

JANUARY 2004

2004.01.01: DARLING TO DOYLE ON BREWER

This note sent Jan. 1 [!] from Darling to Doyle [NB again, who are the regulators working for?] in part: "Happy New Year - I just read a letter from Edward Gould from Gross, Minsky & Mogul making Brewer's 'conditional' request for BEP jurisdiction 'definite'. [new par] I tried contacting Steve L. [Landry] this week to see when he wanted to set up a meeting with Brewer, but he's out. I tried calling George MacDonald about setting up a public info meeting, but he's out....." [ellipses in original]

[NB It is, after all, Jan. 1]

In a reply addressed to Landry, Doyle, Darling, Clark and Macdonald, and copied to Gallagher and Cole, Stearns writes:

"Tighten this up, ASAP. [that sentence both bold and underlined] At our last meeting there was a clear expectation of a follow-up meeting with Brewer before January 5th. Steve Landry or Cyndi Darling -- make the meeting happen. I want to know by Monday noon that a meeting has been scheduled with Brewer. [NB this sentence bold and underlined] Call me if you need assistance. [new par.] Cyndi / Paula: please keep me in the loop, especially re planned legal-ish response. Must you make a preliminary decision on January 5th? Does this latest Brewer letter mean anything legally?"

[NB This amounts to direct orders from the Governor's office to the DEP. Where does this leave the often claimed independence of the DEP?]

2004.01.05: OT COUNCIL

The 2004.01.05 Old Town Council meeting was reported in the Penobscot Times 2004.01.08. This was the meeting at which residents made known their dissatisfaction at lack of information. Ed Spencer was quoted, "No one in this town ever had a chance to get information." "Spencer asked that a public information hearing be scheduled so residents could understand what was going on. He said that the dump in its present state already smelled bad, adding, 'This process smells worse.'" To requests for a hearing, Lord said that public comments would be accepted by the DEP until mid-February, but that the period to request a full public hearing ended Dec. 11.

2004.01.06: PROGRESS WITH GP

Stearns to Laubenstein, "Dialog with GP advancing. I'll know more tomorrow after 11 a.m. Governor will try to close deal with Atlanta within a week. I optimistic, others are pessimistic."

[NB What is going on? This all becomes coherent when the development package of December, "no home runs" according to Douglas, is combined with the new offers of January, including the cash enhancements from Casella.]

2004.01.07: CRITICAL NEGOTIATIONS

A set of e-mails, meeting notes and a new "Proposal from the State of Maine" [see 2004.01.09] surround the terms of the transfer of the parcel. There are also issues related to negotiations with Casella.

Of particular interest is what "Bohlig knows" [President of Casella] -- see previous, 12/22 postponement.

[NB There seemed to be something that GP knew or was doing, that the State knew, but that (perhaps) Casella did not.]

In an 2004.01.06 message from Laubenstein to Howard (PA), he said "It is my impression that Bohling [sic] knows no more now than he did before the holidays." In his reply, Howard replied "Bohlig knows everything. I spoke with Jim myself at length between Christmas amnd [sic] New Years. Jim wants to 'will' this one over the finish line and one way to do that is to build your own reality and hope everyone follows along ..." Howard continues, "That said, if we can get GP and the State to an economic package that works for both, then Jim's deal can happen and will be an integral part of the solution. So maintaining some momentum there is important. Casella is proceeding with the DEP process. I think we need to support that process and not create the impression that there is no reason for DEP to push ahead on their 2/15/04 schedule. [new par.] We should execute an extension to the P&S. It expired 12/31/03. Let's do that in the next few days."

To this Laubenstein replies "I do not recommend that we either extend the deadline on the acquisition agreement or continue discussions with Casella at this time. My reasons (and you may have others) are that a new deal may require a new RFP; there are some provisions in the term sheet (such as sovereign immunity, indemnity, guaranteed commitment by GP to stay in Maine, C & D fuel, cost and length of commitment to take GP waste, reversion of real estate and ownership of biomass facility if GP leaves the State) that should be revisited."

