by directing these wastes elsewhere in their network of landfills. It comes to JRL in part because Maine’s regulations are the least restrictive. Casella is after profits, and landfilling wastes is unfortunately the most profitable process. “*Casella cannot control the amount of MSW bypassed*”, but they can raise their prices on single sort recycling so high that towns can’t afford this service, after they have dismantled their former recycling at the source efforts.

Excuse me for being perhaps overly critical of whoever wrote the Draft, but this statement is absurd: “*Continued operation of the landfill in a manner similar to which it has been operated is consistent with past waste management practices in the State.*” This is praising JRL for 20 years of evading the intentions of restricting future landfills to public owned in

order to avoid becoming New England's dump. Circular reasoning begets more disfunction, while the locals bear the brunt of wastes such as MSW and sludge that were never supposed to be part of JRL inputs.

## Environmental Justice

Throughout this document it becomes clear that the DEP is largely incapable of understanding what respect for the tenets of Environmental Justice would look like when incorporated into a License. One small example is on Page 14: *"If Casella were to refuse to accept the treatment plant sludge due to its moisture content, or to require the generators to dry it further, this would increase the burden on municipalities..."*. Somehow there is zero consideration of what it is like for the neighboring communities of JRL to experience with the huge increases in sludge deliveries. It appears the DEP and others are hesitant to put any restrictions on the producers of WWTP sludge, but offers no additional protection to those of us here in the Sacrifice Zone. There is no Equal Protection.

The Department adopting Casella's language in describing necessary capping or construction materials as "virgin soil" is bizarre. Casella spread toxic sludges on thousands of Maine acres for many years, with DEP approval. Thus, both entities have caused more soil to be degraded. By the way, why isn't this soil which was rendered unusable by Casella for agricultural activities used in place of "virgin soil"? Sadly, there are thousands of truckloads available, which would also avoid the necessity of importing more OBW or other CDD for stabilization or capping.

The Draft lists many important environmental threats present in the vicinity of JRL and Indian Island, yet somehow concludes that this Draft is not inconsistent with the precepts of Environmental Justice. It lists PFAS concentrations in the outfall from Nine Dragons (shut down) paper mill, but in a footnote at the bottom of Page 18 notes that there are no standards for leachate or effluent. However, in most DEP licenses included is the phrase *"...shall not pollute ANY waters of the State..."*. Some of the various PFAS/PFOS family of chemicals are now classified as Hazardous waste. We know the leachate from JRL is released into the Penobscot River barely treated, and we know that these chemicals are present in the outflow into the River. Yet somehow, the Department wants us to exempt Casella from a license violation in the form of water pollution because they have neglected to develop specific standards. This is unjust.

Page 19 contains this troubling quote: *"...groundwater, surface water, porewater, underdrain and leak detection continue to show minimal evidence of impact from landfill leachate."* If there were truly Environmental Justice for JRL, there would be no license applications accepted until we found out exactly what is causing leachate to show up

where it is not supposed to be. Is the landfill liner leaking- yes or no? Instead of answering this simple question, the DEP tries to deflect any concerns by blaming bad numbers on “construction” activities. A landfill is being constructed every single day. “Minimal evidence” needs real numbers associated with it. Leaks never fix themselves: identify the problem’s source(s), and until this is solved there should be no plans for expansion.

Community Notification. (Pg. 20, D) It is completely unacceptable for the Public to have to rely on Casella to notify us of any problems at the Landfill. Okay, they have a website, but what good is that on a moment’s notice in an emergency situation such as a flood or fire? Where is the plan for a coordinated governmental notification system, including local, county, and state officials? Where is the State as Owner, absentee as usual? To date, it seems as if the main function of those who should be helping us is to instead defer to Casella, who will never miss a chance to “spin” any negativity in their favor. It is shameful for our State to defer or deflect important safety and policy problems to a for-profit interstate garbage company. Where is DEP? Where is BGS? Likewise, we have always had to rely on Casella to assert that the odor complaint “...*was confirmed to be landfill related...*”. This is wrong.

Both the Department Finding (Pg. 20) and Conclusions in the Draft are identical aside from the Findings being tied to proving compliance with Environmental Justice precepts, so I will briefly comment on each. (1) Treatment of landfill leachate is vitally important, and as such should be begun immediately. Justice delayed is Justice denied! There have been plenty of discussions on various methods in the Legislature with DEP present, and Casella has implemented a PFAS reduction facility at the Vermont Landfill it also operates. Planning should have already taken place, and they should be required to begin construction right now, before submitting a full Expansion application. Remember: The Penobscot River is being polluted with twenty five million gallons of highly toxic leachate each year. In the OSA it says that Casella shall be responsible for all pollution control measures. Period.

Findings/Conditions (2) appears to offer Casella even more lenient terms of safeguarding air quality than at present. Odors are supposed to be contained within the boundaries of the landfill’s 700 plus acres. This scientific terminology is confusing at best and deceptive in appearance and language. It sounds like technical measurements would be required, thus slowing the process of protecting the Public. Changing restrictions from the Boundary to “...any occupied building...” literally moves the fences back beyond any reasonable distance. This morning I drove along Rt. 43 and saw two serious runners working out- they need to be certain of clean air; otherwise there is no Equal Protection via EJ. My daughter and her partner and dog were out duck hunting along Pushaw Stream adjacent to our property- in a just society they should not be subjected to landfill gases. When I work in

these local woods, and when members of the Penobscot Nation want to pursue traditional activities on Orson Island and other nearby tribal properties, we need to be assured that any odors will be dealt with immediately and comprehensively. Requiring testing at a building with people in it changes the requirements in Casella's favor, when the Environmental Justice precepts should mean better protections, not fewer.

Establishing "...a system to inform the public about significant landfill events..." is long overdue. (4). Terms like "near real time" have no real definition and sound like a recipe for noncompliance and making excuses. Websites require computer/phone access around the clock, which is often not available around JRL. One suggestion that makes sense is to install a siren on top of JRL: it is the highest point for miles around and would indicate abnormal events occurring. These sirens are standard in communities prone to flooding or tornado activities. In addition, there should be a reverse-911 type system installed to notify people who register their phones/email addresses and all officials. It should be made clear to Casella that any delay in reporting events will be reason for substantial financial penalties. By the way, every other State where Casella operates has fined Casella for non-Compliance (to my knowledge: certainly in VT, Mass, and NH): why never in Maine?

This Draft is dangerous in part because it delegates governmental functions to Casella, ignores the causes of leachate leakage, delays leachate treatment facility construction, and does not afford the local citizenry and Penobscot Indian Nation the protections guaranteed in the precepts of Environmental Justice. Having attended the public meetings, read submitted comments including my own, and read this Draft, it is clear that very little of our suggestions and requests have been incorporated to date. This proves a lack of meaningful involvement persists as it has throughout the trouble history of the State owned Juniper Ridge Landfill.

Respectfully submitted,

Ed Spencer

PO Box 12, Stillwater, ME 04489

745-6013