

Thoughts Post-BEP Hearing Sept. 28, 2020

Dear Chairman Draper and Members of the Board of Environmental Protection,

Please consider these comments after participation the Public Hearing of Sept. 17, 2020 to consider language changes to Ch. 400 rules proposed by Citizens' Petition. I will follow my notes from that day in the order that the testimony was presented.

Hillary Lister did an excellent job describing why Maine needs reform of our Environmental Justice and Equal Protection practices. Board members and others giving testimony in opposition seemed to want to focus on rejecting proposed changes on the grounds that they are not somehow quantifiable. They warn of squishy words and definitions, which would presumably give Regulators an impossible task of setting standards for company behavior that would still allow for productive operations. My feeling is that if we want to go through all the DEP rules and licenses and eliminate squishy and nebulous terms we had better be prepared for a very lengthy process. I'm thinking of currently commonly used phrases like "no unreasonable adverse effect". In fact, the definition of Maine Generated Waste that this Petition seeks to change is quite poorly defined and leaves it up to those labeling the wastes (Casella and Pierce Atwood) to determine qualifications for landfilled materials.

"Public Benefit Determination" (PBD) itself may be a very good example of "squishy language". It sounds like it is all about maintaining the Public's interests when considering landfill siting or expansion. The actual determining factor of PBD is all about Capacity for waste disposal. This is why we need to include environmental justice and equal protection as factors to consider. Another squishy term is "recycling" when it is applied to materials placed into a landfill. This is not the same thing as "recycling" our own cardboard, paper and numbered plastics.

After I gave my speech there were good exchanges with Sue Lessard and Bob Duchesne of the Board. The issue of incinerator residue needed to be discussed, and I am in favor of removing the term "incineration" from our language. If the language were unchanged it could adversely affect the PERC WTE but not the others. PERC has been doing an excellent job of adapting to their new fiscal reality since losing their electrical price subsidy on March 31, 2018. They are moving in the right direction with landfill diversion for good old-fashioned capitalist reasons: it saves them money. Cheers to that; and they are much less-inclined to want or need out of state waste.

My discussion with Bob Duchesne focused on the history of JRL. When he said words to the effect of "there was anticipation of large imports of CDD from the beginning" I answered in the negative. This is really interesting and once again shows the benefits of Paul Schroeder's timeline of the early JRL. When Bob became a Legislator, JRL had already been created. I'm not sure if his term began post-2004 or post-2006 election, but he was not there at the very beginning. I have seen rewrites of JRL's birth as presented by Casella's reps at Pierce Atwood, and they exclude any of their nefarious behavior. So to legislators of Mr. Duchesne's time period, Casella's version became official: There was always going to be a lot of Waste Imports; it was sanctioned. As I said in my written and oral history, the Public was told repeatedly: No Out of State Waste. Mr. Duchesne has been closely involved during the evolution of our State Landfill and will be essential to charting a course forward.

We learned from DEP's Paula Clark that rule changes necessitated by LD 401 and/or this Petition have not been adapted as yet. It sounds like there will be some changes made and this is a good time to seek

comprehensive reform, especially since the new Legislature will likely be seated before this BEP process is completed. Bob D. asked her if ReEnergy (formerly Casella's KTI) had done better, as they were told 8 or 9 years ago. My answer, is that looking at the numbers, it seems like total wastes coming through the Lewiston processing facility have increased and the rates of landfill diversion have not improved. Total CDD passing through ReEnergy into JRL have increased over time; Ms. Clark can show you the numbers. She also stated that it is True that Massachusetts cannot landfill materials coming to Maine's JRL, and also noted that there are not many landfills left in Mass.

Mr. Rayback of Pierce Atwood, Casella's long-time attorneys, began by telling the Board that you have no authority to revoke Legislation. He is walking a tight line here: He has taken an oath to tell the truth, but wants the Board to think they cannot fulfill the Citizens Petition. Surely he must know the Statutes that guide BEP, and there are certainly limits to the Board's authority. I implore you: do not accept Mr. Rayback's interpretation of what you can do. He expects you to lazily refrain from engagement on these difficult issues and continue with the status quo that has benefited Casella to the tune of hundreds of millions of dollars. As Acting Commissioner Melanie Loyzim said later in the Hearing, "We have a lot of definitions in our Rules that are not in Statute."

Rayback then tried to raise the specter of business distress caused by restrictions on WTEs. This had already been defused by my discussion with Ms. Lessard. People such as Rayback like to scare folks into believing there will be damage if we change the status quo. On Environmental Justice, Rayback told you that this is not the place for that and called it an "arcane topic". Pierce Atwood likes all decisions to be made in Augusta, where they can better control the process.

Rayback concluded by saying how well-regulated JRL is, that there are so many opportunities for the Public to testify, and Appeal, and even get Public Notice (one small print in one newspaper). This is the same outfit that never gave anyone notice when they made the Secret Amendments to the OSA happen in 2006. And I can tell you first hand that if anyone does appeal a Casella license Rayback will be the first to try to deny your Standing and right to appeal. So I would hope that the Board observes Casella's behavior objectively and not merely accept the Pierce Atwood version.

Bill Lippincott of Hampden illustrated Casella's practice of understating proposed landfill input amounts and then vastly exceeding the projections. Casella's Pine Tree Landfill in Hampden is leaking and the remediation measures in place are not solving problems with groundwater pollution. This is in all probability the future of JRL, only by the time it becomes obvious Casella may well be out of the picture and have left the State and locals to deal with their mess. JRL needs more intensive monitoring of its test wells from an independent 3rd party. JRL's waste inputs have increased steadily, as pointed out in the MMMP graph. This trend continues. Remember: there is at present no upper limit to waste volumes into the state's only functional landfill.

Opponents who testified struck some recurring themes. ReEnergy's Mr. Leahy said : "We need stable regulations." And, " you have no authority". They also like to claim that CDD is somehow an essential building material for a landfill's stability and its roads, and of great public benefit. And we get to save our "virgin soil". They don't want to really discuss the use of impermeable tarps as an option for Daily Cover since they benefit from current practices. Casella doesn't pay any fees to Old Town or Alton for the Daily Cover material. It is easy to see their attraction to the status quo. And if they couldn't get the out of state wastes, they couldn't afford to serve the in-state waste needs. Mr. Worcester of EMR Solid

Waste in SW Harbor said if these rules were passed, it would increase their disposal costs. I don't see how that follows, since the tip fee at JRL is limited on the upper end, but not the lower end.

I urge you to re-listen to the words of Kirstie Pecci, who oversees the Conservation Law Foundation's Zero Waste program. She speaks with the passion and authority of one whose family was adversely affected by a Casella landfill in Massachusetts and through her education and training did something about it. She stated that Environmental Justice standards are crucial for Public Safety, the CDD onslaught from Massachusetts "will never lessen unless you make them", that the use of so-called recycled materials as daily cover is a Shell Game, and that Maine is getting the dregs of the Mass. CDD since the wooden content is being burned before it gets to Maine.

When Ms. Pecci warns us that Maine is being targeted because it is easier to dispose wastes here, that should be our major wake-up call. We have been pushing the snooze button for too long here, and the longer it takes to address the problems highlighted by the Citizens' Petition, the more damage will be done to Maine's environment and future quality of life. The longer we wait the more difficult will be the task. As Ms. Pecci remarked, Fortune Favors the Bold and the Brave.

Thank you all for your attention and time. I will also submit an additional document from last winter when I wrote to the ENR Committee withdrawing my support of LD 401.

Respectfully yours,

Ed Spencer