

MAY 2003

2003.05.01: BALDACCI, CORRELL TALK

Handwritten notes, likely Jane Lincoln, are headed "JEB (GP) Pete Correll," also "Jackie > Beth > Steve, same time" The rest of the notes are:

- Specifics Agreement on Landfill
- Boiler > put to bed [bid?] by noon tomorrow
- Friday afternoon 3:00 > Pete couldn't be more excited
- Thrilled w/ response by state, people, unions
- IRAP -->
- Creative / responsive /-> word on boiler may be enough, Pres. Union > International Rep -> 3:00, 1 1/2 / Sunday time /->

[NB This is interesting about the boiler. There is no doubt that the boiler was central to the deal, was well underway in late April. But see issues that arose with Boralex last minute, 2004.03.04-12.]

2003.05.01: CASHMAN MEMO TO GOVERNOR ON LANDFILL PURCHASE

This memo says "It will be operated as a commercial landfill in the future" and that GP is negotiating with several operator options.

[NB These are not named, and at this time it was assumed the deal could be done without an RFP.]

"By having the state as the owner we can insure that the facility will not be available for out-of-state-waste."

States this memo provides "talking points" for Friday press conference. [NB That would be the following day, May 2. Since it is a "talking points" memo, there is possibly less credence to the "several operator options" statement -- unless it just means, several ways to structure the deal, not several options for firms to be operators.]

2003.05.02: BALDACCI ANNOUNCES LANDFILL DEAL

See also Cashman memo of 2003.05.01. Penobscot Times article of 2003.10.23 reported that the deal was announced May 2 in Old Town. BDN story of 2003.05.03, weekend

edition, "Restart at G-P means rehires, 1 tissue machine to go back online." The rehire would be "... nearly half of the 300 workers laid off last month..." Most of the article is devoted to the mill and production issues, though the landfill component is mentioned. Regarding the restart of the second tissue machine, "The likelihood that the mill will restart the company's second tissue machine, which produced the Brawny paper towel line, is remote. The age of the machine and newer technologies have made the machine obsolete, union officials said."

[NB But see ahead to negotiations of 2003.12, for instance Stearns' memo of 2003.12.18.]

2003.05.03: BDN EDITORIAL

Titled "Reprieve on the Penobscot," and commented on the GP decision to restart operations, the BDN claimed the Governor has "provided the outline for what needs to be done on a broader scale to address the state's persistent economic woes." "... no one can fault his commitment to trying to save the state's economy. As the governor himself said, his administration is not willing to take no for an answer. He is not willing to let a company leave the state without making every effort to keep them here. 'We were astounded by the efforts put forth to develop a tangible economic package - one that is too good for us to walk away from,' said G-P's chief executive officer, Pete Correll. Such efforts will go a long way toward making Maine known as the little state that could rather than the state that was."

2003.05.04: BDN ARTICLE

Article reported that 2 tissue machines ceased operation on April 4. A remedy was sought by "governor's staff, along with G-P and union officials." The source of funding would be "revenue bonds." GP Controller Rick Douglas credited "key staff members" including Cashman. "We spent many days in Augusta putting the pieces of this deal together."

2003.05.05A: MACDONALD MEMO OUTLINING STEPS TO ACQUIRE LANDFILL

In this memo MacDonald outlines "a number of issues that need to be addressed" including Facility Development sections of Maine law. (38:2156-A).

[NB This provision is among the "notwithstanding" provisions that were negated by the Resolve.]

Handwritten on this memo is a note to "Kurt" [Adams] "Let's talk about this when you have a moment."

Among points raised by MacDonald, the first is "Compliance of site to Rule 450, Siting Criteria ..."

Mentions legislative approval -- on basis of report submitted, not of totally new law. The requirement for prior report to Legislature was negated by Resolve.

[NB Overall the memo seems to outline a rational basis for state acquisition (including funding) and steps for how to proceed. It also seems to have perhaps unintentionally provided a basis for project proponents to ensure that certain provisions of Maine law were negated by the Resolve.]

2003.05.05B: CASHMAN NOTES ON "DRAFT PROCESS"

A set of comments (undated) written on MacDonald's "Draft Process" memo include "Find operator first" at steps to purchase, and "A bill is necessary & George & Kurt will work on slight change in law."

[NB: The changes to the law were not minor; see also Townsend recommendations to conduct licensing before determining operator, see 2003.05.27.]

2003.05.05C: PARKER E-MAIL TO SAWYER AND YOUNGBLOOD

One of the points raised in the note from Parker, an engineer identified by Sawyer as having experience in waste management, is the concern that "this will start a movement for every private landfill to get the state to take over ..."

[NB This seems to be exactly one of the problematic outcomes that this project would pose for State policy, according to people who are familiar with waste management policy in Maine.]

[NB The news conference on May 2 seemed to be the basis of growing public awareness, including Parker's.]

2003.05.05D: SAWYER RESPONDS TO PARKER

Copies of this message were sent to Umphrey, Cashman, Adams.

Sawyer says he "suggested" MRC role, etc. -- leading to assume he had already been involved in the idea stage, and he was having trouble having his suggestions heard. "This was far preferable ..."

[NB When was he consulted? Perhaps, see "marathon" session of 2003.04.17.]

Regarding the landfill, he underlines the word "expenses" of the landfill as being a financial concern for GP -- implying a different slant than need to profit from sale.

If this were to be owned by PERC / MRC, it could accept mill waste, PERC ash "plus 15% from other sources."

[NB On what basis is this statement made -- probably under some conditions within the existing license?]

[See also Sawyer letter of 2003.05.06]

2003.05.06: BDN ARTICLE ON LANDFILL

This was the first article devoted to the landfill deal. The true scope was not apparent in it -- it seemed to be a transaction in which the State would assume expenses and liabilities of ownership, and GP would pay for this over time with long term disposal guarantees. This also is the article in which DEP's David Lennett is named, and as saying "the landfill is good for the state." [quoting the BDN, paraphrasing Lennett] Quoting Lennett: "'The facility was built in 1996 and very little of the capacity has been used so far,' he said. 'One of the issues with the purchase agreement is how to allocate the liability of the site and I think the state will assume the liability.'" [...] "'It's a state-of-the-art landfill,' he said. Lennett said the only time the state would have to pay liability costs would be if 'something bad happens.'"