[NB This seems to be a critical moment. See forward, Bohlig letters of 2004.01.12, offering a total of \$6 million in enhancements to their Proposal. The question needs to be asked: isn't this "a new deal [that] may require a new RFP"? Exactly under what circumstances would a new RFP be required? This was the central question I asked Francis Ackerman in conversation 2004.10.15 and in cover letter of the next day.]

2004.01.08: ETIF JOBS BASELINE

Nimon e-mail to Stearns, copied to Cashman and Sosnaud, titled "G-P ETIF." Says Douglas is "... worried about overstating benefits that may not pan out. Just so we're all on the same page: ETIF is a high quality job creation incentive. The law on the books today would not permit one penny of reimbursement for the 100 jobs because of the need to establish a job baseline from the higher of 12/31/03, or the average of the 3 previous 12/31's. To illustrate, G-P has a workforce of 450 as of 12/31/03; the figure balloons to 552 when averaged over three previous year ends, wiping out the 100 jobs in the proposal. One remedy is a private & special law that authorizes the department to alter the ETIF definition of 'base level of employment' for its review of G-P's CY2004 development program. Jack just told me by phone that if all other pieces of this deal come together as planned, he and Governor will seek legislative support for the P & S law. [Private and Special Law -- not to be confused with the Purchase and Sale agreement.] I'll let Rick know generally about our plans for support but won't be sharing specific language yet (see attached draft). He and I will be reviewing the latest G-P proposal draft this afternoon (G-P prefers powerpoint, so we're re-formatting). Let me know if you have questions."

The attached "private and special law" after several "whereas" clauses, reads in full: "Sec. 1. Authorization to adjust the definition of base level of employment. Notwithstanding the Maine Revised Statutes, Title 36, chapter 917, for the purposes of approving Georgia-Pacific of Old Town's CY2004 ETIF development program, the Department of Economic and Community Development may define 'base level of employment' as the total employment of a business as of the December 31st immediately preceding the approval of the employment tax increment financing development program."

2004.01.09: CASHMAN, "JOBS VERY MUCH UP IN THE AIR"

In an exchange of mails related to setting up the Elks Club public informational meeting, Cashman sent an e-mail to Stearns and MacDonald, copied to Laubenstein and Sosnaud, that reads in full: "It needs to be pointed out at this hearing [sic] that the decision on landfill permits is based on environmental data not on public opinion. The statement relating to the value to the state should come from your office George because the value is in relation to our obligation to provide [sic] capacity and the advantages to [sic] this site over our alternatives. The value as to its relation to jobs is very much up in the air and at this point its [sic] a tough thing to talk about."

[NB This statement should be read in relation to the postponement of the closure in December, and the resolution following Casella's new offer of 2004.01.12]

2004.01.09: LETTER ON BEP JURISDICTION

See also Darling's message of 2001.01.01, mentioning reading original of this letter.

On 2004.01.09 Gould of Gross, Minsky and Mogul, representing Brewer, wrote to Alan Stearns, apologizing for not sending a copy of "the City's request that the Board of Environmental Protection assume jurisdiction over this application" to him. In addition, the letter responding to Doyle's objections to their request is also included. [NB neither the original nor the objections and response letters are included.]

2004.01.09: NEW STATE OFFER TO GP

A new "draft" economic proposal from the State to GP was circulated 2004.01.09. Difficult for an outsider to understand in full, this is offered "In addition to the measurable, financial enhancements from actions launched last year, notably the landfill and boiler initiatives..." [ellipses in original] [NB These are the \$16.5M and \$6M offers from December, 2003.]

"The State is pleased to offer a Retention-Expansion package with annual benefits of \$3-4 million to GP Old Town." These included an initiative to bring down wood costs per an Executive Order initiating a wood supply task force, various local tax breaks, and "Governor's Commitment -- \$1,000,000 (year one equity injection" and "Governor's Personal Proposal -- Additional One-Time Funds (to be presented personally on Monday)"

[NB Monday would be 2004.01.12, the day that Bohlig came forward with his \$1M plus \$5M offer. The language of this proposal is interesting and vague. Could we be far wrong in imagining that this "additional one-time funds" of the "Governor's personal proposal" would be exactly the \$5M offered by Casella.]

