

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from combination of electronic originals
and scanned originals with text recognition applied
(electronic original may include minor formatting differences from printed original;
searchable text in scanned originals may contain some errors and/or omissions)

**STATE OF MAINE
119TH LEGISLATURE
SECOND REGULAR SESSION**

**Interim Report
of the
TASK FORCE TO STUDY MARKET POWER
ISSUES RELATED TO THE SOLID WASTE
HAULING AND DISPOSAL INDUSTRY**

December, 2000

Staff:

**Deborah C. Friedman, Legislative Analyst
Alison L. Ames, Legislative Researcher**

**Office of Policy & Legal Analysis
13 State House Station
Augusta, Maine 04333-0013
(207) 287-1670; Fax: 287-1790**

Members:

**Sen. John M. Nutting, Chair
Rep. Robert W. Duplessie, Chair
Sen. James D. Libby
Rep. John L. Martin
Rep. David L. Tobin**

EXECUTIVE SUMMARY

In response to concerns about recent mergers and consolidations in the solid waste industry, the Joint Standing Committee on Natural Resources recommended and the Legislature authorized formation of a Task Force to study horizontal and vertical market power in the solid waste industry in Maine.¹ The Task Force was composed of 5 members of the Joint Standing Committee on Natural Resources – Senators John Nutting and James Libby, and Representatives Robert Duplessie, John Martin and David Tobin. Senator Nutting and Representative Duplessie served as Task Force co-chairs.

The Task Force met 4 times during the interim and received background information on the solid waste industry in Maine, the impact of state and federal policies on the solid waste industry, and solid waste market experience in other states. It also heard testimony from participants and those affected by the solid waste industry in Maine – municipalities, operators of landfills and waste-to-energy facilities and representatives of integrated waste management companies.

Task Force members concluded that they needed more information and analysis to understand the state of the market in Maine, and to determine whether legislative action is needed to improve competition in the market. The Task Force contracted with an economics professor from the University of Maine to develop a work plan to guide data collection and analysis efforts in the second phase of the 2-year study.

The Task Force recommends that the law requiring 30-day notice to the Attorney General of acquisitions of solid waste businesses be continued and expanded. Current law requires notice only if the business to be acquired has more than 5 employees; that law is set to expire 90 days after adjournment of the 1st Regular Session of the 120th Legislature. To assist the Attorney General in reviewing potential acquisitions while the Task Force study continues, the Task Force recommends that the notice requirement apply to all acquisitions and be extended until 90 days after adjournment of the 2nd Regular Session of the 120th Legislature.

¹ The legislation creating the Task Force, 1999 Public Law, chapter 773, also required anyone seeking to acquire control of solid waste assets to notify the Attorney General at least 30 days before the acquisition, to enable that office to address any antitrust concerns.

TABLE OF CONTENTS

	<u>Page</u>
Executive Summary	i
I. Introduction.....	1
A. Establishment and Charge to the Task Force	1
B. Meetings.....	1
II. Background; Overview of Issues	2
A. Market Power	2
B. Antitrust Law and the Limits on Market Power.....	2
C. Legislative Responses to Market Power	5
D. The Structure of the Solid Waste Industry in Maine.....	5
E. Task Force Data Collection Efforts	9
F. Testimony to the Task Force and Emerging Concerns.....	10
G. Plans for Further Study	14
III. Findings and Recommendations.....	16

Appendices

- A. Authorizing Legislation (1999 Public Law, chapter 773)**
- B. Letters from Casella Waste Systems and Waste Management, Inc. responding to questions from the Task Force**
- C. Solid Waste Market Experience in Other States**
- D. Pilot Data Collection Project: Calculation of the Herfindahl-Hirschman Index for the Market for Solid Waste Hauling to the Tri-Community Landfill**
- E. Recommended Legislation**

I. INTRODUCTION

A. Establishment and Charge to the Task Force

Solid waste hauling and disposal services are essential to the quality of life and environment in Maine. Recent mergers and acquisitions within the solid waste industry, both nationally and in Maine, have raised concerns among policy-makers and other public officials. They question whether the market for solid waste services is sufficiently competitive to provide municipalities and other purchasers of those services with reasonable price and choice among providers of these essential services.

In response to these concerns, the Joint Standing Committee on Natural Resources recommended and the Legislature authorized formation of a Task Force to study horizontal and vertical market power in the solid waste industry in Maine.¹ The Task Force was composed of 5 members of the Joint Standing Committee on Natural Resources – Senators John Nutting and James Libby, and Representatives Robert Duplessie, John Martin and David Tobin. Senator Nutting and Representative Duplessie served as Task Force co-chairs.

B. Meetings

The Task Force met 4 times during the interim – on August 28, October 18, November 17 and December 11, 2000. At its first meeting, the Task Force received background information on antitrust regulation and on the solid waste market from representatives of the Office of the Attorney General, a solid waste service provider and municipalities. At its second meeting, the Task Force reviewed information on ownership of solid waste disposal and hauling companies and facilities in the State. It also reviewed a pilot data collection project regarding concentration in the solid waste hauling market in Northern Aroostook County and received information on experiences in other states.

