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STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

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June 22, 2018

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RE: Juniper Ridge Landfill Solid Waste License Amendment #S-020700-WD-BL-A
Appeals by Edward Spencer and Bureau of General Services/NEWSME
Ruling on Proposed Supplemental Evidence

Dear Participants:

In a letter dated May 2, 2018, Board staff requested comment on the admissibility of the proposed supplemental evidence submitted in the appeals filed by Edward Spencer and licensee, BGS/NEWSME. Board staff also requested comment on the admissibility of two Department licenses referred to in the BGS/NEWSME appeal: Municipal Review Committee, Inc. and Fiberight #S-022458-WK-A-N and City of Bath #S-004991-WD-J-A.

Mr. Spencer did not comment on the admissibility of the proposed supplemental evidence.

In a letter dated June 1, 2018, BGS/NEWSME commented on the admissibility of Mr. Spencer's proposed supplemental evidence, objecting to Mr. Spencer's Exhibit #1 and Exhibit #4. In the event Mr. Spencer's Exhibit #1 is admitted, BGS/NEWSME requested that its May 25, 2018 letter from Gorrill Palmer to Don Meagher on "Coastal Resources Swap Agreement – Truck Impact" also be admitted. BGS/NEWSME also argued that the Department's prior licensing decisions are precedent for how the Department has applied the waste management hierarchy as a permitting standard in other cases and that discussion of these decisions should be allowed.

On June 20, 2018, Mr. Spencer commented on the content and admissibility of the Gorrill Palmer letter, but did not object to its admission.

Under provisions of Chapter 2, § 24(D)(2) of the Department's *Rule Concerning the Processing of Applications and Other Administrative Matters*,

The Board may allow the record to be supplemented on appeal when it finds that the evidence offered is relevant and material and that:

- (a) the person seeking to supplement the record has shown due diligence in bringing the evidence to the attention of the Department at the earliest possible time; or
- (b) the evidence is newly discovered and could not, by the exercise of reasonable diligence, have been discovered in time to be presented earlier in the licensing process.

Ruling on Mr. Spencer's Proposed Supplemental Evidence

- Exhibit 1: April 2018 truck delivery reports at JRL¹. The exhibit is admitted. The information is relevant to the finding in the Department's Order regarding provisions for traffic movement, which is an issue on appeal. The information could not have been presented earlier in the licensing process.
- Exhibit 2: Lien on the CRM (Coastal Resources of Maine) Facility. The exhibit is not admitted. The evidence pertains to a facility that is not the subject of the license and is not relevant to the current proceeding.
- Exhibit 3: March 28, 2018 MRC memorandum from Greg Louder to MRC Communities re: Interim MSW Delivery to Crossroads and JRL as of April 1, 2018. The exhibit is admitted. It is relevant to the Department's decision regarding acceptance of MSW at JRL. The letter is dated a few days prior to issuance of the Department Order, and could not have been submitted earlier in the licensing process.
- Exhibit 4: May 9, 2003 letter from Greg Louder (MRC) to Jack Cashman. The exhibit is not admitted. The letter was known and available to Mr. Spencer prior to the licensing decision and, with the exercise of due diligence, it could have been brought to the attention of the Department earlier in the licensing process.

Ruling on BGS/NEWSME's Proposed Supplemental Evidence

- Exhibit 1: Bangor Daily News article, dated April 6, 2018, "Tons of trash going to landfills due to Hampden waste facility delay"; and
- Exhibit 2: Knox Village Soup article, dated April 10, 2018, "Transfer station stops recycling no-longer-profitable plastics."
The news articles are not admitted. The articles, while related to capacity for the management of MSW, are not "the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs" (5 M.R.S. § 9057(2)).
- May 25, 2018 letter from Gorrill Palmer to Don Meagher re: "Coastal Resources Swap Agreement – Truck Impact." The information in the letter is relevant and material. It was submitted in response to the issues raised in the appeal and appellant Spencer's proposed supplemental evidence. As such, it arguably could not have been provided earlier in the

¹ Truck delivery reports were not filed with the appeal. Mr. Spencer subsequently filed April 2018 Monthly Special Waste Activity Report for Juniper Ridge Landfill dated May 14, 2018 by electronic mail on May 29, 2018.

licensing process. Given the admission of Mr. Spencer's Exhibit #1, the Gorrill Palmer letter is admitted to the record.

Ruling on Prior Department Licensing Decisions

- Municipal Review Committee, Inc. and Fiberight, LLC, #S-022458-WK-A-N (July 14, 2016). While listed in earlier correspondence as requiring a ruling on admissibility, the MRC/Fiberight Order is referred to in the Department's Order under appeal; therefore, the order is part of the licensing record and does not require a ruling on admissibility. Additionally, the Board may take notice of prior Department licensing decisions.
- City of Bath, #S-004991-WD-J-A (May 23, 2017). The Board may take notice of prior Department licensing decisions; therefore, the parties may refer to these orders in this appeal proceeding. This license decision does not require a ruling on admissibility.

Finally, discussion of exhibits not admitted to the record will be redacted from the appeal documents. Specifically, text will be redacted from the appeals as indicated below.

- Edward Spencer's Appeal:
 - Page 4, Uncertainty and Control, second paragraph. "I do not deny that there is uncertainty with the future viability of the CRM plant, ~~which currently has at least one lien against it (see exhibit 2)~~.
 - Page 6, Core Promises, as follows:

A major factor in the Department's approval of a time extension for MSW deliveries to JRL is to enable the MRC to accommodate its member communities. ~~It is interesting to reread a letter from MRC's Greg Louder to the state official who was implementing State ownership of JRL, Jack Cashman, on May 9, 2003 (see Exhibit 4 paragraph 2).~~

~~*"You indicated that, in efforts to ensure the long-term availability of the facility capacity for waste generated in Maine, key stipulations regarding future use of the facility include an express prohibitions on: 1) the disposal of unprocessed MSW and 2) the disposal of those wastes generated from out of state sources. MRC fully supports those stipulations while also recognizing the challenges that may arise with respect to implementation of the same."*~~

~~This letter is contained in a packet admitted to the record during the Expansion Hearing in Bangor in October of 2016. You may consider it new evidence and it is important enough to be admitted, although it is already in the record. The point is that the MRC has changed over the years from a fierce supporter of the Hierarchy, to one that relies on landfilling its members' wastes. There is a real possibility that the Fiberight/CRM facility will not be fully functional until after this initial one-year extension expires. At that point, we would be subject to all the efforts on behalf of these communities to make MSW into JRL a permanent accommodation, which would completely disable our Hierarchy at our only operating State landfill.~~

- BGS/NEWSME's Appeal:
 - Page 7. Strike footnote 6.
 - Page 8. Strike footnote 7 and the reference to Exhibit 2 at the top of the page. “See BGS & NEWSME Response to Comments at 1-2 and Exhibits 3 and 9 (March 1, 2018); ~~see also Exhibit 2 to this appeal.~~”⁷

The deadline for argument on the merits of the appeals is Thursday, July 12, 2018 at 5:00 pm. No additional supplemental evidence may be offered at this point in the proceeding. Following receipt of argument on the merits, the Board will schedule the matter for consideration by the Board at a Board meeting.

If you have any questions, you may contact Cynthia Bertocci at (207) 287-2452 or Katherine Tierney, Assistant Attorney General, at (207) 626-8897.

Sincerely,



James W. Parker, Chair
Board of Environmental Protection

cc: Service List