

## **JUNE 2003**

### **2003.06.01: ADAMS DISTRIBUTES TERM SHEET**

The "Non-Binding Term Sheet" that in effect became the operating agreement, including details about provision of C & D for biomass fuel, was distributed by Adams to Parr, Cashman, Karrass, Wyke and Lincoln at 10:53 p.m. from Adams' home e-mail address.

It is already a "redline" and there is no indication where it came from originally. [NB However, see Howard e-mail of Monday, 2003.06.02 to which a revised term sheet is attached, dated 2003.05.30]

Needed, to get it back to GP "by COB Monday."

It is requested to set up a meeting of the "in-state team" at 3 p.m. Monday 2003.06.02 in the Governor's office.

In essence, the document names the "state" in terms of sale agreement and obligations of operating agreement. Many of the provisions here went over to Casella after their proposal was accepted.

### **2003.06.01: HOWARD ON LPP / CARPENTER RIDGE**

From Howard to Cashman, Adams and Parr.

Note that this is a Sunday.

Howard had retrieved documents from his firm's (PA) archives related to the Carpenter Ridge sale agreement. Apparently they were involved in that one, too. Here, he is advocating for a "waiver of sovereign immunity" and two other provisions -- apparently to the advantage of their client that they would like to have included in the present deal.

"1. A waiver of sovereign immunity; 2. A commitment to appropriate for its performance on a priority basis above all other MWMA functions; 3. A reverter in the form of a \$1.00 purchase option in the event of MWMA default, secured by a mortgage on the site and a security interest in the site data."

### **2003.06.02: ADAMS ON CARPENTER RIDGE**

Adams replies to Howard e-mail suggesting provisions from the Carpenter Ridge agreement. He says this is what he would like to follow in general, but that the specific items Howard was bringing up would be different in this case.

Of particular note: "Indeed, I believe that building on this agreement will provide some political cover for both parties." [NB Exactly why would political cover be needed by anyone? Why would structuring the deal in a similar way as Carpenter Ridge take heat off this deal?]

### **2003.06.02: MRC DISTRIBUTES RESOLVE**

Though received by e-mail the afternoon of Friday, May 30 from its attorneys, Lounder did not distribute the text of the Resolve until morning of Monday, June 2. Lounder stated that "MRC should testify in favor" and that he would be distributing something for the Board to review later in the day.

### **2003.06.02: NOTICE OF HEARING**

Notice of the hearing scheduled for the following day 2003.06.03 was printed in the Bangor Daily News 2003.06.02. In full the notice read:

"Public Hearing: Tuesday June 3, 2003. 12:30 pm, Room 437 State House [new par.]  
Resolve, to Authorize the State Purchase of a Landfill in Old Town, Maine. [new par.]  
Contact Person: Elizabeth A. Reinheimer, 100 State House Station, Augusta, ME 04333-0100, 287-4149 [new par.] June 2, 2003."

### **2003.06.03: LEGISLATIVE PUBLIC HEARING**

An e-mail sent Friday May 30, 2003 at 11:53 a.m. by Jack Cashman notes the scheduling of this meeting. See directory printout, in first group from Gov's office.

Original scheduling was distributed by e-mail from Elizabeth Reinheimer 2003.05.30 at 9:59 a.m.

[NB The elapsed time between scheduling and hearing was 4 days (including a weekend) and 3 hours.]

I don't have copies of the e-mails about this meeting, which might shed light on who was invited.

[NB When was the committee workshop? Was it before or after this date?]

Notes distributed after visiting Augusta to review legislative documents include the following points:

Testimony was given by the following people, all checked as "proponents": Dunlap, Lord, MacDonald, Cashman, Reynolds, Bostic (GP), Feck (GP), and St. Peter (Local 80). Written testimony also received from MRC / Lounder, stating support with

reservation that it does not want to become a competitor with the landfill for MSW, would not want unprocessed MSW allowed. Also a baseline preliminary report from Woodard and Curran was also in the file, stating that though there was no obvious evidence of pollution emanating from the site, however since most of the important substances that would be indicators were not being tested, a revised testing program and further analysis would be needed.

