

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

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) EDWARD S. SPENCER
) INTERVENOR
)
) RESPONSE TO
) MOTION TO STRIKE
) FOR BOARD OF ENVIRONMENTAL
) PROTECTION PUBLIC HEARING
) FILED AUGUST 18, 2016
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Dear Chairman Parker,

Please accept this Intervenor's Response to the Casella/BGS Motion to Strike parts of my testimony and that of my expert witness, Dr. Stephen Coghlan. I will do my best to address their concerns in the order they were presented.

A. Testimony Concerning Provisions of the Public Benefit Determination (PBD)

The primary purpose of my testimony is to demonstrate that Casella/BGS have not fully complied with the conclusions and conditions of the PBD. The Chair has ruled that the PBD was relevant to the Expansion Hearing in that it imposes conditions on the overall JRL DEP license. Mr. Doyle tries to argue that Commissioner Aho's recommendation to Casella/BGS that they amend the OSA has no meaning whatsoever, and that it is not an "enforceable obligation". As a member of the Public, it is my feeling that the Regulator (Commissioner Aho in this case) has full authority to make recommendations to the Regulated Entities "(Casella/BGS, in this case). One of the definitions of "recommend" offered by Mr. Doyle is "to represent or urge as advisable or expedient". Instead of offering an explanation of why they feel changing the OSA to reflect changes at JRL involving large volumes of CDD processing residues is not necessary, Casella/BGS only say that her recommendation is not an "enforceable obligation". It is understood that DEP/BEP has no authority to change the OSA; however, DEP/BGS have the authority as Regulator of Casella/BGS to deny a permit if they feel that their rules and conditions have not been met in a timely fashion.

Toni King, a witness for Casella, discusses the PBD in her July 29, 2016 testimony. Casella feels that there should be no limit put on OBW deliveries to JRL, even though this was a Condition of the PBD. It seems that whether DEP labels corrective actions as Findings of Fact, Conclusions, or even Conditions of Approval, Casella/BGS think they have the right to pick and choose which parts of the license to comply with. These issues are relevant, and Chair Parker has expressed in front of the full Board his curiosity about why Commissioner Aho wanted the OSA changed; I was offering an explanation from my perspective.

B. Testimony About the Role of the Landfill Advisory Committee (LAC)

The Juniper Ridge Landfill Advisory Committee came to existence in the same legislation that authorized the State to purchase a generator-owned landfill (by Georgia Pacific's Old Town Mill) and turn it into JRL. Indeed, Mr. Barden's Testimony of July 29, 2016 discusses in some detail what the role of the LAC is and what his duties are in regard to the Committee (Page 2). In my July 29 testimony I was using Casella/BGS's failure to disclose of a new Leachate Disposal Agreement in a timely manner as an example of their habitual failure to inform the LAC of planned landfill changes before they are made so that they can fulfill their obligations under to statute to "1) Review contracts, applications and other documents relating to construction, permitting and operation of the landfill; 2) hold public meetings to obtain feedback of residents concerning the landfill and any permit applications, contracts or other provisions relating to the landfill...". If the LAC is not informed of planned changes at JRL until those events have already taken place then their role as an Advisory group has been neutralized, to the detriment of the Public who looks to them to serve as a "liaison between the towns and landfill operator or state

owner...". (These quotes are from the footnote at the bottom of the second page of Mr. Barden's testimony.)

Mr. Barden's testimony is relevant to the Expansion Hearing as far as the LAC is concerned, and so is mine. Otherwise, they should both be struck, which would hurt the comprehensive overview of the JRL Expansion Hearing. Mr. Barden offered a history of the JRL and his functions since BGS became owner. My testimony also offers some history in regards to the LAC, and some constructive criticism. In fairness to Mr. Barden and BGS, this habit of only partially informing the LAC of JRL events started with the SPO as landfill owner. The common denominator is Casella.

C. Testimony About Leachate Disposal

In her email of June 3, 2016 Cynthia Bertocci, Executive Analyst for the Board, identified "major aspects" for the Applicant to be prepared to offer testimony on and discuss at the Hearing, "even if the topic was not specifically identified by an intervenor." Among these primary issues Ms. Bertocci mentioned "...leachate collection..." and "Monitoring of...leachate...".

Mr. Doyle (with Mr. Laubenstein) is correct saying "The purpose of this testimony is to question whether the leachate is being handled properly." (Page 5 of Motion). Leachate is the liquid that settles to the bottom of a landfill. It is toxic and very noxious, and as such is a pollutant. JRL produces leachate by the millions of gallons annually. The requirement in 1310-N(1) says that before a waste facility is issued a license that the "Facility will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance...". To the Public, the emphasis here is that it will not Pollute "any water", not just the waters directly adjacent to or underneath an expanded JRL. The waters of the Penobscot River are precious not just to the Penobscot Nation but to all humans and living creatures in the entire watershed. As a society we have invested tens of millions of dollars in the Penobscot River Restoration Project (PRRP).

My testimony about the wastewater treatment plant at the former Old Town Mill raises questions about whether this is an adequate destination for treatment of JRL's leachate, now and in the future. As the Operator and Owner of JRL, Casella/BGS have joint ownership and control of leachate from JRL. They have a mandate to "not pollute any water of the State", and it is my contention that the JRL leachate would be less harmful if it were sent to the Brewer wastewater treatment plant. This is especially true given the uncertainties and transient nature of the Old Town Mill's ownership. It would appear that Casella/BGS do not want to acknowledge their obligations regarding leachate disposal.

Testimony of Dr. Stephen Coghlan

Once again, I will discuss the Motion to Strike items as presented by Casella/BGS in the order presented by Doyle/Laubenstein.

