



April 25, 2019

**To Senator Carson, Representative Tucker, and members of the Committee on Environment and Natural Resources,**

This letter is intended to provide you with a simplified historical background on Maine's solid waste policy. I believe this context will be helpful as you consider the solid waste bills before you, particularly as they relate to the State owned Juniper Ridge Landfill in Old Town.

**Background:**

In the 1980s, new federal mandates forced changes in solid waste management, particularly in regard to leaky unlined landfills. Concurrently, some Maine municipal landfills were running out of capacity. Other New England states faced the same problems, and proposals to site commercial landfills in Maine began to surface.

Alarmed at the prospect of becoming a dumping ground for out-of-state waste, the Maine legislature passed sweeping changes to Maine's statutes. Most of that framework still governs today. One of the key decisions was to phase out commercial landfills, to be replaced by publically-owned facilities. This was in part because the Supreme Court had ruled that solid waste was an article in interstate commerce and its flow to private landfills could not be restricted by states. However, states could fully govern and control waste flow to their own facilities.

Statute also created the Waste Management Agency to oversee solid waste and, most importantly, site one or more state-owned and operated landfills. After years of trying, this effort did not fully succeed, the Agency was abolished, and its functions were divided between the State Planning Office (SPO) and the Department of Environmental Protection (DEP).

In 2004, Georgia Pacific announced its intention to close the Old Town paper mill. The Baldacci administration worked to save the mill, investigating ways to help the mill reduce costs. A 3-way deal emerged that appeared to be a win-win for all parties. The state would buy the mill's sludge dump using money from Casella from sale of some operating rights to the landfill. The mill's owner would then use the funds to buy a used biomass boiler, and Casella would provide cheaper wood chips produced from construction and demolition debris (CDD), most of it imported. As a result, the state became the owner of a landfill it had long sought. The mill could expect to lower its costs by \$1,000,000/year. Casella gained valuable landfill capacity.

It didn't take long for the wheels to come off. While all sides seem to have had a firm understanding of the deal, ambiguities began to emerge, coinciding with regulatory and market changes.

First, the legislature was pressed to authorize the deal during the very last days of the 121<sup>st</sup> session, after a brief hearing with little testimony, and before any of the actual contract details

had been worked out. Using “notwithstanding” language, the resolve authorizing the landfill bypassed statutory criteria for siting a landfill. While the City of Old Town was relieved that the mill closing would be averted, many local citizens were up in arms that a large landfill had been forced on the city and surrounding towns. Against this background of citizen outrage, the state was pressed to hold a series of public meetings.

Second, an Operating Services Agreement (OSA) was worked out between the state and Casella through the State Planning Office, with legal review by the governor’s office, and regulatory development of CDD rules by DEP. There was a lot of back-and-forth negotiation, revealed later by documents made public under Maine’s Freedom of Access Act (FOAA). In hindsight, it’s not clear that all parties shared the same understandings. Even today, DEP and the current “owner” of the landfill – the Department of Administrative and Financial Services (DAFS) - are at odds about how much the landfill was to be restricted to special wastes only, though with general agreement that it was intended to cover some municipal solid waste (MSW) in the form of front end process residue and bypass from waste-to-energy plants (WTE).

Third, the 30-year contract between the state and Casella set certain terms of solid waste policy into the agreement rather than in statute, especially around the definitions of in-state and out-of-state waste. The legislature later made an attempt to clarify the definitions in statute, but satisfied no one.

Fourth, the marketplace suddenly changed. In 2005, Massachusetts enacted a ban on landfilling unprocessed CDD. At the same time Massachusetts wanted to conserve its capacity, Maine had just agreed to import an unlimited amount. All the fears of Maine becoming a dumping ground resurfaced with greater shipments of CDD from Massachusetts.

Fifth, the rules changed. The landfill deal was designed specifically to fuel the Old Town mill with wood chips derived from processing CDD. But such fuel inevitably contains contaminants, such as lead from old paint and arsenic from pressure-treated wood. Such contaminants are generally captured by air pollution control equipment in the smokestack, but some risk remains. Furthermore, there had just been a recent incident at a boiler in Athens where the fuel pile caught fire, sending contaminants into the community. It was also learned that wind sometimes blew small contaminant particles from the fuel pile. The financial settlement from this event paid for a study of CDD fuel. The study determined that pollution control equipment successfully removed most of the contaminants from the smokestack, even when the fuel was spiked with contaminants. But when the chipped fuel was too small, it tended to be more likely to have particulates and contaminant emissions. The DEP developed CDD fuel standards, one of which mandated that small particles be screened out. This substantially diminished how much fuel Casella could hope to produce from CDD, and increased the amount of residue in need of landfilling.