### **2003.06.03: MEETING ON TERM SHEET**

This is noted in e-mails involving Curtis, Howard, Adams, Cashman, Parr, Toma, Helen Edmonds, Bostic, Delahanty, Feck, Douglas, Ronald Allen and Doyle.

They wanted a meeting immediately after the hearing, but Cashman and Adams are "tied up" so they will be meeting at 3.

In a reply e-mail from Mike Curtis at 6 a.m. June 3, "We should plan to have Tom Doyle attend the public hearing today (if available) to answer any questions regarding the legal aspects of the proposal."

[NB This is exactly the point I was making at the Jan. 21 meeting, when questioning why Tom Doyle was asked for an interpretation of the statute, when SPO and other state officials were there and presumably able to do that. This e-mail is addressed among others to Kurt Adams and Chris Parr -- they would not be able to explain the "legal aspects" of this?]

### **2003.06.03: OLD TOWN COUNCIL LETTER SUPPORTS THE RESOLVE**

[NB See also Public Participation timeline distributed by Casella and the State. "June 2003. Old Town City Council public meeting resulting in Resolution supporting legislative Resolve." No record of any meeting held in Old Town related to the letter signed in support of the resolve by Council members, signed the day of the legislative Public Hearing, June 3.]

### **2003.06.03: TOWNSEND MEMO DISTRIBUTED AGAIN**

See also 2003.05.27. For some reason the same memo was sent again, dated June 3.

There may be some change in the text, but I don't notice it.

I don't have a cover sheet for it -- was it just an attempt to steer the process at a very late date?

### **2003.06.04: LENNETT ON C&D ETC.**

This e-mail from Lennett to Parr and Adams comments on the term sheet and on the redlined Resolve. He mentions issue of "waste handling fee to support DEP/SPO" -- perhaps it is missing and should be there? Also mentions C&D, mentioned as part of license transfer paragraph -- "Why are these two issues combined like this ...?"

[NB This is an ongoing question, perhaps one of the reasons Betty Lamoreau calls this RFP "unique" see 2003.1008 Michael High meeting and memo.]

A new term sheet was distributed at 11:27 a.m. "reflecting comments received this morning" by Howard.

This new draft under title "No Disposal Fees" says: "The state will not charge any disposal or waste handling fee on disposal of Georgia-Pacific mill waste, or Georgia-Pacific or Lincoln biomass ash ..." It shows no change from earlier drafts.

In a reply e-mail dated 2003.06.05 Dave Fitts from Risk Management (part of state contracting oversight) suggests the "No Disposal Fee" section should include "language that limits mill waste to be only waste from GP mills located in Maine and that the waste or ash be only from renewable resources grown in Maine. The proposed language I fear could allow waste from other GP mills to be dumped in Maine for no fee."

[NB It may be of interest to note that these various term sheets, distributed by PA lawyers, are marked "for discussion purposes only, not official administration policy"]

#### **2003.06.04: MRC REPORTS ON HEARING**

"Yesterday's hearing went well. There was no voiced opposition. Casella and WMI were there but did not testify. There was not a lot of depth to committee questions, but several key legislators were conspicuously quiet." Louder promised further report on "the Committee's handling of the bill."

[NB Are we to wonder at the "no voiced opposition" and the "conspicuously quiet" legislators?]

In his follow-up memo of 2003.06.09, Louder notes on the legislation that it was reported out 11-2 ought-to-pass, and adds: "Note the new calling [sic] for up to a \$20,000 non-refundable deposit for respondents to the RFP for landfill operations."

[NB This was clearly signaling trouble for a potential bid from them.]

In the same memo, Louder reported receiving a letter from Pine Tree (Casella) that "does not accurately characterize" their earlier discussions. Louder ponders what Casella is getting at here. "Along that line, we received reliable word that Casella

believes that MRC and PERC are actively working with Cianbro to put a proposal together."

Louder reports that those discussions are in fact progressing.

A partial answer to Louder's questions about Casella came in the form of "an interesting chat with Sam Zaitlin" on 2003.06.09. "He mentioned that the 'lack of directness aspect, proposal-wise' of the Pine Tree letter was due to legal curtailment..... [ellipses in original] that is, where this is all headed to an RFP process, if Casella made an offer to us, the AG's office may view it as dissuading a prospective bidder. [new par.] I'll discuss this further with Dan McKay."