In a reply to Douglas' message stating "a good collection of 'singles and doubles' ... no home runs and is a bit 'light' in terms of getting people excited" Stearns wrote to Nimon and Cashman: "I talked to the Governor, left voice mail for Jack. The Governor is very focused on extension of any and all Pine Tree benefits to this project -- even with stretching. Can more be done?" Nimon replied to Stearns and Cashman on 2004.01.06, "Just spoke with Jack. I'll let Rick know that should Atlanta come through we will have GP in PTZ [Pine Tree Zone]. Jack asked me to remind Rick that this designation will include corporate income tax exemption (as per PTZ law) for taxes attributable to OT expansion. Sounds like short of Governor going to legislature for special dispensation, this footnote on tax exemption will conclude our proposal to GP."

[However, within 3 days the \$1M plus "personal proposal" emerged, of which there is no sign in these earlier mails.]

2004.01.12: LETTERS FROM BOHLIG ON OPERATIONS CONTRACT

Casella President Bohlig wrote a letter and a follow-up clarification to Stearns and Baldacci on the topic "Contract for Landfill Operations." Two separate offers were made. The first is "an enhancement to its existing Contract Offer of a \$1,000,000 cash contribution which can be used by the Governor's Office in developing strategic resources for the Old Town Georgia Pacific paper making operation. This offer is a cash enhancement offer to our existing offer and would be paid at closing under all of the current conditions which have been negotiated between the parties."

The first letter continues: "In addition, we have examined our offer and believe that substantial front-end benefits will be realized by Georgia Pacific in locating paper making operations from other venues to the State of Maine through the reconfiguring of our existing offer for sludge disposal and biomass supply. [new par.] In order to incentivize Georgia Pacific to this outcome, Casella Waste Systems, Inc. is prepared to offer \$5,000,000 of Additional Cash Reimbursement (ACR) upon the completion of paper making conversion upgrades now contemplated by Georgia Pacific."

[...]

"In order to affect this ACR, Casella Waste Systems, Inc. would propose a modification of the biomass supply contract from \$4.00 to \$8.00 per ton beginning in year 6 and a modification to the sludge disposal contract from \$10.00 to \$25.00 per ton beginning in year 6. This ACR is designed to provide substantial additional improvement to the net present value of the original offer and is offered as an alternative should this assist in locating cash resources necessary to incentivize Georgia Pacific's decision to develop long term sustainable paper making operations in the State of Maine."

Because there was an ambiguity in this letter as to whether the \$5 million was in addition to or would replace the \$1 million, a second letter clarifying the first was sent, stating: "Casella Waste Systems wishes to clarify that the Additional Cash Reimbursement (ACR) of \$5,000,000 is in addition to the existing offer, including the \$1,000,000 enhancement discussed in the body of the above-referenced letter. Taken together, Casella Waste Systems, Inc. is offering \$6,000,000 of additional cash benefits associated with the Contract for Landfill Operation. \$1,000,000 of this is offered without condition to the existing transaction and the balance of the cash contribution (\$5,000,000) is tied to a reconfiguration of the biomass and sludge disposal supply benefits as discussed in the letter. [new par.] I hope this clarification assists you in your discussions with the other parties."

[Update 2004.09.28: After reading the letters again and checking the OSA, it seemed clear that the \$1 million mentioned in the letters was free and clear based on existing agreements, and it would only be after GP put the mill upgrades into place that the \$5 million extra would become part of the deal and Casella would ask for the higher fees]

[NB See memos at 2004.01.07, "Critical negotiations". Especially see Howard (PA) statement that "Bohlig knows everything" and that they had talked late in 2003. What is going on here?]

[See State offer to GP of 2004.01.09, and e-mails of Stearns to Bostic on Correll on 2004.01.14.]

2004.01.12: PUBLIC NOTICE OF ELKS CLUB MEETING

See Casella timeline to Gallagher 2004.01.22.

"Public notice in BDN and Penobscot Times of MDEP Public Information Meeting in Old Town. U.S. mail notice to persons who submitted written comments during the 20-day comment period."