[NB This is the article that prompted Sawyer's e-mail to Lennett, see 2003.05.10.]

2003.05.06: SAWYER LETTER TO UMPHREY, ADAMS AND CASHMAN

This letter refers to the previous meeting he attended "with G.P. officials in the Cabinet Room" but does not give the date.

Refers to "today's BDN" that the state is now proposing to purchase.

Raises issue of self-regulation: (underlined): "There must remain a certain tension between regulator and regulated."

[NB This is one of the points raised also in PCS appeal.]

Among other points, Sawyer wants this in all respects to "meet all Subtitle 'D' regulations" [NB This is a generic term for Federal rules about landfill operation] and he names several others, including "pay appropriate Commercial Landfill fees to the DEP" [NB In current contract, disposal of GP wastes is exempt from state fees.]

Here also is the illustrative comment: "If it walks and talks like a duck ... it's a duck. If it operates and competes like a Commercial Landfill ... it's a Commercial Landfill."

He also asks for negotiating guarantees with GP.

He also refers to Rhode Island ownership of "the Johnston facility" and he does not know other states that have "taken that leap." [** look up that facility; also double check that Maryland or Delaware have such a facility]

2003.05.07: DRAFT HOST COMMUNITY BENEFITS AGREEMENT

This is dated 2003.05.07, but was attached to an e-mail sent by MacDonald on 2003.05.06. It clearly is an agreement between SPO and Old Town -- without mention of operator or other relevant entities.

2003.05.08: MACDONALD MEMO ON DRAFTING LEGISLATION

This is the memo in which MacDonald says "This G-P opportunity doesn't fit neatly into what was planned." Among other problems, there is too much capacity left in presently operating landfills for the regular, statutory siting process to go forward.

He also says "David Lennett at DEP has also offered to assist in this effort....." [ellipses in original]

2003.05.09: DOUGLAS TO GP, CASHMAN, ADAMS, AGREEMENT OUTLINE

This "landfill sale.xls" document was sent by Rick Douglas to GP corporate officials Feck and Bostic outlining the essential points of the agreement.

It is labeled "issues for discussion and agreement" and says "State of Maine (owner) and NEWSM (operator)"

2003.05.09: PROPOSAL FROM CASELLA (NEWSM) TO "FACILITATE THE TRANSITION"

[NB This was faxed from Pine Tree, dated May 9, 2003 but handwritten on this copy is "latest." Implication -- earlier concepts had already been brought forward.]

Among other information, states that C&D will be sorted at Lewiston facility.

[NB At the March 29-30, 2004 public meetings, they claimed that they did not know where the C&D sorting facility will be located. In the draft dismissal of the appeals, at p. 15, "... the Department does not have any specific information regarding the location and

operation of such a facility, or regarding the sources and volumes of CDD expected to be handled."]

At this time, it was conceived by Casella that the operating agreement would be between GP and Casella. After closing on the transfer, the agreement would go over to the state. [NB: This is the order in which the eventual agreements were achieved.]

At point 5, "This operating agreement may, by mutual agreement of NEWSM and the State of Maine, limit or entirely preclude out-of-state waste from being disposed at the landfill."

[NB Clearly they saw this as being regulated by the operating agreement. At the time they probably also knew how they would approach the definition of how out of state waste becomes Maine waste through processing within the state. C&D was integral to the Casella approach from the beginning.]

2003.05.09: RESIDUALS DISPOSAL MEMO TO MRC

Memo from Louder to MRC board. See also letter of this date and followup letter of 2003.05.14 to Cashman.

[NB This e-mail outlines what in essence became the MRC approach to negotiations related to this project throughout the next 2 months, to the day, when Casella submitted its proposal.]

The message reads:

"Dear MRC Board:

"PERC and MRC have been focused in past couple of days on gathering information on the future use of the Old Town G-P special waste landfill in the context of the deal that is being put together by the Baldacci administration to enhance future pulp and paper operations there. PretiFlaherty has ties to this transaction.

"The state is proposing to own the landfill, place some stipulations on use, but turn over the control (future contracting) to a third party. That party, to be announced Monday, is likely Casella.

"PERC / MERC have been advised by PretiFlaherty that it is in our interest to try to strike a deal on future residuals disposal with Casella, before this transaction gets closed, which will take an act of the Legislature (Governor's Bill). I'm headed to PERC this afternoon to discuss a possible negotiating strategy with PERC, should they move

forward with negotiations. The thought at the moment is PERC will negotiate, and the governor's office would play some role.

"I'll provide more info next week as it develops"

[NB A few points: first, at this time it was not believed by the project promoters that the operating contract would have to go out to RFP; second, there was no doubt at that time that Casella was the chosen contractor -- see "latest version" of proposed contract being circulated by Casella this same day; and third, the MRC's main interest was in negotiating a long term ash disposal contract, not in exploring the financial possibilities of being a serious bidder for the operating contract, which was perhaps not conceived at this time -- except see, messages from Sawyer.]

In a reply e-mail of the same date, MRC board member Lee Yeaton briefly raised two important questions that don't seem ever to have been fully answered. His message in full:

"Hi Greg: Good luck this afternoon. What are PretiFlaherty's ties to this transaction? What are the pros and cons concerning MRC owning this landfill? (I am not suggesting it or even supporting the idea but I am concerned enough to think about the idea)."

2003.05.10: GALLAGHER MESSAGE, "IN CASE YOU WONDERED ..."

On May 10 Sen. Tom Sawyer wrote to the DEP's David Lennett as follows:

"David,

"Since you were the one quoted in the Bangor Daily News regarding the GP Landfill, I thought it proper to copy you my thoughts to Kurt and Jack regarding 'ownership'. I continue to believe ownership by either the MRC or PERC would make the most sense for all concerned! GP could get some cash and reduce their disposal costs. 144 towns would have a disposal site for their Ash, FEPR and C&D wastes. The DEP could continue in its current role of Regulator. When CWST or WMI finally fill up, we could revisit the rules at the Old Town facility then ... [ellipses in original]

"I've heard a rumor that Jack is planning on having the State 'own' the facility, and negotiate with a private operator (no RFP process)! to enjoy 'super' operation rights (if it looks like a Commercial Landfill ... [ellipses in original] it is!). If that's the course we're on ... [ellipses in original] I can predict some interesting debates with Joanne, Beth, etc., when we allow a Commercial Landfill to be created without changing State law.