Sixth, there were other solid waste issues occurring at the same time and shortly thereafter. Biddeford was unhappy with Casella’s waste-to-energy facility in the middle of town. Lewiston was on the brink of a deal to have Casella take control of its landfill. And the problem boiler in Athens was the same one that was moved to Old Town. All of these issues landed in the

legislature simultaneously, leading to the creation of a Blue Ribbon Commission on Solid Waste Management. Even this was controversial. The State Planning Office did not want a review, and tried to kill the bill with a big fiscal note. But DEP did want it, and killed the fiscal note by offering to fund it within existing department resources.

In 2006, Koch Industries bought Georgia Pacific and the mill, promptly moved its business line to other facilities, and shut down the Old Town Mill.

Whatever assumptions, expectations, and verbal assurances occurred 15 years ago, it's clear that many of them weren't met.

For the state, the rationale behind the Juniper Ridge Landfill (JRL) deal was twofold: to save the mill, and to fulfill the state goal of owning a landfill in order to control its solid waste future. But the mill closed anyway. A succession of owners attempted to revive it, but the promise of cheaper power was never realized. The biomass boiler proved unable to use the CDD fuel safely, and the new CDD fuel standards reduced the amount of fuel that could be made from CDD. Although raw CDD is still streaming into the state today, very little fuel is recovered, and even less is used by Maine biomass boilers. Almost all of it ends up in Juniper Ridge.

If the logic in 1989 was for the state to avoid being the final resting place for out-of-state waste, the 2004 decision to import out-of-state waste turned the notion on its head. If the idea was to have the state control its destiny by owning and controlling a landfill, turning it over to a commercial operator had mixed results. Hundreds of thousands of tons of waste cross the Piscataqua River Bridge northbound each year, and that is consistent with the original landfill deal, even if many of the anticipated benefits to the state have disappeared.

The state has also had to contend with the unintended consequences of creating and commercializing so much new landfill capacity. Under state law, landfilling is supposed to be the least desirable disposal method. But, it's also the cheapest, which sets up a never-ending conflict over what can be deposited at JRL. The authorizing statute was silent on the matter. The expressed expectations of all parties are ambiguous. Casella, as the operator, and DAFS, as the owner, have lately argued that Juniper Ridge should be treated like all other landfills, able to take unlimited amounts of MSW. But DEP is the agency in charge of leading Maine to a more sustainable future, while carrying out the policy directives of the legislature, and it takes considerable heat from a still-angry public for any perceived failures.

There are two provisions in the OSA that are unambiguous. Item 2.13a on page 24 requires the operator to operate the landfill following the state's solid waste management hierarchy which specifies landfilling as the least preferred disposal option. And item 1.17c on page 5 under Excluded Waste gives the department the power to exclude certain wastes, which it does in the JRL permit. The OSA specifies certain wastes that are acceptable, but leaves excluded waste to the department's discretion. Arguments from DAFS and the operator notwithstanding, Juniper Ridge Landfill is regulated differently than other landfills because the parties agreed to it.

It's been a bumpy road for the state, but it's also been a jarring ride for Casella. Initially, closing of the mill relieved Casella of many financial obligations spelled out in the OSA. The Agreement

required Casella to take Old Town mill waste at fixed prices for up to 30 years. It was also obligated to take waste from the mill in Lincoln. Furthermore, the Agreement required Casella to reserve a certain amount of capacity for the mills, even if the landfill filled faster than anticipated.

A Fuel Supply Agreement required that Casella subsidize the Old Town mill by providing 100,000 tons of low-cost CDD fuel to the mill each year. If the supply of CDD fuel was not sufficient, green wood chips could be substituted, but at a higher cost. With the closing of the mill, all of these responsibilities and Casella costs ended, yet the stream of imported waste to make the unneeded fuel continues unabated.

That's because of an amendment to the OSA in 2006. Under 1.17 of the original agreement, "Casella may bring construction and demolition waste generated outside the State of Maine solely for purposes of allowing Casella to generate biomass fuel required in connection with the provision of biomass fuel" to the mill. Under the new amended agreement with the SPO, Casella could bring in an unlimited amount of CDD from out-of-state to make fuel, landfilling the residue at Juniper Ridge, even if the mill no longer existed. Critics consider this agreement to be a proverbial blank check to import unlimited CDD waste.

