

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

WASTE MANAGEMENT DISPOSAL	)	APPLICANT’S RESPONSE
SERVICES OF MAINE, INC.	)	TO THE POST-HEARING
SOLID WASTE APPLICATION	)	COMMENTS OF CLF
NORRIDGEWOCK, SOMERSET	)	
# S-010735-WD-YB-N	)	

Waste Management Disposal Services of Maine, Inc. (“WMDSM”) provides the following in response to the post-hearing comments filed by Conservation Law Foundation (“CLF”) dated October 13, 2020 (“CLF Comments”), including the specific items identified in ¶ 8 of the Fourth Procedural Order. The six-volume Phase 14 Solid Waste Permit Application, supplemental information filed by the Applicant in response to the review comments by the Department of Environmental Protection (the “Department” or “DEP”), and the information presented during the October 1, 2020 public hearing, collectively addresses the majority of the issues raised by CLF. As a result, in this submission WMDSM is addressing only key areas where CLF has misstated the law, presented incomplete or misleading information, or otherwise raised issues that would benefit from clarification or follow-up from the Applicant.

I. The Phase 14 Project Is Allowed Under State Law

CLF mistakenly argues that the statutory prohibition on new commercial landfills precludes the Phase 14 project.<sup>1</sup> Although there is a statutory ban on *new* commercial solid waste disposal facilities in Maine, state law expressly authorizes *expansions* of existing commercial solid waste disposal facilities, such as the Phase 14 project.<sup>2</sup>

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<sup>1</sup> Conservation Law Foundation Comments regarding application #S-010735-WD-YB-N (“CLF Comments”) at 5-7.

<sup>2</sup> 38 M.R.S. § 1310-X(1).

An expansion of a commercial landfill facility is allowed if three criteria are met. First, the Department must have licensed the facility prior to October 6, 1989. Second, the Department must determine that the proposed expansion is contiguous to the existing facility and (i) is either located on property owned on December 31, 1989 by the licensee or entity under common ownership or control with the licensee, *or (ii) for a commercial landfill that is not under an order or agreement to close, is located on property owned by the licensee.*<sup>3</sup> Third, the Department must determine that the facility provides a substantial public benefit.<sup>4</sup> All three criteria are met here.

The Crossroads Facility has been licensed since 1985, when then-owner Consolidated Waste Services received approval for construction and operation of the first secure landfill for disposal of special wastes (Phases 1-6) and a leachate storage pond.<sup>5</sup> The facility is not under an order or agreement to close, and the Phase 14 project is located in part within the footprint of the existing facility and in part on land that is contiguous to the existing facility. WMDSM sought an advisory ruling from the Department to confirm the footprint of the existing facility and that the expansion area was contiguous to the existing facility. The Department concluded that the Phase 14 project area touches and is otherwise contiguous to the existing facility.<sup>6</sup> Finally, the

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<sup>3</sup> In its Comments, CLF mistakenly relies on the solid waste rules and ignores the statutory language. The solid waste rules have not been updated to reflect the statutory change that added the italicized language, and which authorizes the expansion of an existing commercial landfill facility onto property that is owned by the licensee and is contiguous to the existing facility. It is well established that the statutory language controls over the inconsistent regulatory language. *E.g., Larson v. New England Tel. & Tel. Co.*, 141 Me. 326, 333-34, 44 A.2d 1, 5 (1945) (concluding that a state statute governing the maintenance and repair of roads controlled over conflicting State Highway Commission procedures); *see also Dubois v. Dep't of Agric., Conservation & Forestry*, 2018 ME 68, ¶ 21 n.9, 185 A.3d 743 (concluding that when an agency's complainant disclosure regulations conflicted with the statutory language of the Freedom of Access Act, the statute governed); *Baker v. S.D. Warren Co.*, 2010 ME 87, ¶ 15, 3 A.3d 380 (acknowledging that rules promulgated by the Workers' Compensation Board have been "struck down" when they "directly conflict with express statutory language"). Thus, as long as the facility is not under an order or agreement to close, there is no requirement to have acquired the property prior to 1990. CLF recognized its error and submitted corrective comments on October 20, 2020. Those comments concede that CLF's argument on this point fails. Those comments, however, are not part of the record as they were submitted after the record closed.

<sup>4</sup> 38 M.R.S. § 1310-X(1).

<sup>5</sup> Phase 14 Public Benefit Determination, #S-010735-W5-XY-N, Dec. 21, 2018 ("Public Benefit Determination") at 1.

<sup>6</sup> March 14, 2017 Advisory Opinion for WMDSM Expansion.

Department concluded that the Phase 14 project would provide a substantial public benefit consistent with the requirements of 38 M.R.S. §§ 1310-N(3-A) and 1310-AA.<sup>7</sup> As a result, CLF's claim that the Phase 14 project violates the prohibition against new commercial landfills is simply wrong.<sup>8</sup>

## II. CLF's Policy Arguments Are Not Relevant to this Licensing Proceeding

The majority of CLF's remaining comments address issues that were decided as part of the public benefit determination or, alternatively, are general policy arguments that should be directed to the Legislature or agency rulemaking. Such arguments are not tied to the solid waste licensing standards and are not a basis for denying the application.