2004.01.12: STEARNS TRAFFIC MEMOS

This memo from Stearns to Baldacci outlined status of trucks and traffic issues:

All issues will be discussed at scheduled 1/21 DEP "public workshop"; DEP will recommend against BEP jurisdiction "because the issues are not complex"; Brewer wants alternate routes, then Stearns asks sarcastically "(Bangor Mall? Downtown Orono?)" Designated route changed from Chamberlain to Penobscot bridge. All routes are voluntary. Truck weights and I-95 "is an impasse."

Also this date, Stearns wrote to Landry suggesting a route from Newport over Rt. 43: "If it's not posted and has good intersections, it might even be the preferred route for traffic coming from Skowhegan, no?"

[NB This is the route that would be of concern to Hudson and other communities in that direction. What is the reference to Skowhegan? Does he mean Norridgewock? If so, has Stearns yet come to a clear understanding of what this is all about? The same goes for the general idea that traffic to Old Town will somehow be originating at Pine Tree, not at Orrington and, presumably, Lewiston.]

2004.01.13-14: GP FINANCIAL DEAL SETTLED

See Stearns meeting log for Tuesday 1/13 6:30-7:00 p.m., phone conference between Correll and Baldacci with Stearns attending Tuesday, and followup e-mail to entire state team of 1/14 (MacDonald, Darling, Clark, Laubenstein, High, Cole, Gallagher, Sosnaud, Nimon, Spies, Rider, Roney, Adams, Lincoln, Umphrey, and Boucher).

This e-mail (Jan. 14) was titled "Georgia Pacific: Old Town" and reads in full:
"Yesterday we received reassurances and commitments at the highest levels regarding all current jobs at the Old Town mill. The landfill closing documents and the landfill permit should proceed expeditiously with sustained confidence of win-win-win benefits for jobs. I'll be having conversations with Casella and GP today regarding some details, and additional opportunities."

[NB So what again are we to make of a message directly from the Governor's office to the DEP team (Darling, Clark, Gallagher), "... the landfill permit should proceed expeditiously..." See also Stearns reply message at 2004.01.01. Wasn't the process already in place and underway? What is the meaning here?]

Also on Jan. 14 are e-mails from Stearns to Bostic and Correll, then to Laubenstein and High, with query received back from Laubenstein:

Stearns to Bostic and Correll: "Mr. Correll: [new par] Following last evening conversations with Governor Baldacci, attached are documents which describe the additional \$1M and \$5M which we are eager to bring to the table. As the Governor mentioned, the \$5M is necessarily conditioned upon certain restructuring of terms with Casella Waste Systems, which we believe will be favorable to GP's interests. I look forward to working with your team to develop new jobs in Old Town, and we all appreciate your commitment to all existing jobs in Maine. Please don't hesitate to contact me or the Governor for any reason."

Stearns to Laubenstein and High: "I've had calls today with both Casella and GP. We're ready to roll on a closing. They'll be calling you all to set up meetings. The rough outline that appears to have agreement is: [new par.] -- \$1M from Casella upon closing (see attached letters) in escrow or some other form, at the Governor's control, based on the Governor's interests to flirt with GP. [new par.] -- \$5M referenced in closing documents with contingencies many months or years out, allowing an eventual side agreement between GP and Casella, I flagged the likely need for state concurrence. [new par.] I know that's vague. Frankly, the conversations were vague and we'll rely on your expertise and advice. All parties seem to have considerable common interest and good will to make this happen. I'm at your disposal."

Laubenstein to Stearns and High, with Stearns' replies in caps: "Alan, [new par] Are we to assume that all other provisions of the Term Sheet remain in place? YES. Or have some the terms [sic] been re-negotiated, such as reversion, ownership of biomass

facility, commitment by GP to retain jobs, term of the agreement and indemnity. NO. [new par.] I recall that Jack wanted the acquisition agreement changed to require GP to invest the \$25 (26) million in the biomass plant and not in other capital improvements. YES. [new par.] Certainly, a conference call with you before we enter negotiations would be extremely helpful."

Also, see Cashman memo to Landry of 2004.01.09, cautioning him to emphasize landfill capacity benefits over jobs benefits.

