

IN THE MATTER OF

STATE OF MAINE, ACTING THROUGH) MERITS OF BGS/NEWSME APPEAL
THE BUREAU OF GENERAL SERVICES)
OLD TOWN, PENOBSCOT COUNTY, ME)
JUNIPER RIDGE LANDFILL)
#S-020700-WD-BL-A) COMMENTS OF EDWARD SPENCER
(PARTIAL APPROVAL WITH CONDITIONS)) JULY 12, 2018

Any evaluation of the BGS/NEWSME (BGS/Casella) Appeal of the partial approval to continue bringing Municipal Solid Waste (MSW) to the state-owned Juniper Ridge Landfill (JRL) must deal with several recurring misconceptions in the Appeal. Primarily, the appellants refuse to admit that JRL is different from other landfills because it is state-owned. In addition, they want to lecture the Department of Environmental Protection (DEP) on how to interpret and implement regulations in regard to Maine State Waste Hierarchy.

It is not surprising that a waste company doing business throughout the Northeastern United States would like to see Maine regulations align with their fiduciary responsibility to maximize profits. It is no secret that the most profitable way to handle MSW is to collect it all at once and transport it directly to a landfill. This practice runs contrary to our Waste Hierarchy which prioritizes all activities that result in diversion from landfills. What is difficult to fathom is how Casella's purposes align directly with those of the owner, our Bureau of General Services (BGS).

The issues we are considering were deliberated and decided in 2013 and 2014 when BGS/Casella first applied for permission to bring curbside MSW directly to JRL. The Department agreed to accommodate the perceived need to dispose of some southern Maine MSW after the MERC incinerator closed at the end of 2012. The Department granted permission to bring these MERC communities' MSW to JRL until March 2016. After appeal, the Board extended that timeline to March 31, 2018.

In the June 2014 Board decision denying the BGS/NEWSME appeal (and one I had filed) the Findings of Facts includes this passage on Page 23 (#S-020700-WD-BG-Z):

"JRL does differ from other solid waste disposal facilities in Maine because it is state-owned. As a state-owned landfill, it is appropriate for any license issued by one agency of the state to not create conflicts with terms of the OSA, a contract held by another agency of the state that addresses some aspects of landfill operation also overseen by the Department. The OSA is a contract with BGS that requires Casella to operate the landfill in accordance with the waste hierarchy."

In its 2014 appeal, Casella/BGS claimed that the DEP had erred because it had wrongly implemented the Waste Hierarchy as a Permitting Standard. The Board rejected this argument at that time. In addition, since that decision our Waste Hierarchy is now officially a Permitting Standard. Throughout this current appeal, BGS/NEWSME claims that the DEP erroneously interprets the Hierarchy. They claim that by limiting MSW deliveries to JRL to a one-year time limit (with a 6-month extension possible) the

Hierarchy will be harmed because this will result in more MSW being landfilled at other landfills. They offer little proof to substantiate this claim. Their opinion is “This has nothing to do with the hierarchy, because all landfills are at the same level...” (Page 4). This argument has no merit, and the Findings of Fact from June 2014 explain why. JRL is a different landfill because it is state-owned and the OSA has conditions that the hierarchy be must adhered to. The issue here is not whether some other landfill, for example the Crossroads commercial landfill in Norridgewock, is following the Hierarchy. This is about the state-owned landfill in Old Town being operated in accordance with the state waste Hierarchy.

There is an underlying message in this appeal that has to do with Casella’s obligations to dispose of wastes: “Because there was not enough capacity at other incinerators in Maine to manage all of the MSW that had gone to MERC, and NEWSME was bound by contracts to handle much of it...” (Page 5). The Department disputes this assertion. Casella wants the BGS and state landfill to share its responsibility to dispose of wastes. The actual waste amounts produced by the MERC communities meant to be helped temporarily by their MSW being sent to JRL is about 22,000 tons/year. Somehow, the accommodation granted by DEP to dispose of this waste for a limited time has been expanded by MSW from other places, and now includes MSW being directly deposited from Bangor to JRL, which was never even a part of the BGS/NEWSME application. In addition, the statement above fails to admit that about two thirds of the waste coming to MERC in Biddeford was from out of state, and that there should be no out of state wastes brought to JRL. It was understood in 2004 when JRL became state-owned that there were two prohibited waste streams: out of state waste and Municipal Solid Waste.

Casella/BGS wants to convince the Board that there is a shortage of non-landfill space for MSW in Maine, but again the Department disputes that, and the numbers show that total MSW produced in Maine is trending lower. The appellants say “Moreover, although there were modest gains in how much MSW went to JRL (from 36,878 tons in part of 2014 to 69,934 tons in 2016) ...” (Pages 14 and 15). This usage of the word “modest” in reference to an 89% increase in MSW deliveries to JRL in two years exemplifies the lack of statistical justification for many of their statements with regard to waste flows in Maine.

Casella claims that MSW is needed at JRL for stabilizing sludge and for final grading. However, the Department has found that there are other non-MSW options (chiefly construction debris) that are appropriate for these purposes. Any language indicating that virgin materials would have to be used in place of MSW is not based on reality and therefore any claims of financial distress if MSW is banned are false.

Throughout their appeal, Casella/BGS discuss that there are contracts signed with other waste disposal facilities that are contingent on DEP/BEP granting them extensions. The Department has duly noted this as being a means of pressuring the regulator. They claim that they will deliver 130,000 tons/year of MSW to the PERC waste-to-energy plant in Orrington and 40,000 tons/year MSW to the MRC’s new CRM processing facility in Hampden, but only if granted permission to landfill MSW in JRL until the end of 2023, which would be over ten years since the original “temporary accommodation” of the MERC towns. It sounds like these contingency clauses are Casella’s way of saying “If you don’t let us landfill at JRL, we will cause other MSW to be landfilled and held back from facilities higher on the Hierarchy scale”. This may illustrate their actual lack of commitment to supporting the Hierarchy. It is very difficult to understand how these practices and veiled threats are supported by the BGS, a part of our State government.

The tone in their appeal becomes steadily more strident throughout the document. On Page 14 they claim "In addition, there is no basis under the hierarchy to prefer one landfill over another in determining how to manage that shortfall." By Page 20 their position has become "This disparate treatment of JRL has no support in the law authorizing the operation of a state-owned landfill and is in excess of the authority granted to the DEP." As already noted, JRL is different. There was a prohibition on direct shipments of MSW to JRL in the original OSA. The Hierarchy is now a Permitting Standard, which gives the DEP authority to implement controls at JRL.

In conclusion, it is very difficult to find much of merit in the BGS/NEWSME appeal. There are misleading statements that contradict those in DEP documents. They do acknowledge that the Waste Hierarchy is now a Permitting Standard, and admit that since the CRM facility is not yet functional that wastes intended to go there are not qualified to be "bypass MSW". They fail to admit that the state-owned Juniper Ridge Landfill is unique in Maine and that the Department has ample authority to regulate it as such. To be clear: the DEP has no authority to tell entities where to send their MSW, but they do have the ability to determine that it should NOT be coming to JRL, in accordance with the original RFP and OSA for the landfill.

Respectfully submitted,