At its third meeting, the Task Force invited public comment and heard from local and regional public officials and from public and private waste disposal facility owners, managers and industry associations. Task Force members also talked with Professor Ralph Townsend, a consultant preparing a report for the Task Force. At its final meeting for the interim, the Task Force reviewed the paper submitted by Professor Townsend, setting forth a plan for further study, and put forth its recommendations from the first phase of the study to the 120th Legislature.

¹ The legislation creating the Task Force, 1999 Public Law, chapter 773, also required anyone seeking to acquire control of solid waste assets to notify the Attorney General at least 30 days before the acquisition, to enable that office to address any antitrust concerns.

II. BACKGROUND; OVERVIEW OF ISSUES

A. Market Power

In a competitive business market, firms are deterred from over-pricing their goods or services by the presence of competing firms which may offer a more reasonable price and take away their customers. A number of things can prevent a market from operating competitively, however, including market power.

Market power is said to occur when a firm has the ability to maintain prices above competitive levels for a significant period of time.² Market power can be obtained in several ways – some legal and some illegal. Government regulation granting exclusive franchises creates market power, e.g., in the electric utility industry. Conspiracy among market participants to keep prices high and anti-competitive behavior of a firm preventing new entrants may also result in market power. Market power can be obtained by acquiring and consolidating firms in the same business (e.g., the hauling business); this type of consolidation can create “horizontal market power.” Market power can also be obtained by acquiring firms at two or more levels of business (e.g., in the hauling and disposal levels); market power created through vertical integration is known as “vertical market power.”

There are several ways to respond to unfair market power, including suing a company under antitrust law and enacting legislation to change or control the structure of the market or to provide incentives for greater competition. The Task Force received information regarding agency enforcement of antitrust laws and possible policy initiatives, but focused most of its resources in this first phase of its study on understanding the structure and concerns in the solid waste market in Maine, before proceeding to discuss whether market conditions warrant legislative action and, if so, what action is advisable.

B. Antitrust Law and the Limits on Market Power

Federal and State laws regulate business transactions and practices to prevent anti-competitive behavior, and authorize government agencies to intervene when proposed mergers or business practices threaten healthy business competition.

1. Federal laws

The Federal Trade Commission (FTC) and the U.S. Department of Justice (DOJ) share authority under federal law for regulating unfair or anti-competitive business practices. The Clayton Act prohibits price discrimination and corporate mergers “where the effect may be substantially to lessen competition or tend to create a monopoly in any line of commerce.”³ The FTC and DOJ jointly enforce this law.

² FTC/DOJ Guidelines

³ 15 USC §18

The Sherman Antitrust Act provides civil as well as criminal penalties for persons who monopolize or attempt to monopolize any part of the trade among the states, or who enters into contracts, combinations or conspiracies in restraint of trade.⁴ The Sherman Act is enforced by the Department of Justice, as well as by private actions in which injured parties may recover treble damages and attorney fees.

Finally, the Federal Trade Commission Act prohibits unfair methods of competition or unfair or deceptive acts or practices in or affecting commerce.⁵

2. State laws

Maine laws parallel the federal Sherman, Clayton and Federal Trade Commission Acts.

Title 10, sections 1101 and 1102 prohibit a person from entering into contracts, combinations or conspiracies in restraint of trade and from monopolizing or attempting to monopolize trade or commerce of this State. Violation of these laws is a Class C crime. As an alternative to seeking criminal penalties, the Attorney General may seek to impose a \$100,000 civil penalty for each course of conduct that violates the law. The Attorney General may also sue to enjoin violations, and any person injured by violations may sue to recover treble damages and attorney fees.

Title 10, section 1102-A prohibits a person from acquiring a firm where in any line of commerce the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly. This law is also enforced by the Attorney General, but no criminal penalties are provided. The Attorney General may sue to enjoin the acquisition and any person injured by the acquisition may sue for treble-damages and attorney fees.

The Maine Unfair Trade Practices Act, Title 5, chapter 10 (§§205-A to 214) declares unlawful unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. The Attorney General may sue to enjoin acts believed to violate this Act. Also, any person injured by violations may sue to recover restitution and other equitable relief.

3. Analyzing market power

One method of analyzing market power is the method used by state and federal regulators to determine whether to challenge mergers on the grounds that they will substantially lessen competition or tend to create a monopoly. The results of following these merger guidelines in analyzing data about the Maine

⁴ 15 USC §§1

⁵ 15 USC §45

market can give the Task Force guidance in evaluating the competitiveness of the current market, and can help anticipate potential problems if more acquisitions occur.

a. Horizontal market power

The federal guidelines for analyzing horizontal market power call for defining the market area, collecting data on who is operating there and what percent of the market they hold, and calculating an index called the Herfindahl-Hirschman Index. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. When a large number of firms operate in a market and no single firm has a significant share of the market, the HHI is relatively small. HHI increases as the number of firms decreases or the disparity in size between firms increases.