For example, CLF argues that the project would not provide a public benefit to the state or Maine.<sup>9</sup> Following a comprehensive review process, including a public meeting, the DEP determined that the Phase 14 project will provide a substantial public benefit consistent with the provisions of 38 M.R.S. § 1310-AA(3). Specifically, the DEP concluded that the project meets immediate, short-term, or long-term capacity needs of the State; is consistent with the State solid waste management and recycling plan and promotes the solid waste management hierarchy; and, is not inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal.<sup>10</sup> The Public Benefit Determination was issued in December 2018 and was not appealed. Moreover, 38 M.R.S. § 1310-N(3-A)(B) expressly provides that the public

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<sup>7</sup> Public Benefit Determination.

<sup>8</sup> CLF also argues that the DEP has equated expansion of a "landfill" with expansion of a "solid waste disposal facility," and that doing so is "sloppy policy." CLF Comments at 7. To the contrary, the DEP is simply adhering to existing law, and CLF's argument to the contrary ignores that governing law. The statute allows expansion of an existing "solid waste disposal facility" as long as certain statutory criteria are met. 38 M.R.S. § 1310-X(1). A solid waste disposal facility includes facilities that landfill waste. 38 M.R.S. § 1303-C(30). It is undisputed that the Crossroads Facility, which includes the individual landfill areas referred to as Phases 1-12, is a solid waste disposal facility. Thus, CLF's suggestion that only individual landfill disposal areas may be expanded is contrary to the express statutory language, which allows expansion of facilities, not just individual landfill disposal areas.

<sup>9</sup> CLF Comments at 2.

<sup>10</sup> Public Benefit Determination at 21-22.

benefit determination is not subject to review by the DEP or the Board of Environmental Protection as part of the solid waste licensing process.<sup>11</sup> Thus, CLF's argument that the DEP should revisit the Public Benefit Determination as part of this process is misplaced.

CLF also argues that the use of Alternative Daily Cover (ADC) should be banned.<sup>12</sup> State law expressly authorizes the use of ADC.<sup>13</sup> If CLF wants a change in the law, it should direct its arguments elsewhere. Moreover, allowing the use of ADC is sound public policy. Its use is carefully regulated by the DEP; all ADC must be approved by the DEP and satisfy specific regulatory standards.<sup>14</sup> If ADC were not used as daily cover, as proposed by CLF,<sup>15</sup> it would still require disposal in the landfill, and clean soil would need to be added for cover.<sup>16</sup> For that reason, the use of ADC reduces the need to place clean soil in the landfill, which avoids critical capacity being consumed by clean soil and therefore maximizes efficient use of landfill capacity.<sup>17</sup>

Finally, CLF devotes significant effort to its argument that Maine law should be changed to require a double liner.<sup>18</sup> In support of its argument for a change in the law CLF mischaracterizes the existing state of technology and regulatory framework. In any event, as is the case with its other policy-based arguments, the DEP must follow existing law, not the law that CLF wishes were in place.

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<sup>11</sup> 38 M.R.S. § 1310-N(3-A)(B).

<sup>12</sup> CLF Comments at 9.

<sup>13</sup> 06-096 CMR 401(4)(C)(8)(a).

<sup>14</sup> 06-096 CMR 401(4)(C)(8)(a).

<sup>15</sup> CLF Comments at 9.

<sup>16</sup> 06-096 CMR 401(4)(C)(8)(a) (daily cover required).

<sup>17</sup> CLF suggests that "movable impermeable covers" should be required instead of daily cover, and that the Applicants' witnesses testified on their use. CLF Comments at 9 and n.46. Neither Mr. Luettich nor Mr. Yafate testified on the use of moveable covers, or referred to leachate as "dangerous." Mr. Luettich did testify on the use of interim and final geomembrane covers that shed stormwater and melting snow, but not in the context of daily cover. Public Hearing Transcript ("H.T.") 25:5-26:3 and 28:7-11. The use of movable impermeable covers on a daily basis requires manual labor and foot traffic on potentially slippery high density polyethylene surfaces, which presents both safety and practicability challenges.

<sup>18</sup> CLF Comments at 18-20, 22-23.

In support of its argument for a change in the law, CLF mistakenly asserts that all landfills and all landfill liners leak.<sup>19</sup> CLF relies primarily on a 17-year old paper by R. Kerry Rowe (“Rowe paper”), and a 2015 report by G. Fred Lee and Anne Jones-Lee (“Lee report”) that is based largely on information published by G. Fred Lee starting in the early 1990s, before many of the manufacturing, design, and construction advances for high density polyethylene (HDPE) geomembranes and geosynthetic clay liners (GCLs) were developed, standardized, and refined.<sup>20</sup> Neither work undermines the conclusion that the composite liner system proposed for the Phase 14 project will be fully protective of the environment.

