

## **DECEMBER 2003**

On **2003.12.01** Stearns replied, copying also to Clark, Darling and Gallagher. "I continue to hear that GP and Casella are operating under the assumption of a DEP permit by December 31st. I trust Dawn and Jack are talking to manage that issue, irrespective of any traffic flare-ups." He goes on to distinguish between a DoT permit and a DEP permit, and the best thing to do is convene the meetings and get a factual report in front of the DEP. "Both GP and Casella will be at the December 8th meeting to make the case for timely action on a regional priority. They will point out that if the Old Town landfill proposal fails, the Lincoln / Carpenter ridge facility will need to be opened, and the traffic issues will be identical."

See also MacDonald message of 2003.12.04.

### **2003.12.04: TRAFFIC AND PROCESS**

See also messages of late November on emerging traffic issues. MacDonald now is alerting others to the news articles on traffic issues. Concluding sentence: "A common feeling among people calling DEP is that this process has been kept out of the light and that is not 'sitting' well....." [ellipses in original]

### **2003.12.08: TOWNS MEET WITH DOT, DEP**

This was called to address traffic concerns mainly raised by Brewer. The meeting was held in the DEP offices in Bangor.

We have handwritten notes from John Lord. The estimates they were given were 45 vehicles across a 14 hour day = 3.2 vehicles per hour.

On John Lord's copy of the agenda, there is a list:

Brewer: Verrill & Dana, S. Bost, D. Sacks, F. Higgins, L. Johns, S. Barker.

There is also a post-it with George MacDonald's name and number, and a note in the same handwriting signed "Jack": "We need to begin working out the details of this agreements." On the note in Lord's writing is "call Mon. p.m."

### **2003.12.09: CASELLA MEETS IN ALTON**

This is referenced in a 12/18 letter from Casella to Darling replying to questions and concerns raised about traffic, particular reference to Lyman Feero.

Apparently MacDonald was also there, since reports on this in a 2004.02.18 e-mail to Stearns. A community benefit agreement was offered, and Alton made a counter-offer. "The Town has since retained the services of an attorney and she has asked us to wait before setting up another meeting, in order for her to become familiar with the situation."

### **2003.12.09: LANDRY MEMO ON BREWER**

Replying to a message from Stearns, "How'd it go yesterday?" Landry wrote his outraged e-mail in response, copying to Bruce Ibarguen and David Cole.

The whole problem was laid out, including Brewer's demand that the trucks go to 80,000 lbs., and how this would shoot down the RFP; also, that the DEP standards of safety are vague, that what is being asked for (apparently just to get them out of the towns) discriminates against one kind of hauler, and can't be allowed. It does state Brewer's position well, however: that "this thing was pushed out way to [sic] fast" and that "all the towns in the area should have been consulted prior to putting out the RFP for the facility and that the state as the owner should have required more stringent control over the traffic and where it could go."

[NB All perfectly valid positions, and now they will have more problems than if they had just held the hearings at that time.]

Landry mentions a Friday deadline (12/12/03) to get alternatives to DEP, and part of it is getting crash records up to date which was insisted on by Brewer.

### **2003.12.09: LETTER FROM LORD TO DARLING REQUESTING THAT NO PUBLIC HEARING BE HELD**

### **2003.12.11: REP. ROGERS WRITES BALDACCI**

Will T. Rogers of Brewer wrote a letter of concern to Baldacci about "the planned transport of 540,000 tons of solid waste through Brewer and other surrounding communities. [...] The location of the dump is a very short distance from the exit of I-95 and that should be the primary reason for planning to use the Interstate route."

### **2003.12.12: DOT TRAFFIC REPORT TO DEP**

The report written by Steve Landry was submitted to DEP on 12/12. He outlined the "proposed haul route" from Hampden, over Chamberlain Bridge, via Bradley and Milford to Old Town. This report also outlined 2 alternatives, the first of which was preferable (the second, via Route 2 through Orono, was thought to have too high a crash rate).

A draft was sent late the previous day to Alan Stearns, who commented at 8:59 a.m. 2003.12.12. He provided five bullets headed "Isn't there a larger context?" These included observation that the added trucks would not even trigger a DoT review, routing is voluntary, issue of trucks from origins other than Hampden, smaller trucks would increase trips in some communities, and difficulty of enforcement of trucks coming from the north.

### **2003.12.12: P&S MEETING IN OLD TOWN**

A meeting and call-in was set for 10 a.m. Friday 2003.12.12, to "...finalize the structure of the closing transaction..." per Douglas e-mail. "It will likely involve an amendment to the P&S given the expectation of the DEP license amendment not issuing prior to closing... [ellipses in original] and the associated issues which will have to be worked out."

