



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

STATE OF MAINE, ACTING THROUGH THE)	PUBLIC BENEFIT
STATE PLANNING OFFICE)	DETERMINATION
OLD TOWN, PENOBSCOT COUNTY, MAINE)	
JUNIPER RIDGE LANDFILL EXPANSION)	
#S-020700-W5-AU-N)	PARTIAL APPROVAL
(APPROVAL WITH CONDITIONS))	

Pursuant to the provisions of the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S.A. §§1301 to 1319-Y; and the *Solid Waste Management Rules: General Provisions*, 06-096 CMR 400 (last amended July 20, 2010) and *Landfill Siting, Design and Operation*, 06-096 CMR 401 (last amended July 20, 2010), the Commissioner of the Department of Environmental Protection ("Department") has considered the application of THE STATE OF MAINE, ACTING THROUGH THE STATE PLANNING OFFICE ("SPO") with its supportive data, staff review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

- A. Application: The applicant has applied for a determination of public benefit for the proposed Juniper Ridge Landfill Expansion ("the expansion"), located in Old Town, Maine. The expansion is proposed to accept the same waste types as are currently disposed in the Juniper Ridge Landfill: special wastes, construction and demolition debris ("CDD"), miscellaneous non-special wastes, and municipal solid waste ("MSW") bypass from Maine's 4 MSW incinerators. The expansion is proposed to provide 21.9 million cubic yards of additional capacity at the facility. SPO states that the expansion will provide capacity for approximately 20 years based on disposal needs projected in the latest *State of Maine Waste Management and Recycling Plan* dated January 2009 ("State Plan") and the *Solid Waste Generation and Disposal Capacity Report for Calendar Year 2009*, dated January 2011 ("Capacity Report"), both prepared by SPO. To allow for the Department's periodic review of an affirmative determination of public benefit, the applicant divided the proposed expansion into 3 phases.
- B. History: On October 21, 2003, the Department issued conditional approval for the transfer of licenses for the West Old Town Landfill, developed and operated by Georgia-Pacific Corporation, to the SPO (Department licenses #S-020700-

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WR-M-T and #L-019015-TH-C-T); the transfer became effective when the sale of the landfill to SPO occurred on February 5, 2004. On February 5, 2004, SPO also finalized an Operating Services Agreement (“OSA”) with Casella Waste Systems, Inc. (“Casella”), for the operation of the WOTL. On April 9, 2004, the Department approved the amendment application (Department license #S-020700-WD-N-A) for a vertical increase in the final elevation of the landfill and the disposal of additional waste streams (“the amendment license”). The West Old Town Landfill is now known as the Juniper Ridge Landfill. Solid waste is currently disposed in cells 6 and 7 of the landfill; cells 8 through 11 will be constructed and operated in the future.

On November 19, 2009, SPO filed an application for a determination of public benefit for the same capacity requested in this application. On January 5, 2010, the Department issued a draft denial of that application. On January 13, 2010, the applicant withdrew the application prior to finalization of the denial decision.

2. APPLICABLE LAW

The applicable law for a determination of substantial public benefit is 38 M.R.S.A. §1310-AA, which establishes the process and standards to be used in determining whether proposed new solid waste disposal capacity provides a substantial public benefit. In the first regular session of the 124th Legislature, 38 M.R.S.A. §1310-AA was amended to extend applicability to new state-owned facilities or expansions to existing state-owned facilities.

38 M.R.S.A. §1310-AA(3) reads as follows:

Standards for determination. The commissioner shall find that the proposed facility under subsection 1 or the acceptance of waste that is not generated within the State under subsection 1-A provides a substantial public benefit if the applicant demonstrates to the commissioner that the proposed facility or the acceptance of waste that is not generated within the State:

- A. Meets immediate, short-term or long-term capacity needs of the State;

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- B. Except for expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling, is consistent with the state waste management and recycling plan;
- C. Is not inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal; and
- D. For a determination of public benefit under subsection 1-A only, facilitates the operation of a solid waste disposal facility and the operation of that solid waste disposal facility would be precluded or significantly impaired if the waste is not accepted.

The law further provides that “[i]n making the determination of whether the facility under subsection 1 or the acceptance of waste that is not generated within the State under subsection 1-A provides a substantial public benefit, the commissioner shall consider the state plan, written information submitted in support of the application and any other written information the commissioner considers relevant.”¹

3. PUBLIC PARTICIPATION

As provided in 38 M.R.S.A. § 1310-AA, the Department accepted written public comments on the application for at least 20 days following receipt of the complete application on September 15, 2011. The Department received numerous comments on the application, both orally and in writing. Those that commented in opposition to the application primarily focused on the following issues: the need for an “audit” of solid wastes handled by Casella at its Maine facilities, the source and types of wastes disposed at Juniper Ridge Landfill, the acceptance of excess residuals from the processing of CDD known as “fines”, the lack of a statutory or regulatory definition of “immediate”, “short-term” or “long-term” capacity, and the effect legislative decisions on several solid waste legislative documents (“LDs”) held over from the last legislative session may have on the State’s solid waste disposal capacity needs and operation of the Juniper Ridge Landfill. Those that commented in support of the application primarily focused on the following issues: the need businesses and municipalities in Maine have for predictable and reliable long-term landfill capacity for their solid wastes that cannot be handled other than in landfills, the commentors' knowledge of the operation of Juniper Ridge Landfill, and the business expertise and reputation of Casella. Also, some comments were neither for nor against the project; these commentors' provided questions about the project and

¹ 38 M.R.S.A. §1310-AA(2)

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recommendations for changes to the existing operation or licenses for Juniper Ridge Landfill.

The Commissioner concluded that a public informational meeting would be held on the application, and notice of the meeting was provided to interested parties. On October 24, 2011, in accordance with the above statute, the Department held a public informational meeting on the application in the vicinity of the proposed project. The meeting was recorded, and an audio tape of the meeting is also part of the project record.

Comments received that pertained to the determination of public benefit criteria provided in Finding of Fact #2, above, are addressed throughout this determination.

4. DESCRIPTION OF SPO/CASELLA RELATIONSHIP

As described in Finding of Fact #1.B., above, the SPO is the owner of the Juniper Ridge Landfill and the proposed expansion, and is the applicant for this application. Casella is the long-term operator of the landfill. Actual operations are by NEWSME Landfill Operations LLC (“NEWSME”), a company in which a Casella subsidiary holds the sole membership interest. The terms and conditions of NEWSME Operations’ operation of the landfill are established by the OSA between SPO and Casella, dated February 5, 2004, and amended on July 24, 2006 and November 2, 2006.

While SPO retains ownership of the landfill, in accordance with the Resolve 2003, Chapter 93 and the OSA, Casella/NEWSME Operations is required to pay all costs associated with the development, operation, closure and post-closure care of the landfill and the proposed expansion. In addition, Casella/NEWSME Operations is required by the OSA to establish and maintain financial assurance for the landfill and the expansion sufficient to meet the closure and post-closure care provisions of the applicable solid waste management regulations, assume liability for the landfill and the proposed expansion under both the current (including past actions by Georgia-Pacific Corporation) and future conditions, and assure that adequate disposal capacity is provided for the wastes currently disposed in the landfill for at least a 20 year period.

Condition #6 of the license transferring the landfill licenses (Department license #S-020700-WR-M-T, dated October 21, 2003) from Georgia-Pacific Corporation to SPO requires that if Casella or a subsidiary of Casella is replaced as the operator, prior to

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finalization of a new OSA, SPO must submit to the Department for its review and approval information on the financial capacity of the new operator, information on the financial assurance to be provided by the new operator consistent with 38 M.R.S.A. §400.11 or successor regulations in effect at that time, and information on the technical ability of the new operator.

Casella has prepared an application to expand the Juniper Ridge Landfill in accordance with the terms of the OSA signed by SPO and Casella; the OSA requires that the expansion application be ready for submission by February 5, 2009, but leaves the decision as to when to submit the application to Casella. With the amendment of 38 M.R.S.A. §1310-AA to include expansions to existing state-owned facilities as being subject to the public benefit determination requirements, the Commissioner must determine that the proposed expansion of the Juniper Ridge Landfill will provide a public benefit before the expansion application can be submitted.

The Commissioner finds that the OSA is a contract between the State of Maine, acting by and through SPO, and Casella; the Department is not a party to the contract. Findings of fact and conclusions of law made by the Commissioner on this application are based on the standards and criteria set forth in the applicable law; see Finding of Fact #2, above. The Commissioner further finds that the Department is not bound by the capacity commitments in the OSA; instead, the Department has reviewed the capacity needs in the immediate, short and long term periods. The Commissioner also finds that reference to the applicant in this determination refers to both SPO and Casella/NEWSME Operations (or a successor operator).

5. CAPACITY NEEDS

To determine whether the proposed expansion provides a substantial public benefit, the Commissioner must determine, first, whether the applicant has demonstrated that the proposed increase in landfill capacity meets the immediate, short-term or long-term capacity needs of the State.

