

## **OCTOBER 2003**

### **2003.10.02: NOTES ON FINANCIALS**

Handwritten notes, indicate that Fleet Ryder (Finance), Dave Cyr (Risk), Chris [Parr] (Deputy Counsel), Charlie Speiss and George MacDonald attended this meeting.

Among the notes:

"Performance Bond awkward because of various rights of Casella, vs. letter of credit maintained in contract upon default of debt service"

Various notes on FAME, tax exempt bonds, "would require different accounting."

" -- issue, when Casella has secured DEP permit. October 17th or October 20th expected DEP response on vertical permit."

" -- December 1 is goal to close < something solid

" -- will provoke Casella before then, may provoke GP

" -- Jack 100% clear, no risk, his concept of a 'performance bond'

" \* What Are Kurt's Limits"

Then several lines related to FAME.

" \* due diligence / reassurance even if ink not dry on December 1, even though trying like hell, just got docs in last weeks, draft operating agreement just ten days ago.

-- Fleet will call Casella. Alan will attend. Get Jack's impression in writing."

### **2003.10.04: BORALEX SETTLEMENT**

A Morning Sentinel (Waterville) story of 2003.10.04 describes a \$283,000 fine levied against the Athens biomass boiler, part of which would be spent on "studies on alternative uses of solid waste and arsenic and dioxin in demolition debris." In part the fine was due to a "stubborn fire in the plant's fuel-wood pile that blanketed the area with noxious odors." There was no mention that this plant was planned to be moved to Old Town. "A Boralex official said this week that the company is in the midst of a reorganization and it will likely be months before the fate of the Athens plant is known."

### **2003.10.06: GALLAGHER, CLARK, CASHMAN MEET ON TIMELINE**

This is an approximate date. See 10/20 e-mail from Gallagher to Clark and Stearns: "First, Alan, we met with Jack about 2 weeks or so ago, and talked about the timeline." They "have always made it clear" that a December date cannot be met.

It is possible that the date for this meeting actually was Sept. 18, 2003 (see note for that date) However, that would be quite a bit more than two weeks before.

#### **2003.10.06: MEETING ON PERFORMANCE BOND**

MacDonald writes to Stearns, Cashman, Sosnaud, Laubenstein and Lamoreau, copying to Andrea Smith, announcing a meeting to be held in the Cabinet Room. "The topic of discussion will be 'how do we manage the performance bond that is related to Casella's proposed financing and operation of the West Old Town Landfill', so that this project continues to move forward...." [ellipses in original]

There is an annotated chart showing relations among the various corporate and state entities.

Among the handwritten notes accompanying is, "Risk / reward (Casella is making a ton of money)" and "GP got an extra \$12.5M"

#### **2003.10.07: LAMOREAU TO WYKE**

Lamoreau wrote to Wyke expressing concerns about the RFP. See notes at 2003.10.08.

#### **2003.10.08: MEETING, MEMO FROM M. HIGH**

A file memo from MEH (Michael High of Drummond Woodsum acting as counsel to SPO) offers thoughts to "George and Bill" (presumably MacDonald and Laubenstein) regarding a meeting to be held this date, Oct 8.

The first two points in the memo are:

"1. As we know, Casella has stated that the requirement of a \$50,000,000 bond is off the table. The State has maintained, to date, that the bond was a requirement of the RFP. Please note that Casella is attempting to use against the State the second award letter wherein the reference to the \$50,000,000 bond was deleted.

[NB It appears that the second letter, with deletion of this provision, was demanded by Casella.]

"2. If the State agrees that a \$50,000,000 performance bond is not required at this time, does relief from this requirement trigger any type of obligation to rebid, given that at

least one other potential bidder indicated a willingness to bid but for, among other matters, the requirement of a \$50,000,000 performance bond?"

[NB What bidder was this? We don't seem to possess direct documentary evidence of this.]

There also is mention of the issues of timetable, with permitting not available until 2004 while GP needs the deal done in 2003, at 2003.10.08.

Handwritten notes, 2003.10.08, indicate that Cashman, Sosnaud, Lamoreau, Stearns, Laubenstein and MacDonald attended. There is a list of figures, subtracting: 50 required + 10 M enviro required - 12.5 cash = 37.5, Betty's bottom line, "otherwise put out to bid." - 12.5 FAME bond = 25M operations & other risks, + 10M "enviro, disposal of GP's risk upon cessation of operations."