To this, Robert Farrar, MRC Board member from Bangor, wrote: "Greg -- I get it! The MRC is seen as a real player in this process -- which may hurt our chances to negotiate an up-front deal with Casella. Be careful what you wish for !! ..... [ellipses in original] I still think we are in decent shape, all things considered."

[NB Several thoughts. One is that the suspicions about "dissuading a prospective bidder" seem to be on the mark in terms of how this all evolved in the end. Secondly, if what we have been advised as to the MRC's being, as a public entity, not subject to the same restraint of trade rules as private entities would be, why then would Louder and Zaitlin be engaging in this conversation as well as in the "lack of directness" in earlier communications?]

#### **2003.06.04: NRC APPROVES RESOLVE**

The Natural Resources Committee vote on the Resolve was reported in the BDN on 2003.05.05. In this article was the first public hint of the scope of this project: "Two committee members were concerned about the potential for the landfill to be leased to a third party by the state and operated as a full-blown solid waste facility on a scale similar to the Pine Tree Landfill in Hampden." In addition, Anita Peavey-Haskell "... said she felt the administration was trying to rush the proposal by lawmakers in the waning days of the current legislative session without giving residents of Old Town and the area the chance to weigh in on the plan at locally scheduled public hearings." Cashman replied that "the advisory board would serve as a public watchdog for the Greater Old Town community" according to the BDN. Joanne Twomey was quoted, "'I've deal with the Department of Environmental Protection and I've dealt with toxic ash being spread in my community which they said was lime dust until I collected it to prove it was unacceptable levels of lead and dioxin,' she said. 'So I'm very skeptical about this proposal and I have a lot of concerns,' she said."

See also Penobscot Times article of 2004.01.29, after the Elks Club meeting, reporting in depth on the issues raised by Twomey, Makas and Linda Rogers McKee, Democrat of

Wayne. McKee is reported as saying: "The question I have to ask is when those hearings were held in Old Town for the permitting of the paper mill to have the landfill (back in 1991 when Fort James first applied for a landfill permit), were the people, in fact, at that point aware that the landfill would reach the proportions or the magnitude of Norridgewock or of Sawyer Mountain in the future or did they think that it would be a paper mill landfill only?"

In a Penobscot Times story of 2004.02.12, taking a look back on the legislative process (DEP: Off-site public hearings are rare) it was stated that "Public notices are posted in the weekend editions of the dailies in the state's three largest cities: Portland, Lewiston, and Bangor. The public notice for LD 1626 appeared two weeks before the public hearing, held in Augusta June 3, 2003. A work session was held the following day, June 4."

[NB This has been checked -- the notice for the hearing was published only one day before, Monday 2003.06.03. Two weeks before the hearing on the Resolve would have been Tuesday, 2003.05.19. A full two weeks notice in the weekend paper would have been Saturday, 2003.05.15. If the notice had been in the following week, it would have been 2003.05.23. This public hearing was not even scheduled until Friday, 2003.05.30]

#### **2003.06.05: JOHANNESMAN COMMENTS ON RESOLVE**

In this 5:24 p.m. memo, Johannesman from the Office of Policy and Legal Analysis raises several points including the absence of language allowing SPO to enter into other contracts than the acquisition, correcting a too-restrictive clause about local control, and absence of "emergency clause" meaning it won't be effective till 90 days after adjournment.

Cashman replied at 6:08 p.m. that "we do not need an emergency clause because the closing is not until 12-1" [NB The Resolve went into effect 2003.09.13; still awaiting opinion on implication of this effective date for the RFP process, with award letters of 2003.08.14-18.]

Also in Johannesman's note was discussion of exactly how to phrase the elimination of Old Town local control.

On June 6 Johannesman adds a question about the reverter clause, and brings up "expansion." "You added the provision that the office can enter into contracts for the 'expansion' of the facility. I'm not sure that the committee is ready to explicitly include expansion of the facility in this resolve. Do you think it's necessary for it to be included?"

#### **2003.06.05: MEET W/ AG ON TERM SHEET**

This meeting is referenced in Laubenstein comments sent to Adams 6/9/03.