The Rowe paper evaluated the performance of a lagoon liner that was manufactured and installed more than three decades ago,<sup>21</sup> when the manufacturing and use of geomembrane liners was a new technology. There are important differences between the lagoon liner evaluated by Rowe and the system proposed for the Phase 14 project. For example:

- Rowe’s description of the lagoon geomembrane being exposed to light and atmosphere is not applicable to Phase 14. It is well known that ultraviolet (UV) light decreases the longevity of polyethylene geomembranes. The Phase 14 geomembrane will be manufactured with carbon black, which provides UV protection, and upon installation it will be covered with the leachate collection system (LCS) geosynthetics (geocomposite drainage layer) and granular soil promptly after installation.<sup>22</sup> The Phase 14 geomembrane will remain underground without exposure to UV or the atmosphere throughout its service life (i.e., the active and post-closure periods).
- Rowe’s description of the large number of scratches and patches on the lagoon geomembrane are indicative of poor installation quality and poor or perhaps no construction quality assurance (CQA) being performed during installation. The Phase 14 liner system will be installed using only equipment and procedures that will not impart damage to the geomembrane.<sup>23</sup> Furthermore, close monitoring and observation will be conducted by Construction Quality Assurance (CQA) personnel whose role includes confirmation that only approved equipment is used and scratches and other

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<sup>19</sup> CLF Comments at 18, 20.

<sup>20</sup> CLF Comments at 18-20, 22-23.

<sup>21</sup> Rowe et al, Evaluation of an HDPE geomembrane after 14 years as a lagoon liner, NRC Research Press, <http://cqi.nrc.ca>, May 2003 at 537.

<sup>22</sup> Phase 14 Solid Waste Permit Application – Vol. VI, *Construction Specifications* at 309 (§02520-9) Oct. 2019.

<sup>23</sup> *Id.* at 278 (§02400-9), 306-307 (§02520-6,7).

construction-induced damage does not occur.<sup>24</sup> Additionally, as requested by the Department, WMDSM has agreed to conduct electronic leak detection testing on the liner system to provide further proof of the hydraulic integrity of the liner system upon completing installation.<sup>25</sup>

- Rowe's description that portions of the clay liner above the leachate level were desiccated is not applicable to Phase 14. The Phase 14 liner system (including the compacted clay layer) will be covered with granular LCS soil and subsequently with waste and therefore will not be exposed to sunlight or significant temperature changes during its service life.<sup>26</sup>
- Rowe's observations attributing swelling and increased water content of the clay liner to negligible effective stress is not applicable to Phase 14. Shortly after installation, the Phase 14 liner system will be subject to overburden pressure from the granular LCS layer, and then from substantial thicknesses of waste.<sup>27</sup> Unlike with the lagoon liner, these overburden pressures will preclude swelling of the clay component of the Phase 14 liner system.

CLF's reliance on the Lee report and their mischaracterization of the solid waste regulations are equally unavailing. First, the comments on dry-tomb landfills<sup>28</sup> do not apply to the Phase 14 project, which will be operated as a controlled moisture (limited leachate recirculation) landfill.<sup>29</sup> Second, the Lee report, like the Rowe paper, is based on outdated information not relevant to the system proposed at Crossroads. For example, Lee relies on a 1981 Federal Register statement on hazardous waste landfills, not municipal solid waste (MSW) landfills, and he quotes from EPA officials from 1988, when polyethylene geomembranes were still in the developmental and standardization stage for use as landfill liner components.<sup>30</sup> The technology to prevent degradation of liner systems and to control liquids in landfills has

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<sup>24</sup> Phase 14 Solid Waste Permit Application – Vol. VI, *Quality Assurance Manual* at 34-35, 53-54, Oct. 2019.

<sup>25</sup> Supplemental Information in Support of Phase 14 Solid Waste Permit Application (Response to Sept. 9, 2020 MEDEP Comments Technical Memorandum from Golder), Sept. 23, 2020 at 4.

<sup>26</sup> Phase 14 Solid Waste Permit Application, Vol IV, *Landfill Engineering Report*, Appendix IV-A, Permit Level Engineering Drawings at 56 (Drawing 19), Oct. 2019.

<sup>27</sup> *Id.*

<sup>28</sup> CLF Comments at 18-19.

<sup>29</sup> Phase 14 Solid Waste Permit Application, Vol. 1, § 24 at 41,52,70 and Vol. IV, *Landfill Engineering Report*, at 19, Oct. 2019.

<sup>30</sup> Lee, G.F., and Jones-Lee, A., *Flawed Technology of Subtitle D Landfilling of Municipal Solid Waste*, Jan. 2015, at 5-6.

advanced considerably over the last 30 to 40 years. In short, the problems identified by Rowe and Lee reflect many outdated aspects of liner technology and application that are not relevant to the state-of-the-art liner system that will be used for Phase 14.

Finally, CLF has mischaracterized the regulatory landscape and the developments that now allow use of well-designed and carefully installed single composite liner systems for MSW landfills. The federal Subtitle C regulations, which govern hazardous waste landfills, were promulgated in 1982 and require use of a double-liner system.<sup>31</sup> Regulations governing non-hazardous landfills were not enacted until almost a decade later, in 1991, and require only a single liner for MSW landfills.<sup>32</sup> During the interim, however, and in the absence of any comprehensive federal regulation of non-hazardous landfills, some states adopted a double liner requirement for landfills.