A. The Application: The applicant asserts that the proposed expansion is necessary to meet the long-term capacity needs of the State of Maine. The proposed expansion would provide approximately 21.9 million cubic yards of capacity, with an estimated 20 years of site life. The applicant proposes to develop the

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capacity in 3 phases: Phase I would have approximately 5.45 million cubic yards of capacity and a life of approximately 5 to 7 years; Phase II would have approximately 9.35 million cubic yards of capacity and a life of approximately 8 to 11 years; and Phase III would have approximately 7.08 million cubic yards of capacity and a life of approximately 7 to 9 years. The applicant proposes division of the expansion into phases in expectation that the Department will condition approval of the public benefit determination to require periodic checks on the use of landfill capacity before submittal of applications to develop additional capacity in the landfill expansion area.

The waste acceptance rates for the proposed expansion rely on the latest Capacity Report. The Capacity Report calculated available disposal capacity based on projected growth rates of zero, 1% and 2.8%, and compared the available capacity to that calculated at the 4% growth rate used in the latest State Plan. The applicant concluded available capacity at Juniper Ridge Landfill would be depleted in 2017 at a 2.8% growth rate, and in 2018 at a zero growth rate. For the calculations included in the application, a zero growth rate was used for 2010 and 2011, and a 2.8% annual growth rate was used for the subsequent years. Both the Capacity Report and the State Plan recognize the relationship between the economy and waste generation in Maine

The applicant asserts that, either as a direct customer or indirectly as the disposal facility for incineration residues, wastes from municipalities in every county in Maine are disposed at Juniper Ridge Landfill, with approximately 49% of the points of origin for the wastes currently disposed at Juniper Ridge Landfill located within 25 miles of the landfill.

The applicant estimates that the Crossroads Landfill in Norridgewock (owned by Waste Management Disposal Services of Maine), the only remaining commercial landfill in Maine, had approximately 12 to 14 years of remaining licensed capacity at the end of 2009, based on 2009 fill rates. The licensing of new commercial solid waste disposal facilities is prohibited by 38 M.R.S.A. §1310-X. The active municipal and quasi-municipal landfills in Maine each serve a limited regional need.

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The Capacity Report estimate of existing permitted disposal capacity in Juniper Ridge Landfill, Crossroads Landfill and publicly owned landfills (other than the less than 6 acre CDD landfills) in Maine was approximately 17,568,810 cubic yards as of the end of 2009. The Capacity Report projects that an estimated 24.4 million cubic yards of landfill capacity will be required over the next 20 years, based on a predicted growth rate of 2.8%.

The application and the Capacity Report both emphasize the uncertainty of future waste generation rates. Overall, Maine waste generation rates have declined; however, the larger Maine MSW incinerators import MSW to meet their power contracts as Maine-generated MSW rates fall, so the incinerator residues requiring disposal have not appreciably declined. But, if Maine's economy improves, waste generation is expected to increase. The applicant also notes that many unexpected events could cause an increase in wastes requiring disposal, such as: wastes generated during a major storm event, wastes generated during cleanup of a major spill, or closure of a Maine incinerator.

- B. Department Review: The Department thoroughly analyzed the information available in the various reports and other submittals provided to both the Department and SPO on an ongoing basis to determine the quantities of the various categories of wastes generated in Maine that are proposed to be disposed in the Juniper Ridge Landfill Expansion. This information included the volumes of wastes generated in Maine, the capacity of existing disposal facilities in Maine, reports on solid waste uncertainties and possible plans for the future in the Maine waste markets, the status of disposal facilities in New Hampshire and New Brunswick, and available information on future applications.

Basis for Review of Capacity Needs

In accordance with 38 M.R.S.A. §1310-AA, the Department considered the State Plan during its review of this application. In addition to the State Plan, the Department also reviewed the information provided in the most recent biennial Capacity Report (for calendar year 2009) prepared by SPO in accordance with 38 M.R.S.A. §2124-A.

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The Department also considered data submitted to SPO and the Department in annual and monthly reports regarding solid waste generated in Maine and disposed in Maine’s landfills.

As noted by commentors, neither statute nor regulation expressly define immediate, short-term or long-term capacity. 38 M.R.S.A. §2124-A requires that SPO submit a report to the Legislature, the Governor and the Department “setting forth information on statewide generation of solid waste, statewide recycling rates and available disposal capacity for solid waste. The report due on January 1, 2009 was required to analyze the solid waste disposal needs of the State for the next 3, 5 and 10 years. Based upon these time frames, a reading of the overall statutory scheme as a whole, and legislative intent, the Department has interpreted the solid waste laws to define immediate as 3 years, short-term as 5 years and long-term as 10 years for the purposes of evaluation of public benefit determination applications. The Department has historically used these time frames in its evaluation of all public benefit determination applications submitted to the Department, and has continued that practice with this application. However, to clarify the evaluation process, the Department considers, in general terms, the time involved from issuance of a positive determination of public benefit until the capacity considered in the public benefit determination application is available for disposal.

As described in Finding of Fact #4, above, findings of fact and conclusions of law made by the Commissioner on this application are based on the standards and criteria set forth in the applicable law. While the Department is cognizant of the terms of the OSA between SPO and Casella, the Department is not bound by the contractual agreements between SPO and Casella; in fact, the OSA references in various locations that neither party can guarantee the Department’s approval of the applications required to be prepared by Casella and submitted for SPO.

Relevant Waste Streams

The wastes proposed to be disposed in the proposed expansion are special wastes, CDD, residues from the processing of CDD (the fines component of which is used as alternative daily cover), miscellaneous non-special wastes and MSW bypass. The Department’s review examined data from both 2009 and 2010. According to

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the 2009 annual report, 528,622 tons of waste were disposed in the Juniper Ridge Landfill in 2009. According to the 2010 annual report, 708,198 tons of waste were disposed in the Juniper Ridge Landfill in 2010. (Department review of the monthly waste summary reports submitted by the applicants shows a total of 542,364 tons of waste disposed in 2009, and 712,125 tons of waste disposed in 2010. ²A table created from the Department's *Juniper Ridge Landfill Waste Volume Summary*, updated monthly, is provided as Attachment A of this determination.)

Overview of Current Licensed Capacity

According to the 2010 annual report, the remaining capacity of the Juniper Ridge Landfill as of December 31, 2010 is approximately 6,565,719 cubic yards. The 2010 annual report notes that this capacity is based upon the volume estimated for the landfill in the amendment application as being 10.28 million cubic yards. This volume is based on the landfill design approved in the amendment license, which included a mechanically-stabilized earthen ("MSE") berm along the western and southwestern sides of the landfill, and an enlarged earthen berm along the northern and eastern sides of the landfill. Casella has not constructed the MSE berm or the enlarged berms. In the public benefit application, the applicant notes that the proposed expansion will overlay the northern and eastern waste sideslopes of the currently licensed footprint. The need for the berms will be re-evaluated after this licensing decision. The construction of the berms is estimated to provide capacity for approximately 1 year.

The commercial Pine Tree Landfill in Hampden, owned by Casella, reached then licensed capacity and ceased accepting waste on December 31, 2009. The remaining commercial landfill in Maine licensed to accept many of the same waste types as Juniper Ridge Landfill is Waste Management Disposal Services of Maine's ("WMDSM") Crossroads Landfill in Norridgewock. As of December 2010, the remaining capacity for waste disposal at Crossroads Landfill was estimated by WMDSM to be approximately 3,907,064 cubic yards. In 2009, Crossroads accepted 265,047 tons of waste for disposal; of this, 79,778 tons of

² The difference between the monthly waste summary reports totals and the annual reports totals reflects that the monthly waste summary reports include everything that crosses the scales at the landfill, including construction materials that will not be disposed, whereas the annual reports totals include only the wastes disposed in the landfill.

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waste were used as alternative daily cover. In 2010, Crossroads accepted 258,375 tons of waste for disposal; of this, 75,397 tons of waste were used as alternative daily cover.

There are 7 active municipally-owned landfills for the disposal of MSW. The Capacity Report states that these facilities have an estimated combined capacity of 4.9 million cubic yards (3.26 million tons). These landfills serve their immediate area. The Capacity Report notes that, while reaching capacity will be a significant concern to the region served by a landfill in this group, it will not result in a statewide capacity concern. Expansions approved at two landfills in northern Maine that serve about 50 communities will provide capacity for decades.

There are 2 publicly owned landfills for the disposal of residues from the processing/incineration of MSW. The Capacity Report states that these facilities have an estimated combined capacity of 6.2 million cubic yards (4.5 million tons). These landfills are expected to serve the ecomaine and the MMWAC incinerators for more than 20 years.

There are approximately 14 municipally-owned less than 6 acre non-secure landfills licensed for the disposal of wood waste and CDD. The Capacity Report assigns an estimated overall capacity for these facilities of 10 to 12 years. According to the annual reports filed by the facilities, a total of approximately 12,278 tons of waste was disposed in this group of landfills in 2009, and approximately 7,538 tons was disposed in 2010. The Marion Township CDD landfill in Washington County reached capacity in 2011, and the Marion Users Group is now transporting its CDD to Canada for disposal. The Marion Users Group had planned to license a new landfill, but concluded contracting with the Canadian landfill was a less expensive alternative.