### **2003.06.05: NEW RFP DRAFT FROM MACDONALD**

See 2003.05.30, MacDonald draft to Adams, Parr and Cashman.

### **2003.06.07: TOWNSEND TO ACKERMAN ON RFP**

Townsend forwarded his reactions to the RFP. Townsend's main reaction: "Before the state can put out a meaningful RFP, it needs to come to grips with what it means to be the owner of a landfill and how it wants to use that ownership to pursue state solid waste policy."

Townsend notes that the bidder would assume huge financial risks. "The only reason that a bidder would consider accepting such large unspecified risks is that control of the landfill fits into some broader strategic interest of the bidder. Given that the original proposal from GP was to put the state into a contract with Casella, one has to wonder if the contract simply allows a public bid process that heavily favors Casella."

Townsend also cautions against haste, and that haste is actually against GP's interests. "It [GP] wants a viable operator, and it should not want to be blamed in 10 years when the defects of this process become obvious to businesses and municipalities."

[NB: Huge pressure was being exerted by GP; see Adams' reply to Laubenstein comments of 2003.06.09. What Townsend worries about might not apply if GP and Casella had already made a mutual-benefit deal, which is what this all seems to be, with dollars sent to Cianbro along the way.]

"I think that a key step in understanding its [State's] future role would be to invite a public process that includes potential bidders to comment on how alternative contract terms are likely to affect the bid process. ... De facto, Casella has been allowed to influence bid terms, which gives it a large advantage over other potential bidders."

Raises several issues, including status of the refundability of the \$10,000 deposit; "A bidder who did not have advance notice of the process would have great difficulty putting a bid together by July 20" [especially noting the fuel commitments]; point 5 details issues around serving the needs of MRC / PERC and other issues around MSW; etc.

### **2003.06.09: LAUBENSTEIN COMMENTS ON TERM SHEET**

This refers to meeting of Thursday, June 5.

The opening paragraph indicates the difficulties in negotiations with GP. "As we indicated at the meeting, we were still reviewing the document and would provide you with our thoughts and concerns. We realize that the negotiations with GP have been difficult and much that we have to say you may not only disagree with, but even if you did agree, you may not be able to persuade GP to include in the document."

At point 7, "Disposal Capacity" it is mentioned that present terms may "have an adverse impact on the interest of other operators in submitting a bid." [NB Why phrase this as "other operators" if there were not already one operator assumed?]

At point 9, "Fuel Commitment" again the issue of other bidders is raised, "This term may be onerous for many potential bidders ..."

At 1:30 Adams sent a very testy reply. He said that the elements of the term sheet had been sent to the AG "on May 19th" and that the present suggestions are late.

Adams' last paragraph tells the story: "Lastly, and for your information, we amended the term sheet and resolve per your suggestions last Friday [May 30]. GP notified us this morning that the timing and content of the comments have cooled their enthusiasm for the transaction. They have insisted on a waiver of sovereign immunity or they will terminate negotiations. The Governor will be asking me why the State gave LP&P a waiver and why I am opposed to providing the waiver now. I would really appreciate it if you could give me something to hang my hat on with regard to that issue as well as the others you raise."

### **2003.06.09: MCCLINTOCK COMMENTS TO LAUBENSTEIN**

Jan McClintock, waste management specialist with AG (and at present 9/04 is assigned to advise BEP on this case) sent memo to Laubenstein and other lawyers with comments.

She notes some confusion as to "Who will be the license holder of the DEP licenses?" [NB this is an ongoing concern, with sometimes the SPO being the license holder, and sometimes they are co-applicants with Casella] She suggests that the operator "be the sole license holder of all DEP licenses associated with the landfill."

She also notes that this "seems to be neither a commercial landfill nor a state-operated and controlled landfill such as Carpenter Ridge. Rather, this is a hybrid in which a state-owned landfill is completely controlled by an operator who assumes all financial responsibility for the landfill." At issue are what provisions of law apply, including public benefit, out of state wastes, recycling, and various financial provisions.



Regarding CDD, she says "Aside from the oddity of requiring the operator of this landfill to supply GP with processed construction and demolition debris (CDD) as fuel for GP's biomass facility..." she has questions about other provisions in this section.