"Anyway, I thought it proper to try to keep you in the loop. At least the loop I'm up to speed on. Hopefully, you'll be able to reciprocate down the road."

Lennett sent this along to Dawn Gallagher, who replied: "In case you wondered, I don't think we should answer this email until we meet with the gov's office."

2003.05.12: GP MEETING

Handwritten notes provided by the Governor's office.

This was an "All hands meeting." Quotes Bohlig: "Casella, we can't afford any false starts." [...] "Have to modify statutes. Casella G.P. will lock down deal & State will do what they can."

Under "Terms of Deal" Bohlig asks "How long to get Bond Package done?" "Cashman -- 12 weeks or so." Assuming State gets going with bond, then Casella "will work on permitting."

Quotes "Dave Linnett" [sic] "Sees no physical bars to Casella [here notes are unclear] and operating the facility to accp. G.P. waste prior to full completion." [NB: this is what happened]

Another note: "C&D that will be used is already being burned by Livermore. [Cas.] would like to review some air regs."

[NB See forward to Boralex negotiations with the State, 2004.03.04-12]

2003.05.13: BARNES QUERY ON MANAGING FOI REQUESTS

This refers to a FOI request from BDN, and also asks "... how should we handle materials distributed at meeting yesterday or other transaction-related materials?"

[NB This meeting is apparently the "all hands" meeting of 5/12.]

2003.05.13: CASELLA OFFERS DISPOSAL AGREEMENT TO MRC

In a memo to the MRC board, Louder writes:

"Please find enclosed a copy of a letter hand delivered to EMDC today. It essentially outlines a willingness on Casella's part to extend the existing terms of the residuals agreements and non-complete provision of the Settlement Agreement forward through 2018 on the speculation that an arrangement on the future use of the Old Town landfill will be realized. It seems we should consider a response to Casella while learning more on all aspects of the pending G-P deal."

[NB The reference to Settlement Agreement refers to a condition that needs to be explored. We have seen some reference to this, but its bearing on the unfolding of this deal has not been discussed. Is this what was imposed on Casella by the Attorney General due to their potential impact on market power, mentioned in the Ackerman / Townsend report? PCS 2004.10.06]

Though the cover letter was not in documents received from MRC, one page of a fax from BSSN (Casella attorneys) dated May 13, 2003 providing points 7 and 8 of a proposed "Agreement." Point 7 related to long term tipping fees at the new facility for municipal solid waste (MSW), and point 8 extends "... through 2018 the terms of the existing disposal agreement for residues (ash, Front End Process Residue, and NonProcessables as defined in the Contract with PERC) [...] thereby providing for disposal at the Landfill as of the termination of operations at Pine Tree Landfill."

[NB This opens the issue of long-term disposal future at Old Town. Clearly, the day will come when Pine Tree is full, PERC closes and MERC closes -- with the MERC closure likely coming first, according to news accounts. The huge potential capacity of Old Town would then have all of Maine's MSW potentially coming to Old Town. It is even possible that Casella has a financial incentive to close MERC, which it owns, getting rid of what amounts to a liability and opening Old Town to all wastes from southern Maine. The provisions of the license appear to limit waste stream volumes, but there are often conditional clauses that leave room for opening the door to larger flows.]

The section continues:

"There will be no increase in the residue disposal price associated with the additional transportation distance to the landfill as compared to Pine Tree Landfill. The Agreement will, at the option of the State when it assumes ownership of the Landfill, contain a provision similar to that contained in the current disposal agreement with PERC and Pine Tree Landfill under which NEWSM will be required not to accept from any so called 'MRC communities' waste of a type accepted at PERC while PERC is accepting such waste from such communities at its facility. This restriction will not be applicable as to any 'bypass waste' created by PERC and will be terminated upon the permanent closure of PERC as a disposal location under the existing contracts with the MRC communities."

[NB Regarding transportation distance, we note that Casella has constantly claimed that the costs of smaller trucks on the Interstate could not be managed due to contractual obligations -- which they crafted themselves; and particularly see 2003.12.16 notes in which Casella states that they would lose the contract if smaller trucks were required. Note also that at the time Casella was well aware that all of their trucks leaving PERC were overloaded, not only for use of the I-395 bridge, but for legal travel on any Maine

roads. How can we not assume that they build these facts into their bids as a matter of course?]

[NB In addition, note that by this date, Sen. Tom Sawyer's reservations about this deal were fully known to all parties, and that Casella knew that they were making an offer to a potential competitor for the landfill project. What is not known to us now is when the existing disposal contract was to terminate -- some indication it would be 2006 -- and whether absent this emerging deal Casella would be coming forward with this offer at this time.]

[NB Related to MSW not accepted from MRC communities, it was these clauses that first captured our attention as to the relationship between Casella and MRC in the crafting of the final agreement. Further, the entire picture, given the eventual closure of Pine Tree and the eventual cessation of operations at PERC and MERC (a possibility reported recently in the press) leaves Old Town as the depository of choice for raw MSW from the entire state of Maine, to say nothing of the provisions for unlimited construction and demolition debris that may come from outside Maine, especially given the mandate for seeking the horizontal expansion permit that is integral to this deal.]

2003.05.13: DRAFT TERM SHEET (NEWSM)

See also "latest version" of 2003.05.09.

This proposes NEWSM as managing transition between GP and state ownership.

At this time it was imagined that financing would be from the State, to the amount of \$12 million, with NEWSM assuming the payment of debt service.

At section 23 there is a very detailed description of the C&D plans.

2003.05.14: LOUNDER / MRC LETTER TO CASHMAN

This refers to a meeting "last week" between Cashman, Lounder and Gary Stacey.

[NB This letter is nearly identical in form to a letter sent 2003.05.09, referring to a meeting "this week" except in that the earlier letter did not include the statements about the "follow up discussion" that caused them to believe that the state's thinking had changed on key guarantees desired by MRC. As stated in other messages within MRC indicate that these letters aimed at getting more details about the deal from the State.]