"Jack: legislature made decision that only the state is involved in commercial landfills, thus [three dot triangle, nothing follows]

"Jack: -- no purpose in going out to bid; -- Wast Mgmt did not state that bond was reason for no bid; -- Cianbro had no interest; -- Casella would sue upon rebid; -- Betty disagrees that Casella would win upon suit"

"Jeff: \$50 M was out of thin air based on unknowing

"Betty: language of RFP is unique."

Then at a marginal note "Read aloud" follows: "The AG would defend a decision by purchases to award this contract even absent \$50M / equivalent. [end of page, note says "(continued)"] "but the AG opines that it flies in the face of Statute X, [then between two sets of double horizontal lines] "John B will call Pete Correll (upon Jack's phone call) to let Dec. 1 slip."

Then there are various notes on risk of shutdowns, and GP position on performance bond.

"Conclude: High (Laubenstein) will communicate ASAP willingness to Phil Gleason [Casella attorney] to consider something other than \$50M. Open channel of communication. We expect straight face counter soon. Jack/Jeff."

See also memo of 2003.10.07 from Betty Lamoreau to Rebecca Wyke, with subject "Potential issue." The memo reads:

"I will be meeting tomorrow afternoon in the Cabinet room with several folks interested in the contract with Casella Waste Systems for the operation of the Georgia Pacific landfill in Old Town. The RFP put out by the State Planning Office and approved by Purchases required that bidders have a Standard and Poors rating of at least 'BBB.' If not, they were to provide evidence of the ability to secure a performance bond of \$50M in order to bid, and would have to actually secure said bond before execution of a contract, if they were the selected bidder.

"Casella's S&P rating is 'BBB-', which is a 'speculative grade' considered 'questionable.' (The required BBB rating is an 'investment grade' considered 'adequate.') Casella's attorneys are arguing that we didn't really mean that they'd have to secure [underlined] a bond, only that they had to show proof that they could [underlined] secure one. I disagree with that stance, as does Bill Laubenstein. Because Casella put \$12.5M up front, Bill and I agree that a bond of \$37.5M would be acceptable. Anything short of that would be a significant variance from the terms of the RFP, and against the law.

"I've been told that Commissioner Cashman may be prepared to 'give' on this issue, and push for a bond somewhat lower than \$37.5M. In good conscience, I can't agree to that. 'Just wanted you to know that this may become an issue. I'll be happy to talk to you at your convenience, if you like.'"

### **2003.10.08: PERFORMANCE BOND**

Laubenstein to Stearns, Cashman, MacDonald, Lamoreau, Sosnaud: "I have spoken with Phil Gleason [Casella attorney] and conveyed to him our willingness to discuss an alternative to the \$50M performance bond and that we would like a proposal within the next week to address the State's concerns over environment risk above its insurance and the risk of a shut-down of the landfill. I indicated that FAME would be addressing security for the revenue bonds in tomorrow's meeting."

On the same day, 2003.10.08, MacDonald responded to Michael High, who apparently had sent the Laubenstein note along to MacDonald for his own comment: "Michael - Thanks for the summary... [ellipses in original] In response to item 1, the first award letter was refused by Casella, and they refused to talk about the need for a performance bond until they received an award letter that did not reference that (meeting that Betty [Lamoreau of Purchases] and I had with Casella et al after they refused the first award letter)... [ellipses in original] it was based upon Casella's stance that the performance bond could not be discussed until an award had been made.... [ellipses in original] That led to the second award letter and now they say this????"

[NB It is not clear what was being said by Casella; it was apparently in an attachment sent by High to Laubenstein and MacDonald, "Some talking points for tomorrow's meeting." Included in an attachment MEH memo 10-7-03.doc.]

### **2003.10.09: NEGOTIATING MEETING**

See 2003.10.08 memo from Michael High outlining major outstanding issues.

Handwritten notes, indicate that Mahar [sic], Kay Rand and Phil Gleason attended for Casella, plus Laubenstein, Stearns, MacDonald, and 3 from FAME. Various notes, including "Casella has some paperwork to deliver to FAME, requested two weeks ago."

Of special interest is a marginal note: "OT City Attorney has issue re OT jurisdiction, Bob Miller, planning board review issue; Jeff Sosnaud will try to build consensus between Tom Doyle and Bob Miller." From this, a broad arrow points to, "Ball is in Gleason's [Casella attorney] court, in next two days."