[NB PCS 2004.10.13: I have only recently realized how "odd" this arrangement is. We have a waste management company being contracted to supply fuel for a large corporation in the wood products industry. The contract actually provides that GP may use its own "bark" first, then must turn to Casella for fuel derived from C&D. This is mandated. If Casella can't supply adequate fuel derived from C&D, then they may supply green wood chips as a substitute. It is this very clause that the State relies upon as the reason for not limiting the amount of C&D that is brought into the State. Provisions for C&D were integral to the very first term sheets of 2003.05.]

In her section "State Right to Direct Solid Waste to the Facility" she states "This is the only reference in the RFP to the State controlling anything at the landfill. (Proposal Content, para. 4.b) I don't know what it means. Does it mean that the DEP, or SPO, or the Governor, can require the landfill operator to take certain shipments of waste? Is this an oblique reference to bypassed waste from waste incinerators? Does it include large quantities of special waste for which there is a one-time need for disposal (i.e. the million mice carcasses when Jackson Labs had its fire years ago)?"

### **2003.06.10-11: TESTY EXCHANGE ON GP "ULTIMATUM"**

6/10: There were unresolved issues related to "indemnity, sovereign immunity and recourse to the State" that were causing GP concern -- whereas Adams replied that they were raising issues that "have no concrete impact on the continued operation of the Mill, further investment in the facility or the purchase price." Adams stated, "The Governor's Office is taking an enormous risk with this transaction." In part, Adams writes: "You have since given us an ultimatum. The ultimatum was vastly different than the any [sic] discussion we have had to date. We cannot answer that ultimatum a manner [sic] satisfactory to you."

6/11: In a follow-up, Howard outlined his understanding of the agreement, at one point stating: "If there is no compromise on the issue, then G-P is not read to do the deal without a waiver." Apparently to this statement Adams replied within a longer point-by-point statement, "I am sorry that you now assert that without a waiver the deal is off. This is disappointing. I will let Jack and the Governor know."

### **2003.06.12: PRELIMINARY FIGURES TO MRC**

Aronson writes: "I have so many questions about actual design parameters and costs that I don't trust the numbers; still, it's interesting that the pro forma does NOT work for the MRC. The [sic] residuals tip fee would need to be >\$62/ton in the break-even scenario.

But don't get too excited; there are so many unknown factors, that I'm not ready to believe the numbetrs [sic] yet."

[NB Again, why do these numbers not work for MRC, but work fine for Casella; especially in that long term disposal of GP wastes is a losing proposition. Where will Casella be making its money on this deal? See also letter from Waste Management 2003.07.09 in declining to bid. However, recall Townsend's remarks on the RFP: "The only reason that a bidder would consider accepting such large unspecified risks is that control of the landfill fits into some broader strategic interest of the bidder. Given that the original proposal from GP was to put the state into a contract with Casella, one has to wonder if the contract simply allows a pubic bid process that heavily favors Casella."]

A follow-up message 2003.06.20 from Aronson to Sean Small of CES, copied to Lounder, reads: "Attached is an updated version with all of the caveats we discussed on costs, lack of a design basis, uncertainty regarding material densities, cover requirements, leachate numbers and costs, etc. ENjoy [sic] your weekend!"

### **2003.06.13: CASELLA CONFIRMS PRICE TO MRC**

Along with an update on meetings with Cianbro (to be rescheduled) Lounder reports, "I received a letter from Casella this morning that basically says they are willing to extend present pricing terms on ash, FEPR, NP's, in and out of state MSW if they win the Old Town bid (I will mail today)."

### **2003.06.13: PUBLISHED NOTICE FOR RFP**

[NB This actually appeared in the newspaper before the Resolve was voted. E-mails distributed as part of the Record for BEP hearings include a note from Dave Burns, DEP engineer, to Cyndi Darling: "I saw the RFP in the paper this morning - very interesting language." Exactly what was he meaning by this comment?]

The notice was published in the Kennebec Journal. It stated that "Proposals must include a \$10,000 non-refundable bid processing fee ..." The heart of the notices is the contract services, including operation of an existing landfill, acquiring permits for an expansion, operating the expanded landfill, and "securing qualifying construction and demolition debris for GP to use as fuel in a proposed biomass electricity generating facility. In addition, the operator will provide services to GP including, without limitation, accepting and managing the approximately 50,000 cubic yards per year of mill waste for the duration of the contract."

