

## CONCERNS FOR OLD TOWN PLANNING BOARD

This is an edited version of a document I presented to the BEP in May. Most of my concerns for them are relevant for your consideration. If you want to look at the unedited document, please say so. It is probably available on the BEP/DEP website.

We need to keep in mind from the start that the burden of proof is on the applicant, not the opponents. Expansion of JRL and how it will be regulated will serve as precedent for Maine waste handling for decades into the future. We can best preserve capacity by exerting control. A strictly regulated landfill sets a standard for excellence as our society evolves. Lax enforcement of existing laws and rules encourages unprincipled behaviors which may result in Maine increasingly becoming the dumping ground for the rest of New England.

When the State took ownership of the Old Town Mill's landfill in 2003/2004, it was clearly the intent that wastes from outside of Maine's borders were to be excluded. This goes back to 1989 landmark solid waste legislation declaring that any future landfills sited in Maine would be state-owned (or owned by other public entities). The clear purpose was to control wastes from beyond our borders that threatened to overwhelm our capacity to regulate them and turn Maine into New England's dumping grounds. Although in 2003 State and Casella officials were outspoken about "No out of state waste!", there was actually an agreement allowing Casella to bring in enough debris from outside Maine to source fuel for the Old Town Mill's boiler EXCLUSIVELY. In 2006 the Fuel Supply Agreement between the Mill, Casella, and the State was secretly altered to allow non-Maine debris to be turned into fuel for ANY Boiler in Maine. This was in the second Amendment to the Operating Services Agreement (OSA). Then in 2007 the current definition of "Maine Waste" was passed, once again without notifying local citizens or our Juniper Ridge Advisory Committee (JRLAC).

## BEYOND THE CONTROL

Section 18.B. of the Draft License is a Summary of Proposed Waste Streams Relative to the Hierarchy. It discusses the "...viable waste management options for these wastes as related to the hierarchy that are sufficiently within the control of the applicant to manage or facilitate...". Wherever this "lack of control" language appears in the Draft, it gives Casella license to accept any wastes at JRL regardless of compliance with the Hierarchy. Instead of doing its utmost to Control inputs to our state landfill, the Department says: "If you can't control it, let it in." Wastes with sources outside of Maine comprise at least 40% of JRL inputs (Spencer testimony at Hearing, not refuted).

Being a State-owned landfill allows for control and exclusion, unlike commercial landfills which are subject to the U.S. Commerce Clause. We should preserve capacity by controlling waste inputs, and exclude wastes that are "beyond the control".

## UNREASONABLY VAGUE LANGUAGE

In the Draft License's Table of Contents some variation of the phrase "No Unreasonable" appears in 8 of the 38 Section titles. "Unreasonable" also appears in the draft license an additional 39 times. This strikes me as extremely inexact language for a legally binding regulatory license. This allows for harmful effects of an expanded JRL to be explained away by interpreting the damage as "not unreasonable". Wherever

possible, this vagueness should be avoided. Where people with common sense see “No Unreasonable Adverse Effect on Air Quality”, for example, we know that JRL is going to diminish our air quality.

To be honest let us just understand that: An expanded JRL:

1. IS going to adversely effect existing uses and scenic character.
2. IS going to have an adverse effect on air quality.
3. IS going to have an adverse effect on surface water quality.
4. IS going to adversely effect other natural resources.
5. WILL cause Erosion.
6. A discharge to a significant ground water aquifer may occur.
7. There may be adverse effects on existing or proposed utilities.
8. IS likely to cause or increase flooding.

While we are on the topic of vague language, we should consider Section 9’s title: Fitting the Solid Waste Facility Harmoniously Into the Natural Environment. There is just no way to add over 50 additional acres of wastes piled over two hundred feet high into a formerly natural area and describe this as “Harmonious”. On Page 23, it says “...and at closure it will be fully planted with a vegetative layer and will resemble nearby hillsides with similar height, scale, and form.” There are no “nearby hillsides” that resemble JRL. The top of the landfill is at 390 feet above sea level, the next highest spot in Old Town is less than 170 feet high. I invite the applicant and Department to mark these “nearby hillsides” on a map. Please instruct the authors of the Draft to go back and replace vague language with realistic, factual, and provable assertions.

