



Operated By  
NEWSME Landfill Operations, LLC

September 5, 2018

Paul Mercer, Commissioner  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333

Linda J. Butler  
Licensing and Compliance Specialist  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333

RE: Crossroads Landfill Expansion—Application for Public Benefit Determination,  
#S-010735-W5-XY-N

Dear Commissioner Mercer and Ms. Butler:

With this letter, NEWSME Landfill Operations, LLC (NEWSME), the operator of the Juniper Ridge Landfill (JRL) and an indirect subsidiary of Casella Waste Systems, Inc. (Casella), is submitting comments on the above-referenced public benefit determination (PBD) application by Waste Management Disposal Services of Maine, Inc. (WM) to expand the Crossroads Landfill (Crossroads). NEWSME recognizes the importance of landfills in Maine's solid waste management hierarchy, as well as the need for competitive markets and facilities. Along with the Bureau of General Services, the owner of JRL, we have very recent, first-hand experience with the Department's Public Benefit Determination and Expansion processes. We know and expect that the Department will apply its applicable decision criteria to this application as it has with past applications and on any future applications. A level playing field is critical to those who compete in this industry, to our customers, and to the public at large.

There is much in the WM's PBD application that NEWSME agrees with. For example:

- Section 2.1: Landfills continue to play an essential role in management of the State's solid waste.
- Section 2.3: The importance of competitive markets.

- Footnote 48 at the bottom of page 21: The assessment of Maine's annual MSW disposal needs cited in the *JRL Solid Waste License- Partial Approval with Conditions, #S-020700-WD-BL-A*.

For these reasons, NEWSME supports an expansion of the Crossroads Landfill. NEWSME does have comments regarding certain aspects of the PBD application, as discussed below.

**Current Crossroads Landfill Customer Base Compared to Expansion:**

The PBD application states (page 12) that WM is not seeking to expand its customer base beyond what it currently serves. However, in 2016 the annual fill rate at Crossroads was 333,585 cu. yds. (2018 DEP Waste Generation and Disposal Capacity Report). Note that in 2015 the Crossroads annual fill rate was 270,038 cubic yards (2017 DEP Waste Generation and Disposal Capacity Report). There was, therefore, a 24% increase (63,547 cu. yds.) in the annual fill rate over one year. An expansion of 7 million cubic yards lasting fifteen years indicates a projected annual fill rate of 450,000 cubic yards. This represents a 35% increase over the 2016 fill rate.

MSW disposed in individual Maine landfills was not reported in the 2018 DEP report. However, in the 2017 report (calendar 2015), 81,484 tons of MSW was disposed at Crossroads, or about 34% of the total. Using the projected annual fill rate of 450,000 cubic yards if MSW remains at 34%, this would represent about 153,000 cu. yds. or 137,700 tons, an increase of approximately 56,000 tons per year. WM should provide additional clarity concerning how this projected increase in tonnage relates to their current customer basis. NEWSME is not an advocate of tonnage limits, are not proposing them in this comment, and are not in favor of them as solid waste disposal facilities as they may inhibit competition and create the opportunity for supra-competitive pricing or even the inability for solid waste generators in Maine to have options for disposing of their waste. We are simply asking for clarification as the statement in the Crossroads PBD application about serving its existing customers seems to be in conflict with the size of the expansion request.

**The Requirements of the Waste Management Hierarchy Should be Applied Uniformly, Objectively, Consistently, and Without Regard to Facility Ownership:**

In section 2.3 of its application, WM discusses the importance of competitive markets. The principal concern with lack of competition is supra-competitive pricing for waste disposal. But JRL does not pose the risk of supra-competitive pricing, even if the Crossroads expansion were not developed; NEWSME has tipping fee caps at JRL in its Operating Services Agreement with the State of Maine for all waste types it is licensed to accept. Supra-competitive pricing, however, would be a concern for any waste type that Crossroads is allowed to accept that JRL is not. WM, for example, seeks in its expansion to continue to dispose of MSW (both in-state and out-of-state) without any limit or expiration date. The JRL expansion is not licensed to accept non-

bypass MSW, and existing JRL is currently limited to a cap on annual non-bypass MSW tonnage (81,800 tons) and a term that expires March 31, 2019.