### **2003.10.10: DOYLE LETTER TO LORD**

This is the detailed argument against Old Town's emerging claim that it still retained authority to control transfer of the facility given its ordinance related to the generator owned facility. Letter is included in an e-mail from Stearns to Sosnaud, 10/10.

### **2003.10.16: BSSN LETTER TO LAUBENSTEIN, LIABILITY, CAPACITY RISK**

This letter responds to what Gleason states are the State's principal "concerns" [in quotes in letter], liability if this becomes a Superfund site, and guarantees from Casella to provide disposal capacity to GP. On the first, given the requirements and State supervision in construction and operation, doubt this would become a Superfund site. On the second point, there is plenty of capacity reserved and if Casella is removed as operator this capacity would be under control of the State.

### **2003.10.16: MEETING OF OLD TOWN COUNCIL WITH PRINCIPALS; MACDONALD CONCERNS ON TIMELINE**

This was reported Oct. 23 Penobscot Times. Oct. 16 was also the closing date for public comments on the license transfer.

"Less than a handfull of residents attended the 6:30 p.m. meeting, which had begun a half hour earlier than scheduled due to the television airing of game seven of the baseball playoffs." [N.B. Notes from the meeting indicate it adjourned at 8:05.] "The board itself had few questions."

"Noting that Dec. 1 was just a short time away, Councilor Alan Stormann asked how Casella expected to get approval so soon, but was told by Meagher that the DEP had

been very cooperative and that although the permits weren't going to be filed until Nov. 1, his company had been in pre-application reviews for a while.

"'We have a commitment from the governor on down,' said Meagher."

Also, that there is no need for public hearings in Old Town on this issue.

"Council Chair Reynolds said he was pleased at the presentation.

"'I thought it was great,' he said. 'I think it's going to be a workable thing. I think it's going to be a benefit to everyone.'

"Reynolds said he didn't believe any local public hearings were needed on the matter, since public hearings, which he attended, were held in Augusta this past May and June."  
[NB There were no hearings in May.]

"Attorney Doyle confirmed that was the case.

"'It (the landfill permit transfer) does not require a public hearing in Old Town on the matter,' he said."

[NB First, not only the transfer permit was at stake, but the license amendment -- there is some trimming of the facts here. In addition, there were no hearings in May, to my knowledge -- the public hearing on the Resolve was June 3. I am still not sure when the Committee workshop was held; the Resolve was reported out of Committee on 2003.06.04.]

A memo from George MacDonald the following day (10/17), to Clark, Darling, Stearns, Sosnaud and Laubenstein, noted that at the meeting "Don Meagher said that Casella would be submitting the license amendment package to DEP on October 31 and expected approval by December 1. I did not question this in the public setting, but I was under the impression that DEP would need a few months to complete their review of the project. This timing issue has been discussed in the past and I was surprised at Don's statement."

In addition MacDonald reproduces a "milestones" document distributed by Phil Gleason [BSSN representing Casella] at a "meeting held in the Cabinet Room" today [2003.10.17] and stated "the DEP issuing the license amendment the week of 12/1/03, which I do not believe is what DEP has planned for ....." [ellipses in original] "I am concerned that the continued use of this approval date is going to cause difficulties in meeting the actual closing date ..." [ellipses in original]

In addition, MacDonald states his understanding that the land transfer must be complete before the DEP can begin to consider the license amendment; he wants advice on this from Stearns, Sosnaud and Laubenstein.

[\*\* Verify in Rules what the terms for accepting the application are.]

[NB It is not clear how this requirement was met -- there was apparently a signed agreement given to DEP in late November, though the final sale was not completed until 2004.02.05.]

### **2003.10.17: NEGOTIATING MEETING, ALL PARTIES**

This meeting is noted in an e-mail from Gleason [BSSN lawyer for Casella] to High [Drummond, Woodsum lawyer for SPO] who did not attend the meeting. Gleason explained that no written response to an earlier letter would come until an agreement on the performance bond issue and the timing of closing had been resolved. He briefly outlines points of discussion related to Casella, including: "10. We understand the State is not requiring a \$50M performance bond and spent a good part of this morning discussing the State's security concerns and how to address them. I gather from your voice mail there is a meeting among the various State participants on Monday morning @ 9am [2003.10.20] to consider these issues further. We look forward to hearing the results of that meeting."