To take extreme examples, if 100 firms each have 1% of the market, the HHI is 100. (the sum of 100 squared 1's). If 2 firms each have 50%, the HHI is 5000 ($50^2 + 50^2$). If one firm has 90% of the market and 2 others each have 5%, the HHI is 8150 ($90^2 + 5^2 + 5^2$). Federal guidelines classify a market with an HHI between 1000 and 1800 as “moderately concentrated,” and those with an HHI in excess of 1800 as “highly concentrated.”

The calculation of the HHI is only the first step in determining whether to challenge a merger as anti-competitive. The FTC and DOJ also look at: whether the merger raises concerns about potential adverse competitive effects, given the level of concentration and other features of the market; whether entry of new competitors is likely and whether that entry would occur in a timely manner and in sufficient magnitude to deter anti-competitive behavior; whether efficiency gains from the merger would benefit the market; and whether one of the merging companies would have failed and exited the market if the merger had not occurred.

b. Vertical market power

Vertical market power is more difficult to analyze, since there is no numerical calculation that can provide a threshold for concern. Among the concerns raised by vertical integration are the following:

- Entering a market by means of a vertical merger may eliminate a potential competitor; if existing firms believe that a firm will enter its market as a competitor, they may keep prices reasonable to deter a potential competitor. In addition, entry by merging with an existing company denies the market of an actual competitor.

- Vertical mergers also can create barriers to entry, e.g., where the degree of vertical integration is so extensive that potential entrants must enter both levels of the market to succeed, entry to one of the markets is difficult, and the difficulty of entering that market affects its performance.
- Vertical integration can allow a company to evade the impact of rate regulation, e.g., by purchasing a supplier, raising prices and passing them through to rate payers, as allowed under the regulatory scheme.

C. Legislative Responses to Market Power

Policymakers have responded to the existence of monopolies in the utilities industries, most often by passing laws to regulate rates charged by the monopoly companies. Telephone, natural gas, and electricity are among the services that are now or were once subject to rate regulation. Another less common response has been enactment of laws requiring divestiture of certain assets. Electric utility restructuring is an example, under which Maine law required the separation of electricity generation firms from electricity distribution firms.

Laws relating specifically to the solid waste industry seem less common than those relating to electricity, telephone and other utilities. The Task Force asked Attorney General Offices in all 50 states for information on the solid waste markets in their states and any legal or policy response that has occurred. Few states responded; most of those who did respond said that they have dealt with issues through antitrust litigation. Two states – Alaska and West Virginia – regulate rates for waste hauling, disposal or both in the same way they regulate rates for electricity and other utilities.

Other possible legislative responses to solid waste market problems could include restrictions on consolidation, equal access requirements at disposal facilities, limits on behavior such as prohibition of “evergreen contracts”⁶ and changes in state law to increase competition, such as lifting the ban on development of commercial disposal sites. Any review of these possible options would occur only if the Task Force finds that the solid waste market in Maine is not functioning properly.

D. The Structure of the Solid Waste Industry in Maine

The solid waste industry is a multi-faceted and inter-related one, involving special waste landfills, incinerators, compost facilities, municipal landfills, tire processors and transporters who haul waste from households and businesses to disposal facilities or transfer stations and from transfer stations to disposal facilities.

⁶ Evergreen contracts are private trash-hauling contracts that renew automatically and that contain difficult or costly options for terminating the contract.

1. Solid waste haulers

Solid waste may be brought to a disposal site or transfer station from households and commercial sites by (a) residents themselves; (b) municipal employees; (c) private haulers under contract with the municipality or business; (d) private haulers under contract with the individual resident or business; or (e) a combination of residents and haulers hired by them.

Data collected from municipalities by the State Planning Office show the following distribution of methods of solid waste hauling in 1999.

Methods of Municipal Waste Hauling -- 1999

Method of Municipal Waste Delivery	Number of Municipalities	Percent of State Population	Percent of State Total Tons of Waste Disposed
Municipal employee pick-up	16	14%	14%
Municipal contract with private hauler	116	29%	29%
Residents and Private Haulers Take to Transfer Station	160	26%	33%
Residents Take to Transfer Station	171	18%	16%
Pay-per-Bag Fee	64	12%	8%

The Task Force received some information indicating that, at least in some parts of the State, the number of haulers in the market has decreased. Some municipalities that contract with private haulers say that fewer haulers are bidding on their contracts. Regional Waste Systems of South Portland provided information to the Task Force indicating that the number of haulers bringing waste to the RWS incinerator has decreased, and the concentration of waste hauled by the largest companies has increased. According to RWS, the top three companies delivered 65% of the waste brought to RWS in 1994, with only one company exceeding 25%. In 2000, the top three companies delivered 97% of the waste and each of the three exceeded 25%. The next highest percent of waste was 1.94%.

