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November 8, 2017

VIA ELECTRONIC MAIL

David Russell
Code Enforcement Officer
City of Old Town
265 Main Street
Old Town, ME 04468

Re: Response to November 2017 Comments from Mr. Spencer on the Juniper Ridge Landfill
Expansion Application

Dear Mr. Russell:

On behalf of the Applicants, Bureau of General Services and NEWSME Landfill Operations, LLC, we are writing in response to the comments filed by Mr. Spencer that, due to delays caused by wide-spread power outages, we did not receive until Friday afternoon, November 3, 2017. In recognition of the tight schedule before the next meeting, we appreciate the opportunity to respond.

As an initial matter, Mr. Spencer's latest comments go well beyond the discretionary opportunity granted to him by the Chair on October 10, 2017, which was to provide comments on potential conditions of approval. Mr. Spencer is attempting to have what amounts to a second shot at a public hearing, submitting new evidence after the record has closed and making various arguments, many based on incorrect statements of fact, about why the application should be denied. Further, many of his proposed "conditions" are not actually proposed conditions of approval at all, but rather demand compliance with a permitting standard (which the Applicants must meet anyway) or suggest that the Board should require still more information. He was not asked to comment again on all of the approval criteria or provide alternative findings of fact, and he certainly should not now be providing new evidence that cannot be challenged by the Applicants given that the public hearing is closed. Accordingly, large portions of Mr. Spencer's comments should be struck from the record.

In addition, Mr. Spencer's "General Thoughts on Deliberative Discussions of Oct. 10th" are misleading. His characterizations of the quality of the Board's deliberations – specifically, regarding the impact of the State's approval on this proceeding, how Board members have weighed evidence on issues of odor and litter, and the burden of proof – are simply not accurate. There is nothing wrong, for example, with recognizing that the BEP's approval is relevant, particularly given the DEP staff's expertise and experience with landfills and the fact that many of the local approval standards are nearly identical to the State's approval standards. Further, several Board members stated that they carefully considered

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testimony from citizens about issues like odors and litter, but in the end concluded that the Applicants had met the applicable standards.

Setting those issues aside, we have prepared the attached document to respond to Mr. Spencer's comments. Rather than attempt to address each statement, in the interests of time and relevancy, we instead provide a response on each of the topics that Mr. Spencer raises.

Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Tom", written in black ink.

Thomas R. Doyle

Attachments

cc: Michael Barden
William Laubenstein, Esq.
Don Meagher
Jim Katsiaficas, Esq.

**CITY OF OLD TOWN
PLANNING BOARD**

IN THE MATTER OF

STATE OF MAINE)	
BUREAU OF GENERAL SERVICES)	
NEWSME LANDFILL OPERATIONS, LLC)	BGS/NEWSME'S RESPONSE TO COMMENTS
JUNIPER RIDGE LANDFILL EXPANSION)	OF MAJOR OPPONENT ED SPENCER
2828 BENNOCH ROAD, OLD TOWN)	
CASE NO. 1529-E)	

The Applicants, Bureau of General Services and NEWSME Landfill Operations, LLC (NEWSME), provide this response to comments filed by Major Opponent Ed Spencer, dated November 2017. For convenience, this document uses the headings provided by Mr. Spencer in his comments, most of which are drawn from the approval criteria for solid waste facilities in Section 24-12 of the City's solid waste ordinance.

Standard A: Financial Capacity

Mr. Spencer appears to be confusing two different approval standards – financial capacity and compliance record – and is wrong about both. First, on financial capacity, he ignores the fact that the application states that ongoing activities at JRL are funded by revenues generated from the operation of the landfill (i.e., tipping fees). NEWSME also provided a letter from the Bank of America, N.A., showing that its ultimate parent, Casella, maintains a multimillion dollar secured credit facility administered by that bank. A credit facility is simply a type of loan and not, as Mr. Spencer's comments suggest, a separate entity that the Board can somehow investigate. The City's approval standard requires that the Applicants demonstrate financial capacity to design, construct, operate, and close the Expansion in accordance with the Ordinance and the DEP License. The Applicants clearly meet this standard, as underscored by their BEP approval of this same evidence. See Application, pp. 21, 52 (financial capacity), App. F-1 (financial capacity), App. F-2 (financial assurance, closure/post-closure care), August 11, 2017 Letter to K. Tarbuck (updated annual surety bond); BEP License, pp. 17-19, 99 (Concl. 4), 103 (Cond. 4).

