



September 28, 2020

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**Re: Rule Petition Comments in Support of Citizen Petition to Modify the Department of Environmental Protection (the “Department”), Chapter 400 Maine Solid Waste Management Rules (the “Petition”)**

Dear Ms. Clark, Chairman Draper, and Members of the Board of Environmental Protection:

The Natural Resources Council of Maine (“NRCM”) and Conservation Law Foundation (“CLF”) support the two distinctly separate, yet related, changes to the Chapter 400 rules as proposed in the Petition. The first requests that Maine restrict out-of-state waste from being disposed of in Maine’s publicly owned landfills, and the second requests that Maine provide standing, justice, and equal protection to the communities that are directly impacted by the State’s licensing and permitting decisions.

NRCM is a nonprofit membership organization protecting, restoring, and conserving Maine’s environment, now and for future generations, and for more than 60 years, has been protecting the places and way of life that make Maine so special. We are committed to protecting the integrity of the solid waste management hierarchy and advocating for policies and programs that promote sustainable, resilient, equitable, and efficient materials management strategies in Maine. It is with several decades of knowledge and experience relevant to the laws and programs referred to in this report that we submit these comments.

CLF is a nonprofit, member-supported, environmental organization working to conserve natural resources, protect public health, and promote thriving communities for all in the New England region, including Maine. CLF has a long history of advocating for clean air, clean water, and healthy communities, including addressing the environmental and community impacts of solid waste disposal, and advocating for waste management strategies focused on waste reduction and recycling as opposed to landfilling and incineration.

## **Out-of-State Waste**

The first rule change proposed by the citizen petition would clarify the definition of out-of-state waste, thereby improving the effectiveness of the existing Public Benefit Determination rule. It potentially would also drive adoption of options for landfill cover other than out-of-state construction and demolition (C&D) debris, a change that would greatly enhance pollution control as well as protect State-owned landfill capacity.

The State of Maine acquired the Juniper Ridge Landfill (“JRL”) in 2004 to stop the capacity at JRL from being used up by waste sent to Maine from other states. Other New England states had already passed strict disposal regulations, and the Supreme Court had ruled that states could not violate the commerce clause by preventing waste from one state from being disposed of in a commercial landfill in another state. Maine had already taken necessary steps to prevent new commercial landfills in 1989; and, by replacing them with publicly owned disposal facilities like JRL, Maine could manage the inflow of out-of-state waste. This move was intended to extend the operating lives of Maine’s existing landfills and lessen the need to expand or site new landfills in the state.

However, despite the clear intent to limit the amount of waste generated out of state from filling Maine’s landfills, JRL has in fact and undeniably become a dumping ground for out-of-state construction and demolition waste. According to the Commonwealth of Massachusetts’ Department of Environmental Protection, in 2018, the Commonwealth of Massachusetts exported more than 20,000 tons of C&D to Maine, more than twice what it sent there in 2017.<sup>1</sup> There is much more where that came from. Massachusetts’ net exports of C&D and municipal solid waste have been increasing over the last 10 years and are prodigious – in 2018 the Commonwealth’s net exports totaled more than 1.1 million tons, and most of that was C&D.<sup>2</sup>

The landfill operator, New England Waste Services of Maine, LLC, a subsidiary of Casella Waste Systems, (“Casella”) has consistently applied for, and been permitted by the State to increase tonnage limits and expand the licensed capacity to accommodate a growing volume of waste, much of it from beyond Maine’s borders. As a result, JRL’s fill-rate has increased 32% since 2012, and the 2017 disposal amounts were 40% higher than the maximum amounts anticipated in 2004.<sup>3</sup> Furthermore, Casella has consistently used elements of construction and demolition waste for daily cover at JRL, thereby increasing the tonnage and toxicity of materials buried at the site, even if that cover is not technically counted toward yearly tonnage.

The underlying problem is that the existing laws, rules, and the operating service agreement (OSA) related to JRL create a complex web of confusing definitions and loopholes that commercial enterprises like ReEnergy facility in Lewiston (“ReEnergy”) and Casella are legally and understandably taking advantage of. These laws and rules also make it difficult for the State to reasonably reject applications to increase annual tonnage limits and expand the landfill.

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<sup>1</sup> Draft for Public Comment, Massachusetts 2030 Solid Waste Master Plan, September, 2019. <https://www.mass.gov/doc/draft-2030-solid-waste-master-plan/download> at page 31.