Cashman's position is recapitulated: "You indicated that, in efforts to ensure the long-term availability of the facility capacity for waste generated in Maine, key stipulations regarding future use of the facility include an express prohibitions [sic] on: 1) the

disposal of unprocessed MSW and 2) the disposal of those wastes generated from out-of-state sources." MRC is in support while recognizing challenges.

However, in "our follow up discussion" this week, it appeared thinking with respect to those stipulations may have changed. This uncertainty compels MRC, as a representative of over 160 Maine municipalities, to request access to current information on the elements of this deal."

Next paragraph notes "Enforcement of such stipulations [regarding monitoring of amounts and types of solid waste] is notoriously difficult ..." and they offer MRC as a "resource in your efforts to meet your objectives."

On ownership and control, MRC believes "the more control the state is able to retain" will lead to likelihood public interest will be served.

Apparently there was a glimmer of MRC ownership: "In the absence of an MRC ownership position in the facility or an acceptable arrangement for its future use for PERC's residuals, MRC encourages the state to retain control over the nature of the facilities' [sic] future business arrangements."

Suggests a prompt opportunity to meet to learn more about the pending arrangements.

In a followup message to the MRC board, forwarding this letter, Louder writes:

"attached is letter faxed to jack [sic] Cashman in efforts to spring loose more facts concerning the elements of the pending deal affecting the future use of G-P landfill in Old Town. I met with Dan McKay today to discuss the situation. He continues to analyze the possibilities for MRC landfill ownership. I also plan to request information from Casella in efforts to confirm more regarding their ability to service PERC's residuals for the next 15 years. Francis Ackerman of the AG's office is following this issue and is regular [sic] communication with us. A bit of due diligence has been done on the Old Town site (DEP record)."

[NB Why and at what time did Francis Ackerman, the AG office person most knowledgeable about competition in the solid waste industry, cease participation in this process?]

2003.05.15: ADAMS CONFLICT OF INTEREST; NEGOTIATION RATIONALE

This memo from J Chris Parr to Jane Lincoln, copying to Martha Freeman and Kurt Adams, raises question of Adams' earlier work for BSSN including representing Casella on energy "not waste management" issues.

[See memo of 2003.05.22 in which the decision was made that he must be disqualified from participation "until at least the point at which an operator has been awarded a contract to operate the facility."]

This memo also gives the rationale for the ongoing negotiations with Casella:
"Currently, the State is in negotiations with GP concerning the purchase of a solid-waste facility in Old Town, Maine. GP also is in negotiations with Casella for an operator's agreement for the same facility. When the State purchases the solid-waste facility from GP, the State will take over the operator's agreement brokered between Casella and GP. To protect the State's interest, therefor, the State must participate in negotiations with GP and Casella prior to the State's purchase of the solid-waste facility. [new par.] A range of regulatory and legal issues is at play, and the Governor has asked KA to serve as the lead attorney for the State in the matter. Casella, for its part, is represented in the transaction by BSSN."

This memo also has handwritten note on it: "JL -- Let's discuss. -- JCP" This note shows who had written some of the various notes in subsequent entries.

2003.05.15: MRC "FAVORABLE CONTRACT TERMS"

In continuing communication between Louder and MRC board, he forwarded the following message sent to board member Lee Yeaton responding to Yeaton's message: "While I agree that we should explore MRC ownership -- we must be fully aware of the potential cleanup potential [sic] in the future." Louder replies:

"I agree, future environmental liability risk absolutely needs to be assessed and incorporated into decision-making. In our situation at the moment, the more the MRC is positioned to actually possess the capability to accomplish an ownership position, irrespective of whether it ultimately wanted to or not, the better positioned we are to get more favorable contract terms in lieu of an ownership position. Given present circumstances, I believe its [sic] a prudent strategy. Do you concur?"

In reply, Yeaton wrote: "Greg: I sure do concur" [sic]

2003.05.16: CASHMAN REQUESTS MEETING WITH ADAMS, GP, CASELLA

See e-mail log from Governor's office, batch 1

[NB About this time it was becoming apparent that an RFP would be required.]

2003.05.16: LOUNDER MEETS CASHMAN

Louder informed the MRC board that he would be meeting Cashman at 1:30 in Augusta. "The object is to learn all we can on the pending G-P Old Town landfill deal. I'm checking with Dan to see if he can get me a Confidentiality Agreement to diminish any 'premature disclosure' issue that might arise as reason for not giving us information."

[NB The questions proliferate. If Casella were not the pre-ordained contractor, why would there be any question of the State's sharing information with an entity that could at that time have been considered an alternative operator, as was clear from Sawyer's earlier memos?]

2003.05.19: TERM SHEET DISTRIBUTED TO AG

See e-mail from Adams to Laubenstein, 6/9/03, referencing this.

2003.05.20: MACDONALD E-MAIL ON PARR DOCUMENTS

It is not clear what documents he is referring to, "Chris has prepared for us."

1. Addresses "the purchasing of the landfill and costs that NEWSM will be putting into expansions of the landfill" [ellipses in original] but notes that other costs are not covered.

[...]

5. "I do believe it would be helpful to have DEP review the draft legislation and contracts, since they are, and will be, the site operations regulator David Lennett would be the one to involve" [ellipses in original] [NB: See Parr memo of 5/23 mentioning Lennett involvement, though incorrectly identifying him as being from SPO. Lennett had been involved in the 4/29 meeting; also wrote an original draft of the RFP]

There is a reply from Cashman, "Good suggestions especially number 1 [sic] some of the others have been taken care of" [sic]

2003.05.21A: PARR MEMO TO BALDACCI RE: BID PROCESS OPTIONS

Memo is to Baldacci outlining bid options, from Chris Parr, copied to Jane Lincoln [Governor's chief of staff] and Jack Cashman. Critical element seems to be the timeline for the bids. The third copy I have (Cashman's?) only has one note on it: "Expedited bid process"

I have copies of this memo in three versions: one clean copy; one with neat handwriting (Parr's); and one in somewhat scribbled hand (looks like Cashman's).