Second, the Applicants have provided the civil and criminal disclosure statements required by the Ordinance and DEP Rules. Bank of America is not required to file a disclosure statement because, as Casella's financial institution, it does not meet any of the categories required to disclose under DEP Chapter 400.12. Moreover, the Applicants have satisfied the Ordinance's approval standard on this topic by virtue of their BEP approval and compliance with its conditions. See Application, App. A-1 (BEP License, pp. 51-52).

Standard A: Technical Capacity

As with the financial capacity approval standard, the technical capacity standard is simply that the Applicants demonstrate the technical capacity to design, construct, operate, and close the facility in compliance with applicable rules. As was explained in the application, and as found by the BEP, the Applicants have eminently qualified employees and consultants that more than meet this requirement. See Application, pp. 21-24, 52, App. C-2 (resumes key personnel); BEP License, pp. 19-20, 99 (Concl. 4).

Mr. Spencer's comments, however, focus on several isolated technical issues, presumably in hopes of convincing the Board that the Applicants' technical experts have made mistakes and are not capable of ensuring the project complies with standards. Seeking additional precipitation data, confirmation of approval from the Army Corps, and more engineering information about excavating below the water table are not directly relevant to whether the Applicants have the technical capacity to develop this project. They are instead an attempt to revisit the permitting standards and/or a last-gasp attempt to discredit the reputations of the professionals who have prepared the application. In fact, Mr. Spencer again misunderstands the technical details of the application.

As one example, Mr. Spencer now contends that it is "doubtful" that the stormwater structures could withstand a 100-year flood. The applicable DEP standard in Chapter 400.4.M requires only that the stormwater structures are designed for storms up to and including the 25-year, 24-hour storm event. For this project, however, the detention pond structures are designed such to handle the 100-year storm events by using a structure, referred to as an emergency spill way, to manage discharge flows from the pond to ensure that the pond's integrity is maintained. See Application, App. A-1, pp. 37-38 (Finding of Fact 17).

As another example, Mr. Spencer contends that excavating below the water table will present particular difficulties. This is, however, common practice in Maine. In fact, the existing JRL was built using this technique and it functions well.

Finally, with regard to the supposed disagreement with CES, Mr. Spencer may be referring to a statement contained in a May 13, 2016 letter from CES to Mr. Katsiaficas in which CES identifies a statement in the application relating to the hydraulic connection, if any, between groundwater beneath the Expansion and the residential wells along Rt. 43 that they do not believe is supported by data contained in the application. CES goes on to say on page 3:

While we agree that the risk to these wells is low due to distance, and the redundancies designed into the proposed landfill liner system, there is still potential bedrock groundwater flow from the site to the residential wells along Route 43 southwest of the site. Based on our review of the Application, the regulatory standards appear to be met without this stated conclusion; therefore, our concerns about this issue relate more to the potential need to monitor these residential wells in the future should there ever be a catastrophic failure of the designed systems. We do not believe that the conclusion made by SME poses a licensing concern but do caution that it should not be relied upon in the future as a basis to eliminate the need for monitoring if there is ever a significant release from the landfill without additional data to support it.

The Applicants agree with CES that these wells should be monitored if the extensive proposed site monitoring system that includes both a leak detection monitoring directly under the liner and site monitoring wells between the Expansion and the wells along Rt. 43 indicate failure of the landfill liner system. Thus, the disagreement over whether there's a direct hydraulic connection is academic, as both sets of experts agree that monitoring would be appropriate.

