



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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March 12, 2018

Michael Barden
Department of Economic & Community Development
59 State House Station
Augusta, ME 04333-0059

Don Meagher
NEWSME Landfill Operations, LLC
2828 Bennoch Road
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RE: Application #S-020700-WD-BL-A, Juniper Ridge Landfill Amendment for Continued Acceptance of In-State Municipal Solid Waste – Follow-up Comments

Dear Mr. Barden and Mr. Meagher:

The Department has reviewed the March 1, 2018 response to comments, associated with Department license amendment application #S-020700-WD-BL-A (“Application”) and has a number of follow-up comments. The State of Maine Bureau of General Services, as owner of the Juniper Ridge Landfill, and NEWSME Landfill Operations, LLC, as operator of the Juniper Ridge Landfill, request approval to remove the municipal solid waste (MSW) acceptance date of March 31, 2018 for the disposal of no more than 81,800 tons per year of in-state, non-bypass MSW at the Juniper Ridge Landfill in Department license #S-020700-WD-BC-A, Condition 10, as revised in Board of Environmental Protection Order #S-020700-WD-BG-Z.

The Department commented on the Application on February 15, 2018 and subsequently received responses to the comment letter. Based on the March 1, 2018 response submittal, the Department has included follow-up comments as an attachment to this letter.

Please contact me at (207) 287-7743 or kathy.tarbuck@maine.gov if you have any questions.

Sincerely,

Kathy Tarbuck, P.E.
Bureau of Remediation and Waste Management

ec: David Burns, DEP, Director, Bureau of Remediation and Waste Management
Victoria Eleftheriou, DEP, Director, Division of Technical Services

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Letter to Mr. Barden and Mr. Meagher
March 12, 2018

John Banks, Penobscot Nation
Bill Mayo, Manager, City of Old Town
Town of Alton
Laura Sanborn, Chair, Landfill Advisory Committee
Thomas Doyle, Esq., Pierce Atwood
Gilbert Bilodeau, BGS
Brian Oliver, NEWSME

ATTACHMENT:
**Department Follow-up Comments on Application #S-020700-WD-BL-A,
JRL Amendment for Continued Acceptance of In-State Municipal Solid Waste**

These follow-up comments from the Department are based on the March 1, 2018 response to comments submitted by the applicant. The Department's initial comments on the Application were dated February 15, 2018. The format follows the original comment letter and response with the Department's original February comment listed first, the applicant's March response listed second, and the Department's follow-up comments listed third where the Department has follow-up comments at this time.

Follow-up Comments on the MSW Amendment Application Dated November 2017

1. Page 2-2, Table 1. **No follow-up comment at this time.**
2. Pages 2-2 through 2-8, Section 2.2 Amendment Finding 5, Solid Waste Management Hierarchy. BGS and NEWSME should specify whether any of the former MERC communities listed in Table 1 take recyclables to the CWS Zero-Sort® Recycling Facility in Lewiston.

Response: The majority of the communities that formerly utilize Maine Energy Recovery Company for MSW disposal, as indicated in table 1 of the application, utilize the Westbrook transfer station for consolidation of their municipal solid waste and their recycling material. All the Zero-Sort® transferred through the Westbrook facility is transported to the Lewiston MRF.

Follow-up comment: BGS and NEWSME should specify those communities that make up the majority of the former MERC communities that utilize the Westbrook transfer station for recycling, from where the recycling is then taken to the Lewiston MRF.

3. Page 2-3, Table 2. BGS and NEWSME should provide the amount of non-bypass MSW disposed at JRL that originates from the former MERC communities in order for the Department to have a clear understanding of the final disposition of this non-bypass MSW.

Response: The DEP comment requests information about tonnage that originates from the former MERC communities. It is important to note that MSW received at the Westbrook transfer station originating from these communities includes both residential and commercial MSW. A number of these former MERC communities also deliver their residential and commercial MSW to the WRT transfer station in Wells, Maine, which is then transferred to PERC or JRL. There also are a number of other Maine municipalities and commercial customers that have disposal contracts with JRL that do not use the Westbrook transfer station. All of that MSW tonnage needs a home. That home needs to include JRL.