Following promulgation of the Subtitle D standards in 1991, many states, including Maine, amended their regulations to change or eliminate the requirement of a double liner system for non-hazardous waste landfills. In 1998, following a comprehensive, public process, Maine's solid waste regulations were amended to allow for single-liner systems in MSW landfills.<sup>33</sup> Those regulations remain in place and govern the Phase 14 application.

### III. CLF's Arguments Regarding Out-of-State Waste Are Misplaced

CLF argues that the DEP should impose restrictions on the acceptance of out-of-state waste at the Crossroads Landfill. As a threshold matter, it is well established that consistent with constitutional restrictions, the State may not limit the acceptance of out-of-state waste.<sup>34</sup>

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<sup>31</sup> 47 Fed. Reg. 32365 (July 26, 1982); 40 C.F.R. § 264.301.

<sup>32</sup> 40 Fed. Reg. 51016 (Oct. 9, 1991); 40 C.F.R. § 258.40.

<sup>33</sup> Attached as Exhibit A is the rulemaking package for the 1998 amendments in which Maine eliminated the requirement for a double-liner system for landfills (the "Chapter 401 Rulemaking Package").

<sup>34</sup> *E.g.*, *City of Philadelphia v. New Jersey*, 437 U.S. 617, 622-23 (1978) (state law banning importation of waste violates the Commerce Clause); *see also C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383, 394 (1994) (flow control ordinance unconstitutional under the Commerce Clause); *Fort Gratiot Sanitary Landfill, Inc. v.*

Nonetheless, and without waiver of its constitutional arguments, WMDSM has routinely reported semi-annually on the volume of waste received from in-state and out-of-state generators.<sup>35</sup> As part of its annual reporting for the Phase 14 project, WMDSM is required to submit documentation of the amount and type of waste received from in-state and out-of-state generators, the in-place density of the landfilled waste, the volume of airspace utilized during the reporting period, and the estimated remaining permitted disposal capacity expressed in cubic yards.<sup>36</sup> WMDSM is also required to notify the Department if the amount of non-remediation special waste from out-of-state generators is more than 25% of the annual total waste disposed in Phase 14, or if the amount of all wastes from out-of-state generators is more than 35% of the annual total of waste disposed at the facility.<sup>37</sup> This is consistent with the reporting that has been occurring for many years.<sup>38</sup> It is not clear why CLF thinks that reporting has not occurred and is not already required for the Phase 14 project as part of the Public Benefit Determination.

In response to the requested clarification identified in ¶ 8 of the Fourth Procedural Order, WMDSM agrees that the reporting requirements are as set forth in the Public Benefit Determination, which establishes notification thresholds based on the volume of waste accepted during the *annual* reporting period. Mr. McGown did not have the reporting requirements in front of him during the public hearing. As stated in its December 18, 2018 comments, WMDSM does not object to the out-of-state reporting requirements set forth in the Public Benefit

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*Michigan Dep't of Nat. Res.*, 504 U.S. 353, 367-68 (1992) (state waste import restrictions “unambiguously discriminate against interstate commerce and cannot withstand scrutiny under the Commerce Clause”).

<sup>35</sup> Public Benefit Determination at 10.

<sup>36</sup> Public Benefit Determination at 24, Special Condition 4.

<sup>37</sup> Public Benefit Determination at 24, Special Condition 4.B.

<sup>38</sup> CLF states that WMDSM accepted MSW from Canada. CLF Comments at 2. Due to a coding error, a load of MSW from the Town of Canaan was erroneously identified in the 2019 Annual Report as coming from Canada. No MSW from Canada or from out-of-state was landfilled at the facility in 2019. In any event, the Public Benefit Determination requires WMDSM to notify it in advance if exceptional circumstances require out-of-state MSW to be disposed of in Phase 14. Public Benefit Determination at 23.

Determination, although it expressly reserves its right to challenge any future effort by the Department to restrict the acceptance of out-of-state waste.<sup>39</sup>

Importantly, and the point of Mr. McGown's testimony, WMDSM believes that the key consideration is whether there is and will remain sufficient capacity to meet the needs of Maine generators. While the volume of waste from out-of-state generators may fluctuate year-to-year, over the life of the Phase 14 project, WMDSM expects to limit the volume of out-of-state waste to the reporting thresholds identified in the Public Benefit Determination. Thus, instead of the 200,000 tons annually and 3,400,000 tons of capacity over the life of the Project that CLF argues should be reserved for the people of Maine,<sup>40</sup> based on the Public Benefit Determination reporting thresholds, there would be more than an average of 292,000 tons of annual capacity and approximately 5,000,000 tons of total capacity available over the life of Phase 14 for Maine generators. WMDSM is confident that on an annual basis and over its operational life, Phase 14 will provide a substantial public benefit to Maine towns, residents, and businesses.