Standard B: Traffic

As noted in the Application, and contrary to Mr. Spencer's assertion, all trucks using JRL must be tarped or the waste contained in a closed container to minimize both odor and litter. All leachate is

hailed in closed container trucks. Additionally, potential odorous waste loads are uncovered on-site, sprayed with deodorant prior to unloading, and sprayed again when leaving the site. See Application, p. 54. This is all in accordance with the Ordinance requirement (Chapter 24-12.B.6) that an applicant develop a plan to minimize litter and nuisance odor from trucks.¹

Standard D: Fugitive Dust and Nuisance Odors

As detailed in the application, NEWSME has an extensive system to manage odor and document odor complaints. This system was developed and improved over many years with the assistance of the DEP, and includes additional provisions based on discussions with the City of Old Town during the BEP licensing process. In fact, complaints are dramatically lower than they used to be, suggesting that the efforts to control odor are paying off. See Application, pp. 29-30, 32, and App. D-3. Finally, at the October 10, 2017, meeting, NEWSME agreed in response to a discussion with the Board to record additional hydrogen sulfide data from off-site meters on the odor complaint form.

Each odor complaint received at JRL is reported to the City, the Landfill Advisory Committee, and the State via a monthly summary report, providing third-party review of each odor complaint received, and the public therefore has access to all odor complaints. Annually, these complaints are reviewed and presented as part of the JRL Landfill Annual Report. NEWSME believes this very exhaustive and detailed process has functioned well, and with the additional improvements provided by both the City and the Board will function very well for the Expansion, without need of another layer of complexity.

Based on our experience, adding a third-party odor monitor to this process will not resolve a vocal opponent's concerns. In addition, involving a third-party in responding to odor complaints may increase the response time given travel distance and availability. As a result, we continue to believe that NEWSME's proposed system is robust and comprehensive, and moves compliance away from subjective measures toward objective criteria that can be understood and enforced by all involved.

Standard G: Waste Characteristics

As discussed in the application, NEWSME's waste characterization program is detailed and effective, and specifically addresses how to exclude hazardous waste. Mr. Labbe spoke at length in his presentation about these practices to prevent such waste from being accepted at JRL. NEWSME staff are regularly trained on acceptable and unacceptable wastes. A waste activity report for each load delivered to JRL is provided each month to the City, the Landfill Oversight Committee, and the State. See Application, pp. 36-38, 57-58, App. D-3 (Operations Manual, sec. 7.1 Acceptable Solid Wastes and Waste Characterization), 7.16 (Hazardous and Special Waste Handling and Exclusion Plan), App. G – Waste Characterization & Acceptance Plan, and App. L – Waste Inspection Plan), App. D-2 (Design Report, App. G – Leachate Quality/Waste Charac.), App. D-10 (Leachate Disposal Contracts, etc.). In addition, Mike Barden, Manager of State-owned Landfills, conducts 3-4 site visits annually to review NEWSME waste delivery manifests and observe waste deliveries at the scale house and overall disposal operations.

¹ Incidentally, Mr. Spencer also cites Chapter 24-14.K as a permitting criterion. It is, in fact, a standard condition of approval that will apply only if and when the Board issues a permit (and, in any event, requires "best efforts" to cover containers, not the "ban" that Mr. Spencer claims).

No other landfill in the State has a third-party requirement for waste characterization, as Mr. Spencer suggests, and the Applicants believe this is unnecessary. Both the State and the City already have the authority to inspect the operations at their discretion as part of their general enforcement authority. Nothing more should be required.

Standard I: Air Quality

Mr. Spencer appears to misunderstand how landfill gas is generated and handled at JRL. With regard to surface methane emissions, NEWSME tests in accordance with EPA's New Source Performance Standards. This is a nationwide EPA program that was specifically derived with testing designed for landfills. These standards provide a scientific basis for testing derived by scientists at the EPA. The testing program is overseen by the MEDEP Air Bureau with data also provided to the Solid Waste Bureau and reported in the JRL Landfill Annual Report.

Additionally, Mr. Spencer's assertion about JRL's backup systems is incorrect. During a power loss or power bump, the backup electrical generator starts automatically, with less than five minutes of downtime. This is the same technology that is used in critical infrastructure, such as hospitals. The flare then automatically restarts once the generator is operating.

Lastly, as noted above, hydrogen sulfide data requested by CES on behalf of the City will be provided to the City and State and be available to the public for review.

