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Admitted in: ME

August 18, 2016

James W. Parker, Chair  
Board of Environmental Protection  
c/o Ruth Ann Burke  
#17 State House Station  
Augusta, ME 04333-0017

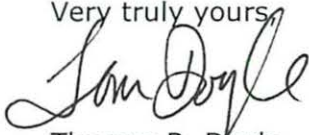
Re: Juniper Ridge Landfill Expansion  
DEP #S-020700-WD-BI-N and #L-024251-TG-C-N

Dear Chairman Parker:

On behalf of the applicants, enclosed please find the Response of State Bureau of General Services and NEWSME Landfill Operations, LLC to Motion to Strike of Edward Spencer.

Thank you very much for your attention to this response.

Very truly yours,



Thomas R. Doyle

Enclosure

cc: Service List

**STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

STATE OF MAINE BUREAU OF GENERAL  
SERVICES  
JUNIPER RIDGE LANDFILL EXPANSION  
CITY OF OLD TOWN, TOWN OF ALTON  
PENOBSCOT COUNTY, MAINE  
#S-020700-WD-BI-N  
#L-024251-TG-C-N

APPLICATION FOR MAINE  
HAZARDOUS WASTE, SEPTAGE AND  
SOLID WASTE MANAGEMENT ACT,  
and NATURAL RESOURCES  
PROTECTION ACT PERMITS and  
WATER QUALITY CERTIFICATION

**RESPONSE OF STATE BUREAU OF GENERAL  
SERVICES AND NEWSME LANDFILL OPERATIONS, LLC  
TO MOTION TO STRIKE OF EDWARD SPENCER**

The State Bureau of General Services (“BGS”) and NEWSME Landfill Operations, LLC (“NEWSME”) hereby file this response to the motion to strike from Edward Spencer. Mr. Spencer’s motion to strike has no merit and should be denied in its entirety.

**DISCUSSION**

Mr. Spencer’s motion to strike focuses on two categories of testimony. First, he seeks primarily to exclude testimony that he believes is either false or misleading. Such arguments about the merits of the case, however, are premature and must be reserved for the hearing itself. The standard that applies at this stage is simply that the Board shall exclude “irrelevant, immaterial or unduly repetitious” evidence. 06-096 CMR 3 § 20(A). A motion to strike is not an opportunity to argue the facts of the case, or to exclude evidence contrary to one’s position, as Mr. Spencer has asked the Board to do here. Second, Mr. Spencer also argues that certain testimony is irrelevant. In each of these cases, however, the testimony he contests is directly related to topics that the Board has already ruled are relevant or are specifically required by the rules.

## I. Term of OSA

Mr. Spencer begins by asking the Chair to strike Michael Barden's testimony that the term of the Operating Services Agreement ("OSA") between the State and Casella is 30 years. *See* Spencer Motion to Strike at 2. Mr. Barden provides this testimony as part of his explanation of the relationship between the parties to the OSA and the applicants in this proceeding. *See* Barden Testimony at 2. Despite acknowledging that Mr. Barden's statement "is not false," Mr. Spencer nonetheless asks the Chair to strike it as potentially misleading in case it "could imply to Board members that the State has an obligation to provide Casella/BGS with capacity for 30 years," even though Mr. Barden says nothing of the sort. *See* Spencer Motion to Strike at 2. In the alternative, he asks – although it is not clear from whom – for what he calls "a clarifying passage." *Id.*

There is no basis to strike this testimony. Mr. Spencer makes no claim that this information about the term of the OSA is irrelevant, immaterial, or unduly repetitious, but instead worries that the Board may read into this an obligation to provide capacity to NEWSME for the length of the contract. Mr. Barden's explanation of the 30-year term is not offered to suggest an interpretation of the OSA, but simply to explain the relationship between the State, as the owner of JRL, and NEWSME, as its operator. This is clearly relevant to understanding how the applicants will meet the various permitting standards that apply to this application, from questions about title, right, or interest to the day-to-day operations at Juniper Ridge Landfill ("JRL"). The Board is entitled to know that the parties have a long-term contractual relationship, given that it is being asked to approve a project for disposal of 9.35 million cubic yards of solid waste.



If Mr. Spencer is concerned about the implications of the term of the OSA, he may provide his own rebuttal testimony or cross-examine Mr. Barden on the truth of his statement. He cannot, however, have relevant testimony struck merely because he is concerned about it. His argument on this point, therefore, should be rejected.

## **II. Capacity Needs**

Mr. Spencer next argues that Mr. Barden's testimony includes "another misleading and possibly false statement" regarding the State's need for additional landfill capacity. *See* Spencer Motion to Strike at 2. Specifically, he focuses on Mr. Barden's statements that additional capacity will be needed in the next two years to avoid disrupting in-state waste deliveries that are currently handled at JRL; that the only commercial landfill in Maine licensed to handle these waste streams does not have the capacity to handle it after 2020/21; and that the State's other landfills cannot handle it, either. *See* Barden Testimony at 4.

This testimony provides relevant background information under the waste management hierarchy about solid waste disposal options in Maine if this application were to be denied. Mr. Spencer makes no effort to dispute its relevance, but rather attempts to argue that it is misleading or inaccurate. While he is entitled to pursue his concerns in rebuttal testimony or on cross-examination, the fact that he disagrees with Mr. Barden's analysis is not a basis to exclude it here. Thus, Mr. Spencer's argument on this point should be rejected, as well.

