

Petition For License Suspension

License Amendment #S-020700-WD-BM-Z

Dear Commissioner Loyzim,

Please consider this to be a petition for license suspension of License Amendment #S-020700-WD-BM-Z. This petition invokes Chapter 2, Section 27.B, which states

B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;

The misrepresentation occurred during testimony on Oct. 4, 2018 by Mr. Doyle, who was speaking to the Board of Environmental Protection on behalf of the State as Owner of Juniper Ridge Landfill (Bureau of General Services) and NEWSME (Casella), who is the Operator of JRL. Enclosed is an email I sent to Mike Barden of BGS and Mr. Laubenstein who represents the State in licensing matters. Mr. Laubenstein wrote to me and said that "The statement of Mr. Doyle's was well within the bounds of normal advocacy."

Since the applicants have failed to honor my request for clarification, my next option is to assert that Mr. Doyle made at least one false statement to the Board which may have influenced their decision that day. Specifically, he said of me after I had read my testimony, "...but he is not entitled to his own facts." Everything in my testimony is factual, and to have stated otherwise without being specific is a misrepresentation.

Perhaps Mr. Doyle was attempting to clarify which "facts" were "mine" and not true with his next statement:

"Here, the original license in 2004 for Juniper Ridge, didn't allow disposal of MSW because the applicants did not request it in their application."

This statement of Mr. Doyle's is also a misrepresentation. He is saying that the applicants could have had MSW included in the license but they simply did not request that it be licensed. This is nonsense. I made reference to the Draft Order for this amendment where on page 011A, in Section D of the Licensing History it says

"2004 license conditions prohibited the acceptance of unprocessed MSW except for MSW bypass from specified Maine incinerators."

The reason MSW was not licensed as a waste stream into the West Old Town Landfill (later renamed JRL) was that it was specifically excluded. My recollection is that NO MSW was part of the Request for Proposals, and also that the Municipal Review Committee (MRC) made NO MSW as part of their support for the State taking ownership of the landfill. MSW exclusion was not simply a matter of Casella/SPO not requesting that it be included.

As a person who has been involved with many decisions by the BEP, I believe that it is essential that all testimony, written or oral, be truthful. Although we are not specifically asked to take an oath of honesty, it is understood that false testimony to the Board has negative consequences, including License Revocation. Therefore I request that the Department undertake procedures to ascertain whether this License Amendment was obtained by false representation to the Board.

This petition includes a transcript of my testimony to the Board on Oct. 4th, a transcript of a portion of Mr. Doyle's testimony that day, my email of Oct. 29th (Request for Clarification), my followup email of Nov. 16th, and Mr. Laubenstein's response by email on Nov. 19th.

Respectfully submitted,

Edward S. Spencer

December 31, 2018

October 4, 2018 BEP Statement

Thank you for allowing me some time to share my thoughts on the issues before us today. For starters, I want to recap the proceedings on Sept. 20th that led up to your deliberations.

During the transition from staff testimony to deliberations, a member of the audience approached the Board, saying he was a PERC owner but not identifying himself. He insisted that he be allowed to testify and when Chair Parker told him that would not be allowed, he continued to speak saying what a hardship it would be for him if the license stayed the same and stating that unlike others who were not allowed to testify, he would lose his business and be forced to lay off the PERC employees.

Immediately following his statements and after he finally sat back down, Sue Lessard appeared to be very influenced emotionally by what had transpired. At first she introduced a motion to table the discussion until a later date due to the difficulty of making a decision that would impact many people. It was not clear whether the PERC owner's unallowed testimony also effected others on the Board, but it does seem clear that this matter needs to be discussed in regard to standard rules of procedure.

Somehow, a motion to table deliberations morphed into discussion of a longer period of time for MSW to come to Juniper Ridge, and the motion was changed to the current proposal. It should be noted that while this was happening, a lot of people were entering the room for the Water Reclassification Hearing which was to begin at 1 PM. Given the obvious impact of the unofficial testimony coupled with pressure to come to a conclusion before the next Board event, my request is that you consider withdrawing the current motion and begin your deliberations as if testimony had just ended on Sept. 20th.

Would you like to discuss this issue now or should I continue with my other points? Okay.

Now let's look at the proposed Draft Order. In the Licensing History on Page 011A, in Section D. it says "2004 License conditions prohibited the acceptance of unprocessed MSW except for MSW bypass from specified Maine incinerators." This prohibition of MSW is also included in the Operating Services Agreement. If for example, the current proposal stands which would allow continued curbside MSW deliveries directly into JRL until 2021 were to be approved, then that would mean that the original license and OSA would be violated for over seven years, from 2014 until 2021.

Let us remember what BGS/NEWSME stated as their intent when they applied for what became the current amendment: "...this extension will serve to meet the ongoing need of primarily southern Maine communities...". (Page 027A). Now, BGS/NEWSME are asking that a temporary accommodation for the

benefit of “Primarily southern Maine communities” be extended until 2023 and include most of the curbside wastes from Penobscot County. This would make a decade of absurdity, especially since they claim that this is somehow compliant with the Waste Hierarchy.