In response to the DEP comment, however, in 2016, the communities under long-term contract that formerly utilized Maine Energy Recovery Company for MSW disposal (being those denoted in bold in Table 1 of the application) generated 22,827 tons of residential MSW which was disposed at either JRL or PERC. This does not account for the commercial MSW from these municipalities that was also disposed at Maine Energy.

It is not possible to specifically track the MSW from the former MERC municipalities, or any other specific customer, after it arrives at the Westbrook transfer station. MSW from former MERC communities delivered to the Westbrook transfer is co-mingled with other in-state MSW received as it is off-loaded from smaller transport trucks (rear-load, front-load, roll-off) and reloaded into tractor trailers for transport to another location, which would either be PERC (in compliance with Condition 7 of the current amendment license) or JRL.

Follow-up comment: The residential MSW amount from the former MERC communities is stated, but a commercial MSW amount from these communities is not. The estimated commercial MSW amount previously disposed of at Maine Energy from the former MERC communities and now disposed at JRL should be provided.

4. MSW Management Post-March 2018

- a. Page 2-7. BGS and NEWSME should provide additional information regarding the following statement: “[t]he Applicants have evaluated various scenarios for the alternative management of MSW generated in Maine post-March 2018 and in all cases, without approval of the requested extension of existing JRL accepting non-bypass MSW beyond March 31, 2018, some amount of MSW will be stranded (i.e., there will be a shortfall in management options for MSW produced in Maine.)” It is still unclear that there are no other outlets for the MSW. Other outlets may include, but are not limited to: waste processing facilities in Maine or out-of-state, incinerators in Maine or out-of-state, etc. BGS and NEWSME should clearly define what is meant by “stranded” waste and provide justification to support this statement.

Response: The term “stranded” was used in the application to define the estimated amount of MSW generated in the State post March 31, 2018, which is not reduced, recycled or composted, or disposed of at current landfills and incinerators, minus the amount of this waste that can be handled by the projected in-state incinerators and processing facilities. This is summarized on the Table included in Appendix 5 of the application. As noted on this table, if all the current and future processing and incineration facilities are able to operate at their permitted (for ecomaine and MMWAC) or stated future capacities in 2018 (i.e., PERC at 210,000 tons/yr and Fiberight at 105,000) tons per year), there is still approximately 200,000 tons of MSW in the State that needs to be landfilled. In 2015, the year used for this analysis the total amount of MSW landfilled in the State not including JRL was about 163,000tons.

The statement in the application, “the Applicants have evaluated various scenarios for the alternative management of MSW generated in Maine post-March 2018 and in all cases, without approval of the requested extension of existing JRL accepting non-bypass MSW beyond March 31, 2018, some amount of MSW will be stranded (i.e., there will be a shortfall in management options for MSW produced in Maine),” refers to scenarios where one or more of the facilities could not operate at their stated capacities. These conditions were evaluated because there is no operating history for either the PERC facility, at its newly stated operating capacity, or the Fiberight facility.

Incinerators: *Regarding the capacity of each MSW incineration facility in Maine, and the extent to which it is being utilized, the source of that information is the Maine Solid Waste Generation and Disposal Capacity Report: Calendar Year 2015 (the most current at the time of the application), Tables 4 and 7. Tables 3 and 5 in the Report for Year 2016 show the same: PERC, MMWAC, and ecomaine, the three remaining MSW incinerators in Maine, are accepting more than their licensed capacity. As noted in the response to Comment 1, however, PERC’s annual waste acceptance rate is expected to decline by about 30 percent beginning on April 1, 2018. With the closure of Maine Energy in 2012 and the expected decrease at PERC, MSW incineration going forward will have declined 47 percent (450,000 tons per year, down from 854,000 tons per year) over a five year period. Source: DEP Waste Generation and Disposal Capacity Reports 2011-2016.*

Therefore, even with ecomaine and MMWAC currently accepting more than their permitted capacities (184,812 versus 170,000 tons at ecomaine, and 77,466 versus 70,000 tons at MMWAC), this doesn’t come close to addressing the stranded quantities of MSW that will occur in the State if this application isn’t approved.