Two landfills serving the State (Crossroads and JRL) alone do not prevent supra-competitive pricing. Both landfills also need to be permitted to accept the same categories of waste and with the same constraints, if constraints are needed. If Crossroads alone is licensed to accept waste types that JRL is not, or if JRL is constrained with tonnage limits and Crossroads is not, then supra-competitive pricing is a very real risk for those waste generators that are effectively forced to use Crossroads and Crossroads alone. Any PBD decision in this matter should consider and address this imbalance.

Another example where this concern arises is with Oversized Bulky Waste (OBW). The 2012 JRL PBD included a condition that requires JRL to comply with a limit on OBW, which was subsequently established in the expansion license. A second PBD condition requires a periodic independent third-party audit, at Casella's expense, of CDD processing operations that transport more than 10,000 tons of OBW per year into the JRL expansion. Crossroads does not face these conditions on OBW. To reduce the potential for supra-competitive pricing for OBW and to ensure that the Crossroads operations promote and are consistent with the hierarchy, similar conditions should be imposed on any PBD approval or removed in future applications for consistency.

The requirements of the waste management hierarchy should be applied uniformly, objectively, consistently, and without regard to facility ownership.

Page 12 of the PBD application notes that "Crossroads also recently entered into an agreement with Fiberright to send MSW bridge capacity waste to Penobscot Energy Recovery Company ("PERC")." To the best of NEWSME's knowledge, PERC has not entered into this agreement. As was required of NEWSME in its proceedings, a copy of any such agreement (or similar agreement) should be submitted to the Department to evaluate how this agreement promotes the hierarchy (see 38 MRS §1310-AA.3.B).

On page 30, the application notes Waste Management's recycling accomplishments nationally, which are laudable. However, all that pertains to compliance with the hierarchy standard in the PBD statute is what the proposed Crossroads expansion (the "proposed facility") does to recycle or promote recycling (and other aspects of the hierarchy) in Maine. See 38 MRS § 1310-AA(3)(B).

**Long-Term Capacity Needs of the State:**

This is defined now in PBD statute as “within the next 10 years.” In the relatively recent past, the DEP has issued a draft denial of a PBD for the Pine Tree Landfill expansion in 2006, a draft denial of a PBD for a JRL expansion in 2009, only a partial (less than half) approval of a PBD for a JRL expansion in 2012, and a draft denial of a PBD in September 2014 for a new landfill to be owned by the Municipal Review Committee, because in each case a determination was made by the Department that there was not a long-term capacity need of the State (within 10 years of the application filing) for the requested capacity. The Department should request of WM and consider what has changed since these PBD denials or partial denials for there now to be a need for an additional 7 million cubic yards of waste disposal capacity.

The previous WM PBD allowed up to 35 percent of out-of-state waste to be directly disposed in the Crossroads Landfill. At the proposed annual fill rate of 450,000 cubic yards, out-of-state waste directly disposed at Crossroads could amount to about 157,500 cubic yards (141,750 tons) per year. However, the standards in statute for approving a determination of public benefit (§ 1310-AA(3)) do not include out-of-state waste as a capacity need of the State. Out-of-state waste, directly landfilled in Maine, has no public benefit to disposal needs of Maine. At a landfill, it also displaces Maine waste, like MSW, that may otherwise be diverted from disposal by recycling or other diversion measures. Put another way, does it make sense to require a landfill licensee to divert waste from disposal to the maximum extent practicable, only to have the diverted waste replaced by out-of-state waste? Therefore, the Commissioner should not consider in his PBD decision-making on capacity needs of the State the portion of the proposed expansion that will be consumed by out-of-state waste directly delivered to the Crossroads Landfill. The Commissioner also should recognize, in his decision-making, that at a commercial landfill like Crossroads any PBD granted based on a long term need to provide in-state disposal capacity could have a significant portion of the expansion capacity filled with out-of-state waste.