On Page 028A the Department’s Findings of Fact include in their discussion on Hierarchy the following:

“Although the 2013 Amendment did not mandate that the 81,800 tons per year of non-bypass MSW specifically come from the communities formerly served by MERC, providing this capacity was BGS/NEWSME’s stated purpose for its amendment request and the intention of the Department and Board in their respective 2013 and 2014 licensing decisions. The addition of non-MERC communities disposing of non-bypass MSW at JRL appears contrary to these licensing decisions and may suggest that the hierarchy may be being subverted with the acceptance of additional MSW at JRL from non-MERC communities.”

There is no doubt to me that the Hierarchy is being subverted with each delivery of MSW that goes into JRL. If this Board and this Department wish to remain compliant with the 2013 and 2014 rulings, then there should really be no more MSW into JRL. I think you could make a pretty strong case that the current 2018 license does not subvert the Hierarchy if it leads to the future reliable landfill diversion options currently presented by PERC and currently proposed by Fiberight. If you choose to allow an additional 2 years on top of the one year extension allowed by the 2018 license, any pretension of being in compliance with the original DEP license and the OSA, as well as the 2013 and 2014 decisions on this matter, would be indefensible from the perspective of the Hierarchy.

In conclusion, I urge you to first take the current proposed Motion off the table, and then carefully consider all of your options mentioned in Ms. Bertocci’s Memorandum. Remember that contingency clauses and proposed nebulous contracts should mean very little when considering these appeals. Deny any further extensions of MSW deliveries into JRL and let the free market function.

Remember the restrictions in the OSA- that there be no MSW, and that Casella was to follow the Hierarchy. If Casella chooses to act spitefully and try to damage PERC’s and CRM’s futures, that is their business and nobody should hold the Board of Environmental Protection responsible for Casella’s actions. Unfortunately, it appears that Casella does have the means to do great harm to the future of PERC and the development of CRM. In my opinion, there is no “Perfect Storm” or waste crisis unless Casella wants there to be one. It is up to our Bureau of General Services to convince NEWSME and Casella to act in the interests of Maine citizens and show some respect for the regulators, the OSA, and the Hierarchy.

The above is my testimony to the Board on October 4, 2018. The following is an excerpt from Tom Doyles presentation to the Board which directly followed:

“I respect Ed’s ability or opportunity to have his opinion about matters, but he is not entitled to his own facts. Here, the original license in 2004 for Juniper Ridge, didn’t allow disposal of MSW because the applicants did not request it in their application. And the OSA did not allow for MSW to be provided in the landfill, but what it says essentially, is that acceptable waste at JRL is any waste that is licensed to go there. So all these subsequent licenses that we obtained including the one in 2013, are licenses that allow MSW to go to Juniper Ridge and are completely consistent with the OSA.”

Request for Clarification

Cheryl Spencer <cjkspencer@gmail.com> Oct 29, 2018, 9:20 AM

to Michael.Barden@maine.gov, William

Dear Mike and Bill,

There is some unfinished business related to the Oct. 4th meeting of the BEP that I would like your help in resolving. At that time, after I gave my ten minutes of presentation to the Board, Tom Doyle then addressed them. He prefaced his statement by saying that he was chosen to speak on behalf of the applicants, meaning NEWSME and the BGS.

As co-applicants, hopefully you can tell me what Doyle was referring to when he said about me late in his testimony, "...but he is not entitled to his own facts." I did not have a chance at rebuttal, and it certainly sounded to me that he questioned the truth of something I had said.

I have attached a transcript that includes about a page and a half of my presentation that day, followed by what I transcribed of Doyle's testimony off of an audiotape furnished by the BEP. It is unclear to me just what facts Doyle told the Board that I misrepresented.

Thank you for your assistance in this matter.

Regards,

Ed Spencer

Cheryl Spencer <cjkspencer@gmail.com> Nov 16, 2018, 2:59 PM

to Michael.Barden@maine.gov, William, Cynthia, Melanie

Dear Mike and Bill,

On Oct. 29th I emailed you asking for your help in clarifying a statement made on behalf of BGS and NEWSME to the BEP on Oct. 4th. Since I have received no response from you I am sending this reminder.

On the 4th, after I gave my ten minutes of testimony to the Board, Tom Doyle addressed the BEP. He stated that he was chosen to speak on behalf of the applicants, BGS and NEWSME. Late in his testimony, Doyle said in reference to me: "...but he is not entitled to his own facts." I did not have a chance at rebuttal, and it certainly sounded to me as if he questioned the truth of something I had said.

I have once again attached a copy of my presentation to the Board on the 4th, as well as a transcript of Doyle's presentation that day. As a citizen with standing before the BEP, I take my responsibility to be truthful very seriously. Your spokesperson questioned the integrity of something I had said to the Board, and I asked for an explanation.

I have revisited my presentation multiple times, and, absent any clarification from you as co-applicants, my conclusion is that Mr. Doyle's statement to the Board was not true. You are probably aware that under DEP's Chapter 2 Rules, an applicant is prohibited from making misrepresentations during licensing procedures, under penalty of having that license revoked,

suspended, or modified (Ch.2.27.B). Therefore, I urge you to take my request for clarification seriously.

I look forward to your timely response.

Regards,
Ed Spencer

Laubenstein, William <William.Laubenstein@maine.gov> Mon, Nov 19, 12:16 PM

to **Thomas**, me, Michael

Dear Mr. Spencer:

The record in this case speaks for itself. The statement of Mr. Doyle was well within the bounds of normal advocacy.

William H. Laubenstein, III

Assistant Attorney General