2004.01.14: RWS CONSIDERS OT DISPOSAL OPTION

A PPH article 2004.01.15 reported a meeting the previous day of the RWS finance committee, exploring options for future disposal of ash from their incinerator, that is "owned and used by 21 southern Maine communities" and that is one of four trash-to-energy plants in Maine. The choices seem to be to expand their existing landfill, managed by L.R. Higgins, in order to provide longer term disposal for their ash as well as added commercial space for other waste sources including Massachusetts, or to enter into a contract with Casella for long term disposal at the Old Town facility. It was expected that the RWS (Regional Waste Systems) landfill had only 10 months of remaining capacity.

"Another proposal, from Casella Waste Systems Inc., owner of the Maine Energy Recovery Co. incinerator in Biddeford, would send RWS ash to a state-owned landfill in Old Town that Casella has a contract to operate. Casella's 20-year proposal would add \$5.02 to \$5.86 to projected trash-burning fees through 2025."

[NB In fact, the "contract to operate" was not signed until the following month, on 2004.02.05.]

See also letter from Higgins to the Phoenix at 2004.04.16.

[Update 2004.10.16: there is word that RWS will not expand in Scarborough, and that RWS ash will go to Old Town.]

2004.01.14-21: SANBORNS CONTACT BALDACCI

Sanborns contact Governor about Alton's relationship to this facility, numbers of abutters, location of entrance road, volumes of trucks. This was forwarded from Mullen to Stearns to MacDonald, who replied with details about how the host community benefits agreement works.

On 1/19 Mary Cathcart sent a message including the line "Help!!" to Stearns saying she had scheduled a meeting with Laura Sanborn for 11 a.m. Wednesday (1/21) and that "a

man named Stan Levitsky(?)" is also organizing a bus and press conference in Augusta for that date.

2004.01.15: DEP, BEP DENY BREWER REQUEST

Reported in BDN 2004.01.21, Dawn Gallagher denied Brewer's request and "informed" the BEP of her decision at their 2004.01.15 meeting. Whereas an earlier article had stated that the BEP had denied the request, a correction clarified that the DEP denied it. Brewer was quoted as having serious problems with this decision. "'The state should not be reviewing itself,' said Bost. 'It's kind of like a code enforcement officer giving approval for electrical work he's done,' said Sachs." The report also quoted from a letter from Tom Doyle representing Casella and responding to Brewer's request: "'Although others have commented on the amendment application, it has not generated substantial public interest of the nature warranting Board jurisdiction,' Doyle's letter states. Doyle goes on to state, 'There should be no discrimination against the trucks carrying waste to the West Old Town Landfill simply because they are transporting solid waste rather than another type of product or raw materials.'"

[NB Was the Board simply "informed" or did they act on this? Was Wardwell acting as Chair of the Board at that meeting?]

2004.01.16: DRY RUN PUBLIC MEETING

MacDonald reports on rehearsal for the Elks Club meeting and gives draft outline of what the presentations will cover.

[NB Of particular interest, perhaps, is the line, "Structure of meeting -- 1 1/2 hrs presentation, please hold questions to end" -- a projected format that did not survive the realities of the meeting.]

2004.01.21: AUGUSTA GATHERING

According to handwritten notes, the following attended: Bell, Lutz, Deb Gibbs, Spencer, Drummond, L. Feero, L. Sanborn, Peavey Haskell, Treat, Twomey, Kauffman, Cathcart, Martin, Makas [Stearns, notes], and in box to the right, Elizabeth Schneider.

Notes:

"Treat -- money to Alton to assist with permit review; -- encourage a public hearing"

"Martin -- if selectmen say they didn't know, they're lying; -- on expansion, their [sic] should be a hearing"

"Cathcart (Makas) -- whether DEP promised a public hearing"

[NB This last line is significant -- at the Natural Resources Committee meeting 2004.02.04, it was emphatically asserted that David Lennett had promised a public hearing, as part of the Resolve.]

2004.01.21: ELKS CLUB "PUBLIC INFORMATIONAL MEETING"

This meeting was reported in the Penobscot Times, 2004.01.29.

The tone of the meeting is given in parts of the account: "'Stop the nonsense and get to it,' shouted someone else. The meeting, which had been planned as an hour-long presentation interspersed with five 15-20 minute public comment sessions, soon gave way to hours of public comments and questions, interspersed with responses from DEP, Casella, G-P and state officials."