The State also has licensed landfill capacity at the as yet undeveloped Carpenter Ridge Landfill located at T2 R8 (Department license # S-021372-WD-A-N, dated June 24, 1996); however, this capacity would require legislative authorization to be developed. This State-owned site has approximately 2 million cubic yards of licensed capacity for special wastes and other wastes. In 2011, the State also acquired the Dolby III Landfill facility in East Millinocket. The Dolby III landfill

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has only approximately 300,000 cubic yards of licensed capacity remaining, and the license transfer approved the disposal of only wastes generated at the Great Northern Paper Co., LLC (former Katahdin Paper) mills in Millinocket and East Millinocket. At this time *de minimus* quantities of waste from the East Millinocket mill are periodically disposed at Dolby III.

CDD Generated in Maine

According to the 2009 and 2010 annual reports filed with the Department and SPO, Maine municipalities and businesses reported generating approximately 397,636 tons of wood waste and CDD in 2009, and 490,274 tons of wood waste and CDD in 2010. Based on information from the annual reports filed with SPO and the Department, and the Department’s general knowledge of waste generation in Maine, Attachment B was prepared to show how the wood waste and CDD was handled by recycling, processing or disposal.

As shown in Attachment B, the most significant change in CDD generation results from a significant increase in the amount of oversized bulky waste ("OBW") and fines, primarily from KTI in Lewiston, disposed at Juniper Ridge Landfill. KTI is a Casella subsidiary. The majority of the CDD accepted at KTI is imported from other states. 38 M.R.S.A. §1310-N(11) provides that, in part, waste generated within the State “includes residue and bypass generated by incineration, processing and recycling facilities within the State or waste, whether generated within the State or outside the State, if it is used for daily cover, frost protection or stability or is generated within 30 miles of the solid waste disposal facility.” 38 M.R.S.A. §1303-C(1-C) defines bypass as “...any solid waste that is destined for disposal, processing or beneficial use at a solid waste facility but that cannot be disposed of, processed or beneficially used at the facility because of the facility’s malfunction, insufficient capacity, inability to process or burn, downtime or any other comparable reason.” OBW consists of large items that may be difficult to process, such as mattresses, furniture, appliances, and certain other components of demolition debris. The Department comments that KTI’s inability to process certain components of the CDD delivered to the site has contributed to the large amounts of OBW delivered to Juniper Ridge Landfill. KTI received Department approval for major modifications to its facility on July 18, 2011. Construction and implementation of the infrastructure improvements to

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the facility have been substantially completed, and KTI expects to generate less OBW due to its ability to process and recycle more material from the CDD. The Department comments that OBW deliveries to Juniper Ridge Landfill in November and December 2011 were less than half the amount delivered in any month since May 2011.

The Department also compared the amount of fines used as alternative daily cover at Juniper Ridge Landfill to the amount of wastes used as alternative daily cover at the Crossroads Landfill in Norridgewock, and concluded that the two landfills used a similar amount of daily cover. The Department also comments that Juniper Ridge Landfill has consistently been found to be operating in conformance with the criteria in 06-096 CMR 401.4.C(8)(a); this subsection limits the depth of fines used as alternative daily cover to 9 inches. Juniper Ridge Landfill routinely covers highly putrescible wastes such as front-end process residues ("FEPR") and MSW bypass from the incinerators, and some sludges, immediately after deposit in the landfill to control the odor from these wastes. However, when comparisons were made considering only the amount of putrescible wastes accepted, the Department concluded Juniper Ridge Landfill used less alternative daily cover per ton of putrescible waste.

The applicant asserts that it predicted that additional residues from the processing of CDD would be disposed at Juniper Ridge Landfill after CDD processing capability was expanded. The Department comments that the increase from construction and operation of a CDD processing facility owned by Casella in Westbrook is no longer expected; the major modifications to KTI in Lewiston were licensed and completed rather than the development of new capacity at the Westbrook facility.

The Department further comments that implementation of changes to 38 M.R.S.A. §1310-N(5-A) which require, in part, the "maximum extent practicable" standard be met is ongoing. Regulations for implementing the statute were adopted on July 20, 2010. Facilities have filed their interim reports, and the first

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demonstration of compliance with the statute is required with the annual reports to be filed by February 28, 2012. The maximum extent practicable standard reads as follows:

”(2) “A solid waste processing facility that generates residue requiring disposal shall recycle or process into fuel for combustion all waste accepted at the facility to the maximum extent practicable, but in no case at a rate less than 50%. For purposes of this subsection, ‘recycle’ includes, but is not limited to, reuse of waste as shaping, grading or alternative daily cover materials at landfills; aggregate material in construction; and boiler fuel substitutes.”³

Special Wastes Generated in Maine

A review of the Department’s records indicates the disposal of approximately 480,541 tons in 2009 and 435,099 tons in 2010 of special waste (including FEPR) generated in Maine at commercial, municipally-owned, and state-owned landfills. Based on information from the annual reports filed with SPO and the Department, and the Department’s general knowledge of waste generation in Maine, Attachment C was prepared to show how the special waste was disposed. Attachment C shows a significant decrease in the amount of special wastes disposed in these landfills.

Municipal transfer stations do not typically handle special wastes. Of Maine’s 4 incinerators, only Maine Energy is licensed to accept special waste; it accepts only a negligible amount. While the Department is unaware of any Maine business generating large amounts of special waste that ships it out of state, Maine businesses are not required to directly report to SPO or the Department the amount of special waste generated.

The Department also licenses the beneficial use of special wastes (including agronomic utilization). A review of Department records indicates an estimated 324,065 tons in 2009 and 242,092 tons in 2010 of special wastes generated in Maine were beneficially used. This represents a significant decrease from the 1,385,552 tons estimated to have been beneficially used in 2008; however, the Department still does not expect Maine municipalities and businesses that

³ 38 M.R.S.A. §1310-N(5-A)

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currently beneficially use their special wastes to dispose of them in landfills in the future.

A review of the Department's records indicates approximately 463,612 cubic yards in 2009 and 639,719 cubic yards in 2010 of solid waste was disposed in the large, generator-owned landfills. These are landfills that are limited by 38 M.R.S.A. §1303-C(6)(E) to the disposal of not more than 15% solid waste accepted on an annual basis from sources other than the single entity that owns the landfill. The 15% from sources other than the generator must be accepted on a nonprofit basis. The generator-owned landfills serving the pulp and paper mills active in 2011 are expected to remain active through the short term, and either have licensed capacity for their wastes or have plans for new long-term capacity that do not include use of the Crossroads or Juniper Ridge landfills for their long-term capacity needs.

MSW Generated in Maine

The last significant category of solid waste currently being disposed in Maine is MSW (including MSW bypass from incinerators). A review of the Department's records indicates the disposal of approximately 661,638 tons in 2009 and 660,392 tons in 2010 of MSW generated in Maine. Based on information from the annual reports filed with SPO and the Department, and the Department's general knowledge of waste generation in Maine, Attachment D was prepared to show how the MSW was handled. Attachment D shows a decrease in the amount of MSW generated, although the percentages of MSW handled through the different options didn't change much except for a steady increase in the amount of MSW exported for disposal in other states and Canada.

The waste stream proposed by the applicant to be disposed in the expansion does not include MSW except for small amounts of MSW bypass from Maine's 4 incinerators and FEPR, which is reported as special waste, above. MSW bypass accounted for 4% in 2009 and 5.6% in 2010 of Juniper Ridge Landfill's waste streams. Conditions on the landfill's licenses limit the amount of MSW bypass Juniper Ridge Landfill may accept.

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No changes to Maine Energy, owned by Casella and located in downtown Biddeford, resulted from the most recent series of discussions about options for operational changes or relocation of the Maine Energy incinerator. The Department comments that the condition on the amendment license for Juniper Ridge Landfill that limits the total amount of MSW that can be handled at both Maine Energy and Juniper Ridge Landfill to 310,000 tons per year, in combination with Maine Energy’s standard practice of zeroing its tipping floor on a weekly basis, appears to have resulted in more MSW bypass coming to Juniper Ridge Landfill than would be the case without the limit. The Department recommends that the Juniper Ridge Landfill Expansion license limit only the amount of MSW bypass from Maine Energy that can be accepted at Juniper Ridge Landfill. 38 M.R.S.A. §1303-C(1-C) defines bypass as “...any solid waste that is destined for disposal, processing or beneficial use at a solid waste facility but that cannot be disposed of, processed or beneficially used at the facility because of the facility’s malfunction, insufficient capacity, inability to process or burn, downtime or any other comparable reason.” The Department comments that the contracts Maine Energy has with its customers also define bypass in similar terms, and that Maine Energy ensures that any MSW bypass transported to Juniper Ridge Landfill was generated in Maine.

Another significant unknown is future disposal of MSW currently disposed at the PERC incinerator in Orrington. As noted during review of the 2009 public benefit application, the current contracts with PERC for disposal of its residuals and bypass expire in 2018, concurrent with the end of the projected “life” of the PERC facility. The large group of Maine municipalities included in the Municipal Review Committee (“MRC”) have been gradually buying into PERC for many years; the MRC municipalities currently own approximately 25% of PERC. The MRC has formed a group to plan for MSW disposal beyond 2018; reportedly, the group will be considering total ownership of PERC as well as other disposal options.