A copy of the RFP is among materials received from the MRC. Among provision was State intent to "finance the purchase of the landfill with a revenue bond supported by the revenue potential of the landfill." The copy received from the MRC had the marginal

comment "Why" and the section about provision of C&D fuel circled: "The operator will provide GP with an option to purchase processed construction and demolition ("C&D") debris fuel for GP's proposed biomass facility beyond what is required after burning all available bark from GP's pulping operations ..." The MRC's copy of the RFP also had a big "?" at discussion of "value of landfill" under Financial Bid. The section begins with: "The value of the landfill, as expressed in the willingness of the bidder to assume responsibility for repayment of the bonds that will be issued to complete the purchase of the landfill by the State and necessary site improvements, shall be presented by the bidder."

The RFP also had the language related to credit rating and the \$50M performance bond.

### **2003.06.14: RESOLVE ENACTED**

This passed the Senate under "suspension of the rules" on June 14. There was some confusion as to when this was enacted. Message from the Law and Legislative Library:

Hello Paul,

Resolve 2003, c. 93 was enacted on June 14  
<http://janus.state.me.us/legis/LawMakerWeb/dockets.asp?ID=280011148>.

That is not however when it went into effect. It went into effect on Sept. 13, 2003, along with all the other non-emergency legislation of that session.

Please let us know if you have further questions.

Sue Wright

Reference Librarian

Maine State Law and Legislative Reference Library

Augusta, Maine 04333

207 287-1600

The contents of the web site she links:

LD 1626 (HP 1205)

"Resolve, To Authorize the State To Purchase a Landfill in the City of Old Town"

(Governor's Bill)

Sponsored by Representative Matthew Dunlap

Date, Chamber Action

5/30/03 House Committee on NATURAL RESOURCES suggested and ordered printed.

Resolve REFERRED to the Committee on NATURAL RESOURCES

Sent for concurrence. ORDERED SENT FORTHWITH.

5/30/03 Senate Under suspension of the Rules On motion by Senator TREAT of Kennebec REFERRED to the Committee on NATURAL RESOURCES in concurrence

6/12/03 House Reports READ.

Representative THOMPSON of China MOVED to ACCEPT the Majority Ought to Pass as Amended Report.

On further motion of the same Representative TABLED pending his motion to ACCEPT the Majority Ought to Pass as Amended Report.

Later today assigned.

6/13/03 House Speaker laid before the House Subsequently, the Majority Ought to Pass as Amended Report was ACCEPTED.

The Resolve was READ ONCE.

Committee Amendment "A" (H-563) was READ and ADOPTED.

ROLL CALL NO. 245

(Yeas 110 - Nays 17 - Absent 24 - Excused 0)

Under suspension of the rules, the Resolve was given its SECOND READING without REFERENCE to the Committee on Bills in the Second Reading.

Subsequently, the Resolve was PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-563)

Sent for concurrence. ORDERED SENT FORTHWITH.

6/13/03 Senate Under suspension of the Rules Reports READ On motion by Senator MARTIN of Aroostook Majority Ought to Pass As Amended Report ACCEPTED in concurrence READ ONCE Committee Amendment "A" (H-563) READ

On motion by Senator MARTIN of Aroostook Senate Amendment "A" (S-312) to Committee Amendment "A" (H-563) READ and ADOPTED Committee Amendment "A" (H-563) As Amended by Senate Amendment "A" (S-312) thereto ADOPTED In NON-CONCURRENCE

Under suspension of the Rules, READ A SECOND TIME PASSED TO BE ENGROSSED AS AMENDED BY Committee Amendment "A" (H-563) AS AMENDED BY Senate Amendment "A" (S-312) thereto In NON-CONCURRENCE Sent down for concurrence

6/14/03 House The House RECEDED and CONCURRED to PASSAGE TO BE ENGROSSED as Amended by Committee Amendment "A" (H-563) as Amended by Senate Amendment "A" (S-312) thereto. ORDERED SENT FORTHWITH.