[NB It is still not exactly clear what was given to the DEP, given that the final agreement was not signed until 2004.02.05.]

### **2003.12.12-14: "... ANY PETITIONS?"**

Stearns initiated a set of e-mails with the question, "Other than Brewer's letter, any petitions?"

Darling replied 12/13 yes: Sidell, on traffic; Lippincott; Maine People's Alliance. "I assume you know that the City of Brewer requested several things: that the 20 day comment period be extended to 12/31/03; that the Board of Env. Protection assume jurisdiction; and that a public hearing be held. [new par.] a [sic] first for me - the City of Old Town requested that the Department not [underlined] hold a public hearing."

In his reply to this, Stearns on 12/14 (Sunday morning) stated "Dawn Gallagher told me the Town of Alton requested a public hearing? True?"

### **2003.12.15: PAYMENT AND CLOSING AGREEMENT**

Laubenstein announced to Stearns, Cashman and Sosnaud that "Casella has agreed to pay and GP has agreed to accept \$12.5 million in December in order to close before the end of the year." Projected closing date: 12/22. Aiming at a meeting 12/18 Thursday to go over the agreements. In part this depends on a "sign-off on the Operating Agreement."

[NB Yet see 2003.12.22, closing was postponed.]

## **2003.12.16: BEHR MEMO ON LEAKS**

The memo from Dick Behr was reported in a Penobscot Times article 2004.01.22, one day after it was discussed during the first Elks Club meeting. It was quoted as saying there are "statistically significant water quality changes" and that another memo from Behr 2003.12.22 "...takes issue with hypothetical leakage scenarios as presented by SME." Also, a 2003.12.30 letter to Darling from Behr recommends "an updated environmental monitoring plan (EMP)."

[NB It is telling that none of this was public -- or even known within the DEP -- until after the period for requests for public hearings based on conflicting technical information had already closed.]

## **2003.12.16: GP CONFERENCE CALL**

Stearns notifies Baldacci of a 1:45 12/16 conference call involving Cashman, Douglas and Ralph Feck (in Atlanta) to go over certain cutbacks at GP (fewer projected jobs, shutdown over Christmas) and status of sale.

"It is likely now be timely for the Governor to call GP in Atlanta: concern regarding downsizing, good news regarding Casella closing, encouraging progress on landfill permit, solid commitment to business climate and future of pulp & paper in Maine."

With this was a GP "Confidential" presentation (Power Point) "Old Town Facility Cost Structure Review December 16, 2003." This pointed to weakness in the tissue market, increasing competitiveness, higher costs at OT, possible savings via biomass boiler. The overall picture does not seem very good for the OT mill.

## **2003.12.16: TEAM MEETS WITH BREWER**

[NB This meeting was unknown to me until the record was distributed. In the record list, at X.5\* it is stated "DEP project manager responded orally at a 12/16/03 meeting that 06-096 CMR Chapter 2 sets the time frame for requesting BEP jurisdiction.]

At Record List X.6, not copied for Board, are Darling's notes from that meeting. The copy is not good, but there was discussion of costs of transport from PERC and perhaps other sites; and there is a line that states: avg. unc. "cost = \$4 M / y." [NB This is the cost that was floated in the papers that represents sending the trash in smaller trucks over the Interstate.] The notes are fragmentary, but seem to say that if there is additional truck traffic, Brewer will oppose the license. The notes conclude with a line referring to a "DG decision" [Dawn Gallagher] that would allow time to resolve "Brewer, et. al traffic concerns."

Handwritten notes from office of the Governor (4 pages) are more detailed and legible than Darling's. Attending: Doyle, Meagher, Drew (for Casella), Bost, Sachs, Stearns, Darling, Landry, Barker (Brewer PD), Higgins (Brewer DPW)

Casella's position is stated thus: "Meagher: back of the envelope; -- 20,000 payload = 30% increase in trucks; -- 50% of customers are contractual -- MERC, PERC, RWS: bids from Casella assume 100K as part of combined transport / disposal -> Casella would eat, and / or would lose low bid upon rebid; -- (85% of traffic = 100K); -- 50% is spot market, Cassella [sic] unable to measure cost, determine whether business would go elsewhere."

[NB Is this process about protecting Casella's competitive position? Should the fact that they would be underbid in a process that protects the public interest be cause for ignoring that interest?]

Some marginal figures reflect the \$4 M / year added costs. "\$125M over life of facility + revenue loss from competition" [NB This is within a drawn box.]