#### IV. CLF's Recycling Arguments Are Both Inaccurate and Misleading

WMDSM has consistently stated in its application that it collects recyclable materials from 23 of its 55 municipal MSW customers.<sup>41</sup> WMDSM does not collect recyclable materials from the other 32 municipalities because these communities already have recycling programs in place.<sup>42</sup> Some municipalities run their own recycling programs.<sup>43</sup> Other municipalities contract with other commercial providers.<sup>44</sup> In either case, it is clear that the 32 municipalities not

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<sup>39</sup> WMDSM Comments on Draft Public Benefit Decision, Dec. 18, 2018.

<sup>40</sup> CLF Comments at 10.

<sup>41</sup> Phase 14 Solid Waste Permit Application – Vol. 1, at 33; *see also* Phase 14 Public Benefit Determination Application at 31.

<sup>42</sup> Phase 14 Public Benefit Determination Application – Response to Department Review Comments, Sept. 14, 2018, at 3; *see also* Phase 14 Public Benefit Determination Application – Response to Department Review Comments, Oct. 31, 2018, at 2-3.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

receiving recycling services from WMDSM *are not* landfilling recyclables at Crossroads, as CLF claims.<sup>45,46</sup> CLF's assumption is inaccurate and illustrates its overly simplistic view of the solid waste market in Maine.

CLF goes on to claim that in 2019, based on MSW disposal figures,<sup>47</sup> Crossroads recycled 1.5% of the MSW landfilled at the Facility and should have collected 10,000 tons of cardboard.<sup>48</sup> Again, CLF bases its calculations on the same false assumption identified above. While WMDSM does not provide recycling services to all of its MSW customers, this does not mean recyclables are not removed from MSW prior to arriving at Crossroads. For example, WMDSM accepts MSW from Maine Waste to Energy (formerly Mid-Maine Waste Action Corp. (MMWAC)) when it reaches processing capacity.<sup>49</sup> Recyclable materials are removed from the MSW at the local level; however, this diversion is not reflected in annual volumes of redirected materials tracked by Crossroads.<sup>50</sup> CLF's reliance on overly simplistic math deflates these figures leading to an inaccurate and misleading portrayal of the Facility and its recycling efforts, and its claim that WMDSM recycled 1.5% of the MSW entering the Crossroads Landfill is categorically false.

As demonstrated in both its Solid Waste License Application and its Public Benefit Determination Application, WMDSM is committed to advancing all of its recycling programs

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<sup>45</sup> CLF Comments at 10-11.

<sup>46</sup> Conversely, it is also important to note that WMDSM provides reduction, reuse and recycling series to many locations or entities where it does not collect MSW. Recycling services such as the Beneficial Tire Reuse Program and its Waste Evaluation and Sustainability Consulting are provided to customers throughout the State of Maine. Programs such as BatteryTracker, eScrapTracker, LampTracker and BallastTracker operated by Waste Management are also available for participation by residents throughout Maine.

<sup>47</sup> As the Department is aware, 2019 MSW disposal volumes at Crossroads were atypical. In coordination with the DEP, Crossroads provided critical disposal services to the Municipal Review Committee (MRC) during the many delays experienced by the Fiberight/Coast Resources Facility. While the Crossroads Facility accepted 187,000 tons of MSW in 2019, the five-year MSW average (2012-2017) was 82,183 tons. Phase 14 Public Benefit Determination Application at 12.

<sup>48</sup> CLF comments at 11.

<sup>49</sup> Phase 14 Public Benefit Determination Application at 12.

<sup>50</sup> See 2019 WMDSM Annual Report at Appendix B and C.

including Single-Sort.<sup>51</sup> WMDSM plans to enhance its Airport Road Transfer Station to maximize the amount of materials reused and recycled at the facility and to minimize contamination and disposal.<sup>52</sup> In addition, WMDSM has developed and introduced an initiative within its Single-Sort Recycling Program to further enhance recycling efforts.

For the past year, WMDSM has operated a targeted initiative aimed at reducing contamination within its Single-Sort Recycling Program.<sup>53</sup> Each load of recyclable materials entering the Crossroads Material Recovery Facility is inspected to determine general contamination levels.<sup>54</sup> Loads with significant amounts of contamination are flagged and photographed for documentation purposes.<sup>55</sup> WMDSM then works constructively with identified customers to develop a strategy for reducing contamination in future recycling loads.<sup>56</sup> Following this initial step, WMDSM staff then separate and remove as much contamination as possible from the load significantly reducing overall contamination rates prior to shipment.<sup>57</sup> WMDSM's decontamination initiative has proven highly effective.<sup>58</sup> Recycling loads shipped from Crossroads to ecomaine have seen significant improvements in contamination rates.<sup>59</sup> Over the past year, WMDSM's initiative has effectively reduced and almost entirely eliminated all fees assessed by ecomaine for loads with greater than 6% contamination originating from the

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<sup>51</sup> Phase 14 Solid Waste Permit Application – Vol. 1, at 29-32; 34-35; *see also* Phase 14 Public Benefit Determination Application at 23-37.

<sup>52</sup> Phase 14 Solid Waste Permit Application – Vol. 1, at 34-35; *see also* Phase 14 Public Benefit Determination Application at 32-33.