Miscellaneous Non-Special Wastes from Maine Routinely Disposed at Juniper Ridge Landfill

The last broad category of waste proposed to be disposed by the applicant, miscellaneous non-special waste, constituted less than 0.1% in 2009 and 0.4% in

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2010 of Juniper Ridge Landfill’s waste streams. Typical wastes included in this category include spoiled food waste from Maine industrial processing plants and businesses, carpet fiber and padding waste from Formed Fiber Technologies in Auburn, tire chips, and vegetable starch.

Historic Use of the Juniper Ridge Landfill

The Department reviewed specifically how the existing licensed Juniper Ridge Landfill capacity has been utilized since the State of Maine purchased the landfill. Using information provided by the applicant in its annual reports and in this public benefit determination application, a summary of the types and amounts of wastes disposed in the Juniper Ridge Landfill throughout its operation was prepared. This information is provided in Attachment E of this determination.

Evaluation of the data in Attachment E reveals that the amount of waste disposed in the Juniper Ridge Landfill exceeded the 540,000 tons per year estimate included in the 2003 amendment application in 2008, 2010 and 2011. The significant increases since the end of 2007 were in ash, FEPR, OBW, fines and MSW bypass. The incinerator residue and bypass increases were associated with the cessation of disposal of putrescible waste at Pine Tree Landfill, and the closure of Pine Tree Landfill. Some increase in MSW bypass in 2010 and 2011 is also attributable to the Department’s encouragement of the use of MSW bypass in the soft layer of new base cells (14,911 tons were used for this purpose in 2010, and 5,301 were used in 2011). The Department routinely tracks the quantities of OBW and fines from KTI, and MSW bypass delivered to Juniper Ridge Landfill; see Attachment F for a tabulation of this information. As noted above, the Department recommends that the Maine Energy and Juniper Ridge landfill licenses be de-linked in the 9.35 million cubic yard expansion license to limit only the amount of MSW bypass that can be accepted in expansion. The Department suggests this would minimize the frequent deliveries of MSW bypass from Maine Energy (37,561 total tons in 2010, and 22,305 total tons in 2011).

The most significant increases in waste acceptance were seen with OBW and fines from the processing of CDD. OBW increased from 3.5% of the total waste acceptance in 2008 to 9.7% in 2009, 13.6% in 2010, and approximately 18.6% in 2011. Fines increased from 7.3% of the total waste acceptance in 2008 to 8.8% in

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2009, 12.3% in 2010, and 17.7% in 2011. The Department concurs with the applicant that the increases are, at least in part, caused by the closure of Pine Tree Landfill and the subsequent increase in out-of-state CDD delivered to the KTI processing facility instead. As noted above, the Department's analysis indicated the fines delivered to Juniper Ridge Landfill are legitimately being used as alternative daily cover. However, the Department recommends limiting the amount of OBW delivered to Juniper Ridge Landfill by CDD processors that report in their annual reports generating substantive amounts of OBW to that amount that has been determined by the Department to have been generated as a result of recycling CDD "to the maximum extent practicable".

Disposal Capacity Unknowns

As described more fully throughout this determination, over the next few months there are several policy and legislative decisions that may significantly impact the ways solid waste is handled in Maine, and thus the need for disposal capacity for solid waste generated in Maine. It is not possible at this time to quantify these impacts and thus assess how they will affect solid waste capacity and capacity needs. The Department expects, however, they will impact solid waste capacity needs to some extent. The application also recognizes the potential impact of the listed issues. The outstanding solid waste management issues the Department refers to includes, but is not limited to:

- * potential decreases in CDD processing residues requiring disposal as a result of full implementation of 38 M.R.S.A. §1310-N(5-A);
- * observed changes in solid waste needing disposal;
- * the potential sale of Juniper Ridge Landfill, as noted in the Capacity Report;
- * potential development of disposal capacity at other landfills;
- * extension of waste fees to residues from the processing of CDD; and
- * potential statutory changes to the definition of "waste generated within the State"; and
- * operation of PERC past 2018.

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Maine Generated Waste Expected to be Disposed in Maine Landfills

The applicant notes that the projected annual fill rates provided in the 2003 amendment application did not include the closure of Pine Tree Landfill in Hampden at the end of 2009. However, as has been stated before, the closure of Pine Tree Landfill did not occur “early”; rather, Pine Tree Landfill reached its then licensed capacity. Apparently, the applicant assumed approval of increased capacity at Pine Tree Landfill for which Casella did not submit an application until August 2005. Casella subsequently withdrew its application for a revised public benefit determination associated with the increased capacity amendment application, and entered into the Schedule of Compliance that detailed the phased closure of Pine Tree Landfill. Closure of the landfill was completed in 2010.

Throughout Maine, disposal numbers have continued to be lower, as noted by MRC/PERC communities having trouble meeting their guaranteed annual tonnage of MSW delivered to the PERC incinerator. Both PERC and Maine Energy have imported additional MSW in recent years in order to meet their power contract obligations. The State Plan projected a 2007 annual fill rate at the Crossroads Landfill of 336,854 tons; in its July 2009 capacity update, WMDSM reported an average annual fill rate of 300,000 tons per year. Crossroads reported disposing of 265,047 tons of waste in 2009 and 258,375 tons in 2010. The State Plan estimated the remaining capacity life at Crossroads Landfill at the end of 2007 to be 3,900,000 cubic yards or 10 to 12 years; in its 2010 annual report, WMDSM reported having 4,202,973 cubic yards of remaining capacity (still approximately 12 years or more).

The estimates of capacity needed in the State Plan were calculated using a 4% annual increase, to reflect increases in economic activity and population. In the Capacity Report and the public benefit determination application, the applicant scaled the annual increase back to reflect the now expected lack of growth in economic activity and population for several years.

Finally, the Department notes that, as seen in Appendices A through E, there is considerable volatility in the solid waste arena. Overall, Maine’s waste generation rate has decreased, and thus the existing disposal capacity needs have

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decreased. However, if the economy improves in the near term, the Department agrees with the applicant that waste generation is likely to increase. The Department also concurs that the landfill design and licensing process can be lengthy. It will take considerable time, from the date of this determination, before the first cell of the expansion is constructed and operational. The Department has taken this fact into account in its analysis of capacity needs. The public benefit determination application proposes the division of the expansion into 3 phases. Phase I is estimated to provide 5 to 7 years of capacity for approximately 4,687,000 tons of waste. Phase II is estimated to provide 8 to 11 years of capacity for approximately 8,041,000 tons of waste. Phase III is estimated to provide 7 to 9 years of capacity for approximately 6,089,000 tons of waste.

C. Commissioner Findings:

Based on the foregoing figures and analysis, the Commissioner finds that, in the absence of additional capacity at Juniper Ridge Landfill, there is sufficient disposal capacity currently available for the amounts of CDD, special wastes and other wastes known to be generated in Maine and expected to be disposed in Maine landfills both in the immediate (3 years) and short-term (5 years) periods. The Commissioner further finds there likely exists sufficient disposal capacity currently available for the amounts of CDD, special waste and other wastes known to be generated in Maine and expected to be disposed in Maine landfills in the long term (10 years) period, provided the existing solid waste disposal options remain available and waste generation rates remain depressed.

The Commissioner finds that the timing of an application to expand Juniper Ridge Landfill appears to be at least partly based upon the terms of the OSA. The Commissioner further finds that the provision in the 2nd amendment to the OSA that encourages Casella to import CDD to be processed into CDD fuel for biomass boilers is outdated given current circumstances. The applicant acknowledges that Casella has difficulty meeting the quality standards for CDD fuel. Further, the Commissioner finds that the biomass plant referenced in the OSA no longer burns CDD fuel. As also noted in Finding of Fact #6.C, below, the Department is not bound by the language in the OSA. In any event, the Commissioner recommends SPO and Casella amend the OSA to address the significant quantity of CDD imported into Maine under the terms of the OSA.

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Based on the large, and to date annually increasing, volume of OBW disposed in Juniper Ridge Landfill, the Commissioner finds that it appears much of the CDD imported into Maine contains insufficient wood to justify efforts to process it into CDD fuel. Although 38 M.R.S.A. §1310-N(11) defines residues and bypass generated by incineration, processing and recycling facilities in Maine as Maine waste, some of the CDD delivered to KTI has little or no processing value, and therefore is ultimately disposed in a landfill, usually Juniper Ridge Landfill.

The Commissioner finds that it is necessary and appropriate to establish a limit on the tonnage of OBW disposed in the expansion. If, and when, a license is issued for the construction and operation of an expansion, the Department will establish such a limit. The limit will be based upon the results of annual demonstrations required pursuant to 06-096 CMR 409.2.C, that waste processing facilities that generate residue requiring disposal will “recycle or process into fuel for combustion all waste accepted at the facility to the maximum extent practicable, but in no case at a rate less than 50%”, submitted by CDD processing facilities that send OBW to Juniper Ridge Landfill for disposal. Annually, the Department will reevaluate and may modify this limit.