State ownership of future landfills in Maine became the law in 1989 and JRL was the first functioning State Landfill. Out-of-State wastes were banned other than those strictly controlled by contract with the State for fuel destined exclusively for the Old Town Mill. Now, we have over 300,000 tons per year coming into JRL that was disposed of beyond our borders.

#### OLD TOWN AS ONLY CHOICE

One measure of the State’s BGS lack of effort to secure landfill capacity aside from JRL in Old Town is reflected in a statement on Pages 91-92 of the Draft: “The applicant stated that alternative State-owned landfill sites, such as Dolby in Millinocket and T2R8 NWP (currently undeveloped), and the one commercial landfill (Crossroads in Norridgewock) were not viable options because JRL was the only site which had a Public Benefit Determination.” Are we to think that JRL or other prospective sites suddenly appear with a PBD prepared? A PBD has to be applied for and examined by DEP, with informational sessions and perhaps Public Hearings included. In the case of the BGS, there is probably a combination of bureaucratic laziness and fear of controversial decisions.

Why wouldn’t Casella want other sites developed besides JRL? They don’t want any competition. To properly site another landfill, there would have to be an honest Request for Proposals (RFP) where they would face an open market, unlike JRL’s RFP which got only one response and then the winner refused to comply with all the terms of the RFP. Casella wants to control the marketplace and be the last landfill open, according to what they have told their shareholders. Mike Barden of BGS bluntly told those of us gathered at the Public Informational Meeting for JRL Expansion in the fall of 2015 at Old Town City Hall, “Old Town is the only one we are looking at.”

JRL was forced into existence by a heavy-handed paper company, but was strictly prohibited from putting anything but mill waste into the landfill. The 2003 Resolve eliminated our municipal ordinances to that effect. Carpenter Ridge and Dolby also began as paper mill generator-owned landfill. With all the shut down or struggling mill sites in Maine, doesn't it seem that the right amount of money and effort could yield results? Furthermore, all three current state-owned landfill sites are clustered in Penobscot County. As long as the Department keeps rubberstamping JRL expansions, the people of Old Town and Penobscot County will continue to bear the burden of nuisance and future ecological time bombs.

#### TECHNICAL ISSUES

At the Public Hearing (BEP Public Hearing, Bangor, October 18-19, 2016) many of us first learned that over 12 acres of the planned expansion would be built "...where the base of the landfill is located under the water table on the site." (Mike Booth). Mr. Booth then said that the water would be pumped out during the construction process and that it would actually be helpful to have upward water pressure on the landfill! I am surprised that this will be allowed under DEP rules, and it defies common sense. This should require further Board scrutiny from both an engineering and a wetlands perspective.

Also at the Hearing, Mr. Sevee mentioned pumping groundwater as a means to control escaped leachate, "...and we have shown through these pumping test that we can affect groundwater levels out as far as 2000 feet away from where the well is being pumped." (Transcript Page 41). This would happen while pumping an area dry enough to do very sensitive and meticulous base preparation. This would seem to have negative effects on surrounding wetlands.

Mr. Booth referenced the extensive site selection process prior to the Old Town mill siting its landfill where JRL is now located. "From the 58 sites, the further screening of those sites narrowed those sites down to 18 sites. The sites that were eliminated were eliminated because of either wetland and surface waters surrounding use." I doubt that this specific below-the-groundwater site would have passed muster. The mill needed but a small fraction of footprint compared to the planned size of JRL. Another question never answered was how much of a factor cost of development and ease of permitting were in the landfill site selection process. We are told to believe that just by chance the one out of 58 sites selected as best suited was also the closest, least expensive to develop, and within the Old Town borders where paying over half the tax base certainly enabled ease of approval for the Mill.