The Crossroads PBD application projects approximately 15 years of disposal capacity. To comply with the statute, and conclusions of four previous PBD or draft PBD denial decisions, capacity for out-of-state waste should be excluded from the PBD, and the projected life should be reduced to 10 years, consistent with the “long term need” standard. This results in 4.7 million cubic yards. This amount should be further reduced to address capacity that may be consumed by out-of-state waste (35%), resulting in a partial approval of 3 million cubic yards.

**The Requirements of 38 M.R.S. § 1310-X:**

Finally, the interpretation of the requirements of Section 1310-X regarding the expansion of an existing (grandfathered) commercial solid waste disposal facility is flawed. This has led to WM proposing in this PBD application a new landfill, not an expansion, which is not contiguous with an existing landfill facility.

Subsection 3.B of § 1310-X requires that the “proposed expansion” be “contiguous with the existing facility.” Subsection 3.B.(2) also requires that the proposed expansion be located “on property owned” by the licensee. But these are two separate and distinct requirements. Contiguity of the expansion with the existing facility is not the same as contiguity of property ownership. Moreover, the statute uses the term existing “facility,” not “facility site,” which is a broader term only found in the DEP’s rules. Although the term “facility” itself is not defined in the statute, the term “solid waste disposal facility” used in the introductory clause of § 1310-X (3) is clearly what is intended by the use of the word “facility,” and is defined in the Solid Waste Management Act as a “solid waste facility for the...landfilling of solid waste.” 38 MRS §1303-C (30). Consequently, when Section 1310-X refers to a requirement that the proposed expansion be “contiguous with the existing facility,” it means contiguous with an existing landfill. A “landfill” is defined in the Department’s Rules as a “discrete area of land or an excavation used for the disposal of waste.” DEP Regs. Ch. 400.1 (WWW). It does not include other areas of a facility site such as roads, parking lots or non-landfill waste handling areas.

Section 1310-X also needs to be read in the context of the entire state policy for solid waste management that was enacted in 1989:

- New commercial solid waste disposal facilities were prohibited.
- Existing commercial landfills at the time (SERF and Crossroads) were granted limited grandfathering with the intention of being phased out.
- The Pine Tree Landfill (previously called SERF) was issued a draft denial of its PBD application in 2006 based, in part, on this policy of phasing out existing commercial landfills.
- The entire purpose of § 1310-X in 1989, by transitioning from commercial landfills to State-owned was to give the State, as a market participant, the ability to prohibit out-of-state waste without violating the Commerce Clause of the U.S. Constitution.
- In 2012, in amending § 1310-X, the Legislature removed the ownership date of property on which an expansion of an existing landfill could occur. In the context of the overall

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state policy described above, this change should not be interpreted as allowing endless acquisition of property and separate, distinct and new landfills to be created, theoretically extending to Maine's borders.

Also, regarding the proximity of the proposed expansion with the existing solid waste boundary of Crossroads, the description of title, right, or interest (TRI) on page 41 of the application describes a "portion" of the proposed expansion being located on land currently owned by WM. Where is the demonstration of TRI for the remaining portion of the proposed expansion?

In summary, NEWSME supports the continued operation of the Crossroads Landfill through an expansion. However, both Crossroads and JRL should be licensed with consistency and uniformity by the DEP so that that they can compete fairly in Maine on a level playing field.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Donald Meagher". The signature is fluid and cursive, with the first name being particularly prominent.

Donald Meagher  
Manager of Planning and Development

cc: David Burns  
Victoria Eleftheriou  
Kathy Tarbuck  
Michael Barden  
William Laubenstein