The history of the establishment of the Juniper Ridge Landfill is also relevant here. As directed by the Resolve authorizing the acquisition of the Fort James landfill in Old Town, the State Planning Office issued a Request for Proposals (RFP) to select the landfill operator. Casella submitted its proposal in July 2003, which the State selected. As part of Casella’s proposal, as required by the RFP, Casella identified the anticipated categories, sources, and amounts of solid wastes that would be disposed in the state-owned landfill (see Exhibit 4). Casella’s proposal identified up to 200,000 tons per year of MSW that would be disposed at the state-owned landfill in the event a current disposal facility closed (the future of PERC and Maine Energy, “should they close,” were specifically noted). The proposal concluded by stating: “...the West Old Town Landfill [later renamed JRL] will be operated to help address future disposal needs of the state as the current providers of disposal are phased out.”

Out of State MSW Incinerators: *Within a transportation distance similar to that of the Westbrook transfer station to JRL, out-of-state incinerators are either full and will remain so given the state of solid waste disposal in New England (Wheelabrator MSW Incinerator, North Andover, MA) or are charging tip fees plus cost of*

transportation (in excess of \$100 in total) (Covanta MSW Incinerator, Haverhill, MA) that would make it uneconomic to use them (i.e., not practicable). See Exhibit 5.

Processing Facilities: Regarding MSW processing facilities located in Maine, this would be the Fiberight facility, once it comes on line. The tonnage allocated to this facility was the tonnage that has been signed up under contract with Municipal Review Committee municipalities: approximately 105,000 tons. See Exhibit 6. Casella has recently executed an agreement with the Fiberight owner to deliver the facility 40,000 tons of in-state MSW per year. Other than the planned Fiberight facility, there are no other MSW processing facilities in Maine.

To the applicants' knowledge, there are no MSW processing facilities out-of-state within the distance of the Westbrook transfer station to JRL. Out-of-state recycling- processing facilities only accept recyclables; not co-mingled MSW.

Out of State Landfills: There is some limited capacity in out of state landfills, and if this application is not approved some of the MSW that is taken to JRL will be diverted to several of these facilities. However, disposing of MSW in one landfill over another does not address the solid waste hierarchy standard, because the standard does not differentiate between landfill facilities. Moreover, it is prudent and sound policy for Maine to provide for the management of its own MSW, and not rely on other states or out-of-state facilities to manage or dispose of MSW generated by Maine businesses and citizens. In fact, the purpose of Maine's 1989 statutory ban on new commercial disposal facilities, 38 MRS §1310-X, was for the state to be a market participant and to manage in-state waste at State-owned landfills.

Follow-up comment: Reference is made to Exhibit 6. Exhibit 6 references agreements that are contingent on consent from Waste Management Disposal Services of Maine (WM) and that “[e]fforts to obtain this consent are ongoing.” If consent is not received, the MRC and CRM have negotiated the terms of a backup agreement with Casella and WM to implement a “waste swap” (see page 3 of the letter in Exhibit 6). The written consent from WM or the “waste swap” agreement should be provided to assist the Department in understanding where waste will be disposed of in the various potential scenarios.

- b. Page 2-8. Page 2-8. BGS and NEWSME should provide confirmation of the stated capacity of PERC and Fiberight after March 31, 2018. It is our understanding that PERC can operate at 310,000 tons per year and Fiberight at 145,000 tons per year.

Response. See answer above regarding Fiberight. See Exhibit 1 for PERC, which intends to operate at approximately 210,000 tons per year beginning April 1, 2018.

Follow-up comment: While the letter provided by PERC in Exhibit 1 specifies that PERC's “current long term operating plan” is based on approximately 210,000 tons, it is the Department's understanding based on a March 6, 2018 telephone conversation

with PERC, that PERC could feasibly and economically operate at a capacity between 260,000 to 270,000 tons per year. Absent other information, the Department will be considering this available incineration capacity during review of the application request.

5. Technical Aspects. **No follow-up comment at this time.**
6. Appendix 1. **No follow-up comment at this time.**
7. Appendix 4. **No follow-up comment at this time.**

Follow-up Comments on the MSW Amendment Application Supplement Dated December 14, 2017

8. Additional Diversion to Southern Maine Waste Incinerators. **No follow-up comment at this time.**
9. Additional Diversion to the PERC or Fiberight Facilities
 - a. The executed agreement for Pine Tree Waste, Inc. to supply 40,000 tons annually of Maine MSW to Fiberight should be provided to the Department. Additionally, the extended agreement with PERC to supply 30,000 tons annually of former MERC-disposed MSW, plus additional commercial MSW, noted as being under negotiation, should be provided to the Department when finalized.