<sup>2</sup> Id. <https://www.mass.gov/doc/draft-2030-solid-waste-master-plan/download> at page 28.

<sup>3</sup> Source: DEP’s January 2019 Maine Materials Management Report to the Legislature

Maine does not currently have a legal mechanism to limit or prevent Maine’s *commercial* solid waste processing facilities from accepting out-of-state waste, and we recognize that these facilities will continue to accept and bury out-of-state waste. In fact, Waste Management has applied for a permit to allow Crossroads Landfill in Norridgewock, Maine, to expand by more than 48 acres and bury about 450,000 tons a year through 2040. There is nothing preventing Waste Management from using all of that capacity for out-of-state waste as long as it receives the necessary permits for the expansion. Given this, commercial solid waste enterprises should not be permitted to dispose of out-of-state waste in publicly owned landfills like JRL.

And currently JRL is being used largely for out-of-state waste. For instance, ReEnergy reported that it accepted a total of 235,650 tons in 2019, and 91% of that tonnage came from Massachusetts or New Hampshire. Then it sent an astounding 93% of that waste, or 220,018 tons, to JRL to be buried. For reference, that is about 27% of the total tons disposed of at JRL that year<sup>4</sup>—and ReEnergy is not the only solid waste processing facility that imports waste from other states and ultimately disposes of it at JRL, just the most notable.

By leaving loopholes that turn waste generated out of state into waste generated in state through the “recycling” that takes place at ReEnergy and other operators and therefore eligible for disposal at JRL, the State is failing to protect an asset held for the people of Maine. And this failure is being capitalized on to the benefit of commercial enterprises like Casella and ReEnergy and to the detriment of the health and welfare of the communities adjacent to JRL, never mind being antithetical to the whole purpose of the State purchasing the landfill in the first place. We believe it is the State’s responsibility to right that wrong through changes sought by this petition.

Minor progress was made by the 129<sup>th</sup> Legislature with the passage of LD 112<sup>5</sup> and LD 401<sup>6</sup>, but these bills will not alter the high volume of out-of-state waste ending up at JRL. NRCM and CLF believe it is high time for the State to take action and no longer allow Maine’s solid waste processing facilities to dispose of more waste at JRL than they accept from true Maine-sources.<sup>7</sup> It’s time to adopt a reasonable plan, to match the intent of the proposed rule, to phase out the delivery of out-of-state waste at JRL and adopt legal protections to ensure that these issues don’t continue into the future at JRL or any other State-owned landfill.

The policy of using CDD, or Construction and Demolition Debris, for daily cover at JRL should also be revisited. Casella is currently accepting a large amount of CDD and using it for “alternative daily cover” or ADC at JRL. In 2017, ReEnergy “processed” more than 200,000

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<sup>4</sup> The 2019 Annual JRL Report states that the landfill received and disposed of 818,457 tons of waste material.

<sup>5</sup> LD 112 clarified the purpose and intent of State-owned landfills in statute to aid in permitting decisions. State-owned landfills should be, and legally can be, treated differently than other landfills because they are owned by the State.

<sup>6</sup> LD 401 passed after this citizen petition was submitted, and clearly defines what constitutes “waste generated from within the State.” While a step in the right direction, it still allows for mass importation of out-of-state waste destined for JRL.

<sup>7</sup> For instance, this would mean that in 2019 ReEnergy should only have been allowed to send to JRL the 9% that came from Maine, totaling 21,873 tons.

tons of C&D from out-of-state - 144,239 tons were used as daily cover at JRL. This is not a new practice for Casella. For example, in 2005, 2006, and 2007 Casella buried more waste disguised as “cover” at the Southbridge Landfill than waste.<sup>8</sup>

This is not just a landfill capacity problem. According to the most recent Waste Characterization and Capacity Studies done in Massachusetts,<sup>9</sup> its C&D contained many toxic materials, especially carpets, treated wood, and gypsum board. CDD exported from Massachusetts is likely to contain large amounts of gypsum board because it is specifically banned from disposal in Massachusetts’ landfills or incinerators (C&D is not banned as a general category) by 310 CMR 19.00 Solid Waste Facility Regulations.<sup>10</sup> Treated and untreated wood is allowed to be burned at Massachusetts’ incinerators, and there is no waste ban on carpets.<sup>11</sup> Gypsum board is very polluting and dangerous. When gypsum board is mixed with water by exposure to the weather it produces an odorous, poisonous gas called hydrogen sulphide. Casella is being paid to take this material, and then is passing it off as a beneficial use to the landfill, when in actuality it is benefitting only Casella to bury waste but not have to count it toward yearly tonnage totals.