The one in Parr's hand says: "JEB -- So that I am clear, could you confirm which of the four options below you want to exercise? I thought you said option 3, but I am" --and the note breaks off and option 3 is circled. The essence of option 3 is that there would be a regular bid but "waiver" of appeal process, with risks from an appeal, which would be minimal -- in other words, they have thought through the legalities in such a way as the "selected contractor" could "begin work immediately."

In addition, there is a 2-page worksheet, again in Parr's hand, outlining the bid options and noting some cryptic comments about DEP.

2003.05.21B: PARR WANTS TO BE IN THE LOOP

Memo from Parr to Lincoln and Cashman, suggesting that they both keep him in the loop in terms of "any and all internal and external discussions about the transaction" so he can effectively give legal advice to the Governor.

2003.05.21C: CASHMAN MEMO TO BALDACCI, NEED FOR BID

Because Casella "have not done their job" in satisfying AG on "Market Power issues and on process issues" [...] "It seems we need to reopen the process and allow for competitive bids to satisfy the Attorney General."

[NB: another indication that preference would have been to do all of this without open bid process]

In addition, costs of the biomass boiler are rising due to moving costs, so various ideas are presented as to how to get more cash to make that happen.

[NB: The issue of doubling costs for biomass boiler is somewhat troubling. Why did the costs go from 12 to 24 million? Is the involvement of Cianbro in this part of the deal, from the beginning (participating in the meeting in Montreal related to acquiring the boiler) to now (moving and constructing the boiler) part of the answer?]

2003.05.21D: MEETING, BALDACCI, LINCOLN, CASHMAN, PARR

Two sets of meeting notes: Parr's and Lincoln's. See also notes from 4/29 meeting in Lincoln's hand.

"JEB" wants the state to not be "on the hook" financially, expedited legislative process, "Casella to be told for expedited bid process; G-P -- monies will be obtained"

"RFP: structured so that upfront monies are obtained; JEB --> time constraints are not there now"

[NB: See 2003.05.22 memo from Parr to Baldacci, copied to Lincoln and Cashman. "As a result of information I learned during the course of the day yesterday, I understand that the only urgency to the process now is in relation to the legislation that must be introduced to ensure the transaction between the State and G-P must occur." What was the last day on which a final bill could be presented to the Legislature for consideration in the session?]

"G-P wants \$ and boiler transport"

"Close door Casella" "(1) Cut cord w/ Casella, (2) Pete Corell called"

"(1) Legis. -- transfer = blessing of transaction"

Lincoln's [apparently] notes on this meeting:

"Close door to sole source."

"Structure open process

- 1 term sheet agreed to by GP / State

- cas in bidding process > front end \$

- fair shot f/ all int. parties

- cut cord w/Casella, talk w/Pete Correl

- open process

"Thru legislature --

- approve purchase

- blessing on operator

"Word out to key legislators

"finance payments upfront

- length of operating agreement

- gets you more \$ up front

"legislation > p hng next wk

call Casella

meeting w/ag

public facility / public process

"--> 1:00 Casella (SPO)"

Continuing in Parr's hand:

At 9:35 Parr speaks with Juliet Brown, "informed her that the state would be (1) purchasing the OT landfill and (2) putting the operator agreement out to bid" This bidding process would be "as we see appropriate" (underlined) and that JEB would determine which option would be followed. [Brown, according to the Phoenix article of 2004.04.2-8 Juliet Brown is an attorney representing Waste Management.]

At 9:35, talked to Linda Pistner, who feels Kurt Adams is still conflicted, and "I concur."
[NB: however, see later memo: he stayed part of the case, ultimately]

At 9:47 Parr "Confirmed bidding process option w/JEB"

The notes go on and on. At time noted 10:07+, "Bill Laubenstein, Francis Ackerman, Linda Pistner, Jack Cashman, JCP [Parr] @ AG Dep't" Notes indicate that legislation is correct; no need for legislation "for expedited bidding;" Linda Pistner says "30-yr. deal not a deal-breaker"; Cashman, "RFP would keep PERC protected & L P & P" with K in a circle, followed by a ?. "would exist, no out of state waste"

[NB: Questions and thoughts about the treatment of the MRC in the operating agreement began our search for the full story about the terms of the deal. This gained interest when MRC pursued the project as a bidder, eventually supported the Casella proposal, while at the very same time renegotiating long term disposal contract with Casella, at improved terms.]

Francis Ackerman, "Structure RFP so that bidders (underlined) propose time periods."

Lower: "+ Call John Delahanty" [Pierce Atwood attorney, representing GP]

2003.05.21E: PARR MEETS CASHMAN AND MACDONALD

"Permit application process must begin"

The rest of the notes deal with RFP, P & S with GP, and Resolve. Several of the provisions under RFP are "Terms as in past agreement", namely: Extend to PERC Sec. 9; L P & P provision; leachate provision; Old Town's wood ash.

Close 12/1/03 or earlier, "issue bonds, bonds assumed by bidder."

Under P & S w/ GP, following: "GP must agree to put \$ to Old Town mill for mill's competition \$; Mill employment provision; capacity commitment; price open; L P & P + 3 or 4.

[NB Need for employment guarantees seems to be recognized, does not occur in final agreement.]

The last line is "Legislation: + Resolve?"

2003.05.21F: PARR REVIEWS RESOLVE WITH DELAHANTY

5:16 p.m. Parr meets Delahanty.

Delahanty "representing G-P" [however, see notes of Elks Club meeting, at which Doyle says "PA is paid by Casella." Of course, these were separated by 7 months. The Phoenix article of 2004.04.02-08 writes: "'Pierce Atwood was very unpleasant to deal with,' Adams wrote on September 22, adding that 'they have a history of overreaching.' Particularly, perhaps, when one of their lawyers is representing G-P and lobbying for Casella."]

"JD explained background of previous transaction & discussed present circumstances ..." [What previous transaction, perhaps the existing license for the landfill as operated by GP?]

Parr "discussed present circumstances & JEB's commitment to save jobs; identified RFP, legis., & P&S as necessary 3 elements to tackle --> are doing so"

At 6:26 p.m. Parr sent an e-mail to Delahanty, Doyle, copied to Cashman and MacDonald, with draft legislation attached. "At your earliest convenience, please review ..."