<sup>53</sup> Phase 14 Solid Waste Permit Application – Vol. 1 Response to MEDEP Comments, Mar. 31, 2020, at 11-12.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

Crossroads Facility.<sup>60</sup> WMDSM's initiative has helped its customers keep recycling costs as low as possible at a time when the market rate for recycling continues to climb.

WMDSM also provides its municipalities and commercial customers with educational materials and technical expertise to further promote an increase in reuse and recycling rates.<sup>61</sup> The circulation of these materials often leads to constructive conversations between WMDSM and its customers about recycling best practices and the general state of the recycling market.<sup>62</sup> WMDSM stands ready to offer insights and expertise from its parent company, the nation's largest residential recycler, to assist the state of Maine and specifically, the DEP, navigate the challenges presented by the ongoing recycling crisis.<sup>63</sup> Phase 14 also allows new recycling programs such as Textile Recycling, Household Hazardous Material collection and Organics Diversion to launch.<sup>64</sup>

Moreover, Crossroads makes other important Maine-based recycling operations possible. For example, Crossroads supports the 115 towns and cities within the MRC by accepting bypass and residuals from the Coastal Resources or Fiberight Facility.<sup>65</sup> Fiberight's innovative technology diverts both recyclables and organics from MSW at industry-leading rates.<sup>66</sup> CLF entirely ignores WMDSM's role in supporting these recycling operations that promote and support the State's Waste Hierarchy as well as advancing its recycling and composting goals.

Finally, the vast majority of wastes accepted at the Crossroads Landfill cannot be incinerated or further processed, recycled or reduced.<sup>67</sup> Such wastes include special waste,

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<sup>60</sup> *Id.*

<sup>61</sup> Phase 14 Solid Waste Permit Application – Vol. 1 Response to MEDEP Comments, Mar. 31, 2020, at 11.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Phase 14 Solid Waste Permit Application – Vol. 1, at 34; *see also* Phase 14 Public Benefit Determination Application at 25-26.

<sup>65</sup> Phase 14 Public Benefit Determination Application at 16.

<sup>66</sup> *Id.*

<sup>67</sup> Phase 14 Public Benefit Determination Application at i, 10-12.

construction and demolition debris and materials or waste used as alternative daily cover.<sup>68</sup> The Crossroads Facility provides a critical outlet for these wastes, which would otherwise have to be transported at significant economic and environmental cost to more distant locations.<sup>69</sup>

CLF also misrepresents a number of facts regarding WMDSM's recycling and diversion programs. First, CLF claims Electronic Waste, Tire Reuse and Battery Diversion is offered only once per year at the Airport Road Transfer Station.<sup>70</sup> Instead, these recycling services are *provided every day of the year* the transfer station operates, which is typically four days a week, year-round.<sup>71</sup> CLF also suggests WMDSM launch additional hazardous material collection programs.<sup>72</sup> However, collection programs already exist within WMDSM's disposal network such as the Androscoggin Valley Council of Governments' annual event serving the Androscoggin, Franklin and Oxford counties region.<sup>73</sup> Finally, CLF also claims WMDSM has done "as little as possible" to keep recyclables out of the landfill during the active disposal process.<sup>74</sup> CLF's statement is yet again misleading and inaccurate. It overlooks the important and telling example of staff at the Crossroads Facility carefully monitoring wastes coming into the landfill. For example, in 2017 Crossroads staff identified a significant volume of unaccounted for glass.<sup>75</sup> WMDSM worked directly with the customer, one of the State's largest

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> CLF Comments at 11-12.

<sup>71</sup> Phase 14 Solid Waste Permit Application - Vol. V, *Site Operations Manual*, at 2 (Dec. 31, 2016); *see also* Phase 14 Solid Waste Permit Application, Vol I, at 30-31.

<sup>72</sup> CLF Comments at 11-12.

<sup>73</sup> *See* Exhibit B attached hereto which provides information from the Androscoggin Valley Council of Governments regarding its Household Hazardous Waste annual collection event available here:

[https://www.avcog.org/974/Household-Hazardous-Waste#:~:text=Androscoggin%20Valley%20Council%20of%20Governments%20\(AVCOG\)%20collects%20Household%20Hazardous%20Waste,Franklin%20and%20Oxford%20counties%20region](https://www.avcog.org/974/Household-Hazardous-Waste#:~:text=Androscoggin%20Valley%20Council%20of%20Governments%20(AVCOG)%20collects%20Household%20Hazardous%20Waste,Franklin%20and%20Oxford%20counties%20region)

<sup>74</sup> CLF Comments at 12.

<sup>75</sup> Phase 14 Solid Waste Permit Application – Vol. 1, at 31, fn. 5; Phase 14 Public Benefit Determination Application at 33.

glass distributors, to develop a process at its facility for diverting the glass from its waste.<sup>76</sup> WMDSM utilized its national recycling network to locate an out-of-state recycler that could accept and process the glass that had previously been difficult to recycle in-state.<sup>77</sup> In an 18-month period, nearly 6,000 tons of glass were diverted from the landfill and recycled.<sup>78</sup> Similar volumes of glass have been diverted annually since then.<sup>79</sup> It is unclear how CLF argues WMDSM has done “as little as possible” to keep recyclables out of the landfill when examples like this exist within the administrative record.