In Chapter 401(C) Performance Standards and Siting Criteria, it says "Disturbance of soil material must not affect ability to monitor water quality at the facility site." Yet in the JRL Annual Reports, there are many instances where a well has tested higher for a substance than it did before, and often this is dismissed as "caused by construction". A landfill is Always Under Construction, and there seems to be a violation of 401(C) which is not addressed in the Draft. It is also concerning that it sounds as if the only thing that will convince Casella's experts that there is a liner leak would be if they detect test results with a "leachate footprint". Leachate formed in different parts of the landfill is not homogenous, but varies with the wastes it passes through.

Odor issues are talked about in the Draft License and were at length at the Hearing. I stand by my claim that this process is flawed because the Casella employees get to decide if it is a "confirmed" offensive odor. Interestingly, at a landfill in Southbridge, Massachusetts that is operated by Casella, there is a 3<sup>rd</sup> Party independent odor authority. Once again, Maine trails Massachusetts in waste regulation.

## LEACHATE DISPOSAL

At the Public Hearing in October, much was said about LRL current practice and future plans to dispose of the toxic landfill leachate at the Old Town Mill site. The Department's Draft License seems to endorse future leachate disposal in this manner simply because there is a "licensed operator" to funnel leachate through. This will cause harm to the Penobscot River, and the Applicants and Department should be asked to explain and to prove that there will be no pollution involved.

Currently, the leachate is collected into a tank on-site, then transferred into trucks and driven to the former mill's Wastewater Treatment Plant (WWTP). It is supposed to be treated with chemical to get it into a very wide range of PH. Once dumped into the lagoon, it is aerated in order to neutralize Biological Oxygen Demand (BOD). Then it is drained into the Penobscot River. There is no secondary treatment for removal of particulates and sediments, many of which are heavy metals such as lead and arsenic. Where do these toxins end up, if not in the river? There is no tertiary treatment with chemicals, and from what they have said, it is not even diluted before being dumped ("batch released") into the River. There is very minimal testing required to determine the toxicity levels as it enters the River and no testing of its impacts on the adjacent parts of the River.

Under Solid Waste Facility Licenses 1310-N(1), it says:

"Licenses. The Department shall issue a license for a waste facility whenever it finds that: Facility will not pollute any water of the State..."

This means there should be no harm to ANY waters, not just those directly adjacent to the landfill. We are talking about 10 million gallons of toxic solution being dumped directly into our Penobscot River system. This is a threat to subsistence fishing, a protected practice of the Penobscot Nation, not to mention recreational fishing which many of us enjoy with our families. Simply put, there has to be a better way to protect our natural resources from leachate pollution.

## FINANCIAL ABILITY AND CRIMINAL OR CIVIL RECORD

Building, operating, and closing a huge landfill requires major capital. Casella's proof of financial ability for the purpose of this license is limited to a single short letter from May 21, 2015. It is written on Bank of America stationery, but Bank of America in no way guarantees Casella's fiscal capacity. Instead, it states that Casella has access to financing from a "credit facility". There is no description of just who or what this "credit facility" consists of. The Board should consider asking for a more detailed and updated proof of long-term capital access.

When the State put out its belated Request for Proposals (RFP) for a JRL operator in 2003, one of the requirements was that applicants needed to post a \$50 million Bond. After Casella, the sole bidder, was awarded the job, Casella refused to honor the Bond requirement. Some State officials, to their credit, thought that this was illegal. But Casella prevailed, offering a Bond in a much lower amount (less than 10% of that listed in the RFP). You can read documents detailing this in the Timeline presented by Mr. Paul Schroeder at the Hearing, and part of the Record. Lack of proof puts Maine's taxpayers at risk, and we need look no further than the Dolby landfill to see what happens when the State has to pick up the bill for an insolvent operator. DEP licenses have a spotty record as far as Financial Capability, and there

have been several mill bankruptcies in Old Town in the last ten years where DEP has certified their “financial ability”.

In Section 23 of the Draft License, Criminal or Civil Record, it says “...a license for a solid waste facility or activity may be denied if the owner or the operator or any person having a legal interest in the applicant or the facility has been convicted of any criminal law or adjudicated or otherwise found to have committed any civil violation of environmental laws or rules of the State, other states, the United States, or another country.” The disclosure statements only included members of NEWSME and the operator of the (now closed) Pine Tree Landfill in Hampden. The Department also requested and received an organization chart of other Casella companies that do business in Maine.