**CHANGE IN WASTE HAULERS DELIVERING TO
THE RWS INCINERATOR, 1994 vs. 2000**

FISCAL YEAR 1994		FISCAL YEAR 2000	
Company	Percent of Waste Delivery to RWS	Company	Percent of Waste Delivery to RWS
Astro	12.05	---	---
BFI	3.16	--- **	--- **
Carey	4.84	Carey	.65
Casella	0	Casella	29.10
Coadco	0	--- **	--- **
Enviropac	9.72	--- **	--- **
Harris	6.01	---	---
Herrick	2.04	Herrick	1.94
McCormick	.80	McCormick	.51
Pine Tree Waste	0	--- **	--- **
Waste Management	36.54	Waste Management	39.80
Troiano Waste	16.13	Troiano Waste	28.01
Yarmouth Rubbish	8.71	--- **	--- **
		** -- Hauler Purchased by Casella	

At least some of the decrease in haulers is caused by consolidation. Information submitted at the request of the Task Force indicates that the 2 largest firms in the state – Casella and WMI – have purchased at least 20 haulers statewide in the past 4 years. This information does not present a complete picture of the hauling industry in Maine, which is somewhat difficult to create because there is no single centralized source of information on the industry.

2. Solid waste disposal facilities

At one time, municipal landfills were the primary method of disposing of solid waste. In 1999, there were only 8 licensed and operating municipal landfills, and they accepted approximately 10% of municipal solid waste generated in the State. The remainder of the waste is disposed of in waste-to-energy incinerators and commercial landfills.

a. Incinerators

Maine has 4 major waste-to-energy incinerators: The Maine Energy Recovery Company facility in Biddeford; Regional Waste Systems incinerator in South Portland; the Mid-Maine Waste Action Corporation incinerator in Auburn and the Penobscot Energy Recovery Corporation facility in Orrington.

Major Waste to Energy Incinerators in Maine

Incinerator and Location	Capacity	Owner
Regional Waste Systems (South Portland)	Daily: 550 tons Annual: 170,000 tons	RWS, Inc., a quasi-municipal corporation formed by 21 municipalities
Mid-Maine Waste Action Corporation (Auburn)	Daily: 200 tons Annual: 70,000 tons	MMWAC, a quasi-municipal corporation formed by interlocal agreement among 12 municipalities
Penobscot Energy Recovery Corporation (Orrington)	Daily: 1100 tons Annual: 270,000 tons	General Partners are Casella Waste Systems ⁷ Inc. and Energy National, Inc (ENI) of Minnesota. Limited partners include Casella, ENI and the Charter Municipalities
Maine Energy Recovery Company (Biddeford)	Daily: 1000 tons Annual: 250,000 tons	General Partners are Casella Waste Systems, Inc. and Energy National, Inc. (ENI)

Incinerators do not operate in isolation. Material delivered to the incinerator that does not burn efficiently is separated from the waste and sent to a landfill. This material is known as front-end-processing-residue or FEPR. Ash resulting from incineration must also be landfilled. Incinerators rely on

⁷ Casella is part owner of the PERC plant through its subsidiary, PERC Management Recovery Company, Limited Partnership (PMC).

revenue from selling electricity as well as on tipping fees to maintain their economic viability.

b. Landfills

There are 2 privately-owned landfills in the State – the Crossroads facility in Norridgewock and the Sawyer facility in Hampden. The Sawyer facility is currently accepting mostly special waste, such as incinerator ash. The Norridgewock facility accepts both municipal solid waste and special waste (incinerator ash and front-end processing residue).

State law currently prohibits new commercial facilities, although expansion of existing facilities may still be possible. Instead of allowing new commercial facilities, state law provides for development and operation of state-owned facilities. The State currently has licenses from the Department of Environmental Protection and from the Land Use Regulation Commission to construct and operate a waste disposal site in central Maine near Lincoln (T2R8, known as the Carpenter Ridge site). State law requires the State Planning Office to submit to the Legislature a plan for developing and operating that facility when 4 years or less of disposal capacity remains in the State for municipal or special waste.⁸

There are 8 large municipal landfills in Maine – in Bath, Brunswick, Augusta, Presque Isle, Fort Fairfield, West Forks, Lewiston and Greenville – and several other small landfills. There are 2 publicly owned landfills that are licensed to accept special waste. These are used primarily for incinerator ash – the RWS landfill accepts waste from its own incinerator; the Lewiston landfill accepts MMWAC’s ash.

E. Task Force Data Collection Efforts

The first step in evaluating horizontal concentration is to define the relevant service and a market area in which firms compete to provide that service and then determine which firms compete there and what percent of the market they hold. How do you define a market area for solid waste hauling? Is it a 50-mile radius around a landfill or other disposal site? What if waste is collected from towns farther than 50 miles away, deposited in transfer stations at the outer ring of those markets, and brought to the disposal facility from the transfer stations? In an attempt to begin defining the appropriate market area for analyzing solid waste hauling services, Task Force staff conducted a pilot project collecting information from disposal facilities on which haulers dispose of waste there.

⁸ 38 MRSA §2156-A, subsection 2

1. Pilot project to analyze horizontal concentration in Northern Aroostook

State Planning Office staff asked the Tri-Community Landfill (TCL) to provide data on what haulers bring waste to the landfill, and in what quantities. TCL was chosen because of the size and the relative isolation of the facility, which simplifies data collection. The results of the study are included in Appendix D. They indicate the difficulty in defining the relevant market area, and the dramatically different results obtained by different definitions.