A. Testimony About Biophysical Economics

At the beginning of his testimony (Page 2) Dr. Coghlan frames his analysis of the Expansion Application as "...a 'systems ecology' perspective of how landfills (and the expansion thereof) relate to the interconnections among the human economy and the natural environment from which we humans derive our sustenance and wealth, including fisheries

and their supporting watersheds.” His discussion of Biophysical Economics (BPE) may be viewed as offering an alternative way of evaluating our relationship with and effects on our environment. Contrary to what Doyle/Laubenstein believe, the discussion on BPE is intended to assist the Board members in an analysis of JRL Expansion’s effects on our human and ecological system. This testimony is described by Doyle/Laubenstein as “...almost entirely focused on global issues...” when in fact he offers specific examples of the harms caused by overdevelopment and the benefits to society when efforts are made to enhance our local river systems, such as the Penobscot River Restoration Project (PRRP). Regardless of the theory of economics utilized by Dr. Coghlan or the DEP, their conclusions are the same: “...our first priority must be on waste reduction...”. (Coghlan at Page 10, State Hierarchy). To strike all references to Biophysical Economics from this testimony would be to deny the Board insight as to Dr. Coghlan’s overall methods of evaluating a JRL Expansion.

B. Testimony About Climate Change

Doyle/Laubenstein urge the Chair and Board to strike all testimony about Climate Change. I can think of no issue More Relevant to planning for how we generate and dispose of waste over the short- and long-term than climate change. I urge those making that decision to carefully reread Dr. Coghlan’s section on Climate Change. He carefully lays out the theory and evolution of Climate Change research, led by scientists such as Dr. James Hansen of NASA. He then tries to logically predict what sort of changes will/would occur locally under Climate Change scenarios and offers scientific opinion about how this would affect landfill design and function throughout the lifetime of JRL. The threat of extreme precipitation events is ignored at our peril, and it is a certainty that the scientists and engineers at DEP and the US Army Corps of Engineers have given this possibility serious consideration. Dr. Coghlan also urges us to “reassess the risk posed to all fisheries and wildlife habitat, including that for endangered Atlantic Salmon.” (Page 11). He describes in detail how changes in climactic conditions stress already-threatened species.

Climate Change is caused by excessive emissions of greenhouse gases. Landfills are one of the leading sources of man-made Greenhouse Gases, including methane, which is many times more harmful to our finite atmosphere than carbon dioxide; fugitive releases from many sources, including landfills, are major drivers of global warming but are often underestimated. Discussion of how Climate Change could affect an expanded JRL are critical, especially as it relates to wetlands and flood plain planning. Taking a broader view, ocean acidification is being documented as a fact along the coast of Maine and poses an extreme threat to our fishing economy (think of lobsters being unable to form shells).

C. Wetland Valuation

Ms. Bertocci’s email of June 3, 2016 lists major aspects of the JRL Expansion Hearing and includes “Wetlands alternatives analysis” and “Compensation plan” as relevant issues. In Chapter 310, Section 5.C. it says “Compensation is the offsetting of a lost wetlands function with a function of equal or greater value. The goal of compensation is to achieve no net loss of wetland functions and values...”.

Dr. Coghlan introduces an alternative approach to wetlands valuation. This concept of eMergy systems analysis may seem like a radical concept to some, but it is based on

objective foundational scientific concepts such as the 2nd law of thermodynamics. As he says on Page 14, "...the point is that eMergy synthesis is a well-developed, scientifically rigorous, and ostensibly objective valuation procedure, albeit one not considered in the Application." These issues are part of the NRPA application. DEP scientists and those at the US Army Corps of Engineers may very well utilize eMergy as one way of looking at wetlands value. Given this distinct possibility, it is ludicrous for Doyle/Laubenstein to claim "The Board does not have the authority to attempt to apply anything like it here." (Page 8).

D. Dr. Coghlan's Citations

The applicants, Casella/BGS, want the Board to strike all of Dr. Coghlan's references because either they are links to documents or not submitted as exhibits. There are 43 References listed in his testimony, which is written as standard scientific literature and acceptable throughout the world as such. His references, mainly consisting of peer reviewed published books and scientific journals, reflect sources of his scientific knowledge, and cannot usually be distilled to one quote on a single page. As far as links to documents, in this day and age much information only exists in digital repositories, such as the NOAA Fisheries sources cited which has no print equivalent.

In order to furnish the documents necessary to satisfy Doyle/Laubenstein, we would have to have printed 28 copies of items such as the first listed Reference by Bardi. This one item is 126 pages. Some are of shorter length, and if it would be helpful we could print and distribute those prior to the Hearing.

What about the Applicants' testimony and submissions? Doyle/Laubenstein's Motion to Strike contains a link to a dictionary definition on Page 3. Should Mike Booth be required to provide the textbooks on which he bases his knowledge of engineering design? In their Conclusion, Doyle and Laubenstein insinuate that to "...help ensure an efficient and fair hearing for all parties..." the Board should throw out Dr. Coghlan's comprehensive list of References. This would be a great disservice to the Board as well as to scientists working on the Expansion Application.

CONCLUSION

Hopefully you will give these responses careful consideration. We should remember that the Board has taken jurisdiction of this Hearing because JRL Expansion is a matter of great importance to the people of the State as a whole. The bottom line on submission of testimony is whether or not the Board and others can access the information. To require intervenors to produce tens of thousands of pages of printed references in order to make for an efficient Hearing would be an awful precedent to set, and possibly grounds for Appeal. Should Casella and BGS wish to contend with anything submitted as our testimony, they have the right to add expert witnesses for the Hearing.

Respectfully submitted,

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