In addition, the Commissioner finds that periodic independent third party audits of CDD processing operations that transport more than 10,000 tons of OBW to Juniper Ridge Landfill on an annual basis are necessary, in order to verify the results of the demonstrations required under the provisions of 06-096 CMR 409.2.C, are necessary in view of the significant volumes of OBW disposed in the state-owned Juniper Ridge Landfill in the past. The purpose of the audits will be to ensure that, by maximizing processing and recycling at CDD processing facilities, disposal of waste at Juniper Ridge Landfill is minimized, in conformance with the intent of 38 M.R.S.A. § 1310-N (5-A). The Commissioner therefore requires that periodic third party audits be conducted, focused on the nature and volume of processing residues being sent to Juniper Ridge Landfill for disposal. The first such audit(s) will occur prior to the disposal of OBW from processing facilities anticipated to transport more than 10,000 tons of OBW to the 9.35 million cubic yard expansion annually. Third party audits will be conducted by a qualified consultant selected by the Department in consultation with the affected processing facilities and Casella. Casella will reimburse the Department

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for the cost of the audits. Audits will be conducted at 2 year intervals, unless or until the Department approves their discontinuation.

The Commissioner further finds that the 310,000 ton annual limit placed on MSW handled at both Maine Energy and Juniper Ridge Landfill⁴ results in more MSW bypass being disposed at Juniper Ridge Landfill than would a limit specific to Juniper Ridge Landfill. The 310,000 ton annual limit was negotiated with the Municipal Review Committee and Casella in 2002 to ensure that Maine Energy (a Casella-owned company) and Casella-owned or operated disposal facilities, did not garner an unfair advantage in the MSW market. It was carried into the amendment license in 2004. The Commissioner therefore, rather than continue the 310,000 ton annual limit, places a 25,000 ton annual limit on the amount of MSW bypass that the 9.35 million cubic yard expansion may accept for disposal during routine operations. If the 9.35 million cubic yard expansion is licensed, the license should include provisions for exceptions to this limit in emergencies or prolonged outages at Maine Energy.

The Commissioner finds it is reasonable to determine that the full 21.9 million cubic yards of disposal capacity sought by the applicant is not needed to meet the State's immediate, short-term or long-term capacity needs. The Commissioner finds that available data shows a current decrease in the amount of Maine waste needing disposal, and that whether the amount of waste needing disposal will decrease, level off or increase in the future is uncertain at this time. However, the Commissioner finds that it is reasonable and prudent to plan for an increase in capacity needs based upon an expected eventual improvement in the economy. Accordingly, to ensure the availability of adequate long-term capacity given current outstanding issues related to Maine's solid waste management system, and the difficulty in guaranteeing the time period from submission of an application for a new or expanded landfill through final appeals and construction, the Commissioner finds that the 9.35 million cubic yards of capacity estimated for Phase II of the expansion proposal would adequately ensure that Maine could meet its long-term disposal capacity needs. 38 M.R.S.A. §1310-AA requires that an applicant receive a positive determination of public benefit prior to submission of an application under 38 M.R.S.A. §1310-N for new or expanded disposal capacity. The Commissioner therefore determines a substantial public benefit

⁴ see the amendment license- DEP #S-020700-WD-N-A. dated April 9, 2004

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only for the 9.35 million cubic yards of capacity estimated for Phase II of the proposed landfill expansion. It is anticipated that the proposed landfill expansion footprint will be modified to reflect this partial approval.

6. CONSISTENCY WITH STATE WASTE MANAGEMENT PLAN

As part of the substantial public benefit review, 38 M.R.S.A. § 1310-AA(3) requires that the Commissioner determine whether the proposal for increased landfill capacity at the Juniper Ridge Landfill is consistent with the state plan.

A. The Application: The state plan, prepared by SPO in accordance with 38 M.R.S.A. § 2122, is based on the priorities and recycling goals established in 38 M.R.S.A. §§ 2101-2132, including the solid waste management waste hierarchy. In decreasing order of preference, the hierarchy for management of solid waste is reduction, reuse, recycling, composting, incineration and landfilling. The State Plan notes that landfilling is at the bottom of the waste management hierarchy.

The applicant notes the proposed expansion is consistent with the State Plan in that the proposed expansion is contemplated and incorporated into the plan as a central component in meeting the State's solid waste disposal capacity needs over the next 20 years. The applicant references 38 M.R.S.A. §2123-A(4) as its basis for use of 20 years as the long-term window for future disposal capacity.

In support of its application, the applicant describes how Casella is actively involved in source reduction, reuse, composting, toxics reduction, and recycling programs throughout the State and at Juniper Ridge Landfill, and concludes that these efforts reduce the risks related to waste handling and disposal at Juniper Ridge Landfill to the maximum practical extent. The initiatives detailed include: Zero Sort® (single stream) Recycling operations that are located at 4 Casella facilities in Maine, and in collection vehicles operated in 3 municipalities; standard recycling collection operations that serve many municipalities and many businesses in Maine; CDD and woodwaste processing operations in Maine; composting or beneficial reuse of large volumes of Maine's organic waste through Casella's New England Organics facilities; and 7 universal and electronic waste consolidation facilities in Maine. The applicant states that, in 2010, Casella facilities and programs recycled, beneficially used, or composted a total of 250,

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227 tons of waste materials in Maine. The applicant also describes SPO's considerable efforts to promote recycling consistent with the State Plan.

The applicant asserts that the wastes currently disposed in Juniper Ridge Landfill and proposed for disposal in the expansion are primarily materials that cannot be reduced or recycled for one or more of the following reasons: the nature of the wastes precludes it; they are already residuals from recycling or source reduction activities; or the State or municipalities lack the recycling resources to handle the materials in an economic fashion.

The applicant notes that the State Plan identifies the management and disposal of CDD as an area of continuing difficulty in Maine, and states that Juniper Ridge Landfill received 145,488 tons of unprocessed CDD generated in Maine in 2010; 62% of this CDD is reported as being generated within 50 miles of the landfill. Landfill capacity for the waste is needed because it is not accepted at MSW incinerators, and cannot be recycled or reused without investment in equipment, labor, and sufficient land area for collection and processing of the CDD. The applicant also asserts that the 3 Casella CDD processing facilities in Maine all achieve no less than a 50% recycling rate, in compliance with 38 M.R.S.A. §1310-N(5-A). In 2010, the facilities produced approximately 106,000 tons of biomass fuels, recovered metal, aggregate, and alternative daily cover (used at Juniper Ridge Landfill) from the approximately 200,000 tons of woodwaste and CDD delivered to them. The applicant also notes that regulatory changes promulgated in 2006 to the CDD fuel quality standards resulted in an increase in the CDD residue generated by screening to obtain CDD wood fuel that met the standards; at KTI, only between 5 and 20% of the CDD processed can be converted to fuel grade wood chips.

- B. Department Review: The Department comments that using the State Plan's recognition that an expansion of the Juniper Ridge Landfill is contemplated as justification for a positive determination of public benefit is inconsistent with the state's actual capacity needs, as explained in Finding of Fact #5, and is inconsistent with the waste management hierarchy. The Department also comments that the OSA sets an upper limit for tipping fees that can be assessed on wastes disposed at Juniper Ridge Landfill, to "act as a check on pricing for the

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disposal of similar materials at other solid waste facilities”⁵. The tipping fees, however, are lower than those charged by the remaining commercial landfill in Maine, and may contribute to increases in the disposal of some waste streams, such as CDD and wastewater treatment plant sludges, because the cost of disposal can be less than the cost of handling the wastes for processing, composting or agronomic utilization.

The Department comments that the applicant has demonstrated that both Casella and SPO play critical roles in source reduction, reuse, composting, toxics reduction, and recycling programs throughout the State, and that many of the waste streams disposed at Juniper Ridge Landfill cannot be handled other than by land disposal. However, as discussed more fully in Finding of Fact #5, above, the Department comments that inspections of the KTI facility indicate much of the incoming CDD has arrived pre-sorted with the wood and easily recyclable components removed. This has reduced the volume of materials recoverable for recycling or reuse at KTI, and has resulted in substantial amounts of fines and OBW being sent to Juniper Ridge Landfill⁶. Although the fines are used as alternative daily cover in compliance with the applicable standards, the Department recommends that the amount of OBW disposed at Juniper Ridge Landfill as processing residue be limited.

- C. Commissioner Findings: The Commissioner finds that it is inadequate to rely on the circular reasoning that the State Plan, developed by SPO, relies on the development of expansion of the Juniper Ridge Landfill, owned by SPO, to provide disposal capacity for the next 20 years, which is a requirement of the OSA between SPO and Casella. Further, the Commissioner finds that both SPO and Casella understand that the Department is not bound by the language in the OSA, among other reasons, because the OSA specifically includes the following language: "The parties, however, recognize that the MDEP is an independent permitting authority before which the State must appear as any other person. Therefore, the parties acknowledge that any commitment of the State to cooperate with and seek a governmental approval is not a guaranty of issuance of such approval or the terms of such approval."⁷

⁵ State Plan, page 42

⁶ see Attachments B, E and F of this license

⁷ OSA, section 4.1

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The Commissioner further finds that the 20 year period referenced in 38 M.R.S.A. §2123-A(4), when taken in the context of the entire statute, is appropriately viewed as a general long-term planning horizon, rather than a directive that at all times landfill capacity be licensed and available for a 20 year future period.

The Commissioner also finds that the rate of CDD generated in Maine requiring disposal has in significant part increased because CDD that was imported for disposal at Pine Tree Landfill is now classified as waste generated in Maine under 38 M.R.S.A. § 1310-N (11) because it is handled at a Maine processing facility. The full implementation of 38 M.R.S.A. § 1310-N(5-A) and the limit on OBW included in this determination are expected to decrease the amount of processing facility residues handled at the Juniper Ridge Landfill. The Commissioner finds that while landfilling may be an unavoidable management option for some CDD, it should be employed only when all other options are unavailable and there is a demonstrated need for use of that landfill capacity.

