

SEPTEMBER 2003

2003.09.02: OLD TOWN, DEP PERMIT SCHEDULE MEETINGS

See timeline sent from Casella to Cashman 2003.09.18. On this date two meetings were held, one with Lord, Doyle, Curtis, Douglas, Meagher, and MacDonald, to discuss "...Old Town role and participation in transaction and process" and another with Doyle, Booth, Drew, Curtis, Douglas, Meagher, Darling and Clark "to discuss DEP permitting schedule."

2003.09.03: OLD TOWN ASSERTS RIGHTS

E-mail from Doyle to Meagher, Douglas, Curtis, Delahanty, Howard, Hiltner, Bohlig, and Ahrens, also forwarded by Doyle to Cashman, requests statement of known legislative intent of the Resolve, since Bob Miller, Old Town's attorney, asserted that the Resolve did not take away all of Old Town's planning board control, particularly since their ordinances controlled "generator owned" landfills, and the facility was still generator owned.

Doyle particularly asked "Don and John, I know one or both of you were in the thick of this when Treat's amendment was offered late in the process. Any assistance you can provide from the process documenting that the Resolve's Section 5 was not intended to allow the City to have a separate transfer approval process for the City permit?" He concludes that he has not shared this with MacDonald, but "... we may want to let Jack Cashman know of this development ASAP."

2003.09.09: OSA, P&S DRAFTS TO HIGH

See Casella timeline of 2003.09.18. These documents "...sent to State's outside counsel."

2003.09.13: RESOLVE GOES INTO EFFECT

[received from Law Library,2004.09.22]

Thank you for contacting us with your question regarding the effective date of LD 1626 from the First Regular Session of the 121st Legislature. This LD was enacted as Resolve 2003, Chapter 93. The effective date when the law went into effect was September 13, 2003.

If you would like to read the full text of the Resolve, please click on the link below:

<http://janus.state.me.us/legis/ros/lom/LOM121st/Res51-98/TableofContents.htm>

Next, scroll down to and then click on Chapter 93 to retrieve the full text.

We hope this helps.

Sincerely,

Mark Knierim
Reference Librarian
Maine State Law and Legislative Reference Library
Augusta, Maine 04333
207 287-1600

[NB at issue is whether the various RFP and proposal activities, including whether the acceptance and award of 8/18, were allowed since the Resolve did not go in to effect until 9/13. See for instance 9/25 letter from Drummond, Woodsum on "operative agreements" that speaks of Acquisition Agreement and Casella agreement. At point 11 "The State expects that Casella would sign the Operating Services Agreement." If this had not been signed, but only accepted, until after Sept. 13, would this make the proposal process legal under terms of the Resolve?]

2003.09.17: RAND TO CASHMAN ON PROCESS

Rand (BSSN, Casella) assures Cashman they are making all efforts to meet schedule, "...with due diligence to make the expansion permittable by December 1." DEP is "being very conscientious" and this is the right way to proceed with them. Also, "... would it have been better if we could have been going through this process in July? Yes, but we both understand the importance of having gone out to RFP, which added three to four months to the timeline."

[NB This is interesting -- a representative of one of the private parties is cautioning the leading representative of the State to be more cautious and considerate of process.]

2003.09.18: CASHMAN, GALLAGHER MEET ON TIMELINE

This meeting was held to clarify the constraints DEP had in the permitting process.

See also e-mail from Doyle to Cashman, copied to Meagher, offering documents that might be helpful "... in advance of your 1 p.m. meeting today." A two-page chronology was attached, beginning with bid opening and ending with a Dec. 1 "Final Commissioner Order."

[NB How are we to interpret this activity of Cashman, carrying GP and Casella's expectation for presentation to Gallagher?]

See also note for 10/6. The 9/18 date comes from 10/21 memo from Stearns to Baldacci and Lincoln. (see that date)

[NB The timeline's "Projected future schedule" is interesting: Oct. 30, public notice of intent to file application; Oct. 31, submission of application; Nov. 1-20, DEP review; Nov. 21, draft order; Nov. 24-28, public comment period; Dec. 1, "Final Commissioner Order."