If the market is viewed as including the town of Houlton, the Herfindahl-Hirschman index is 2039, a concentrated market. Without including Houlton in the market area, the HHI is 924, a reasonably unconcentrated market. However, that analysis leaves Houlton as its own market, with an HHI of 10,000, since the City of Houlton awarded its residential waste disposal contract to a single hauler.

This pilot project demonstrated the importance of defining the market appropriately, and led the Task Force staff to conclude that more data and analysis of the market was needed before conclusions about the horizontal concentration of the market can be drawn.

2. Plans for further data collection

On the basis of the pilot project, staff concluded that data collection from disposal sites should continue, but that analysis of the data will require continued effort to define the market area. That further work may involve consultation with local officials, solid waste businesses and antitrust experts.

F. Testimony to the Task Force and Emerging Concerns

In addition to collecting data, the Task Force sought testimony on concerns and observations from participants in the solid waste market.

Regional Waste Systems

Charles Foshay, General Manager for Regional Waste Systems, described the difficult financial position in which RWS operates, largely because of changes in state and federal solid waste policy and federal court decisions. RWS is a quasi-municipal corporation formed in 1974 by interlocal agreement among 21 municipalities. It was formed to provide a facility to meet the state mandate that municipalities provide for the disposal of solid waste generated within their borders. RWS operated a landfill for the first 15 years after it was formed.

In the late 1980's, however, RWS switched to incineration. This change was precipitated by diminishing landfill capacity and a number of federal and state actions that made it economically feasible for groups of municipalities to finance costly incinerators. State bonds were issued to encourage building of incinerators

as alternatives to less environment-friendly landfilling. Federal energy policy encouraged waste-to-energy plants as a way to reduce reliance on foreign oil. State laws allowed municipalities to pass “flow control” ordinances, directing the waste generated within their borders to the incinerator, to ensure that the incinerator had sufficient revenue from tipping fees and from electricity sales to pay off the bonds.

But in 1994, the U.S. Supreme Court struck down flow control ordinances as unconstitutional burdens on interstate commerce.⁹ Municipalities could no longer require haulers to bring all waste from the municipality to the RWS incinerator. Municipalities can require haulers they contract with to bring municipal waste to the facility. But commercial waste, which makes up about half of RWS’s revenue, is collected under contract with businesses, not the municipality. Those haulers can, and do, take the waste where the tipping fee is lowest. RWS has attempted to retain this business by keeping commercial rates low, and requiring municipalities to make up the difference.

A second factor leading to higher costs for RWS municipalities is electric utility restructuring, which has led CMP and other power companies to buy out or renegotiate their power purchase contracts. RWS settled with CMP for a lump sum, and will sell its electricity in the future to a Texas company. But the revenue from that contract is less than RWS was receiving from the CMP contract. Tipping fees would have to increase to make up the difference, a shortfall of about \$5 million per year. Divided over the 190,000 tons of waste delivered to RWS per year, that amounts to \$26.32 per ton. But because RWS must keep the commercial fees competitive, the burden of making up the shortfall may fall disproportionately on the member municipalities, either through higher tipping fees or higher assessments.

Large haulers can take waste anywhere and exacerbate the financial problem at RWS. RWS doesn’t fault them for those decisions – they are in business to make money and choosing the lowest-cost service makes business sense. But those low costs are coming at the expense of municipalities that acted responsibly to meet their state mandated roles. Instead, Mr. Foshay asked the Task Force to recommend an equalization subsidy to correct the inequitable results of a decade of policy changes statewide for solid waste management.

Tri-Community Landfill

TCL is a quasi-municipal corporation formed in 1977 by interlocal agreement between Caribou, Fort Fairfield and Limestone. In 1989, TCL was forced to decide whether to close its landfill or to spend a large sum of money to build a landfill that complied with new environmental regulations. After agreement from 35 municipalities to enter into 7-year contracts for disposal of waste, TCL began construction of a landfill in 1996 and opened it in 1997. They issued \$3.8 million

⁹ C. & A. Carbone, Inc. v. Town of Clarkstown, N.Y., 511 U.S. 383 (1994)

of bonds for 25 years, relying on delivery of 24,000 tons per year. Houlton was one of the 35 municipalities that had agreed to deliver waste to TCL. However, the contract with TCL was a contract with Houlton's hauler, not the municipality itself. That hauler has been purchased by Casella, and the contract with the hauler expires at the end of 2001. Casella has begun talks with TCL about where it will dispose of its waste after the current contract expires. TCL is concerned that the Casella hauler will be offered a lower tipping fee at the PERC facility than is offered at TCL, and that the revenue from that waste will be lost to TCL. The communities that finance TCL feel at a competitive disadvantage with the Casella-owned facilities, and feel that they relied on the support of regional towns in undertaking the financing.