V. CLF’s Composting Arguments Are Unfounded

It is difficult to understand how CLF takes the position that developing and launching a regional composting program that will include nine municipalities, local businesses and schools, educational opportunities, collaboration with the Department’s Compositing Coordinator, and a readily available supply of finished compost, all in a region where no program currently exists, does not affirmatively support and promote the State’s Waste and Food Recovery Hierarchies. More specifically, CLF yet again relies on the same flawed math identified above to suggest a size for the composting facility that, for a program in its infancy, would simply constitute an imprudent allocation of resources.<sup>80</sup> CLF’s additional compost-related arguments are misguided, should be directed to the Legislature or agency rulemaking, and are not the basis for conditioning a license or denying the application.<sup>81</sup> WMDSM is enthusiastic about the launch of its new

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<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> CLF Comments at 12-13.

<sup>81</sup> CLF Comments at 13.

compost initiative and looks forward to adding this program to its other Hierarchy-related programs at the Crossroads Facility and helping to advance the State’s composting goals.<sup>82</sup>

#### VI. The Phase 14 Project Design is Fully Protective of Groundwater

Mr. Macdonald testified on the comprehensive investigations undertaken to study the geology and hydrogeology of the site, the time of travel calculations, and the groundwater monitoring program, which collectively demonstrate that the Phase 14 project will be fully protective of groundwater.<sup>83</sup> CLF appears to misunderstand the significance of the pumping test, which confirms the isolated nature of the groundwater within the till and bedrock. Specifically, CLF asserts that the results of the pumping test suggest a “hydrogeologic regime that is deeply integrated and very sensitive to small system changes” and as such the “Department should deny WMDSM’s Application.”<sup>84</sup> The results of the pumping test, however, indicate the following:

- No hydraulic response was observed in the silty fine sand during the pumping test, confirming the lack of hydraulic connection between these surficial materials and the underlying units (i.e., the Presumpscot clay, glacial till, and bedrock).<sup>85</sup>
- The vertical hydraulic conductivity of the Presumpscot clay is low with an overall geometric mean vertical hydraulic conductivity of 2.17E-07 cm/sec.<sup>86</sup> The low vertical hydraulic conductivity of the Presumpscot clay and the lack of drawdown observed in the overlying silty fine sand unit during the pumping test supports the conclusion that clays function as an aquitard, impeding meteoric recharge and creating confined conditions in the underlying glacial till.

The observed hydraulic influence of the pumping well is consistent with the confined conditions of the till and bedrock and the confining nature of the clays. Hydraulic stress of any

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<sup>82</sup> Even before Crossroads launches its composting program, it has already been supporting a separate local program. Starting in the fall of 2018, WMDSM began collaborating with the Town of Farmington to develop and operate a composting facility. In 2020, WMDSM also assisted Farmington by providing a composting location at Crossroads for horse manure collected from the local racing track, which has been offered to local residents free of charge.

<sup>83</sup> H.T. at 46:22-65:3; Phase 14 Landfill: Groundwater Protection PowerPoint Slides filed Sept. 14, 2020.

<sup>84</sup> CLF Comments at 21.

<sup>85</sup> Phase 14 Solid Waste Permit Application, Supplemental Geologic and Hydrogeologic Report, July 31, 2020 (“Supplemental Geologic and Hydrogeologic Report”) at 13.

<sup>86</sup> Supplemental Geologic and Hydrogeologic Report at 16.

type (e.g., pumping, recharge, barometric changes etc.) imparted on a confined hydrologic unit will be transmitted further than in an unconfined hydrologic unit. The hydraulic response in the till and bedrock to pumping confirms that the hydrostratigraphic units beneath the clay are well protected from development above the clay.

CLF also raised concerns generally about hydrogeologic conditions at the site,<sup>87</sup> and the Department requested information on the percentage of the Phase 14 landfill underlain by less than five feet of in-situ soils with an undisturbed hydraulic conductivity of less than or equal to  $1 \times 10^{-5}$  cm/sec.<sup>88</sup>

There is no regulatory requirement that there be five feet of in-situ soils with an undisturbed hydraulic conductivity less than or equal to  $1 \times 10^{-5}$  cm/sec.<sup>89</sup> The solid waste rules do, however, require additional liner components if development *will disturb soil material within five feet of the bedrock surface* in more than 5% of the landfill footprint.<sup>90</sup> There are *no locations* within the footprint of Phase 14 where development will disturb soil material within five feet of the bedrock surface.<sup>91</sup> As acknowledged by DEP when this requirement was adopted, its purpose is to address the increased risk of changes in groundwater quality if soil is disturbed within five feet of bedrock and the need to ensure that groundwater quality could be monitored reliably.<sup>92</sup> Moreover, although requested to do so at the time, the DEP declined to impose a stand-alone requirement for five feet of undisturbed soil with a maximum hydraulic conductivity of  $1 \times 10^{-5}$

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<sup>87</sup> CLF Comments at 20-23.

<sup>88</sup> Fourth Procedural Order at ¶ 8.