6/14/03 House FINALLY PASSED. Sent for concurrence. ORDERED SENT FORTHWITH.

6/14/03 Senate Under suspension of the Rules FINALLY PASSED

### **2003.06.18: BOSTIC MEETS CASHMAN**

Bostic e-mail to Cashman, forwarded to Adams. There was an issue around Bostic's understanding, "...we had said that we would be 'silent' on the issue of sovereign immunity with regard to the indemnity thus I believe that we must have two separate [sic] agreements ..." "If our long term commitments from the State are contained in the acquisition agreement, the issue of sovereign immunity is pre-determined in the State's favor, which is not the basis for silence as were discussed. I thought that silence on this issue meant that there would be two agreements; I think that you should make the clear [sic] with the AG."

### **2003.06.18: GP LAYOFFS**

BDN reports "GP lays off 7 salaried employees at Old Town," see 2003.06.18. The article noted the "April 4 restructuring" [...] "The mill shut down the tissue-making portion of its facility in early April. However, G-P restarted one of two tissue machines in May, with help from Gov. John Baldacci. The move put 140 of the 300 laid-off workers back on the job."

### **2003.06.18: HIGGINS CONTACTS MRC**

Eric Higgins sent the following message to Lounder: "If the MRC is looking to partner with someone on the state's landfill, let me know. We can operate it, and provide material (revenue) for both the landfill and the biomass."

This was forwarded to Peter Prata (see forwarded subject line, "old town") who replied: "Very interesting. WHat [sic] do you think, bring him up to the meeting on Monday."

That would be 2003.06.23.

### **2003.06.23: RFP PRE-BID MEETING**

Many pages of questions and answers are available related to the pre-bid process. Physical stability of current fill is an issue, under study. On leachate, it is now 1% of GP's total waste water treatment, "so it is not a concern to G-P." [NB Yet we have learned that the volumes and composition of the leachate are potentially a problem, that the GP plant is not equipped to handle the flow, and Old Town has not yet agreed to take it.] Regarding community relations, "There have been no comments from citizens regarding the possible sale of the landfill to the state." [NB This was late June. Remember that there were no opposing comments at the Legislative Committee hearing, either.]

A list dated 2003.06.19 of "Questions for the Pre-Bid Conference" was faxed from Aronson to the MRC. Among these questions was "Capability to provide a performance bond of \$50 million !!!!!" Also, "Why 6.0 million gallons per year of leachate?"

The next day 2003.06.24 Lounder reported that he would not likely be available to forward further questions, and that he was meeting from 9-11 a.m. with Casella.

[NB Materials obtained from the MRC contain the questions and replies that were submitted before the pre-bid meeting, at the meeting, and from SPO replying after the meeting.]

Among questions asked prior to pre-bid meeting:

"Q. What was the thinking behind requiring a minimum financial rating of 'bbb' and the \$50 million dollar [sic] performance bond if the rating wasn't held? A. Given the nature of the project, the level of bonding that will be involved, and the realm of potential issues related to landfill operations, the State wanted financial assurance from bidders."

Apparently, at the pre-bid meeting:

"Q. Will the State impose any restrictions on the use of out-of-State material to fulfill the fuel supply obligations? A. The State does not now, nor intend to, impose any restrictions on the use of out-of-State generated / provided fuel supply."

"Written questions received following the pre-bid meeting:"

"Q. Will alternate bids be accepted / reviewed? Specifically, if GP's financial parameters, ie: 1. 30 years landfill capacity, 50,000 tpy, \$10 per ton; 2. 30 years fuel supply, 100,000 tpy, \$4-9 per ton; 3. \$12 million for landfill [new par.] cannot be met, is there any reason to prepare & present a bid and \$10,000? A. If the minimum requirements for responses to the Request for Proposals cannot be met, the bid(s) cannot be accepted."

[NB However -- how is it that the bond requirement could not be met yet the bid was accepted, while the fuel and disposal clauses were assumed to be firm, and deterred other bidders ...?]

"Q. How much C & D processed wood is available in the state? A. The DEP tracks processors of C & D waste. Their information shows that in 2001, 32,390 tons and in 2002, 88,680 tons of C & D waste were processed into chips. These are estimates of C&D processed into chips based on numbers provided to the Department by the processors. There is no guarantee that all the chips met specifications as a fuel chip."