See 2003.05.23 response from Doyle, "a redline with G-P's suggested revisions..."

2003.05.21G: LOUNDER CONTACTS SAWYER

In a message copied to Peter Prata of PERC, Lounder wrote:

"Dear Senator Sawyer --

"MRC / PERC have been working diligently to obtain a full description of the essence of the pending deal concerning future use of the G-P Old Town landfill. Bits and pieces

have been obtained from the Governor's Office. We are attempting to gather information from Casella as well. Do have [sic] any information that you can discuss with us?"

In a reply message of the same date, Sawyer wrote, copying to Prata:

"There are some things that I 'know' and some more that I 'suspect' ... [ellipses in original]

"I've circulated an earlier letter listing my opposition to the State owning the GP site.

"My stated preference would be to have PERC (generator) or MRC (quasi-muni) purchase it. In either instance, I strongly believe some sort of 'coalition' should oversee its operation to minimize risk to taxpayers ... [ellipses in original] both State and local!

"My second choice would be to have its 'purchase' put out to RFP and let the chips fall where they may.

"I understand the exact situation remains rather fluid even as we 'speak'. Additionally, most any scheme will require Natural Resources Committee hearings and votes ... [ellipses in original] I suspect I'll be kept up to speed that way.

"That's the best I can offer at the moment. I'll try to keep you guys posted as best I'm able."

2003.05.22A: CASHMAN AT MRC BOARD

In part, Lounder's invitation to Cashman reads: "As we have discussed, it is our desire to learn as much as possible on the further details concerning the landfill facility in our efforts to be positioned to support the cause in efforts to best serve the public interest."

2003.05.22B: PARR DELIVERS RESOLVE TO DUNLAP

12:19 p. "Delivered draft of resolve to Rep. Dunlap, who I understand will be speaking to Sen. Martin"

[NB ** What was the latest date a bill could be submitted and still considered within the schedule of the session?]

2003.05.22C: PARR CONSULTS HOWARD / PA ON RESOLVE

12:42 p. "Spoke w/ Chris Howard @ PA; generally fine w/draft resolve, save for sovereign immunity waiver assurance in K; CH also would want term sheet prepped for reference during resolve hearing / WS process"

[Note: 23 minutes after the resolve was delivered to its legislative sponsor, the attorney for GP was being consulted as to its content, and request was received for cooperation in preparing for legislative workshop and hearing]

2003.05.22D: DAVID LENNETT "HONES" LEGISLATION

See May 23 memo from Parr to Baldacci.

[NB In that memo he identifies Lennett as being with SPO -- that opinion was not correct.]

2003.05.22E: PARR TO BALDACCIO ON ADAMS CONFLICT, RFP

The recommendation is made to exclude Adams from participation, at least until an operator is selected.

As to the RFP: "As a result of information I learned during the course of the day yesterday, I understand that the only urgency to the process now is in relation to the legislation that must be introduced to ensure the transaction between the State and G-P must occur." Recommends regular 32 day period from when RFP is released. "Using the normal process and timing very likely would close the door to any real or perceived legal or ethical issues or challenges that might be otherwise made if the appeal period were to be waived. Please advise." [Please advise is in bold]

The cover memo is followed by one page devoted to the Adams issue.

[NB In this memo Casella is not mentioned, only "operator" in general terms; yet it was Adams' involvement with Casella's attorneys, and his own representation of them, that was of concern.]

2003.05.22F: PARR REVISES OPINION ON ADAMS CONFLICT

In a second memo of that day, from Parr to Baldacci, copied to Cashman, Lincoln and Adams, he has revised his position and thinks Adams is not conflicted. This is because of "the change in approach the State has taken by opting to place out to bid a contract for the operation of a waste facility on the property." There was generally agreement that this would conform with the law, though Linda Pistner continued to be "concerned that an appearance of conflict could have negative consequences, at least politically." Only Adams would be at risk legally. "Therefore, while there would be a political risk involved for you if Kurt were to be prosecuted under the law, Linda said you would not be legally vulnerable." In bold: "Please advise."

2003.05.22G: ACKERMAN CONSULTS TOWNSEND

See memo distributed 2003.05.27 from Ackerman to: Cashman, Parr, Adams, MacDonald, Lennett, Clark, Rowe, Pistner, Laubenstein, Garrett and Peters.

It states that "Kathi Peters and I spoke with Dr. Ralph Townsend on May 22, 2003 for the purpose of seeking his advice with regard to the bid process for selecting an operator to run the GP landfill." 12 points follow.

2003.05.23A: PARR TO BALDACCI, "UPDATE ... ON TRANSACTION"

"Update on G-P/State of Maine transaction" This memo says that on 5/21 the draft legislation crafted by MacDonald and Parr was sent to Pierce Atwood.

"Legislation is in the works. Wednesday evening [May 21] I sent to Pierce Atwood (PA) (representing G-P in the transaction) a draft of legislation crafted by George Macdonald [sic] (of the SPO) and me. PA is honing the draft a bit. The draft also was shown and proved satisfactory to Rep. Dunlap and Sen. Martin. Yesterday, David Lennett of the SPO [NB: actually of DEP] tightened the draft a bit more and that was sent on to PA for consideration."

[NB It was always a question with me, who wrote the Resolve? Here it is stated, Parr and MacDonald. In the transcript of the 2003.03.29 session, Charlie Gibbs asked "Did Pierce Atwood in any way help write tht Resolve that the Legislature had to approve? Mr. Doyle: We reviewed the Resolve language. We didn't write it. The Legislature wrote it." (P. 67, line 22) In "Response to Comments" from the DEP, at p. 68 of 83:

"Legislators were involved in the process of drafting and working on the Resolve that authorized the State Planning Office to purchase the landfill." Response to Comments at p. 73 of 83: "The Resolve was written by legislators, Governor's staff and State Planning Office."

The second part of the memo deals with the complexities of participation of Kurt Adams, whose former firm BSSN also represents Casella. The core of it: "The greatest concern, then, likely would be that Kurt would have worked on an RFP and contract with the knowledge that Casella probably would be bidding on the contract, thereby possibly raising a challenge asserting that a conflict of interest issue, or an appearance of a conflict of interest problem, exists."