<sup>89</sup> The rules require only that the in-situ soils have an undisturbed hydraulic conductivity less than or equal to  $1 \times 10^{-5}$  cm/sec. 06-096 CMR §401.1(C)(3)(b). There is no requirement for five feet of such soils.

<sup>90</sup> 06-096 CMR 401 § 2(D)(1)(b) (emphasis added).

<sup>91</sup> As Mr. Luetlich testified at the public hearing, there are no areas where development will disturb soils within less than seven feet from the bedrock surface. H.T. 72:2-7. The Technical Memorandum from Geosyntec dated Nov. 4, 2020 (“Geosyntec Technical Memo”) and attached as Exhibit C hereto provides additional documentation on this issue.

<sup>92</sup> See Response to Comments, Comment 2.D. at 48, included in the Chapter 401 Rulemaking Package.

cm/sec.<sup>93</sup> Instead, DEP clarified the regulations governing time of travel calculations to ensure that assumptions on the minimum hydraulic conductivity of imported soils are conservative.<sup>94</sup>

Although there is no regulatory requirement that there be five feet of in-situ soils with an undisturbed hydraulic conductivity less than or equal to  $1 \times 10^{-5}$  cm/sec., WMDSM has evaluated that condition for the Phase 14 project. As demonstrated in the application materials, all of the in-situ clays within the Phase 14 landfill have a bulk vertical hydraulic conductivity of less than  $1 \times 10^{-5}$  cm/sec.<sup>95</sup> There are a two areas in the northern end of Phase 14E and two small areas in Phase 14D where there is less than five feet of clay.<sup>96</sup> These areas represent less than 5.9% of the Phase 14 landfill.<sup>97</sup> As described more fully in its September 23, 2020 submission, to achieve base grade elevations, in some areas WMDSM will bring in a silt clay backfill that will be compacted and tested to demonstrate the soil material has a maximum vertical hydraulic conductivity of  $1 \times 10^{-5}$  cm/sec.<sup>98</sup> As a result, more than 95% of the Phase 14 landfill will have five feet or more of clay material with a vertical hydraulic conductivity less than or equal to  $1 \times 10^{-5}$  cm/sec.<sup>99</sup>

## VII. The Project Will Not Adversely Impact Views From Mount Tom

As reflected in the attached technical memorandum from Geosyntec, the Project will not adversely impact views from Mount Tom, which in any event is not a significant recreational

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<sup>93</sup> Responses to Comments, Comment 2.D(2) at 49.

<sup>94</sup> *Id.*

<sup>95</sup> Phase 14 Solid Waste Permit Application – Vol. III, Section 5.2.2; Supplemental Geologic and Hydrogeologic Report, Section 2.0.

<sup>96</sup> Nov. 5, 2020 Golder Technical Memorandum (“Golder Technical Memo”) attached as Exhibit D hereto. The areas with less than five feet of clay are contained entirely within the portion of the landfill where the soft clay is absent. Golder Technical Memo, Figure 2.

<sup>97</sup> *Id.*

<sup>98</sup> Sept. 23, 2020 Supplemental Information in Support of Phase 14 Solid Waste Permit Application, Attachment B (variance).

<sup>99</sup> Golder Technical Memo.

resource.<sup>100</sup> First, there are no designated hiking trails, parking areas, or other features that would indicate Mount Tom is used for hiking. There is a gated unpaved road with power lines and/or telephone lines following the alignment of the road to the peak, but no other visible trails. At the peak, there is a small clearing for a fenced in communications tower, but otherwise the summit is wooded in all directions.<sup>101</sup>

There is no evidence that the summit or other locations on Mount Tom are established public viewing areas.<sup>102</sup> Although in theory (if there were no vegetation on Mount Tom) the Phase 14 project might be minimally visible at the distance of 3 ½ miles, there are no views in that direction due to the presence of mature trees and other vegetation at the summit.<sup>103</sup>

Accordingly, there is no evidence that there are established public viewing areas on Mount Tom and, even if there were, because it is heavily wooded, the Project would not interfere with any existing views from Mount Tom.

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<sup>100</sup> Oct. 31, 2020 Memorandum from Geosyntec (“Mount Tom Memo”) attached as Exhibit E hereto.

<sup>101</sup> Mount Tom Memo.

<sup>102</sup> 06-096 Ch. 400.4(F)(1)(c)(test is whether the project “unreasonably interferes with views from established public viewing areas”).

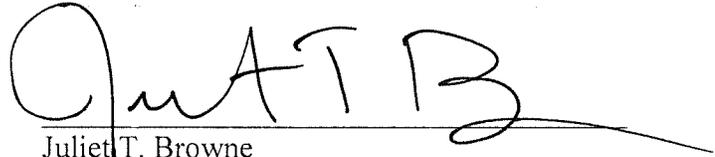
<sup>103</sup> Mount Tom Memo.

WMDSM appreciates the opportunity to provide this information responsive to the CLF

Comments.

Dated: November 5, 2020

Respectfully submitted,

A handwritten signature in black ink, appearing to read "JTB", with a horizontal line drawn underneath it.

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