The Commissioner further finds that, consistent with the goals of the State Plan and the statutory solid waste management hierarchy, the applicant should aggressively pursue in the course of its operation of the existing Juniper Ridge Landfill and the proposed expansion approaches that decrease the volumes of waste requiring disposal, and that the applicant does not adequately demonstrate that the proposed expansion advances the State's waste reduction, reuse and recycling goals.

Finally, the Commissioner finds that the applicant has not demonstrated that the proposal for the full 21.9 million cubic yards of increased landfill capacity at the Juniper Ridge Landfill, to be developed in 3 phases, is consistent with the state waste management and recycling plan. The Commissioner further finds, as explained more fully in Finding of Fact #5, above, that a number of outstanding questions, issues and potential changes in the way solid waste is handled in Maine, as well as recent decreases in solid waste generation, have altered the basis for certain assumptions made in the State Plan, and cause it to be imprudent for the Commissioner to approve at this time, the entire amount of disposal capacity requested. Instead, the Commissioner finds that the approximately 9.35

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million cubic yards (8,041,000 tons) of disposal capacity planned by the applicant for the expansion will meet the intent of 38 M.R.S.A. §1310-AA(3).

7. CONSISTENCY WITH LOCAL, REGIONAL OR STATE WASTE MANAGEMENT

The third public benefit criterion is consistency with local, regional or state waste collection, storage, transportation, processing or disposal.

A. The Application: The applicant asserts that the proposed landfill expansion will provide needed landfill capacity for generators of solid waste, especially those in the area local to Juniper Ridge Landfill. The applicant notes that Juniper Ridge Landfill provides disposal capacity for, in addition to its regular contractual customers, unanticipated delivery of contaminated soils from Department-supervised remediations and cleanups, and debris generated during natural disasters such as hurricanes, floods or winter storms. In addition, the applicant asserts that the capacity proposed for the Juniper Ridge Landfill Expansion may be needed if the current waste flows to one or more of the Maine incinerators changes; in response to statutory or regulatory changes; if changes in operation at one or more of the existing generator-owned or municipally-owned landfills decrease the amount or types of wastes accepted; or in response to changes in technology.

B. Department Review: The Department concurs that all of the residues from the 2 largest incinerators in Maine are disposed in Juniper Ridge Landfill; that no other options are currently available for FEPR or MSW incinerator ash; and that the amount of residues from PERC and Maine Energy requiring disposal are unlikely to decrease until after 2018 because the facilities must acquire sufficient MSW to meet their power contracts; if Maine municipalities and businesses provide less waste than expected, the incinerators will seek out-of-state MSW to make up the difference. 38 M.R.S.A. §1310-N(11) defines residues from the incinerators as waste generated within the State.

The Department also concurs that Juniper Ridge Landfill currently provides needed capacity for CDD generated in the vicinity of the landfill, and that the proposed expansion would continue to meet area capacity needs. The Department is not aware of any new CDD landfills planned for the Old Town/greater Bangor

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area and expect a couple less than 6 acre landfills in the vicinity to close within the next 5 to 10 years. However, the Department comments that the quantity of CDD delivered to Juniper Ridge Landfill from a 50 mile radius is a small part of the total CDD disposed at Juniper Ridge Landfill. If the amount of OBW from CDD processors is limited, as recommended in Findings of Fact #5 and #6, above, the capacity that could be provided by Phase II of the expansion, if approved and constructed, may be reasonably expected to meet local needs for the long-term.

The Department comments that no future large remediation projects have been identified; however, it is prudent to ensure the availability of sufficient landfill capacity for unexpected remediation or spill cleanups. When natural disasters occur, the Department typically implements procedures which allow short-term handling of debris in the local areas affected. Therefore, although it is unlikely the expansion would handle volumes of debris large enough to significantly affect landfill capacity, unexpected capacity needs from these types of activities could be accommodated within the 9.35 million cubic yards of capacity proposed for Phase II.

- C. Commissioner Findings: As noted in Findings of Fact #5 and #6, above, the Commissioner finds that the additional 21.9 million cubic yards of landfill capacity that full expansion of the Juniper Ridge Landfill would provide is not needed to meet the State's needs in the immediate or short term, and a 9.35 million cubic yard expansion will be adequate to meet long-term disposal capacity needs. This determination is unchanged when reviewing local or regional waste management needs; no significant changes in the way current users of the Juniper Ridge Landfill access the facility is expected in the near future.

The Commissioner finds that a determination that the capacity provided by the estimated 9.35 million cubic yards of capacity in Phase II of the proposed expansion at the Juniper Ridge Landfill will not result in a gap in local, regional or state waste landfilling needs. The applicant has not demonstrated that the entire amount of proposed increased capacity from the landfill expansion is needed to provide special waste, CDD or other waste disposal needs in the local or regional area that Juniper Ridge and other facilities could not provide. Therefore, the Commissioner finds that the landfill capacity over and above the 9.35 million cubic yards proposed for Phase II is currently not needed, and

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approval of Phases I and III at this time would be inconsistent with local, regional or state waste collection, storage, transportation, processing or disposal as the additional capacity might undercut local, regional and state initiatives to encourage waste reduction, reuse and recycling.

BASED on the above Finding of Facts, the Commissioner makes the following CONCLUSIONS:

1. The proposed expansion of the Juniper Ridge Landfill in Old Town, Maine, will provide a substantial public benefit, provided the expansion is limited to the 9.35 million cubic yards associated with the Phase II area as described in the public benefit application, provided an annual limit on OBW disposal in the 9.35 million cubic yard expansion is established by the process described in Finding of Fact #5.C, and provided no more than 25,000 tons of MSW bypass from Maine Energy is delivered to the 9.35 million cubic yard expansion in any calendar year, unless authorized by specific conditions in a Department license for the 9.35 million cubic yard expansion.
2. The entire 21.9 million cubic yards of capacity proposed for expansion of the Juniper Ridge Landfill is not needed to meet the immediate or short-term solid waste disposal capacity needs of the State.
3. The 9.35 million cubic yards of capacity proposed for the Phase II area of the expansion of the Juniper Ridge Landfill is adequate to ensure the long-term disposal capacity needs of the State can be met.
4. The proposal for expansion of the Juniper Ridge Landfill is consistent with the State Plan, provided only the application for the capacity proposed for Phase II is submitted.
5. The estimated 9.35 million cubic yards of landfill capacity in Phase II only of the proposed Juniper Ridge Landfill expansion is consistent with local, regional or state waste storage, transportation, processing or disposal.

STATE OF MAINE, ACTING THROUGH THE	29	PUBLIC BENEFIT
STATE PLANNING OFFICE)	DETERMINATION
OLD TOWN, PENOBSCOT COUNTY, MAINE)	
JUNIPER RIDGE LANDFILL EXPANSION)	
#S-020700-W5-AU-N)	PARTIAL APPROVAL
(APPROVAL WITH CONDITIONS))	

6. The Commissioner recommends SPO and Casella amend the OSA to address the significant quantity of CDD imported into Maine under the terms of the OSA, and the associated large volumes of processing residues delivered to the Juniper Ridge Landfill.

THEREFORE, the Commissioner APPROVES only the 9.35 million cubic yards of capacity estimated for the Phase II area as described in the noted application of the STATE OF MAINE, ACTING THROUGH THE STATE PLANNING OFFICE, SUBJECT TO THE ATTACHED CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached as Appendix A.
2. The invalidity or unenforceability of any provision, or part thereof, of this determination shall not affect the remainder of the provision or any other provisions. This determination shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
3. The applicant shall, if, and when, a license is issued for the construction and operation of the 9.35 million cubic yard expansion, comply with the limit, and any subsequent modifications to the limit, established by the Department in the license on the tonnage of OBW that may be disposed in the 9.35 million cubic yard expansion.
4. Periodic independent third party audits of CDD processing operations that are anticipated to transport more than 10,000 tons of OBW to the 9.35 million cubic yard expansion for disposal on an annual basis shall be conducted to verify the results of the demonstrations required under the provisions of 06-096 CMR 409.2.C, focused on the nature and volume of processing residues being sent to Juniper Ridge Landfill for disposal. Third party audits will be conducted by a qualified consultant selected by the Department in consultation with the affected CDD processing facilities and Casella. Casella shall reimburse the Department for the cost of the audits. The first such audit(s) shall occur prior to the disposal of OBW from these processing facilities in the 9.35 million cubic yard expansion. Audits will be conducted at 2 year intervals, unless or until the Department approves their discontinuation.