### **Environmental Justice and Equal Protection**

NRCM and CLF are in full support of adding the proposed definitions of *Environmental Justice* and *Equal Protection* to the Chapter 400 rules, and with it a new, fifth public benefit determination standard that states: “*The facility operation is not inconsistent with protecting the health and welfare of local communities and is not inconsistent with ensuring equal protection and environmental justice for communities where the waste facility is proposed or operating.*” Maine has a duty to avoid discriminatory practices against communities that may be located near a waste disposal facility. This proposed language serves as an appropriate companion to the existing standard that protects business interests, which states: “*For a determination of public benefit under subsection 1-A only, facilitates the operation of a solid waste disposal facility and the operation of that solid waste disposal facility would be precluded or significantly impaired if the waste is not accepted.*” Adding this new public benefit determination standard can help provide equal protection and environmental justice to the people and communities adjacent to JRL.

The 2003 Resolve<sup>12</sup> that allowed for the State to purchase JRL stipulated that the City of Old Town and the Town of Alton shall establish a joint citizen advisory committee consisting of seven members, of which five must be from the city of Old Town and two from the town of Alton. It was then amended to include one member from the Penobscot Indian Nation. To the best of our knowledge, the citizen advisory committee is not formally recognized as a

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<sup>8</sup> In fact, in 2006 they used twice as much cover (267,552 tons of C&D fines and residuals/CDD, contaminated soil, and ash) than municipal solid waste and C&D waste (116,768 tons). Yearly Landfill Disposal Report to MassDEP, 2005, 2006, 2007.

<sup>9</sup> Massachusetts’ C&D is mostly made up of treated and untreated wood, carpet, drywall/gypsum board, asphalt pavement, brick, concrete, asphalt roofing and composite materials. [Open XLSX file, 93.93 KB, for Summary of Waste Combustor Class II Recycling Program Waste Characterization Studies \(Includes 2010, 2013, 2016 & 2019 Data\)](#) <https://www.mass.gov/guides/solid-waste-master-plan#waste-characterization-&capacity-studies>

<sup>10</sup> <https://www.mass.gov/doc/310-cmr-19000-solid-waste-management-facility-regulations>

<sup>11</sup> <https://www.mass.gov/guides/massdep-waste-disposal-bans>

<sup>12</sup> <http://www.mainelegislature.org/ros/LOM/lom121st/Res51-98/Res51-98-44.htm>

stakeholder in decisions regarding JRL. They have not once been contacted by the State or NEWSME in advance of significant proposed changes.

It is also evident that Casella downplays the serious concerns of the people living adjacent to JRL. On May 13, 2019, in response to a letter that NRCM sent to the Joint Committee on Environment and Natural Resources, Casella stated that: *“History has demonstrated that while landfills are by nature an object of citizen resistance and opposition, JRL is a flexible asset for Maine solid waste management as the solid waste industry evolves.”* We believe Casella has failed to acknowledge the very real reasons *why* there is resistance and opposition to new or expanded landfills in its communities, which include but are not limited to:

- Toxic groundwater and soil contamination when the landfill eventually leaks;
- Air pollution from frequent waste delivery vehicles, fugitive particulate matter, and potentially faulty or damaged landfill gas collection lines or landfill fires;
- Potential serious offsite damages in the event of inadequate stormwater management systems, should the area experience an extreme weather event, which is more and more likely due to anthropogenic climate disruption;
- Threat of subsidence as the weight of the material disposed of at JRL could disrupt the underlying geology;
- Untreated leachate potentially discharged by local sewer systems into waterways;
- Local ecosystem disruption and threats to wildlife;
- Property devaluation, stigma, and negative impacts on local economic development; and
- Odor, noise, traffic, and loss of enjoyment of property.

NRCM and CLF believe that the concerns and protection of communities surrounding JRL and other landfills deserve at least equal consideration as the businesses that are impacted by licensing and permitting decisions. We support the proposed changes included in the citizen-initiated rule that is before you, and we urge the BEP to use whatever legal authority available to support the intent of these measures through rule change.

Thank you very much for your time and thoughtful consideration.

Sincerely,



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NRCM Sustainable Maine Director



Kirstie Pecci  
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