City of Waterville

Waterville's Director of Public Works, Greg Brown, explained to the Task Force the difficulty his city is having with meeting its obligation to deliver a certain amount of tonnage it is required to deliver to the PERC facility, its guaranteed annual tonnage, or "GAT." Despite continual reductions in its GAT, Waterville will likely not meet its quota this year, resulting in monetary penalties. Brown is not sure how the tonnage could fall so far below expectations. He suspects that waste is being delivered to MERC by haulers that have been recently purchased by Casella. Casella has recently built a transfer station in the area, and Brown believes that the waste is being transported to MERC from that facility. He has asked for data on where the waste from the transfer station is going, but he has not received answers.

PERC Municipal Review Committee

The PERC Municipal Review Committee (MRC) is an organization formed by the 130 PERC Charter Municipalities. Greg Louder, Executive Director of the MRC, described the concerns of the Charter Municipalities.

The Charter Municipalities have several interests in the PERC facility. Their long-term contracts with the facility (through the year 2018) obligate them to deliver a guaranteed tonnage to the facility, at a tipping fee determined through a formula set forth in the contract. They are also part owners of the facility, being entitled to one-third of the profits of the PERC incinerator. They can also purchase additional shares of the company with "performance credits" that they earn through their interactions with the facility. To protect these interests, the MRC is entitled to monthly and annual operation and performance reports, which enable them to review the company's financial operating information and to monitor expenses, tipping fee adjustments and changes in cost due to law changes.

The MRC is concerned that tipping fees have increased dramatically since they first entered into contracts with PERC – from \$12 in 1988, to \$32 in 1991 and a

net of \$45 in 2000. One of the MRC's chief concerns is the cost of disposing of ash and other residuals from the incinerator. This cost is passed through to the Charter Municipalities in their tipping fees, and the MRC is concerned with the potential conflict of interest created by the fact that the PERC plant contracts with the Sawyer facility for ash disposal. Casella owns the Sawyer facility and has an interest in the PERC facility,¹⁰ through one of its subsidiaries. In addition, the municipalities are concerned about the loss of choice in hauling contractors.

Representatives of Casella Waste Industries, Inc.

Don Meagher, Licensing and Compliance Manager, Eastern Region of Casella Waste Industries Inc. was asked to address the Task Force at its background meeting in August. Mr. Meagher pointed out that, in the past 20 years, the solid waste industry has changed from a largely unregulated, local service provided by the town dump to a highly-sophisticated, interrelated, regulated and expensive solid waste management system. These changes have resulted from public demand for more environment-friendly solid waste disposal and for a system that steers waste to recycling and incineration in preference to landfilling. Companies in such an industry benefit from combining the capital and risk-intensive disposal segment of the market with recycling, hauling and transfer stations. Integration provides for the greatest efficiency and economies of scale. The hauling industry in a rural state like Maine is composed of long, low-density routes. Consolidation of routes allows servicing with denser routes and more customers, without increases in the number of trucks or employees. Consolidation is balanced because there are low barriers to entry into the market. It is not unreasonably expensive to start a hauling business, and haulers can operate on a stand-alone basis without having to own disposal assets. Also, municipalities have an option of having their own employees haul the waste to transfer stations or the disposal facility.

Jim Hiltner, Vice-President of Casella, also addressed the Task Force. Mr. Hiltner responded to comments made to the Task Force at its second meeting. Mr. Hiltner commented on the criteria for evaluating market concentration, saying that the calculation of an HHI index is just one step in analyzing horizontal concentration. The U.S. DOJ also analyzes (a) whether changes in the market indicate that the current market share of a particular firm overstates or understates its future competitive significance; (b) the ability of competing firms to enter the market, i.e., whether barriers to entry are high or low; and (c) the efficiencies likely to result from a proposed merger, which would make the merger beneficial for consumers by providing low prices, improved quality, enhanced services or new products.

¹⁰ Casella has an interest in PERC through one of its subsidiaries; the subsidiary is one of 2 general partners in PERC and is also a limited partner in PERC. A subsidiary of the other general partner (ENI) manages operations of the PERC plant.

In response to the pilot data collection project, Mr. Hiltner said that it demonstrates that there is a competitive market for hauling in Aroostook County, and that municipal contracting decisions play a large part in waste hauling competition.

With regard to the Tri-Community Landfill, Mr. Hiltner says that Casella has been working to find a mutually-beneficial arrangement for waste disposal services in Houlton. In response to concerns that Casella would entice Houlton waste to the PERC incinerator and away from the TCL by offering inappropriately low tipping fees, Mr. Hiltner explained that the agreement between PERC and its charter municipalities would prevent that from happening. The agreement prohibits the PERC incinerator from offering to non-Charter municipalities a lower tipping fee than is charged to the Charter Municipalities, unless the Municipal Review Committee consents. Therefore, the vertical integration of ownership of the PERC incinerator and the hauler does not create undue market power.

Casella Waste Systems also provided written information at the request of the Task Force, including a list of the communities that have directly contracted with Casella for waste hauling services; a description of the businesses acquired by Casella in Maine; and a description, from the company's perspective, of the legislative and regulatory factors that affect its business activities. In its written response, Casella noted that the dramatic price increases at PERC occurred years before Casella acquired an ownership interest in the plant. In addition, they noted that there is no conflict of interest in disposal of PERC ash at the Sawyer landfill because the pricing and term of ash disposal are determined by a contract entered into years before Casella acquired either the Sawyer landfill or an ownership interest in PERC.