"Bruce Sidell of Old Town asked why Casella couldn't run smaller loads and pass the cost on to the generators of that waste, but was told by Bohlig that the company had to guarantee the state a ceiling on prices and that there was a need for long-term stable prices for solid waste disposal."

[NB Other than prices guaranteed to GP, what prices were guaranteed to the State? Bohlig's comments do not reflect the truth as stated by Meagher at 2003.12.16, that if Casella would have to bid on smaller loads, they would not win the contracts.]

A 7-page set of notes from this meeting were received as part of the official Record, 2004.09.17.

Most of the questions and answers are what have been heard many times in this process, for instance: "after Rick Douglass' presentation: does G-P guarantee that it will keep the mill open if the landfill sale goes through? he's sure that if it does not, the mill will close; the sale gives the best chance to keep the mill open, but he didn't give a guarantee" [all lower case as in original]

There was an interesting comment on truck count for that day -- 54. Answer was that GP hauls leachate "periodically instead of routinely." [NB ** if so, what are we to make of all the "peak hour" calculations, since they can be out of synch with the reality of hauling schedules?; i.e., true peak hour statistics.]

As to "what about Casella's record?" MacDonald replied, "described bidding process; 5 weeks of due diligence and went with Casella."

PCS question was commented this way: "what was Pierce Atwood's role in this deal? T. Doyle -- the 'deal' was between the Governor and G-P; the Resolve was done by the Legislature; PA is paid by Casella" [And where is the fact that PA was paid by GP during the preliminaries and through the passage of the Resolve?]

2004.01.21: STEARNS SUPPORTS SPECIAL RATES

This is a letter to the Public Utilities Commission in support of better electric rates for GP. In explanation, part of the overall deal is "the negotiation of a long-term power contract with Bangor Hydro to optimize the economics of the combined projects."

"These various agreements are mutually inter-dependent and were developed so that the long-term operational and production costs will keep the mill viable for the mid term." [NB which is it, long term, mid term, short term or no term?]

The second page of this letter starts mid-sentence -- must be an error. "I believe we barely averted the permanent loss of even more jobs in the recent past, and that unnecessary delay and continued uncertainty should not be considered an option. Rather, we are working daily to send a clear message to Atlanta that Maine's business climate is competitive such that GP should consider permanent retention and in fact expansion of GP's Maine operations."

2004.01.22: CASELLA TIMELINE TO GALLAGHER

Meagher sent "the inforamtion [sic] you have talked to Jim Bohlig about." A document was attached, "Public Participation in West Old Town Landfill Process."

This includes the line: "June 2003 Old Town City Council public meeting resulting in Resolution supporting legislative Resolve."

Also: "August 18, 2003 Bid award selecting Casella as Landfill Operator. No appeal filed within public appeal period."

2004.01.22: CASELLA WON'T USE FAME

Laubenstein informs Cashman that "Casella is not necessarily going to use FAME, but wants to leave the option open for post-closing financing." This will have impact on state exposure for debt service under certain circumstances. "If Casella finances at some unknown time after closing, and we are on the hook after year 15 of the agreement, our maximum exposure could increase significantly. One option is to say we will no longer pay any debt service (since Casella obviously does not need FAME); or we could agree to only pay debt service for 5 years or some other period of time."

2004.01.23: BELL LETTER TO GOVERNOR

Pam Bell's e-mail demanding an explanation was forwarded by Mullen to Stearns, who said: "I recommend no response..." Mullen's reply, "...and no response it will be."

2004.01.23: STEARNS EXPLAINS "OUT OF STATE TRASH"

Umphrey says he is getting calls on out of state trash.

Sterns replies: "The issue was openly and frankly discussed Wednesday night. [new par.] Out of state trash is prohibited at a state-owned landfill. The definition of out-of-state trash is a term of art, however. Ash coming from a Maine incinerator, even if the trash which generated the ash is out of state, is defined as in-state ash. [new par.] The related issue is that the capacity at the state-owned landfill (Old Town) for in-state trash will free up space at the Private landfill (Hamden) [sic] for out-of-state trash. Regardless, Hampden will be full within a matter of years, with or without Old Town, and Maine needs landfill capacity for Maine businesses, Maine municipalaitys [sic] [new par.] George MacDonald, SPO, able to speak to this issue."