There are certain aspects that are not troublesome -- in that the mere potentiality that Casella might bid cannot be condition of conflict, as that would apply to any client of BSSN doing anything. However: the "totality of circumstances" aspect might come into play, "i.e. the fact that Casella and BSSN were involved in the initially contemplated transaction and it thus was foreseeable that those two parties might be involved in the bidding process that will now occur."

[NB: This is the most direct statement that Casella was involved in the origins of this entire idea. However, also see history paragraphs from Casella proposal, putting origins of this line of thinking in March, in GNP deal and Dolby facility.]

Their decision: for Adams to remain involved, with Toni Kemmerle and Parr also involved, and that "the RFP and the contract that ultimately are developed for the bidding process will be subject to the review and approval of the Office of the Attorney General prior to the release of those documents. [new par.] I have spoken to Kurt about the possible legal liability that exists for him if he becomes involved in the transaction, and I understand him to be comfortable with becoming involved nonetheless. Consequently, I, too, am comfortable."

2003.05.23B: LENNETT DRAFTS RFP

10:58 a.m. David Lennett sends a draft RFP to MacDonald, Parr, Ackerman, Darling, Clark, and Barnes. "Recommend we consider these for internal consumption at the present time, since they do not yet reflect input from SPO/AGs office, etc."

[NB The Record List enters e-mails among staff related to RFP, however these seem to be restricted to staff assistance on technical requirements of the site, particularly toward assisting SPO answer questions from bidders. An issue for me: why are the earlier staff activities not similarly entered?]

2003.05.23C: DUNLAP, MARTIN AND CASHMAN CONFER ON THE RESOLVE

2003.05.23D: CASHMAN REPORTS MARTIN IS OK WITH RESOLVE

This is an e-mail from Cashman's secretary, Andrea Smith, to Chris Parr. "Jack just called...[ellipsis in original] Matt Dunlap spoke with John Martin and he is fine with the resolve...[ellipsis in original] we need to get it submitted to the Revisor's office ASAP so it can be scheduled for a public hearing...[ellipses in original] Matt Dunlap will take care of getting the signatures for us."

[NB: See public meeting of March 30, I asked who wrote the resolve, and was told the legislators and the SPO]

2003.05.23E: PA REPLIES ON RESOLVE

At 1:52 p.m. Friday May 23, 2003 Tom Doyle replied with a redlined edit of the draft resolve, replying to e-mail of 5/21. This was sent to Parr and Cashman, copied to Delahanty and Howard.

[I'm not expert at reading this redlined text. It is clear from the summary that "pursuant to a bid process" is removed, and "enter into such contracts the office determines are necessary" is added.]

At 1:56 p.m. this text is forwarded on to MacDonald and Kurt Adams.

2003.05.23F: MRC MEETS CIANBRO

E-mail from Rick Leonard, Cianbro, headed "Financial Model," to Lounder and other MRC officials, states: "Great to meet you guys today. We'll get back at it next week. I look forward to it. Thanks."

In a follow-up message to the MRC Board, Lounder reported that Cianbro's Vigue, at the meeting, "... expressed his thoughts on the long term benefits of a public interest position of control at the landfill. He explained that his company had discussions with the state about a potential Cianbro proposal. Information had been compiled by Cianbro to that end and it was shared with us in confidence. He encouraged MRC to further analyze the information and submit a bid to an RFP now being prepared by the state. We suggested the MRC would look things over and continue discussions with them this week. Near as I can tell, Cianbro's interest in the G-P 'job retention transaction' is twofold: 1) they would be involved in / hired to accomplish the relocation and retrofit of a biomass unit located in Athens... [ellipses in original] said to be a job costing 22 million or less, and 2) they could secure the job of running the landfill under an operating agreement they presently project to cost someone around 1.4 MM on an annual basis."

Comments that follow relate to having George Aronson follow up with financial analysis. "I roughly studied the numbers over the weekend. I couple of things [sic] jump out at me. First, the arrangement contemplates a guarantee of G-P's continued use of the facility at rates way below cost (part of the package needed to keep them competitive). In absence of 'filling fast' with out of state material, it is going to be very hard for anyone to 'make up that loss.' Second, if the numbers all prove valid, it does appear that the airspace, on a cost basis, is somewhere around \$30 to \$35 per yard, or ton, for Ash and FEPR. Transportation costs would need to be figured in for comparison to present costs."

[NB See also Waste Management letter submitted in lieu of bid, 2003.07.09]

In addition there are comments about Cashman's not wanting to discuss the details due to RFP process. "Also, Jack Cashman from the state called this morning to explain where it was going out to RFP now, he couldn't discuss details with us anymore. Also mentioned that he hopes to have a legislative resolve before the natural [sic] Resources

Committee by Friday... [ellipses in original] apparently to make way for the state ownership of the Old Town facility and the RFP process. Will send a draft for our review. He hopes we will support."

[NB Cashman had not been too forthcoming with information about this transaction, even before the decision to go for Resolve and RFP. MRC did testify in support of the project before the legislative committee, with caveat that they did not want competition for disposal of MRC communities' MSW. See also at least two sets of notes from meeting 2003.05.21 with Baldacci, Lincoln, Cashman and Parr, "cut cord w/ Casella.]

2003.05.27: ACKERMAN MEMO ON TOWNSEND CONVERSATION

Memo distributed 5/27/03 from Ackerman to: Cashman, Parr, Adams, MacDonald, Lennett, Clark, Rowe, Pistner, Laubenstein, Garrett and Peters.

It states that "Kathi Peters and I spoke with Dr. Ralph Townsend on May 22, 2003 for the purpose of seeking his advice with regard to the bid process for selecting an operator to run the GP landfill." 12 points follow.

These include: convene an interagency committee to oversee the bidding; licensing should precede the bid, "Ralph questioned how prospective operators can effectively construct a bid without having prior knowledge of what materials will be accepted at the landfill." Reasons given: otherwise large "players" already active will have advantage, and state might not get best deal.