STATE OF MAINE, ACTING THROUGH THE	.	30	PUBLIC BENEFIT
STATE PLANNING OFFICE)		DETERMINATION
OLD TOWN, PENOBSCOT COUNTY, MAINE)		
JUNIPER RIDGE LANDFILL EXPANSION)		
#S-020700-W5-AU-N)		PARTIAL APPROVAL
(APPROVAL WITH CONDITIONS))		

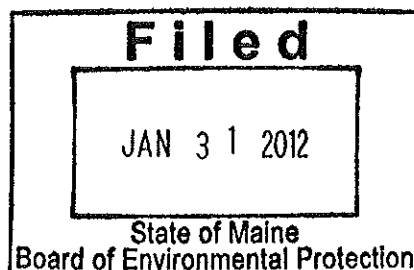
5. No more than 25,000 tons of MSW bypass from Maine Energy shall be delivered to the 9.35 million cubic yard expansion in any calendar year, unless otherwise authorized by specific conditions in a Department license for the 9.35 million cubic yards expansion.

DONE AND DATED AT AUGUSTA, MAINE, THIS 31ST DAY

OF January, 2012.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Patricia W. Aho
 Patricia W. Aho, Commissioner



PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

Date of initial receipt of application: September 15, 2011

Date of application acceptance: September 23, 2011

Date filed with Board of Environmental Protection:

XCD73907/cwd

STATE OF MAINE, ACTING THROUGH THE . 31 PUBLIC BENEFIT
 STATE PLANNING OFFICE) DETERMINATION
 OLD TOWN, PENOBSCOT COUNTY, MAINE)
 JUNIPER RIDGE LANDFILL EXPANSION) PARTIAL APPROVAL
 #S-020700-W5-AU-N)
 (APPROVAL WITH CONDITIONS))

ATTACHMENT A

TOTAL WASTE RECEIVED AT JUNIPER RIDGE LANDFILL
 BY MONTH

YEAR	TOTAL WASTE RECEIVED (in tons) ⁸												ANNUAL TOTALS
	Jan.	Feb.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.		
2004	4,504	7,589	10,257	5,254	6,103	7,089	6,544	6,219	5,904	4,274	2,978	4,125	48,490
2005	40,608	34,028	36,450	15,555	22,365	26,081	17,775	25,789	24,060	28,189	28,219	34,985	245,368
2006	35,804	26,081	32,769	38,314	54,025	55,240	42,951	48,127	40,543	43,248	48,689	43,583	525,806
2007	54,440	38,585	45,800	29,772	35,780	43,334	40,869	41,092	39,801	57,791	47,379	37,171	472,643
2008	41,602	34,955	44,419	54,878	53,125	52,647	55,798	61,836	66,515	53,072	42,479	50,182	629,357
2009	56,032	48,521	52,186	43,780	45,909	44,833	41,275	43,424	40,001	58,271	53,242	50,653	542,364
2010	47,688	43,708	56,031	58,100	58,399	62,962	62,241	63,564	60,840	65,730	64,213	59,337	712,125
2011				54,945	57,209	64,365	59,235	69,824	63,068	68,383	62,862	59,136	706,452

⁸ compiled by the Department from monthly reports submitted by the applicant

STATE OF MAINE, ACTING THROUGH THE . 32 PUBLIC BENEFIT
 STATE PLANNING OFFICE) DETERMINATION
 OLD TOWN, PENOBSCOT COUNTY, MAINE)
 JUNIPER RIDGE LANDFILL EXPANSION)
 #S-020700-W5-AU-N) PARTIAL APPROVAL
 (APPROVAL WITH CONDITIONS))

ATTACHMENT B
 WOOD WASTE AND CONSTRUCTION & DEMOLITION DEBRIS (CDD⁹) GENERATED IN MAINE

	2008		2009		2010	
	% of total	% of total	% of total	tons	% of total	tons
disposed in Maine landfills				368,388	95.2	466,826
Juniper Ridge (in Old Town)	31.7	39.2		155,747 ¹⁰	49.5	242,866 ¹¹
Crossroads (in Norridgewock)	24.2	17.1		68,075	14.2	69,737
Pine Tree (in Hampden)	2.6	7.1		28,264	-	(closed)
CDD fines used as alternative daily cover (ADC)	15.0	11.8		46,744	17.8	87,449
munio/quasi-municipal landfills	13.9	17.1		67,992	13.1	64,273
generator-owned landfills		0.4		1,566	0.5	2,501
fuel chips / energy (in ME, NH or Canada)	6.2	6.5		25,690	3.6	17,484
used as erosion control mix (in ME, NH & MA)	1.0					
exported to NH or Canada	1.1	0.1		198	1.0	5,000
stockpiled	4.0	-		5	-	
otherwise recycled, reused or beneficially used (in ME, NH or Canada)	0.3	0.4		1,510	-	
otherwise disposed		0.5		1,850	0.2	964
total wood waste and CDD generated				397,641		490,274

⁹ CDD includes oversized bulky waste (OBW) from incinerators and processing facilities

¹⁰ includes 50,581 tons of OBW from KTI

¹¹ includes 95,157 tons of OBW from KTI

STATE OF MAINE, ACTING THROUGH THE . 33 PUBLIC BENEFIT
 STATE PLANNING OFFICE) DETERMINATION
 OLD TOWN, PENOBSCOT COUNTY, MAINE)
 JUNIPER RIDGE LANDFILL EXPANSION)
 #S-020700-W5-AU-N) PARTIAL APPROVAL
 (APPROVAL WITH CONDITIONS))

ATTACHMENT C
 DISPOSAL LOCATIONS FOR SPECIAL WASTES GENERATED IN MAINE

DISPOSAL FACILITY	2008		2009		2010	
	% of total	tons	% of total	tons	% of total	tons
:						
Juniper Ridge Landfill, Old Town	63.4		66.0	316,952	79.4	344,377
Crossroads Landfill, Norridgewock	16.9		2.3	11,123	3.8	16,572
ecomaine Landfill, Scarborough	7.7		10.3	49,714	10.8	47,066
Pine Tree Landfill, Hampden	6.2		16.2	77,829	-	(closed)
City of Lewiston Landfill	3.1		3.6	17,246	4.1	18,023
City of Rockland Quarry	2.3		0.2	1,139	0.2	866
Tri-Community Landfill, Fort Fairfield	0.2		0.6	3,116	0.7	3125
City of Presque Isle Landfill	0.1		0.5	2,400	0.6	2614
Hatch Hill Landfill, City of Augusta	<0.1		<0.1	176	0.1	625
City of Bath Landfill	<0.1		0.1	406	0.1	487
Town of Hartland Landfill	0.1		0.1	440	0.1	445
TOTAL DISPOSED		593,966		480,541		435,099

STATE OF MAINE, ACTING THROUGH THE . 34 PUBLIC BENEFIT
 STATE PLANNING OFFICE) DETERMINATION
 OLD TOWN, PENOBSCOT COUNTY, MAINE)
 JUNIPER RIDGE LANDFILL EXPANSION)
 #S-020700-W5-AU-N) PARTIAL APPROVAL
 (APPROVAL WITH CONDITIONS))

ATTACHMENT D
 MUNICIPAL SOLID WASTE (MSW) GENERATED IN MAINE¹²

DISPOSAL TYPE	2008 -		2009		2010	
	% of total	tons	% of total	tons	% of total	tons
Incinerated: Maine Energy, PERC, ecomaine & MMWAC	74.3	491,000	74.2	491,000	71.1	469,707
Municipal/Quasi-Municipal Landfills	12.5	71,894	10.9	71,894	10.6	69,713
Crossroads Landfill in Norridgewock	10.3	65,529	9.9	65,529	10.7	70,500
Exported to NH or NB	1.9	24,857	3.8	24,857	6.1	40,606
Generator-Owned Landfills	0.8	4,202	0.6	4,202	0.5	2,956
Incinerator Bypass to Juniper Ridge Landfill	0.2	4,156	0.6	4,156	1.0	6,910
total amount of MSW generated (in tons)	692,508	661,638		661,638		660,392

¹² FEPR amounts are reported in the special waste table

STATE OF MAINE, ACTING THROUGH THE. 35 PUBLIC BENEFIT
 STATE PLANNING OFFICE) DETERMINATION
 OLD TOWN, PENOBSCOT COUNTY, MAINE)
 JUNIPER RIDGE LANDFILL EXPANSION)
 #S-020700-W5-AU-N) PARTIAL APPROVAL
 (APPROVAL WITH CONDITIONS))