If we reread the above quote from 1310-N(7) carefully, it requires disclosure of unsavory activity by “...any person having a legal interest in the applicant or the facility...”. However, the Department has only looked at the local Casella subsidiaries. These are wholly owned by Casella, so shouldn't the entire management structure be asked to disclose criminal or civil judgments? They certainly have a “legal interest” in the facility. What about the lenders who finance Casella activities, including this expansion? The Bank of America refers to a “credit facility”, who would have a “legal interest” in Casella activities: shouldn't the Department ask for their records to be included? It needs to be said that throughout the northeastern United States there have been many cases of criminal activity by those in the solid waste business. One wonders about the long list of contributors to JRL and those “not sufficiently in the control”.

#### INADEQUATE ENDANGERED SPECIES EVALUATION

The Draft License continues the inadequate effort to fully evaluate JRL's expansion's impact on the surrounding and larger ecosystem. In fact, the Department has neglected to fulfill its obligations to fully review the criteria necessary to issue an NRPA license. Remember, this is a federal permit administered by the State DEP. After sixteen months of formal steps leading us to the issuance of a Draft License, we suddenly learn that all our testimony, by the Public, applicants, intervenors and agencies alike, have been filed under the wrong number. This may be grounds for voiding any NRPA permit issued.

Let us pause for a moment and consider a future scenario. Perhaps after the Board concludes its work, either the applicants or opponents dislike the outcome and file suit. At that point, perhaps an opponent wants to make reference to the testimony of Dr. Stephen Coghlan. But, couldn't the attorneys for the applicant say: “That testimony is no good, it was not filed properly (improper license number identification)”. Or, an opponent could say: “This NRPA application was filed under the wrong number and the permit should be disallowed.” Either way, it may be better back up and restart the process. We need to understand the potential impacts before this gets ever more complicated.

The Draft license goes through the various criteria for the NRPA. However, it looks at the projected expansion in a very narrow way. For example, Stantec found that there are no salmon streams on the property. But the Draft says: “The Department's rule 06-096 C.M.R. ch. 315, guides the Department in its analysis of impacts to existing scenic and aesthetic uses resulting from activities in, on, over or adjacent to protected natural resources subject to NRPA.” (Page 87). It appears that the Department may have looked at “activities in, on” the proposed footprint, but that they gave very little attention to impacts “over or adjacent to protected natural resources subject to the NRPA.”

At the Hearing there was this exchange between myself and Stantec's Bryan Emerson (transcript Page 192):

Mr. Spencer: "Okay, Mr. Bryan Emerson, you mentioned that your consultation regarding Atlantic salmon consisted of two sentences transmitted via e-mail. Did you engage in a formal consultation with U.S. Fish and Wildlife Service as may be required under the Federal Endangered Species Act and if not, does this e-mail exchange serve as an adequate replacement for a formal ESA consultation review?"

Mr. Emerson: "We have not engaged in formal consultation with U.S. Fish and Wildlife service regarding Atlantic salmon, as we understand from our conversations with the Corps that formal consultation will not be required."

Mr. Spencer: "Has there been any analysis done as part of this application of potential impacts to fisheries associated with disposal of JRL leachate into the Old Town mill's wastewater treatment plant?"

Mr. Emerson: "We did not do any studies of that, no."

The applicant did not ask for formal review by the USFWS, and neither did they spend any significant amount of time with the State's Department of Marine Resources (DMR) and Department of Inland Fish and Wildlife (MDIFW). They received short letters with no explanation from the state agencies. Yet somehow the authors of this Draft License want people to think that a permit should be issued and justifies this in part on "review comments" of DMR and MDIFW. There is no official documentation that the U.S. Army Corps of Engineers told the Applicants or Department that for the purposes of the NRPA permit, "formal consultation will not be required."