Standard K: Existing Uses and Scenic Character

Mr. Spencer next asks that the Applicants be required to pay for fencing or landscaping for "anyone who considers the sight of JRL to be a Nuisance." This is not, however, the standard for existing uses and scenic character. Rather, in Section 24-12.K, the Applicant must make "adequate provision" to fit the project into the existing natural environment and show that there will not be an unreasonable adverse effect on existing uses or scenic character. As shown in the application, and as found by the BEP, the Applicants have done this. See Application, pp. 45-48, 61-62, App. D-6 (Visual Assessment), App. H (Cell Development Plan), App. E-3 (Site Surroundings Map); BEP License, pp. 21-28, 99-100 (Concl. 8), 103-104 (Cond. 6). That Mr. Spencer personally would have reached a different conclusion is not a basis to require personalized fencing or landscaping plans for anyone who happens to disagree with the Board.

Standard L: Water Quality

With respect to impacts on water quality, Mr. Spencer attempts to re-argue whether the project will have unreasonable effects on, or pose unreasonable risks to, water quality. Mr. Spencer's discussion on this point revolves around his intent to discredit the operations of the wastewater treatment plant at the former Old Town mill with new information apparently derived from his own personal investigations. As explained previously, that facility was recently licensed by DEP to continue operations, and the DEP specifically took into account its ability to treat the leachate from JRL. See Application, pp. 49-50, 62-63, App. E-3 (Site Surrounding Map); BEP License, pp. 32-33, 35-36, 99-100 (Concl. 1, 10, 12, 30), 106 (Cond. 15). Nothing more is required.

Standard M: Compliance Record

Once again, Mr. Spencer seems confused about the approval standard. He quotes the permitting standard from Section 24-12.M on compliance record, but then says that the ordinance somehow requires more by questioning whether the Applicants provided a complete application by reference to items in Section 24-8.O that must be included in the initial submittal. The question of whether the application is complete is no longer an issue. Further, and in any event, while Mr. Spencer may disapprove of the Maine law of corporations, it is beyond any reasonable dispute that NEWSME is a valid and legitimate corporate entity, in good standing with the Maine Secretary of State to do business here, and serves as the operator of JRL. See Application, App. C-1 (good standing certificate). As such, NEWSME is an appropriate applicant, and there is no basis to pretend that it somehow does not exist simply so that one can inquire instead of its ultimate parent company. See also Application, pp. 50, 63, App. I (Civil & Criminal Disclosure Statement), August 2, 2017 Mike Booth Letter (submitting July 31, 2017 BGS Disclosure Statement).

Standard P: Applicable Ordinances

Strangely, with respect to demonstrating compliance with other applicable local ordinances, Mr. Spencer contends that NEWSME should reduce the operating footprint at JRL. This is not, to our knowledge, even relevant to any other applicable ordinances. Regardless, as discussed in the application, NEWSME operates in this regard in compliance with DEP requirements for open area and daily cover in DEP Chapter 401.8. See Application, Operations Manual § 7.7 in App. D-3.

Waivers

Mr. Spencer's only suggestion on waivers is that the City should not grant them until the State does. This makes no sense, as the requested waivers relate to requirements in the City's solid waste ordinance that do not exist in the State rules. Thus, there is no need to make similar waiver requests of the DEP.

Proposed Conditions

Rather than apply the sixteen specific standards in Section 24-12 of the Ordinance, Mr. Spencer repeatedly references the overall requirement in the first paragraph of that section that an applicant must demonstrate that the project "will not threaten public health, human safety or the environment or create a nuisance" Mr. Spencer ignores, however, the language that immediately follows that phrase, which explains how an applicant does so – "*by demonstrating compliance with the standards of this Section.*" Thus, the way an applicant shows that a project is not a threat to health, safety, or the environment, or a nuisance, is not defined by a "garbage company lawyer," as he says, but rather by the City's own ordinance. Any other approach would be wholly subjective, and thus improperly leave to the Board members the responsibility to define the applicable standards in any given case, or even to add new ones. This would be a violation of due process, and is certainly not what the drafters of the ordinance intended.