### **2003.10.17-20: CLARK AND GALLAGHER MEMOS ON TIMELINE AND P&S AGREEMENT**

This set of e-mail exchanges, beginning with MacDonald's reflections on statements made at various meetings (see 10/16 notes) are critical documents regarding the time pressure the DEP was under. In addition to MacDonald's comments about what was said in Old Town as well as at a meeting in Augusta, there is Clark's "barring any currently unforeseen problems or issues (such as a public hearing request from the outside)" and the fact that "the Department has however, started substantive review of certain aspects of the project as requested by Casella" (10/19).

In addition, Clark's e-mail addresses the issue of a signed P&S agreement directly. "In order to find the amendment application 'complete for processing' we must have demonstration of sufficient title, right or interest in the property. A signed purchase and sale agreement would satisfy this requirement. The determination that an application is 'complete' is significant since the review clock actually starts ticking at that point. As you know, the Department has however, started substantive review of certain aspects of the project as requested by Casella. Staff have been meeting weekly to provide early comment as the application is being developed."

In addition, there is an e-mail from Chris Howard of PA stating Cyndi Darling's assertion that Feb. 15 is a likely earliest date for approval, with Howard concluding "This is obviously a problem we need to address ASAP."

### **2003.10.21: CASELLA'S OFFER ON BONDING ETC.**

This "Summary" is from High to Laubenstein, forwarded to Stearns.

"1. Casella substitutes its bond for GP's to cover closure and post-closure monitoring and maintenance.

"2. Casella maintains environmental insurance on this project for the term (do you want a tail -- e.g., term plus 6 years) in the amount of \$10 million or the amount required by DEP for comparable facilities, whichever is greater. The face amount of the policy will increase with the CPI throughout the term.

"3. Casella provides whatever security FAME requires to secure repayment on the bond, presumably a declining balance letter of credit.

"4. Casella pledges \$15 million of cash collateral in favor of the State. The State will have a perfected, first priority security interest in the pledged assets to secure Casella's obligations under the agreement. The pledged collateral can be reduced annually by \$1 million per year [sic] beginning on the first anniversary of approval of the horizontal expansion to a floor of \$5 million plus CPI from the closing date.

"5. Casella will covenant in the agreement to maintain some minimal bond rating? -- in lieu of financial covenants consider this as an indicator of financial health."

See also memo of this date from Laubenstein to Stearns, "Casella / GP Landfill Transaction / Risk Scenarios"

Lots of notes by hand are added to this. Various notes indicate they see problems with the scenarios that have been proposed. [NB Again, mostly uninterpretable by me.]

There is an intriguing note on a separate lined page of notes: "Paula: scenarios for failure of horizontal -- conceptually pre-permitted?"

[NB Does this have a bearing on the issue I raised in my appeal, related to the separation of what amounts to a single permitting process into three separate parts?]

### **2003.10.21: DEP ISSUES LICENSE TRANSFER**

See also timeline given by Casella to Gallagher, 2004.01.22. "DEP License Transfer Approval. No comments received. No appeal filed within public appeal period."



### **2003.10.21-24: STEARNS UPDATES**

A memo was sent 10/21 with followup 10/24 from Stearns to the delegation in Ireland, mentioning that Chris Howard [of PA, representing GP] is also with them. At issue is lack of mutual agreement on a workable timeline. Stearns refers to a Sept. 18 meeting between DEP and Cashman (see note for that date). The issue is that GP still needs a final decision by 12/31, while mid-February is the earliest the DEP can deliver, in best of circumstances.

In the follow-up, a meeting between Baldacci, Gallagher and Stearns on this issue is scheduled for 10/27. A conference call of 10/22 was reported, at which Casella supported DEP's position on timeline. Further meetings are scheduled for 10/28-30. The Governor is available for further negotiations but at this point "no such meeting is scheduled or advised."

### **2003.10.22: ALL PARTIES CONFERENCE CALL**

This was mentioned in Stearns e-mail of 2003.10.19 to Clark and Gallagher, copying to others, noting that issues raised by Clark regarding impossibility of meeting a December 1 license issuance, and the issue of needing signed P&S in order to begin processing, would be added to the topics to be discussed.