ATTACHMENT E
 AMOUNT OF WASTE DISPOSED IN JUNIPER RIDGE LANDFILL,
 AFTER PURCHASE BY STATE OF MAINE

WASTE STREAM	2003 amendment application (estimate)		2003 (Oct-Dec) (actual)		2004 (actual)		2005 (actual)		2006 (actual)		2007 (actual)		2008 (actual)		2009 (actual)		2010 (actual)		2011 (from monthly reports)		
	(tons)	% of total	(tons)	% of total	(tons)	% of total	(tons)	% of total	(tons)	% of total	(tons)	% of total	(tons)	% of total	(tons)	% of total	(tons)	% of total	(tons)	% of total	
ash related waste	70,000	13.0	5,744	23.1	86,474	16.4	91,999	19.5	159,159	25.8	131,132	24.8	131,187	24.8	131,187	24.8	131,187	24.8	131,187	18.5	
FEPR	120,000	22.2	0	18.1	105,139	20.0	74,763	15.8	117,118	19.0	84,727	16.0	125,250	16.0	125,250	16.0	125,250	16.0	125,250	17.7	
OBW	20,000	3.7	0	4.9	29,225	5.6	9,649	2.0	21,405	3.5	51,438	9.7	96,520	9.7	96,520	9.7	96,520	9.7	96,520	13.6	
CDD	190,000	35.2	0	30.2	163,581	31.1	143,453	30.4	125,790	20.4	104,309	19.7	145,488	19.7	145,488	19.7	145,488	19.7	145,488	20.5	
CDD fines/fines for cover			0	3.1	42,320	8.0	41,109	8.7	45,148	7.3	46,744	8.8	87,449	8.8	87,449	8.8	87,449	8.8	87,449	12.3	
Misc. special waste ¹³	50,000	9.3	0	0.1	38,419	7.3	46,379	9.8	73,704	11.9	7,595	1.4	19,029	1.4	19,029	1.4	19,029	1.4	19,029	2.7	
Misc. non-special solid wastes			30	--	11,649	2.2	8,398	1.8	5,822	0.9	2,051	0.4	1,106	0.4	1,106	0.4	1,106	0.4	1,106	0.2	
Wood/bark/knois,			5,842	3.0	2,013	0.4	145	--	127	--	605	0.1	858	0.1	858	0.1	858	0.1	858	0.1	
Lime/slaker grit				2.7	5,784	1.1	4,402	0.9	3,130	0.5	6,205	1.2	3,229	1.2	3,229	1.2	3,229	1.2	3,229	0.5	
Treatment plant sludges	50,000	9.3	35,290	14.0	29,999	5.7	44,683	9.5	44,953	7.3	70,265	13.3	58,558	13.3	58,558	13.3	58,558	13.3	58,558	8.3	
MSW bypass	40,000	7.4	0	0.8	11,155	2.1	7,620	1.6	21,426	3.5	23,551	4.5	39,524	4.5	39,524	4.5	39,524	4.5	39,524	5.6	
TOTAL WASTE (tons)	540,000	100.1	46,906¹⁴	100	525,758	99.9	472,600	100	617,782	100.1	528,622	99.9	708,198	100	708,198	100	708,198	100	708,198	131% of estimate	
change from 2003 amendment application				47% of estimate			88% of estimate		114% of estimate		98% of estimate		131% of estimate		131% of estimate		131% of estimate		131% of estimate		

¹³ Miscellaneous special wastes includes oil spill debris, sandblast grit, non-friable asbestos, leather scraps, grit screenings, etc.

¹⁴ Sludge mixing program began

¹⁵ Sludge mixing program ongoing; limited waste acceptance

STATE OF MAINE, ACTING THROUGH THE 36 PUBLIC BENEFIT
STATE PLANNING OFFICE) DETERMINATION
OLD TOWN, PENOBSCOT COUNTY, MAINE)
JUNIPER RIDGE LANDFILL EXPANSION)
#S-020700-W5-AU-N) PARTIAL APPROVAL
(APPROVAL WITH CONDITIONS))

ATTACHMENT F (page 1 of 2)
OBW and FINES from KTI, and MERC & PERC BYPASS DISPOSED at
JUNIPER RIDGE LANDFILL (in tons)

	OBW - KTI	FINES - KTI	MSW BYPASS - MERC	MSW BYPASS - PERC	RDF - MERC
2008					
Jan.	1,618	4,483	0	0	0
Feb.	1,389	3,868	0	0	0
Mar.	1,696	4,301	0	0	0
April	1,703	3,502	1,897	0	0
May	1,855	2,717	5,466	0	0
June	1,541	4,281	1,673	0	0
July	2,025	861	1,352	0	0
Aug.	1,829	2,369	2,635	0	0
Sept.	1,956	3,184	3,008	0	0
Oct.	1,874	4,733	2,113	0	0
Nov.	1,758	3,183	170	0	0
Dec.	1,379	2,910	3,111	0	0
TOTAL	20,623	40,392	21,425	0	0
2009					
Jan.	1,590	3,259	0	0	0
Feb.	742	2,447	0	0	0
Mar.	1,445	3,209	0	0	0
April	1,441	1,535	1,889	0	0
May	1,838	0	5,817	10	1,064
June	1,960	6,134	2,978	341	245
July	3,050	4,608	2,767	472	0
Aug.	1,889	477	3,149	0	246
Sept.	1,753	1,627	1,606	0	219
Oct.	8,919	5,393	1,034	325	135
Nov.	14,514	2,330	653	0	83
Dec.	11,440	3,639	517	0	0
TOTAL	50,581	38,952	20,410	1148	1,192

STATE OF MAINE, ACTING THROUGH THE 37 PUBLIC BENEFIT
STATE PLANNING OFFICE) DETERMINATION
OLD TOWN, PENOBSCOT COUNTY, MAINE)
JUNIPER RIDGE LANDFILL EXPANSION)
#S-020700-W5-AU-N) PARTIAL APPROVAL
(APPROVAL WITH CONDITIONS))

ATTACHMENT F (page 2 of 2)
OBW and FINES from KTI, and MERC & PERC BYPASS DISPOSED at
JUNIPER RIDGE LANDFILL (in tons)

	OBW - KTI	FINES - KTI	MSW BYPASS - MERC		MSW BYPASS - PERC	RDF - MERC
2010				(soft layer)		
Jan.	12,143	3,000	1,146		637	0
Feb.	7,601	3,117	1,592		1,347	351
Mar.	4,959	5,389	2,038		0	679
April	7,591	5,805	4,101		0	0
May	8,554	5,328	5,355		0	0
June	8,797	10,845	1,769		0	0
July	6,042	6,438	2,655		0	0
Aug.	8,561	6,417	2,784		0	0
Sept.	7,999	9,458	1,210	2,124	0	0
Oct.	7,978	17,022	0	5,035	0	0
Nov.	8,252	12,833	0	4,777	0	0
Dec.	6,680	10,735	0	2,975	0	0
TOTAL	95,157	96,387	22,650	14,911	1,984	1,030
2011						
Jan.	6,989	9,155	0	824	0	0
Feb.	5,581	8,364	0	589	0	0
Mar.	8,559	10,945	376	0	0	0
April	8,138	9,718	1,306	0	0	0
May	8,157	7,968	4,929	0	0	0
June	9,355	9,104	2,445	0	0	0
July	8,787	9,636	2,528	0	0	0
Aug.	12,645	11,882	2,372	0	0	0
Sept.	10,284	12,541	2,199	0	0	0
Oct.	10,623	13,849	849	649	0	0
Nov.	4,398	9,583	0	1,785	0	0
Dec.	4,228	12,260	0	1,454	0	0
TOTAL	97,744	125,005	17,004	5,301	0	0

Appendix A

STANDARD CONDITIONS TO ALL SOLID WASTE FACILITY LICENSES

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL. VIOLATIONS OF THE CONDITIONS UNDER WHICH A LICENSE IS ISSUED SHALL CONSTITUTE A VIOLATION OF THAT LICENSE AGAINST WHICH ENFORCEMENT ACTION MAY BE TAKEN, INCLUDING REVOCATION.

1. **Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed by the licensee. Any consequential variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
2. **Compliance with All Applicable Laws.** The licensee shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
3. **Compliance with All Terms and Conditions of Approval.** The licensee shall submit all reports and information requested by the Department demonstrating that the licensee has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
4. **Transfer of License.** The licensee may not transfer the solid waste facility license or any portion thereof without approval of the Department.
5. **Initiation of Construction or Development Within Two Years.** If the construction or operation of the solid waste facility is not begun within two years of issuance or within 2 years after any administrative and judicial appeals have been resolved, the license lapses and the licensee must reapply to the Department for a new license unless otherwise approved by the Department.
6. **Approval Included in Contract Bids.** A copy of the approval must be included in or attached to all contract bid specifications for the solid waste facility.
7. **Approval Shown to Contractors.** Contractors must be shown the license by the licensee before commencing work on the solid waste facility.
8. **Background of key individuals.** A licensee may not knowingly hire as an officer, director or key solid waste facility employee, or knowingly acquire an equity interest or debt interest in, any person convicted of a felony or found to have violated a State or federal environmental law or rule without first obtaining the approval of the Department.
9. **Fees.** The licensee must comply with annual license and annual reporting fee requirements of the Department's rules.
10. **Recycling and Source Reduction Determination for Solid Waste Disposal Facilities.** This condition does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

The solid waste disposal facility shall only accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by 38 MRSA Chapter 13.

11. **Deed Requirements for Solid Waste Disposal Facilities.** Whenever any lot of land on which an active, inactive, or closed solid waste disposal facility is located is being transferred by deed, the following must be expressly stated in the deed:
 - A. The type of facility located on the lot and the dates of its establishment and closure.
 - B. A description of the location and the composition, extent, and depth of the waste deposited.
 - C. The disposal location coordinates of asbestos wastes must be identified.



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: January 2004

Contact: (207) 287-2811

SUMMARY

One of two methods is available to an aggrieved person for appealing a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner -- in an administrative process before the Board of Environmental Protection ("Board") or a judicial process before Maine's Superior Court. This FACT SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, will assist aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeals. A failure to file an appeal within the identified time periods will result in the Commissioner's decision becoming final.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24.

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes and photocopies are not acceptable. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

An appeal must contain the following information:

1. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
2. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
3. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
4. *All the matters to be contested.* As part of the appeal, the Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, *see* 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