"PD: -- Wilson & Union is high crash; -- hit and run (non-deliberate) trucks; -- jake brakes, clipped signs, Route 9, Route 46; -- intersections are marked; -- trucks don't understand synch at Bridge Hill; -- Penob River bridge is somewhat better"

Sachs adds "This traffic is new pattern, new turn." Bost adds "Possible / likely increase in traffic with expanded permit." Meagher counters, "Limited to state of Maine waste, defined market." Bost: "NH waste turned to ash becomes Maine waste."

Brewer PD: "No [arrow up] trucks period." Sachs: "Brewer would oppose Eastern Fine expansion that affects North Maine. Ec Dev = quality of life. 80K can be done legally."

Doyle: "This is least congested route; -- safest route; -- economic route; -- not talking a lot of traffic - 5 trucks peak hour; -- keep it in perspective."

I-95 was discussed. Alan: "Impasse on I-95 -> procedure." Meagher: "Procedure -> GP"

Under "Follow Up" first point is: "Ratchet up Federal --> Chiefs of Police Assoc. --> BDN --> Snowe & Collins. -- Focus on I-395"

Canadian trucks were discussed, US v. Canadian inspection, "10x noise from Canadian trucks"

Discussion of DEP requirements, "must act by Jan 5 (+ / -)"

Overall outcome of the meeting: "Goal: Build confidence in DEP jurisdiction and ability of this room (and other towns) to build com"

### **2003.12.17: LAUBENSTEIN MEMO ON AGREEMENTS**

This memo for file outlines basic acquisition and operating agreements.

It expresses confidence that this round of permitting will prevail, though perhaps not the expansion. A provision was written in to "share the risk that the horizontal expansion is unobtainable". The expected present permitting will give 10,000,000 cu. yds. If expansion is not allowed, GP is only guaranteed 15 years of disposal capacity.

Discussing the operating agreement, the section on "Acceptable Waste" states: "Casella requested to be permitted to buy processed C & D fuel for the GP biomass plant from out of state vendors and to bring the related residue to the landfill for disposal. We refused this request since we have repeatedly told stakeholders that there will be no out of state waste at the facility. Casella is allowed to dispose of residue from C & D fuel that is processed in the state."

[NB Casella's proposal is quite telling -- apparently what they had in mind was to operate a facility somewhere out of state, and then to bring all the fuel and the waste to Maine!]

Under Operating Agreement, point 6, "We have not reached agreement on the terms of the \$4,000,000 performance bond to secure Casella's obligations. I believe the parties agree that the bond must provide for immediate cash payments to the State to enable the State to operate the landfill."

### **2003.12.18: LAUBENSTEIN ON "LATEST DEVELOPMENTS"**

A message to Stearns, Cashman, Sosnaud, MacDonald, states "I thought it might be helpful to put down some issues presented by the latest developments."

[NB What are these developments? We could assume they have to do with Stearns' message on investment and taxation options for the Old Town Mill, and looking forward, to the GP decision to postpone the 2003.12.22 closing.]

The message has six points:

"1. Is there a need to close in December? Can we not wait until the license amendment is granted and all appeals exhausted? The reason GP put forward to close in December throughout the negotiations was revenue recognition. GP now claims it needs to get cash for the biomass facility. Yet, no work can be done on the facility until construction

season begins next year. In addition, why would GP invest \$12.5 now if there is even a remote chance the remainder would not be realized? Michael recommends we do not close in December under the current set of circumstances."

Point 2 is on the reverter option. Point 3 related to term of contract, suggesting that shorter than 30 years would be "more realistic." Point 4 is: "Should we amend the Acquisition Agreement to require investment of the purchase price in a biomass facility? In the Acquisition Agreement GP has agreed to construct a biomass facility, but has the option of investing the purchase price in a biomass facility or 'other capital improvements of the Old Town Mill site, or a combination of both.'"

The final two points are:

"5. Would any changes in the structure of the transaction affect the RFP process? George believes that there are features of the transaction that other potential bidders found too daunting to be willing to bid. These include the 30 capacity commitment at \$10 a ton for 500,000 tons a year and the C & D fuel obligation. If either of these substantive provisions were to be changed, then we would probably be required to go out to bid again.

[NB This figure may be in error. We believe the capacity commitment at \$10 was for 50,000 tons per year.]

"6. Has there been such a substantial change in circumstances that there is no longer a meeting of the minds and therefore no contract? If there is a consensus that GP latest disclosure is a change in how the transaction is to be viewed, we should consider closely examining the Acquisition Agreement for provisions that have been included because of the prior understanding about GP position. In some respects, we could consider two transactions with GP: one for the acquisition of the landfill and another for the disposal of waste."