Response. See Exhibits 10 and 11, which have been minimally redacted to protect confidential business information (i.e., trade secrets). The redacted information derives independent economic value from not being known by competitors and others who can obtain economic value from its disclosure and the parties to each agreement have taken reasonable measures to maintain its confidentiality.

Follow-up comment: Not all pages of the Pine Tree Waste and PERC agreement were included in Exhibit 11, only the odd numbered pages were submitted. The omitted even numbered pages should be provided.

BGS and NEWSME should provide the Department with the redacted information and a supporting request to protect it as confidential business information in accordance with the definition of trade secret in the *Uniform Trade Secrets Act*, 10 M.R.S. §§ 1542(4)(A) and (B). Once this information is submitted, the Department's FOAA Coordinator will review the request and make a determination as to whether the request is reasonable and whether the information should not be publicly disclosed.

BGS and NEWSME should clarify whether the originally agreed-upon 30,000 tons of former MERC-disposed MSW is part of the approximate tonnage amounts listed in Section 2.3 of the Agreement for Disposal Services provided as Exhibit 11. The

Department assumes that the 30,000 tons is included as part of the 130,000-approximate tonnage that may be provided to PERC by Pine Tree Waste, Inc. for a 1-year period. A clarification should be provided if it isn't clear in the previously omitted even numbered pages of the agreement.

- b. The actual costs associated with tipping fees at both PERC and Fiberight and associated differences in transportation costs, in addition to the fixed prices associated with the long-term disposal agreements with the southern Maine communities should be provided in order for the Department to have a clear understanding of the financial limitations to take additional MSW to these facilities. BGS and NEWSME noted that it is uneconomical for them “to divert additional MSW to either of these facilities at the significantly higher tipping fees they would require, and they would not accept additional MSW at the tip fee the Applicant would be able to pay.” Additional clarification should be provided to define what is meant by the tip fee the Applicant would be able to pay.

Response: The PERC and Fiberight agreements are the result of arms-length, good-faith negotiations that occurred over several months and provide for significant in-state MSW tonnage to be supplied to those facilities (and diverted from other facilities, including JRL), assuming approval of this application by March 31. They provide benefits and obligations to both parties. The tonnage and pricing in these agreements do not occur in isolation. They cannot be “cherry-picked” without altering the overall end result that was mutually agreeable to both parties.

Follow-up comment: As noted above, the Department requests that the redacted information including actual costs be provided in order for the Department to make an informed evaluation of the application request.

While the Department respects that BGS and NEWSME have finalized agreements with both Fiberight and PERC as a “result of arms-length, good-faith negotiations,” the Department does not condone the fact that these agreements are contingent on the Department’s approval of the application request. The Department will continue to evaluate the application request in an objective manner in accordance with applicable laws and rules together with Maine’s solid waste needs.

- c. If it is possible for PERC to accept additional MSW beyond the tentatively agreed-upon 30,000 tons, written confirmation from PERC should be provided regarding the additional capacity they can accept and at what cost.

Response: Casella subsidiary, Pine Tree Waste, has entered into an agreement with PERC for delivery of additional MSW significantly beyond the 30,000 tons per year, contingent on approval of this application for continued acceptance of up to 81,800 tons of Maine MSW at JRL by March 31, 2018. See Exhibit 11.

Follow-up comment: The Agreement for Disposal Services provided as Exhibit 11 specifies that an approximate tonnage of 130,000 may be provided to PERC by Pine Tree Waste, Inc. for a 1-year period. Section 2.3 specifies that 50,000 tons of this total would be out-of-state waste. The specific origin, contract obligations, and available alternatives regarding this waste should be submitted to provide the Department adequate information to determine if out-of-state waste is displacing in-state waste for incineration in Maine. BGS and NEWSME should also provide information relating to the reduction, reuse, recycling, and composting efforts for the 50,000 tons of out-of-state waste.

As noted in the follow-up comment in 9(a) above, the missing even numbered pages of the agreement in Exhibit 11 should be provided and may provide additional clarity to our follow-up comment above regarding out-of-state waste.

10. Additional Separation or Processing to Remove Recyclables or Organics. **No follow-up comment at this time.**
11. Alternatives and Costs Associated with Not Using MSW in Site Operations. **No follow-up comment at this time.**
12. Other. **No follow-up comment at this time.**