The existence of this amendment was not revealed to the public until it was discovered through a FOAA request. Worse, the amendment was signed at a time when the Blue Ribbon Commission on Solid Waste Management was reviewing state policy on these exact issues, when the legislature was wrestling with solid waste, and despite a statutory mandate that empowered the Juniper Ridge Advisory Committee in Old Town to advise on contract changes. When the secret agreement was exposed, public outrage boiled over again. SPO Director Martha Freeman was summoned to a public meeting in Old Town to explain it to a furious crowd.

The agreement specifically addressed another Casella grievance that occurred when the DEP turned down its application for an expansion of the Pine Tree Landfill in Hampden. Casella has made statements in the past implying that there were assurances from the state that the creation of Juniper Ridge would not have an impact on the operation of Pine Tree. In reality, Pine Tree was being filled so quickly with out-of-state CDD that the Bangor Daily News covered the story on April 8, 2008:

*"In a public benefit application for the landfill submitted by Casella in 1997, the fill rate was estimated at 143,000 tons a year, at which rate the facility would reach capacity in 2020. Then in 2002 the statistics were revised and the landfill was estimated to reach capacity by 2012. But with the high volume of incoming waste in 2004 and 2005, the landfill is expected to be filled on or before February 2007."*

*"The DEP draft order indicated that the fill rates at Pine Tree had risen dramatically in just three years, increasing from 211,990 tons per year in 2002 to 604,094 in 2005."*

The Department declined a permit for expansion, closing the landfill by 2009. After the closure - consistent with the original intent of the 1989 law to phase out commercial landfills - the legislature passed a law in 2012 allowing the Crossroads Landfill in Norridgewock to expand. In

its comments to DEP on the 2019 Maine Materials Management Plan, Casella asserted that the public policy was “curiously abandoned.” In reality, the change addressed a concern that by commercializing the state-owned landfill, the state had created a monopoly it could not control. Not only did the legislature see fit to take this action, but it was also Recommendation B(9) in the final report of the Blue Ribbon Commission on Solid Waste Management.

“9. Remove the calendar limitation in 38 MSRA 1310-X(30)(B) related to contiguous property ownership and the expansion of commercial solid waste facilities.”

The 8-0 vote included a yes vote from the State Planning Office.

Yet another Casella grievance has been the difficulty in getting expansion permitted at JRL. Although the OSA term was for 30 years, and Casella put up 30 years’ worth of money to purchase the operating rights, the initial permit was for a fraction of the available capacity. Casella has always wanted to permit the landfill for its entire expected life, thus avoiding the high cost of repeated permit applications and the public scrutiny that comes with each application. As contemplated in the OSA, the state would provide reasonable assistance in getting expansion permitted, but with the explicit acknowledgement that DEP is the independent permitting authority. However, the OSA contained no provisions for periodic review of performance. Against the backdrop of citizen ire, permitting has moved slowly and incrementally ever since, much to Casella’s pique.

### **Conclusion:**

In the end, nobody is particularly happy. One waste-to-energy plant is gone and another reduced, greatly diminishing a major source of waste going to JRL. Paper mill wastes have disappeared. Yet, despite these major reductions, DEP reports that the fill rate at JRL has increased 32% since 2012, and the expected life of this state-owned asset is shrinking.

Since signing the OSA, Casella’s expectations about how much fuel it could produce were changed by new fuel standards. It experienced the closing of its Pine Tree Landfill while watching a competitor’s landfill potentially expand. It has seen a new law passed, subjecting the state-owned landfill to a Public Benefit Determination. It has not been granted a permit for full expansion of the site’s remaining capacity. And every permit change it seeks is met with a headwind of citizen resistance. Casella has also made a bona fide effort to improve recycling through its zero-sort facility in Lewiston, only to face an economic crash in the value of recycled materials.

Meanwhile, the state often disagrees with itself on how to honor the original deal while not compromising its goal of managing waste and materials sustainably. At this time, DEP and DAFS are in opposite corners.

At last, both the DEP and the Board of Environmental Protection (BEP) included a plea for help in their annual reports to the legislature this year, calling on the legislature to clarify state policy.

And, for now, that’s where the matter squarely sits.