[NB Again, what is "GP latest disclosure"? And, though the final OSA and P & S do not mention it, aren't the disposal and fuel commitment terms as suggested in the additional \$5 million offer from Bohlig 2004.01.12 a change in substantive provisions? Those provisions would significantly raise the fuel and disposal prices after 5 years. Wasn't the low price for those a competitive barrier that deterred potential bidders? See letter from Waste Management, 2003.07.09.]

In a reply message 2003.12.22, 8:31 a.m. [NB this turned out to be the day intended to be the closing, postponed by GP -- when?] Sosnaud writes: "I think Bill's #6 (below) captures it. Without a commitment to Old Town -- which is probably ephemeral unless the Plattsburg to Old Town consolidation occurs -- everything needs to be reexamined."

## **2003.12.18: MEETING ON AGREEMENTS**

Laubenstein message 2003.12.17 to Stearns, Cashman, Sosnaud, MacDonald and Adams confirming meeting for 2003.12.18 "... to discuss the status of the landfill transaction and the negotiated terms of the Acquisition Agreement and the Operating Agreement." Attached was "...a memorandum outlining the major negotiated provisions of both agreements." [NB This was four days before the scheduled closing, that was postponed.]

## **2003.12.18: STATE OFFERS PACKAGE TO GP**

This "Proposal from The State of Maine" was forwarded by Nimon to Douglas, copied to Cashman and Thaxter Trafton, in a note headed "GP Expansion." It assumes "you would invest \$35 million all at once and that you would hire 100 net new employees. I also arbitrarily set the employment baseline at 450 - we'll need to review this number together to make sure it is the one required by statute."

[NB Compare this draft with the one distributed in January; see 2004.01.09. See also the difficulty in the way GP was counting jobs, necessitating a proposed special law exempting this deal from existing job baseline statutes; see Nimon e-mail of 2004.01.08.]

Through various tax breaks, this proposal offers a total of \$16,477,380 in benefits to GP over 20 years, plus \$6,645,800 in reimbursement for "all property taxes paid on eligible business property." This apparently was supplemented with a \$3-4M / yr. offer in January, plus two one-time cash offers; plus the accrued value of below-market prices for sludge disposal and biomass fuel.]

Headed by "Download of thoughts, conversations:" this was addressed to Cashman and Nimon, headed "Old Town Tissue Machines." It explored the feasibility of moving "a machine" vs. moving a "towel line," seen as more "realistic." "\$5M to \$10M to restart machine #1 and move lines from NY."

[NB The conversations these comments represent may be the origin of the enhanced offer from Casella, adding \$6M to their commitment if GP were to complete certain plant improvements.]

Further discussion of transport and energy costs, as well as comments on marketplace for tissue products: "KimClark & ProctorG are huge competitors. Honestly, both OLD and NY could both [sic] die, GP could supply NE from south."

**2003.12.22: GP POSTPONES CLOSING** Laubenstein e-mail informs Stearns, Cashman, Sosnaud and MacDonald, reporting also conversation with Chris Howard: "...



it is our understanding that GP has not fully disclosed the facts leading up to GP's decision to postpone a closing."

An issue around what Howard (PA) could disclose to Casella. "He said he was not a [sic] liberty to disclose anything to Casella or Casella's attorney." [NB See ahead to exchanges of 2004.01.07]

[NB What was in their minds? I can only imagine that GP was either imagining or threatening that they would close the mill, and this was being used as some sort of leverage on the whole deal. See also e-mails of late Oct., early Nov., on "complete for processing."]

### **2003.12.29-31: HOWARD (GP) TALKS TO BOHLIG (CASELLA)**

The exact date of this conversation is not known. See Howard e-mail to Laubenstein, 2004.01.06, "Bohlig knows everything. I spoke with Jim myself at length between Christmas amnd [sic] New Years."

[NB One has to wonder what the relationship is between the closing postponement, the letters from Bohlig of 2004.01.12 offering the cash enhancements, and bringing the deal to a close.]

### **2003.12.30: BEHR MEMO ON EMP**

Dick Behr sent Cyndi Darling a memo on the Environmental Monitoring Plan. This is a set of comments toward drafting an EMP.

[NB Why are they still evaluating the data and crafting a plan when the period for public to request hearing based on credible conflicting technical evidence is already closed?]

"Based on my recent reviews of the facility's water quality data, additional downgradient monitoring wells are certainly needed."

Since Woodard & Curran's baseline report shows TKN and TOX in leachate, "At a minimum, TKN and TOX should be added to the parameter list."

A critical sentence, p. 2: "However, the detection of a variety of volatile organic compounds and several elevated inorganics and indicator parameters indicate the primary liner may be leaking." (Citing Woodard & Curran, 2003)