### **2003.10.22: LORD LETTER ON LEACHATE**

Draft letter from Old Town manager John Lord stating that though studies still need to be performed, they expect that the waste water treatment plant will be able to accept leachate

### **2003.10.23: OT COUNCIL MEETS; TRANSFER ESCAPES REVIEW**

E-mails from MacDonald and Douglas 2003.10.24 express great relief that the Old Town Council has not pursued its potential right to be involved in approving the permit transfer. MacDonald: "...but that now seems to be dead!!!!" Douglas: "Great news ... Bob Miller basically did not offer any opposition ... John indicated that he kept the idea of a City Resolve (T. Doyle document) to himself, since he got the Council position he wanted ..."

### **2003.10.24: MEETING WITH CASELLA**

Apparently in Stearns' hand, "10/24 with Casella". Bohlig, MacDonald, Meager attended, apparently. Detailed notes, many ending mid-thought. Overall, Casella is arguing that it will run a safe dump, that the bond numbers are arbitrary, that they have

put up most of the financial risk, etc. "Why put risk on Casella" "Casella already taking lion's share of permit risk due to \$25M investment"

[NB Overall, this would have to be read by someone who understands the many aspects of the financial requirements of this deal.]

### **2003.10.27: RATIONALE FOR LOWER SECURITY BOND**

This note from Laubenstein to Stearns copying to MacDonald and High, outlines reasons why a lower bond may be sufficient, as well as a schedule for further reducing it over time.

See earlier concerns related to the \$50,000,000 requirement and its implications for revisiting the RFP process, note of 2003.10.08.

### **2003.10.29: "DEAL PROGRESS" CONFERENCE CALL**

See e-mail from Chris Howard to many recipients of 2003.10.28.

Also at this time, because "The State did not finish reviewing the State / FJ agreement in time to make today's drafting session" this would be rescheduled for "Thursday" presumably 2003.11.06.

### **2003.10.30: AMENDMENT APPLICATION SUBMITTED**

See Casella timeline to Gallagher 2004.01.22. See also debates on when this can be considered "complete for processing."

### **2003.10.31-11.05: EXCHANGES OVER "COMPLETE FOR PROCESSING"**

At issue here is GP's need to push the process along so that the \$25 million they needed would be available by the end of the year. The final message, from Douglas to Stearns, Doyle, and Howard (11/5), "Our corp folks are adamant [sic] that we find a way, even without the vertical amendment, to get closed for \$25MM in December..." [ellipses in original]

The exchange got going with a message from Doyle at 3:22 p.m. 10/31 stating that he had just met with Cyndi Darling, who had replied "no, not yet" as to whether the application was "complete for processing." She said negotiations were going well, that there had been a meeting 10/30 "between the State and G-P and it was "very productive" and that there would be another meeting "next Wednesday" (11/5).

Doyle's concern is that completeness determination is what gets the clock going the the "20-day comment/request for public hearing period." This is what they want to get over

with as soon as possible. The sticking point is that the regulations, apparently, require that the sale be complete before the application can be considered.

However, as Stearns says in an 11/4 message to Douglas, Doyle, Darling and Clark, "... DEP is already reviewing the permit application and a determination of completeness will have no impact on the ultimate schedule of the permit. What Tom is asking DEP to do is to break from the clear intent of rule, and break from practice, for the sole reason of shifting the public comment window. [ ... ] Tom's blunt conclusion that there is no legitimate reason to await the P&S seems to overlook the genuine interest in squeaky clean attention to procedure which will in fact allow us to defend the accelerated process in the event of any public scrutiny, or request for elevated public process."

"Tom's blunt conclusion..." was given in the form of what sounds like a challenge at the end of his opening e-mail of 10/31, "In my view, there is no legitimate reason to delay the application's 'completeness' determination. The parties need to decide whether they want to escalate this to a higher level or wait till next Wednesday."

Laubenstein suggests they stop arguing about whether or not a signed P&S is needed, in order to work on completing the deal. On 2003.11.05 Rick Douglas [GP Old Town] write: "I agree to move forward, albeit somewhat still concerned about the position the DEP is taking on this TRI issue... [ellipses in original] The most substantial issue in front of us is the agreement to a closing date, and that is part of the P&S .... [ellipses in original] Our corp folks are adamant [sic] that we find a way, even without the vertical amendment, to get closed for \$25MM in December..." [ellipses in original]