G. Plans for Further Study

The Task Force hired a consultant to prepare a work plan for further study of the solid waste market, and particularly to focus on a plan to study vertical integration. Dr. Ralph Townsend, Professor of Economics and Chair of the Economics Department at the University of Maine, is the consultant to the Task Force. Professor Townsend met with the Task Force and with Task Force staff to clarify issues and concerns. He delivered a paper to the Task Force laying out 29 tasks to be performed during the interim and in the next phase of the study beginning in the summer of 2001.

The work plan calls for preparation of the following background materials before the Task Force reconvenes following the 1st Regular Session of the 120th Legislature:

- A thorough review of state and federal laws and court cases affecting the solid waste industry;

- A review of consolidation and integration on the national level;
- Tonnage and cost data from municipalities and disposal sites over the past 10 years;
- More thorough information from other states on how they have responded to consolidation and integration in the solid waste market; and
- A summary of state policy objectives relating to solid waste.

When the Task Force reconvenes, Professor Townsend suggests that it:

- Gather information on the impact of concentration in the disposal market on the ability to enter the hauling market;
- Describe and assess vertical mergers in the State;
- Assess the relationship between public and private disposal facilities, and between in-state and out-of-state facilities; and
- Assess cost data, including profitability and cost justifications for mergers.

Finally, Professor Townsend set forth possible policy options for the Task Force to consider if it concludes that changes in the market are merited. Those options include: allowing construction of commercial disposal facilities or accelerating development of state facilities to increase competition in disposal; altering the municipal responsibility to provide for disposal; restricting further consolidation or requiring divestiture of existing assets; and regulating hauling or disposal rates.

III. FINDINGS and RECOMMENDATIONS

Findings

State antitrust laws allow the Attorney General to intervene when a planned merger between 2 or more companies threatens to substantially reduce competition in a given market. It is essential that the Attorney General receive notice before a merger occurs, to provide the greatest opportunity for analysis and public protection. The law requiring a company to give 30 days notice to the Attorney General before acquiring a solid waste company is set to expire 90 days after adjournment of the 1st Regular Session of the 120th Legislature, approximately mid-September of 2001. That law also requires notice only if the business to be acquired has more than 5 employees. The Task Force finds that continued notice of all acquisitions is necessary, to give the Task Force time to complete its work without concern that further consolidation and integration will occur without review by the Attorney General. Also, since numerous acquisitions of small hauling companies can have a significant impact on competition, the notice requirement should be extended to all companies, regardless of the number of employees.

Recommendation

The Task Force recommends that the Maine statutes be amended to change the repeal date on the notification law to 90 days after the adjournment of the 2nd Regular Session of the 120th Legislature. It also recommends that the notice requirement be extended to all acquisitions, regardless of the number of employees.

Findings

The Task Force finds that the work of understanding and assessing markets is a highly technical issue, requiring background in economic principles and expertise in market analysis. The Task Force needs resources to hire a person with such specialized skills to assist it in analyzing data that is being collected during the legislative session. Funds are needed to hire a consultant to enable the Task Force to finish its work during the next legislative interim.

Recommendation

The Task Force recommends that a sufficient amount of funds be provided to it to hire an economics and market analysis expert to assess market data collected by the Task Force and that the Task Force be authorized to retain such an expert for the duration of its study. Funding sources, including dedicated revenue relating to solid waste matters, must be pursued.

APPENDICES

- A. Authorizing Legislation (1999 Public Law, chapter 773) (not included)
- B. Letters from Casella Waste Systems and Waste Management, Inc. responding to questions from the Task Force (not included)
- C. Solid Waste Market Experience in Other States
- D. Pilot Data Collection Project: Calculation of the Herfindahl-Hirschman Index for the Market for Solid Waste Hauling to the Tri-Community Landfill
- E. Recommended Legislation

G:\STUDIES\Study Reports - 119th 2nd\Solid Waste Hauling and Disposal-Final Report.doc (1/23/01 10:05 AM)

APPENDIX A

Authorizing Legislation (1999 Public Law, chapter 773)

APPROVED

CHAPTER

MAY 09 00

77 3

BY GOVERNOR

PUBLIC LAW

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND

—
H.P. 1736 - L.D. 2442

**An Act Regarding the Solid Waste Hauling and Disposal
Industry**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §2111 is enacted to read:

§2111. Acquisition of solid waste and residue hauling assets

1. Prohibition. A person may not acquire, directly or indirectly, controlling stock or substantial assets that include those used in solid waste or residue hauling from a business engaged in and of which more than 1/2 of the revenue is derived from solid waste or residue hauling in the State without prior notice as required under subsection 2.

For the purposes of this subsection, "solid waste or residue hauling" means the collection, transportation or delivery of solid waste or residue to a transfer facility or station, incinerator or disposal site from residential or commercial generators and customers and includes hand pickup, containerized pickup and roll-off services.

