

NOVEMBER 2003

2003.11.05: FAME ISSUES

On top of the anxiety being caused by the DEP in not accepting the application as being complete for processing there were delays on the part of Casella in getting needed financial information to FAME in time for a November board meeting -- thus pushing consideration to December, with no possibility of issuing a bond until January, since there is an appeal period required. See e-mail from Christopher Roney of FAME, 2003.11.05. This prompted a plea from Rick Douglas for Roney to reconsider given "the impact of the delay in information from Casella." Douglas later in the day, 6:05 p.m., said that Jim Bohlig said the required information was being forwarded that night, to arrive 2003.11.06. It seemed the crisis was over. [NB Yet, the financing did not come via FAME, in the end -- or did it?]

2003.11.06-07: MEETING AND MEMO ON OSA

An e-mail from Gleason 2003.11.07 mentions a meeting "yesterday" on the OSA. Issues included limits on State's opening "a competitive landfill," and the "risk issue." Regarding that, he writes: "... On the other hand, if the closure results from some action by Casella (e.g., the failure to apply for and diligently pursue the horizontal expansion permit), then the State should have recourse against Casella in the form of the 4M performance bond and the right to retain the improvements made to the landfill by Casella."

2003.11.07-08: LAUBENSTEIN MEMOS ON OPERATING AGREEMENT

Laubenstein wrote two memos, one to "file" and one without any recipient indicated, outlining issues raised by "Casella's response to our draft of the Operating Agreement ..."

Nov. 7:

Of top importance is conditions under which Casella might be allowed not to pay "the operator's fee (the repayment of the revenue bonds) ..."

[NB at this time they were still under the assumption that state bonding would provide financing for this deal]

A second issue is the State's obligation to repay Casella for improvements if for some reason the agreement is terminated.

There is also "a very expansive definition for force majeure." [My understanding is that this is a legal term for acts of God over which the parties to the contract can have no

control -- PCS] Their definition includes any governmental orders limiting their contract, affecting their permits, or "the commencement of any action by anyone seeking to delay or prevent any aspect of the development or operation of the landfill." Laubenstein: "We think, as does FJ, that this is overly broad."

In addition "Casella wants the State to agree not to establish another solid waste landfill during the term of the Agreement." Laubenstein thinks this might be necessary. [NB Why would Casella want this -- the only reason I can think of is that they would become a perpetual monopolist on landfill capacity in the State.]

The Nov. 8 memo is more formally written:

Its first line is "Response to Casella risk analysis dated November 7, 2003" and this memo may have been forwarded to Casella [?].

In background paragraphs, Laubenstein states, "As Casella has said many times, there is very little risk that the DEP will not grant a permit to increase the vertical capacity and will not grant a license to increase the horizontal. Also, according to Casella, there is also very little risk that the State will adopt a policy that bans the disposal of municipal waste in a solid waste landfill; no state has ever adopted such a policy." Laubenstein then goes on to estimate that Casella will take in "between \$20,000,000 and \$25,000,000 a year."

[Two points on this. First, the door seems open to MSW. Given the potential closure of MERC, and the eventual closing of PERC and Pine Tree, how many years will pass before Old Town is accepting MSW from everywhere in Maine. Second, the figures are realistic, even as net revenues. According to my own calculations, Casella stands to make in the range of \$25M per year clear for 30 years, across all related operations.]

[NB This does not include what Casella will be making on tipping fees for construction debris that they accept and then sort -- let's say, 400,000 tons / year, at \$100/ton, = \$40,000,000 more per year, perhaps minus what they charge themselves to deposit it at the landfill, plus what they sell for fuel -- let's say approximately doubling the figures given by Laubenstein. At that figure we easily get to the \$1 billion figure over 30 years as portrayed in the Daily News articles]

Laubenstein continues: "Under the terms of the proposed agreement between the State and Casella, Casella will pay the purchase price for the landfill, determine how the site will be developed, be responsible for licensing and development and retain all revenues from operation of the landfill. Thus, for all intents and purposes, Casella is in the position of the owner. Title to the property is the only indicia of ownership not present."

[NB This is an important point, raising again the questions of why the State is involved in this. See also McClintock memo, "hybrid" facility, 2003.06.09.]

Laubenstein goes on to outline why the terms Casella is seeking are flawed: by virtue of State ownership the firm would be in a better position than they would if they owned the site themselves.

The two legal issues raised:

"Whether Legislative Resolve authorizing the State to purchase a landfill in the City of Old Town authorized the State to undertake to pay any portion of the purchase price?

"Whether the State Planning Office can enter into a contract in which the State undertakes to compensate the contracting party if there is a Legislative change in State policy?"

2003.11.11: NOTES ON DRAFT OPERATING AGREEMENT

Notes in an unknown hand, possibly Roney's of FAME, outline a complete set of expectations related to commitments on the part of Casella, in case of various outcomes related to horizontal expansion, volume of disposal available to GP, obligations on bonds and application for horizontal expansion.