[NB This clearly states the issue, but only part of it. At all points in the public discussion, until questions about C&D were raised at the March 29-30 meetings, out-of-state waste was discussed exclusively in terms of incinerator ash. The idea that the same logic would apply to C&D was never discussed -- though the promoters were well aware of this, see pre-bid questions related to out of state sources for fuel supply, 2003.06.23.]

2004.01.25: CASHMAN DEFENDS LANDFILL

Cashman sends e-mail to Gallagher and Stearns containing text of the op-ed he submitted to BDN and Penobscot Times. In his note to them he states that the "Mayor of Old Town" would be willing to sign a letter expressing "that he was embarrassed by the actions of those in attendance last Wed. and that a further public hearing would only serve to bring out the same people who are less interested in hearing facts than in throwing personal insults to the DEP." He asks about appropriateness of this and "let me know what your plan is for the next step."

[NB Certainly the next step would not be to take a step back and perhaps have a public hearing. This also is an example of sending orders from above to DEP.]

2004.01.26: LESSARD LETTER TO GALLAGHER

This letter, copied to Stearns and Cashman, expressed grave concerns about the conduct of the Elks Club meeting, and stressed that "If this is allowed to be decided on emotion and dragged out long enough to kill the deal that the State has with Georgia Pacific, it will be virtually impossible for the State to ever approve a landfill siting / expansion of any type again." She says it must be approved "...unless the information submitted for review to DEP on the West Old Town Landfill application reveals aspects of the license amendment that do not satisfy the standards in law ..."

In her e-mail to Stearns and Cashman, she states: "I am very concerned over the snowball-going-downhill manner in which the West Old Town Landfill licensing amendment is being morphed into something totally unrelated to the original intent of the legislative resolve and the reality of what would be located at the site."

In a follow-up message from Cashman to Stearns (replying to Stearns memo on 1/27 conference call, see below), he states, "The e-mail from Sue Lessard is right on target. If anyone needs to have a reason why there should not be a public hearing all they need to look at is the action from last week."

2004.01.27: CONFERENCE CALL ON STRATEGY

Stearns on 1/26 (Monday) announced a meeting / conference call for 1/27 including: Clark, MacDonald, Darling, Bohlig, Benoit, Doyle, Meagher, Feck, Douglas, Landry, Sosnaud, Gallagher, Cashman and Garrett.

The meeting would be at DoT with others calling in.

"AGENDA

- "1. Resolve whether any additional public sessions are advised
- "2. Discuss press strategies for Wednesday Jan 28
- "3. Press strategies beyond Wednesday
- "4. Other pending issues (if any)

"I am not inviting various supporters to join on this call. We can reach out to them once we have arrived at decisions."

[NB Again, exactly why is the Governor's office in the lead on decisions affecting DEP process?]

In a related e-mail from Stearns to Cashman, the following: "Call me. [new par.] Bohlig and Bostic are meeting with the Governor Tues (tomorrow) at 5:30 pm. Join us? [new par.] No one is arguing for a public hearing. Dawn is still arguing for a public workshop, which will delay the permit a week or so, and will thus delay Bostic's interest in a closing for a week or so. Dawn argues strongly that some public transparency (workshop) is necessary for (1) credibility (2) defense against anyone who storms the BEP asking for BEP jurisdiction. I can't imagine that a week really makes a difference to Bostic, but he's on a tear and Bohlig won't cough up pre-closing cash until he agrees with Dawn's strategy."

A memo from Stearns to Baldacci dated Jan. 27 and titled "Jan 27 5:00 meeting with GP & Casella" reviewed the results of the morning conference call and apparently is intended to prepare the Governor for the meeting later in the day.

The two parts of this memo are titled "Issue # 1: Landfill Permit" and "Issue # 2: Closing on the \$25M deal (boiler, sale)". [NB Yet, by this time it was known as a \$26M deal, or more.]