"Questions after the site walk" include:

"Q. Does the RFP allow for MSW to be placed in the landfill? A. The RFP asks for recognition of the solid waste management hierarchy. We are not saying 'no' to the landfilling of MSW. The State is saying 'no', however, to 'out of state' generated waste being disposed of at the site."

"Q. Who gets the profits? The operator, state, GP? A. The selected vendor, the operator of the landfill, gets the profits."

### **2003.06.26: NRCM ATTY. JON HINCK SENDS CONCERNS TO ADAMS**

Three concerns were sent from Hinck to Adams, who put him off in various ways, finally Adams on 2003.07.04 asked if "we can talk in a couple of weeks?" [NB After everything was in place and the Proposal had been received; even though Hinck on 2003.06.26 agreed to a delay "particularly if the short answer is that you spotted and addressed the three issues." Which had not been done.]

The three points raised by Hinck were 1. tax issues, particularly with regard to no revenue neutrality, no fees to be collected, and possibility of creating a "tax-free dumping zone"; 2. environmental liability due to state involvement, and 3. out of state

waste, particularly freeing up space in existing commercial landfills in that "Maine origin waste that would be landfilled elsewhere could be diverted to the new landfill, opening up space at other landfills to receive more out-of-state waste." Hinck continued, "In fact, each of the three above issues do not appear facially to have obvious environmental impacts. The more obvious concern is the potential for putting more public money at risk than anticipated. Since this is not part of my organization's core mission I merely share these thoughts for your consideration."

### **2003.06.27: MRC RESOLUTION DRAFTED**

Aronson forwarded a draft of the MRC resolution supporting Casella's bid, "I put together on the basis of conversations with Jim Bohlig on Friday." [NB Not clear what Friday that is, since this message was sent 2:59 p.m. Friday.] "Jim Bohlig will be available on Wednesday for further discussions if needed."

[NB This indicates that the resolution was a joint Casella - MRC product.]

In reply, Bohlig called this "an excellent first start from our discussions" but suggests there be added "... an additional 'whereas clause' related to the MRC potential involvement in recycling statewide initiatives that Casella may contemplate to offer to implement associated with the RFP bid ... [ellipses in original] specifically ... [ellipses in original] we would like the MRC to consider being joint investors in these projects on a full equity basis ... [ellipses in original] you would have a right but no obligation to co invest [sic] on these programs where your participation could cause a much higher participation rate at the municipal level and as an equity investor you could be instrumental in getting other municipalities to bring materials and implement community recycling programs."

[NB This sounds wonderful, until we remember that this "investment opportunity" is being offered to a potential competitor on the RFP, and also given that there are no specifics as to exactly what is being offered here.]

### **2003.06.30: CASELLA / MRC PARTNERSHIP**

This letter from Meagher to Louder outlines conversations ongoing since March, with original objectives of providing disposal for PERC and "a fixed planning horizon in which to develop expansion plans" for Pine Tree. "During the course of our many meetings the level of trust among the parties grew, aided in part by the close working relationship that developed during this session of the Maine Legislature."

[NB Meaning, MRC support of the Resolve, or were there other cooperating efforts at the Legislature?]



Then an opportunity arose related to the Dolby facility owned by GNP, which "was not to be, but the idea, the concept of commercialization, remained alive."

"... the governor's office resurrected the concept of commercializing a generator owned landfill..."

[NB this is one party's answer to the question: who came up with this idea? Dunlap's statement in legislative floor debate was "Everybody got an idea."]

This letter continues in outlining "consideration of 'investment' opportunities for MRC in the West Old Town facility were Casella chosen as the operator ..."

The letter goes on to detail what this partnership would look like, and some of the functions it would address, including "utilizing the lined West Old Town facility as the region's principal C&D repository, both for environmental reasons (reduction in use of scattered <6 acre unlined sites) and to enhance beneficial reuse by segregating clean waste wood which can be processed for use in Georgia-Pacific's biomass boiler."

[NB This points toward another element in what seems to be Casella's overall strategy, convincing towns to discontinue their functioning C&D sites and pay Casella for disposal.]