This date is a Tuesday, and a later e-mail from Laubenstein to Gleason, Howard, High, Stearns, Cashman, and Roney begins "I am sure you are looking closely, as I am, at the document prepared by Chris [Roney of FAME?] at the end of our meeting on Tuesday." He continues "I am not sure that paragraph 3 clearly states our agreement." This paragraph is about State obligation related to revenue bond payments. "In other words, as long as Casella can operate the landfill, then it could not terminate the operating agreement and look to the State for help on the revenue bonds."

Paragraph 3 of the document states: "Casella obligated on bonds, come hell or high water. State has 'moral ob' to Casella to reimburse it for pmts on bonds under the same circumstances that require GP to contribute its capacity."

[NB It was apparently this meeting referred to in an e-mail from Gleason of BSSN -- part of header information missing, but subject line "West Old Town Landfill" and partial list of recipients is Meagher, Howard, Grimes, Rand, and Waneta Drew. Issues discussed in that message included comments about the possibility that the state might open a competitive landfill, risk of premature closure or lack of expansion permit, including mention of "the \$4M performance bond." A date for this message was derived from its text, which requested a meeting "... next Tuesday morning, November 11th."]

2003.11.14: STEARNS ON EXPANSION BENEFITS

Stearns sent an e-mail to a huge list of people involved in this deal:

"Keith McKeen just asked me to respond to Hampden citizens concerns that the Old Town expansion would lead to more out-of-state waste in Hampden. I presented him with the win-win-win opportunities we are bringing to closure."

2003.11.17: MACDONALD LETTER TO ALTON

In this letter addressed to Ron Borja, Chairman of Alton Board of Selectmen, responding to an Alton request for information on the landfill, MacDonald suggests a meeting "... to fully address the questions and concerns you raised. In order to focus on the issues you identify in you [sic] letter, I suggest that this meeting be limited to the three Selectmen, representatives from Georgia-Pacific, the intended landfill operator (Casella Waste Systems, Inc.) and their engineers, and myself."

[NB This is a typical indicator of their approach to public involvement.]

2003.11.20: ACQUISITION AGREEMENT

The "marked and signature copies" are ready, see message from High to Howard, MacDonald and Laubenstein. "Would you also call to advise that it is on its way as we are trying to get it delivered to DEP by 4:00."

The e-mail from Laubenstein is headed, in bold: "Good News: the GP Acquisition Agreement has been signed and will be delivered to the DEP today."

2003.11.21: ACCEPTED FOR PROCESSING

Letter from Darling to Meagher. [Record List XV.A.1]

"As you know, staff began the substantive review of the application at the same time we completed the preliminary review of the application." [NB what date was that? One perspective on this is based on a transparency argument, that the public should get a shot at its own 'review' when the DEP begins its own review.]

"In order to meet the February 13, 2004 processing timeline set for the Department's decision on this project, it will be critical that both Casella and its consultants, and Department staff respond as quickly as possible to information provided by the other party. Department staff have committed to completing our review of the application, as submitted, by the end of December."

[NB Again, the compressed timeline. Exactly where did the 2/13 "processing timeline" come from?]

2003.11.21-12.11: PUBLIC COMMENT PERIOD

See Casella timeline to Gallagher 2004.01.22.

2003.11.26: ACQUISITION, PERMITTING SCHEDULE

Laubenstein to Cashman, Stearns and Sosnaud, forwarding the "GP Acquisition Agreement."

"We are getting some pressure from Jim Bohlig to rush to a signing. Our response has been that this is a complex arrangement and we need to take our time to make sure we have the best agreement we can. [new par.] Both GP and Casella are content to live with the fiction that the DEP will issue a permit in December and are unwilling to begin discussions about a back up [sic] plan to close the deal. We have suggested they start negotiating now so that we do not come to December 30 without an agreement how to complete the project."

2003.11.26: TRUCK ISSUE EMERGES

Message from Landry of Maine DoT to Stearns, "I apologize if the meeting I had concerning the landfill caused so many problems."

[NB No indication of when that meeting was, no earlier messages referring to it.]

"The intent of our meeting was to meet with the communities where we (MDOT) perceived to be traffic problems. We found three areas on the proposed haul route to be problematic; One in Bangor, one in Brewer [sic] and one in Old Town. Brewer was not notified of the meeting up front, oversight on our part and I have apologized to Stephen Bost for the oversight. [...] The major problem is that Brewer said they had no idea the landfill was even proposed and that trucks would be going through their community."

Goes on to mention relatively small number of trucks from DoT perspective, upcoming meeting with communities.

"The problems in these communities are perceived problems and ones that just educating the people isn't going to solve. The bottom line is I think that some town along the haul route will ask for the Board of Environmental Protection to take jurisdiction on this project and there will be no way that this will finish this year."

On Sunday, 2003.11.30, David Cole replied, also copying to Stearns, Umphrey, Cashman and Ibarguen. "Alan, I assume that getting this done without delay is important to the GP deal. What are the consequences of delay? I'm not sure the impacted communities understand the role of this landfill deal in saving jobs at GP in Old Town. I agree with Steve that some of this goes beyond the 'numbers', and issues of perception (impact and equity) enter into the picture. We need to strategize on this early this week. I think that any of the impacted communities would think long and hard before adversely impacting th GP deal in any way, if that indeed is the case."