As a technical matter, Mr. Emerson said (transcript Page 103): "...the Corps regulates 750 feet out from the pools." These are vernal pools he references here. Other Casella witnesses stated that all the groundwater would have to be pumped from beneath the 12 acres of the expansion area that are below groundwater level to allow construction. They also testified that in the past they have pumped groundwater in the past and effected groundwater levels 2000 feet from the wells. Since groundwater underlies surface water, and the expansion site is surrounded on three sides by wetlands and contains an area that is NOAA-designated Critical Endangered Atlantic Salmon Habitat, draining the 12 acres for construction would have to have a negative effect on the wetlands to an undetermined distance from the landfill footprint.

Part of the NRPA contains an Alternatives Analysis. Casella did not do a serious analysis of options to avoid needing this much additional landfill capacity. Why would they really want to show other alternatives when they control JRL? In testimony I mentioned that Department Staff had concluded that there were alternatives for every JRL waste stream except the PERC incinerator ash and FEPR, which is a relatively small percentage of total wastes. Given these unnamed options to dispose of waste streams elsewhere, the lack of formal review with USFW, the very limited review by the State's DMR and DIFW, and the complete absence of any consideration of impacts to fisheries associated with dumping 10 million gallons of barely treated toxic leachate directly into the Penobscot River, this Draft License approval of an NRPA permit is unjustified. The Board should reject it outright, or ask for a thorough review, this time including engagement with Federal Agencies.

THREAT OF BYPASSED MSW

From the beginning of JRL it was understood that curbside garbage (MSW) was to be excluded from State landfills except in emergency situations where an incinerator is out of commission. Over the years, MSW became accepted as a so-called “soft layer” to be placed at the bottom of new cells as a supposed buffer between other wastes and the liner. I object to this practice because I do not consider it to be an appropriate medium since it is not uniform and may contain sharp objects and extremely acidic or caustic materials that could endanger the liner.

Closely reading Condition 11 on Page 101, in A it lists as a potential source of MSW to JRL: “...waste delivered under an interruptible contract with PERC...”. The Board, Department, and Public need to know if there is such an “interruptible contract” between PERC and Casella/BGS. Does one exist, and if so, what are the terms and conditions? It is well known that after March 31, 2018 PERC will be operating without many of its former municipal customers who have signed up with the Municipal Review Committee (MRC) to bring its MSW to their new Fiberight facility in Hampden. There is a lot of uncertainty involving PERC’s future, and it would basically dismantle the State Waste Hierarchy if MSW going to PERC were to go straight into JRL should PERC fail. The Board needs assurance that this will not happen.

The requirements in 11.C. mandate that Casella/BGS notify DEP about excess MSW deliveries beyond incinerator capacity when MSW deliveries continue to JRL for a week. This should be stricter. A week is too long, it should be a matter of days or even immediately. It has been documented in the past that Casella had deliberately scheduled MSW deliveries that only lasted for six days to circumvent the notification requirement.

In general, as part of regulating a State-owned landfill, there should be a requirement that all contractual clauses held by Casella that could possibly effect JRL should be revealed. An “interruptible contract” is a start. Also, just what is the arrangement between Casella and its former KTI Biofuels processing facility in Lewiston and its owner since 2012, ReEnergy? Do terms of that sale require that ReEnergy residues be given preference over other materials for use as Alternative Daily Cover (ADC)? This allows ReEnergy to avoid paying tip fees to Old Town and Alton, and under Maine’s absurd definitions qualifies as a “recycled material”. It should be noted that these large “processing facilities” would not come close to meeting their 50% threshold of recycling inputs without this privilege. Does Casella assure customers in other states that JRL is available as a backup disposal site if the primary landfill is unusable?

#### FINAL THOUGHTS

These issues are real and relevant to Old Town citizens. Instead of always narrowing the topics considered to be “Relevant” to an Expansion, please understand that each and every one of these concerns are part of what Old Town declares in the first paragraph of our Chapter 24 Ordinance:

“The City is committed to preventing the degradation or destruction of natural resources, minimizing the adverse impact of solid waste facilities on the natural environment and protection the health, safety and general welfare of all people.”

Respectfully submitted,

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