2003.09.19-22: CONCERNS RAISED ABOUT P&S

Beginning with messages from Jim Smith and Toni Kemmerle [Jim Smith is chief counsel for Maine Dept. of Transportation; Kemmerle works with Parr and Adams] concerns are raised about the draft agreements that were sent out for review. Among other issues, one stands out: "4. the fact that the grantee, State Planning Office, has no authority to acquire or hold real estate." They note an upcoming meeting with Michael High scheduled for 2003.09.26, but since Laubenstein will be out of town, they suggest a delay in this.

Alan Stearns replied 2003.09.21: "I'm not entirely sure why I was copied on this. I'd caution that the schedule and completion of this deal is a priority. Counsel's decision to raise concerns and proposed delayed schedule [NB apparently referring to suggestion of delaying a meeting until Laubenstein's return] should be undertaken with clear guidance from decisionmakers closely involved in this deal. Counsel to MDOT was invited to voice concerns by whom? With what understanding of the context and what client's interest?"

On 2003.09.22 Adams replied with his understanding, noting that he is conflicted out of the "Casella piece" due to his former firm's representation of Casella, but that he can comment on the "GP piece if that would be helpful. From the description of the P&S Toni provides below, it seems to me that Pierce Atwood overreached again. Here are my thoughts based only on Toni's comments below:"

He addresses the several points, including that "Under the term sheet and the resolution passed by the Legislature the State of Maine is the grantee." He concludes:

"The term sheet was negotiated over several months. It was painful and often times extremely confrontational negotiation. Pierce Atwood was very unpleasant to deal with. Going forward I would advise you to stick close to the term sheet and watch your counterparty closely -- they have a history of overreaching.

"Remember, this is an arrangement that will save 500 jobs, provide GP with capital to invest in Old Town to make the mill more competitive, and give the State much needed landfill capacity, all of which is paid for by a third party. The Governor is committed to

the transaction and wants to see it consummated. Do the best you can to close the deal in keeping with the term sheet."

[NB All of this verbiage about "revenue neutral" and "paid for by a third party" obscures the fact that we all pay for this in the long run, including all of the dollars that will go to Casella. "They" aren't paying; they are the ones who are profiting.]

2003.09.25: PUBLIC NOTICE OF LICENSE TRANSFER

See Casella timeline, given to Gallagher 2004.01.22. Public notice published in BDN and certified mail notice to abutters. [** verify]

2003.09.26: DRUMMOND, WOODSUM (SPO) LETTER ON "THE OPERATIVE AGREEMENTS"

There is a clean copy obtained from DECD, along with various e-mails among the parties and distributing the letter, including a reply 2003.09.25 from Gleason [BSSN, Casella] to High: "Thanks, Mike. We will need some time to digest this. I am available the afternoon of October 1, but I would suggest you hold off on redrafting the documents until we have had an opportunity to talk issues and concepts; a 'battle of the forms' at this juncture strikes me as premature."

I have another copy with notes perhaps in Lincoln's hand (cf. "Casella" on notes of 5/21).

BSSN is identified as "Casella," PA is identified as "Both."

At point 10: "The State expects the performance bond as per the RFP."

At point 11, "The State expects that Casella would sign the Operating Services Agreement." This implies that the agreement was not final at this time -- perhaps making the issue of the Sept. 13 effective date for the Resolve a non-issue.

Howard of PA replied on Sept. 30.

Still at issue is "indemnity" required by GP, that they first attempted to secure in language waiving the State's sovereign immunity in the Resolve (not agreed; see exchanges of 6/10-11/03. "... GP will not proceed without the indemnity."

[NB This issue has come up several times ... exactly what are they protecting themselves from if they think the dump is ok i.e. not leaking while under their management?]

2003.09.26-10.16: PUBLIC COMMENT PERIOD FOR TRANSFER

See Casella timeline given to Gallagher 2004.01.22. "20-day public comment and request for public hearing period on transfer application. No written comments or requests for public hearing received."

[NB The public meeting held with the Old Town Council, where "less than a handful" of the public was present and which was convened early due to the baseball playoffs, was held the last day for public comment on the license transfer. Is it any surprise that no comments were filed regarding the transfer?]