



# HOUSE OF REPRESENTATIVES

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Paul Mercer, Commissioner  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

January 24, 2018

Re: Juniper Ridge landfill license amendment application filed 11/27/17

Dear Commissioner Mercer:

On January 3rd, the Environment and Natural Resources Committee received a briefing from the Bureau of General Services regarding the Juniper Ridge landfill license amendment that has come before the department. I share my fellow committee members' desire that the committee not intrude into a regulatory matter, and to remain focused only on matters of state policy and statute. This letter represents only the concerns of myself, and those individual legislators on the committee who attach their signatures below, with regard to possible flaws in statute for which the committee is responsible.

The ENR Committee has advised by separate letter that the department consider holding a public meeting on the license amendment. During the committee briefing, I asked a number of questions that were not immediately answerable based on what appears in the amendment application and appendices. Since these questions are likely to come up during a public meeting, I am taking the liberty of writing some of these observations down in order to help the department prepare. There is no need to reply to this letter. However, if answers emerge during the normal course of processing the application, the department may later wish to update the committee at the department's discretion and convenience.

**Observation:** From the beginning, the state recognized that landfilling municipal solid waste (MSW) at Juniper Ridge Landfill (JRL) could undermine Maine's solid waste hierarchy. The Operating Services Agreement, the original JRL permit, and subsequent amendments all recognize that allowing municipal solid waste into JRL would put cheaper landfill capacity into competition with preferred methods of disposal. The current exception is supposed to be temporary.

A sample of relevant language:

### **Operating Services Agreement:**

Excluded Waste is defined on page 4. Agreement to operate the landfill in accordance with the hierarchy is on page 24.

### **Original JRL Permit #S-020700-WD-N-A:**

Condition 16a stipulates on p59: "With regards to the acceptance of MSW for disposal, consistent with its proposal, the applicant:

A. shall not dispose of unprocessed MSW from any source other than bypass from the following sources: PERC incinerator in Orrington and the Maine Energy incinerator in Biddeford; waste delivered under an interruptible contract with PERC; or waste delivered in excess of processing capacity at other MSW incinerators in Maine;”

In **Permit amendment #S-020700-WD-BC-A** the department found on p24 that limiting further disposal of MSW at JRL would better align the operation of JRL with the goals of the waste hierarchy, and that Casella should continue to pursue the establishment of arrangements that would accomplish that additional diversion. The Department also finds that the applicant must minimize to the greatest extent practicable the amount of MSW disposed at JRL, and must include in each annual report a summary of its efforts to avoid the disposal of MSW at JRL.”

The department also articulated on p15 the expectation that the landfilling of southern Maine waste at JRL was temporary:

“The Department further finds each municipality is free to select a disposal option for its MSW based on the criteria of its choice. As covered in detail elsewhere within this finding of fact, the Department finds that the applicant has adequately demonstrated the need for disposal of 81,800 tons per year of MSW on a temporary basis.”

Further, on p25 of the amendment, the department found that the March, 2016 deadline (later extended to 2018 by the BEP) “is appropriate to ensure that activities at JRL support, and do not subvert, the waste management hierarchy.”

Condition 5 stipulated:

“5. Casella shall continue to plan for, and will make its best effort to divert MSW from landfilling at JRL to the greatest extent practicable. JRL shall include in each annual report a summary of its efforts to meet this diversion requirement. This summary shall include, but not be limited to:

5.A. A list and description of all diversion options evaluated and/or pursued by Casella, including currently operating Maine waste-to-energy facilities as options;

5.B. A narrative detailing the specific efforts made by Casella to implement diversion options; and,

5.C. A narrative describing the results of Casella's evaluation/pursuit of MSW diversion options, including the volume of waste and diversion destination of MSW successfully diverted, and/or the specific reasons that MSW was not diverted to other destination options.”

Casella is to be commended for making significant investments in recycling in the state. Its pilot project with Scarborough and Exeter Agri-Energy is a big plus. The operator is also doing a good job of compacting at JRL, preserving airspace. However, during committee questioning, it was unclear how relevant any of these activities were in complying with Condition 5, since there was little documentation that the stranded waste was being reduced or diverted, and there was no evidence of a plan to find a permanent home for the waste.