## **III. Alternative Daily Cover**

Mr. Spencer's third topic relates to what he calls "a discrepancy" between the testimony of two witnesses, the City of Old Town's Bill Mayo and Casella's Toni King. He argues that they offer inconsistent evidence on the use of alternative daily cover ("ADC") at JRL and therefore that one must be false. Rather than attempt to explore this issue through cross-

examination at the hearing, however, and with a thinly veiled slight at Ms. King's credibility (because he has never known Mr. Mayo to deliberately misstate facts), Mr. Spencer incredibly invites the Chair to decide whose testimony on this point to strike. *See* Spencer Motion to Strike at 2.

As an initial matter, even a cursory review of the testimony in question demonstrates that Mr. Spencer is wrong. Mr. Mayo cites a 20% figure in reference to the use of construction and demolition debris ("CDD") fines as ADC used at JRL. *See* Mayo Testimony at 2. Ms. King cites a 30% figure in reference to *all* types of ADC, including CDD fines. *See* King Testimony at 3 (stating that about 30% of the waste accepted at JRL is ADC). In fact, her very next sentence makes this crystal clear, had Mr. Spencer taken the time to read it carefully: "[t]hese materials include ashes, short paper fiber, and CDD fines." *Id.* Thus, the CDD fines that Mr. Mayo was talking about are a subset of the ADC that Ms. King was talking about, and thus their testimony is consistent.

More importantly for these purposes, once again, Mr. Spencer fails to appreciate that questions about the merits of testimony is not a basis for a motion to strike. There is no attempt here to show that the evidence offered by Ms. King is somehow not relevant to the permitting standards. Thus, as before, his request that the Chair strike the testimony of one or the other on this point should be denied.

#### **IV. Oversized Bulky Wastes**

Mr. Spencer next turns to two issues related to testimony by Ms. King about oversized bulky waste ("OBW"). First, he objects to her characterization of the quantity of OBW as "very low volume," because he believes that 60,000 tons per year is a lot of waste. *See* Spencer Motion to Strike at 3. Second, he also objects to her testimony about compliance with one of the

conditions of the Public Benefit Determination (“PBD”) related to OBW, noting that he has been told repeatedly that testimony about the PBD would not be allowed. *Id.*

With regard to Ms. King’s characterization of the volume of OBW as “very low volume,” this is clearly a matter of opinion, not legal relevance. Ms. King is being offered as a knowledgeable waste management witness, and, in the context of a facility that is anticipated to accept approximately 700,000 tons of waste per year, it is not difficult to understand why she might characterize a waste stream that comprises less than 9% of that as low volume. If Mr. Spencer feels that it is misleading, he is free to characterize it as he desires in rebuttal testimony or ask about it on cross-examination, but it is clearly relevant.

With regard to his objection to Ms. King’s testimony about Condition 3 of the PBD, the Board Chair has explained – at Mr. Spencer’s prompting – that “to the extent the Public Benefit Determination imposes conditions on any license that may be issued in this proceeding, *including limits on the types and volumes of waste*, those limits are arguably relevant and may be addressed in testimony and cross-examination.” Third Procedural Order at 4 (emphasis added). Condition 3 of the PBD specifically states that when a license is issued for the expansion of JRL, the Department is to establish a limit on the tonnage of OBW “based on the results of annual demonstrations required pursuant to 06-096 CMR 409.2.C, that waste processing facilities that generate residue requiring disposal” have met the recycling requirements. PBD at 20.

Ms. King’s testimony that there do not appear to be any such waste processing facilities that generate residue requiring disposal that have not met the recycling standard, and thus that this condition is no longer applicable, is directly responsive to the Chair’s ruling. It is relevant because if the Board accepts this evidence as true, there should be no OBW limit at all. To be sure, the Board will have the final say on this condition, not Ms. King. Ms. King is, however,



entitled to provide factual testimony to the Board to help them make that decision. Thus, this testimony is relevant and Mr. Spencer's request to strike it should be rejected.

**V. Relevant Metrics**

Mr. Spencer's last argument is that Ms. King should not be allowed to offer her opinion as to the relevant metrics for measuring compliance with the waste management hierarchy. *See* Spencer Motion to Strike at 3 (stating that "it sounds as if Casella is lecturing BEP and DEP on how to evaluate their efforts at compliance"). He therefore argues that her testimony about relevant metrics should be struck as irrelevant.

The waste management hierarchy rules provide that an applicant for a solid waste disposal facility "must" include evidence demonstrating compliance with the hierarchy, including:

a description of the reduction, reuse, recycling, composting and/or processing programs/efforts that the waste is or will be subject to, and that are sufficiently within the control of the applicant to manage or facilitate, including *relevant metrics* to evaluate effectiveness . . . .

06-096 CMR 400 § 4(N)(2)(a) (emphasis added).

Thus, the rule specifically directs the applicant to suggest to the Department the relevant metrics that Mr. Spencer finds "irrelevant." His argument on this point, therefore, should also be rejected.

**CONCLUSION**

We respectfully request that Mr. Spencer's motion to strike be denied in its entirety.

Dated: August 18, 2016



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