At (6) "Ralph questioned whether CDD should perhaps be barred from the facility up front." At (7) expresses possibility that the State actually might make some money out of this. At (12) suggested "the use of a carefully calibrated capacity-usage or depletion charge to reduce the incentive to fill the landfill faster."

2003.05.27: ADAMS ON TOWNSEND

At 12:03 p.m. Kurt Adams responded to the Ackerman memo on Townsend, to the effect that the suggestions would slow the process.

At 12:51 Ackerman replied to Adams that some of Townsend's recommendations would not obstruct the pace, others might, for instance "the recommendation that the State license the facility before going out to bid ..." Ackerman asks if the critical issue is getting "GP's cash needs" met, and if that can be done, then why expedite the process; additionally the expedited process would advantage those firms "familiar with Maine's permitting procedures."

2003.05.27: BEVER FOIA RE: GNP

Fred Bever of Maine Public Radio submits FOA request for items related to the GNP mills in Millinocket and East Millinocket. This is included in this batch -- in some earlier memos there was some confusion in the Governor's staff between GP and GNP.

2003.05.27: DELAHANTY, "WHO WILL BE THE PRIME SPONSORS?"

This was sent 5/27/03 at 7:02 p.m. It comments on the "final resolve." Copies to: Parr, Doyle, Howard, Adams, Cashman, Kemmerle, MacDonald, Andrea Smith.

It was in response to an e-mail sent by Parr at 5:21 p.m., 5/27, stating that the bill had gone to the Office of the Revisor.

He says toward the end to Chris, "thanks for all your help on this."

[NB Clearly, the point is to help GP, though in the long run the firm that really was helped, and to which Chris Parr is directly connected, is Casella.]

[I don't exactly follow the various alternatives related to municipal roles. They are balancing their needs to get the deal done, with political realities. PCS]

The recommendation is made that changes be in place before the bill goes to the revisor with signatures. "By the way, who will be the prime sponsors?"

2003.05.28: MRC MEETS CASELLA

Note from Louder to MRC Board reported meeting 3 p.m. 2003.05.28. Meagher and Hiltner attended for Casella, Louder, Peter Prata (PERC) and Gary Stacey (PERC) attended for MRC. This was mainly reiteration of the 2003.05.13 long term disposal offer, with suggestion that Casella would include details of this offer in their Proposal to the State. MRC gained the sense that MRC was interested in the "... possibility submitting [sic] a bid of its own. They apparently feel the need to deal with us. Otherwise, they could have simply said, 'OK the offer in the May 13 letter stands.' It sounds like they are going restate [sic] and perhaps modify their proposal... [ellipses in original] hopefully with more favorable terms. I'll keep you informed."

The rest of the message related to the status of the Resolve (unknown at that time) and ongoing consideration of Cianbro arrangement.

[NB This points toward the what seems to be the main intent of MRC participation, gaining a better long term price for ash disposal.]

Related to the Cianbro talks, on 2003.05.30 Aronson provided the following figures to Cianbro:

"For estimating purposes, assume that PERC generates the following materials:

"52,000 tons per year of ash @ 1.0 ton/cy, 26 tons per truck load

"46,000 tons per year of glass and grit @ 0.75 ton/cy, 31 tons per truck load

"12,000 tons per year of non-processibles at 0.2 tons/cy, 22 tons per truck load"

Aronson also "attached a note on some legislation that might be of interest" and the page that follows is titled Internal Notes: PERC / MRC Discussion w/ State regarding future use of G-P Old Town landfill" These are as follows:

"Message 1 -- We're aligned as partners in public interest

"Message 2 -- MRC is an experienced public interest resource in this area

"Message 3 -- MRC wants to support this cause & we need information on the essence of the deal in order to do that

"Message 4 -- With information, we can help it fly, we can work in confidence (see agreement)

"Message 6 -- We have experience on the issue of delegation of owner's control, Andy Hamilton, SASWDD, [sic]

"Message 7 -- We have experience in issues of airspace utilization ... [ellipses in original] MSW to Hampden, DEP

"Message 8 -- Mechanism for owner / control shift over time, we can check fit

"Message 9 -- Legislative piggyback 'regional association'

"We believe our involvement will support the State's objectives."

2003.05.28: MRC MESSAGES ON RFP, RESOLVE

See also discussion at 2003.05.23, MRC meets Cianbro, including followup messages of 2003.05.28.

Larry Folsom of the MRC Board asked on 2003.05.27 "Can we get our hands on the resolve?" Louder replied, "Cashman promised to send it to us as soon as it becomes available... [ellipses in original] the document we really want to see and / or influence is the RFP (we discussed the idea of a backdoor thru Cole, however, Cashman said

yesterday he had to cut off communications on the RFP, in fact he had an attorney with him on the call to me yesterday, Parr?, which [sic] I think is the MDOT guy that Vigue referred to. I think the possible 'in' there closed, and in an RFP process with sanctity, that's probably appropriate."

[NB Unfortunately, all indications are against "an RFP process with sanctity."]

[NB See ahead, 2003.09.19-22, names Jim Smith as DoT counsel. No indication this is person referred to here.]

2003.05.29: BIOMASS BOILER MEETING

These are notes in unknown hand (would have said Cashman, but at one point says "Jack has made \$22 m. state commitment ...")

[NB See also 2003.05.23 MRC Meets Cianbro, which gives same \$22 million figure, "or less."]

There is an Agenda, and the topics are the biomass boiler and the purchase and sale agreement. Various issues including C&D "waste provision" are discussed, though it is not clear what if any conclusions are made.

Last line is: "Boralex are very strange guys."

2003.05.29: MACDONALD SENDS WOODARD AND CURRAN REPORT

This "preliminary report" may be sufficient to satisfy the earlier questions from Risk Management.

2003.05.30: GP TERM SHEET

See Howard e-mail of 6/2/03, on which a revision of "G-P-State Term Sheet 05.30.03" is attached."

2003.05.30: MACDONALD DISTRIBUTES RFP DRAFT

MacDonald sent a "rough draft of how the FRP might be 'introduced' am willing to flesh this out further..." [ellipses in original] "I haven't included language on what we would ask for financial assurances up front (know we talked about \$20,000 cash and \$1 M surety bond to be part of the application...) [ellipses in original]