Annual compliance reports list Casella's Zero-Sort Recycling facility and cardboard recycling programs as diverting MSW, but there is no documentation to suggest specific diversion of the stranded southern Maine waste. Likewise, the reports list diversion to incinerators, but that diversion appears to be pre-existing contracts. The reports list tonnage delivered to other landfills, and counts it as diversion from JRL, but this is normal waste-hauling by Casella's affiliate, Pine Tree Waste. In short, there is little evidence of diversion or a plan to relocate the stranded waste, as required by Condition 5. In five years, there appears to be no change. Indeed, the exact same tonnage of disposal

is being requested in the proposed amendment, evidence that there has been no substantive diversion of the stranded waste.

Fortunately, the applicant's letter to the department, dated December 14, 2017, is more informative. The letter makes several key points.

First, the applicant asserts that there is no more capacity at any of the remaining incinerators, and that the new Fiberight facility is maxed out. While perhaps presently true, during nearly the entire period of the current amendment, there was a tremendous amount of potential capacity under consideration. Both PERC and Fiberight were anxiously looking for enough waste to remain viable, and ecoMaine was actively looking for new customers. While the applicant has asserted that it could not get a favorable tipping fee at ecoMaine, it is worth noting that several midcoast communities agreed to terms during the same period, even though they are located farther away than the stranded southern Maine waste.

Second, the application asserts that due to cost, landfilling the stranded southern Maine waste is the only option that can achieve the "maximum extent practicable" standard. This is problematic because, as proposed, it is the applicant that solely determines practicability. Unless the department is informed of all attempts to find a new home for the stranded waste, and is provided with proposals and price quotes, it is impossible for the department to assess if the standard is satisfied, or even if attempts have been made. To the contrary, if the southern Maine communities currently enjoy lower tipping fees at JRL than is typical at most other communities, this supports the department's original concern that MSW at JRL subverts the hierarchy.

Third, the letter describes reasons why MSW cannot go to other Maine landfills. However, there is no mention of New Hampshire landfills located much closer than JRL. A round trip to Casella's North Country facility in Bethlehem, NH, saves 100 miles over going to JRL. And it's only half that distance to Turnkey in Rochester, NH. There may be a myriad of reasons why the applicant was unable to consider these alternatives – both are nearing retirement – but there is nothing in the record that suggests they were even investigated.

Fourth, the applicant asserts that it couldn't consider Crossroads in Norridgewock because transportation costs were too high. There is a special irony in this assertion, since the landfill is 56 miles closer than JRL to the Casella transfer station in Westbrook. The assertion that Crossroads will fill too fast once MRC waste starts going there is even more ironic. MRC had wanted to negotiate to bring its waste to JRL, but it was Casella that signed a deal with PERC precluding MRC from negotiating. This resulted in LD 1194, a bill advanced by MRC that asked the legislature to invalidate the agreement. The committee voted Ought-Not-To-Pass, because it did not want to interfere in private contracts between businesses, and because it did not want cheap disposal of MSW at JRL to subvert the hierarchy. A consequence of confused state policy means that southern Maine communities have enjoyed cheaper disposal at JRL, but not the eastern Maine communities that are actually near the landfill.

Lastly, the applicant asserts that additional separation or processing to remove recyclables or organics is not currently practicable. This begs the question: what is the plan? The Tri-county Solid Waste Group and Casella have had five years to plan for the end of temporary disposal at JRL. Instead, there appears to be no plan and no planning, just business as usual. Meanwhile, the MRC communities have been aggressively planning for their solid waste futures, while ecoMaine has rebalanced its portfolio of communities in order to decrease reliance on spot market waste.

Most of these observations are more relevant to the permitting process than ENR committee work, and they are listed now only because these same points may surface in the public meeting that the committee encourages, and the department may be asked to respond to them.

As a policy matter, the legislature created the hierarchy and created JRL. The legislature created split oversight of the state-owned landfill, where BGS has the ownership role and DEP regulates. For committee purposes, the three policy issues that might require committee attention are these:

- 1) Does extended landfilling of MSW at JRL subvert the hierarchy, over which the department has repeatedly expressed concern?
- 2) Has the legislature compounded the problem by exempting MSW from payment to the Solid Waste Management Fund, thus making landfilling an even cheaper option?
- 3) As a co-permittee for all JRL licenses, does BGS have any responsibility for seeing that permit conditions are met, or is the onus solely on the operator?

Sincerely,

Rep Robert S. Durbane  
Rep Stanley Paige Zyl  
Rep Lucia Fay  
Rep Jeff [Signature]

Senator Tom Santilli  
Ralph Tucker  
[Signature] Senate District 9  
Rep Denise Hadlow