Regarding the permit, all agreed "begrudgingly" to go along with Gallagher's call for another public meeting, "The public forum has risks PR and will result in one to two weeks delay in final issuance of the permit. The public forum has the benefit of 'transparency' of state government process, and best 'innoculating' [sic] DEP since the permit process will likely be an issue before the BEP."

[NB Stearns' putting the words transparency and inoculating in quotations indicates that they all knew this was a formal gesture, not a substantive effort toward open public process.]

Cashman urged GP to "defer to Gallagher's judgment" [Stearns] because "the Governor has stuck his neck 20 miles out" [Cashman] "for GP and this landfill and two weeks delay in the permit is not unreasonable."

Further, it was noted that Gallagher would release her "reasons for denying an adjudicatory public hearing" the following day [Jan. 27]. [NB Exactly why was this decision delayed until this time -- that is, when after Dec. 9 could she have announced this? -- and was it appropriate for her to be part of this spin-crafting meeting as a preliminary to her decisions on the hearings?]

Regarding the closing, point 2 states that \$25 million are needed for the boiler, with "... the original plan was \$12.5M by 12/31/03 and \$12.5M upon permit issuance (2/13/04). That schedule was slowed by GP's uncertainty around the holidays."

[NB 2004.09.01 PCS: still unknown exactly what was going on at that time, that caused such angst among all parties, especially Casella]

Point 4 states: "An additional \$1M is set aside pending future job expansion discussions." [NB This is the \$1M, first installment of \$6M, offered by Casella's Bohlig on 2004.01.12. This money was not in the original Proposal submitted July 9, but was put into an escrow account according to the 2004.02.05 operating service agreement and purchase and sale agreement.]

Four recommendations are given by Stearns, all of which "err entirely on the side of GP's interests." [NB Again, GP is the driver of this process.] The first three points relate to Casella's coming forward with the cash, and accepting risk of successful appeal, since "It's a good permit, it will withstand appeal, the permit and appeal are Casella issues."

The fourth recommendation, in full: "All parties should focus on a full-court strategy before the BEP. Risk of appeal and date of issuance (risk of elevation to BEP) are entirely dependent upon 'best foot forward' to BEP. Managing risk / reducing risk is more important than assigning risk."

2004.01.28: NEW TRUCK ROUTES ANNOUNCED

Landry informs Stearns that 5 routes will be announced 2004.01.29 in the BDN. "The alternate routes will hit the paper tomorrow. Are you ready for the backlash from the other communities who weren't originally involved?"

2004.01.29: PROBLEM WITH CLOSING, TITLE

Chris Howard [attorney for GP] sends the following message to Bostic, Allen, Feck, Curtis, Doyle and Delahanty, which got to me because copied FYI by Bostic to Stearns:

"Just received a call from the Casella crew. They say the closing is supposed to be an actual closing where GP conveys title outright, no escrow closing. That means you give up title to the landfill for (a) \$12.5 million in cash and (b) a letter of credit for \$13.5 million. The letter of credit pays when appeal periods expire. GP takes the risk that if the permit does not go effective it must pay back the \$12.5 million and then go get its title back from the State and terminate the Casella [sic] operating agreement.

"I would prefer to structure this as a 2-step closing where \$12.5 million is paid in cash at First Close and docs are delivered into escrow together with a \$13.5 million letter of credit. Once the permit issues the escrow breaks (Second Close) and the LC is drawn and title passes. Bottom line -- I would prefer to see GP hold its title until it gets fully paid.

"Bohlig says that is not the deal. Specifically discussed with the Governor and we must have an actual closing. Bohlig says GP is comfortable with the risk the permit does not issue and it has to get its title back from the State.

"That so?"

2004.01.31: BDN EDITORIAL

On 2004.01.30, Umphrey informs Stearns and Cashman that Susan Young will write an editorial for the BDN: "Susan Young of the BDN is writing an editorial for tomorrow on the old town [sic] land fill [sic]. She is a former environmental reporter to [sic] she has some informed opinion on the whole deal. Can you call her at 990-8203. She has talked with Dawn."

[This was probably the editorial titled "Landfill Logic" from BDN 2004.02.03.]