2. Notice. The person acquiring controlling stock or substantial assets under subsection 1 shall provide notice of this acquisition to the Department of the Attorney General at least 30 days prior to the date of acquisition. That period may be shortened with the consent of the Attorney General.

3. Exception. Notwithstanding subsection 1, this section does not apply if the business from which controlling stock or substantial assets are being acquired employs 5 or fewer individuals.

4. Confidentiality. Information received by the Department of the Attorney General as a result of the notice requirement under subsection 2 is confidential.

5. Penalty. A person that violates this section is subject to a civil penalty not to exceed \$10,000, payable to the State. The penalty is recoverable in a civil action. The violation constitutes a prima facie violation of Title 5, section 207.

6. Repeal. This section is repealed 90 days after adjournment of the First Regular Session of the 120th Legislature.

Sec. 2. Task Force to Study Market Power Issues Related to the Solid Waste Hauling and Disposal Industry established. The Task Force to Study Market Power Issues Related to the Solid Waste Hauling and Disposal Industry, referred to in this section as the "task force," is established.

1. The task force consists of 5 members of the Joint Standing Committee on Natural Resources, appointed as follows:

A. Two members from the Senate, appointed by the President of the Senate; and

B. Three members from the House of Representatives, appointed by the Speaker of the House of Representatives.

The first Senate member named is the Senate chair and the first House member named is the House chair.

Legislators may continue to serve while they are Legislators until they are replaced by new appointments.

2. All appointments must be made no later than 30 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. The chairs of the task force shall call and convene the first meeting of the task force within 30 days of the date the last member is appointed.

3. The task force shall conduct a study of market power issues in all aspects of the public and private solid waste hauling and disposal industry. The task force may examine any

issue that the task force determines to be relevant to assessing market power issues. The task force shall examine at a minimum:

- A. Issues of market concentration or horizontal market power;
- B. Issues of vertical market power arising from integrated ownership or control of solid waste hauling, disposal and other related assets;
- C. The existence of barriers to entry into the solid waste hauling industry, including required capitalization;
- D. The reasonable geographic areas and markets in which market power could be exercised;
- E. The extent to which imbalances of supply and demand create opportunities for the unreasonable exercise of market power;
- F. Issues of solid waste hauling and disposal pricing, including debt service of public facilities and its relationship to tipping fees;
- G. The advantages and disadvantages of altering the current market system in the solid waste hauling and disposal industry; and
- H. The approaches taken in other states to address market power issues.

4. The task force shall consult with the following interested parties in conducting the study: the Department of the Attorney General; the Executive Department, State Planning Office; the Public Utilities Commission; the Department of Environmental Protection; municipal representatives; industry representatives; and other parties as determined appropriate by the task force.

5. The task force may retain experts or other consultants as determined necessary in order to conduct the study.

6. Members of the task force are entitled to receive the legislative per diem and reimbursement of necessary expenses for their attendance at authorized meetings of the task force.

7. Upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide necessary staffing services to the task force.

8. The task force shall submit an interim report of its findings and recommendations no later than December 6, 2000 and a final report of its findings and recommendations no later than December 5, 2001 to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The interim and final reports must include any legislation necessary to implement the recommendations of the task force. If the task force requires an extension of time to make its reports, it may apply to the Legislative Council, which may grant the extension.

9. The chairs of the task force, with assistance from the task force staff, shall administer the task force's budget. Within 10 days after its first meeting, the task force shall present a work plan and proposed budget to the Legislative Council for approval. The task force may not incur expenses that would result in the task force exceeding its approved budget.

Sec. 3. Legislation. The joint standing committee of the Legislature having jurisdiction over natural resources matters may report out a bill related to the solid waste industry to the First Regular Session of the 120th Legislature.

Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

2000-01

LEGISLATURE

Task Force to Study Market Power Issues Related to the Solid Waste Hauling and Disposal Industry

All Other

\$4,500

Provides funds for the Task Force to Study Market Power Issues Related to the Solid Waste Hauling and Disposal Industry and for the costs to retain experts or consultants.

APPENDIX B

**Letters from Casella Waste Systems and Waste Management, Inc. responding
to questions from the Task Force**



Casella Waste Systems, Inc.

*Casella Waste Management
Sawyer Environmental Services
Superior Disposal Services
New England Waste Services*

October 11, 2000

RECEIVED

OCT 13 2000

*Eastern Regional Office
110 Main Street, Suite 1308
Saco, ME 04072*

Market Power Task Force
C/o Deborah C. Friedman, Esq.
Office of Legislative and Policy Analysis
13 State House Station
Augusta, Maine 04333-0013

OPLA

*(888) 539-9993
(207) 286-1668
(207) 286-1696 Fax*

Dear Task Force Members:

I am writing in response to Deborah Friedman's letter of September 13, 2000 requesting information for the Task Force. For convenience, each information request is restated in italics.

1. *A list of all companies owned, operated or otherwise affiliated with Casella that conduct business in the State of Maine, showing, in each case*
 - (a) *trade names used (if other than company name);*
 - (b) *territory served within the State of Maine;*
 - (c) *the exact nature of the relationship between Casella and the company (e.g. 20% owner; contractual rights, etc.);*
 - (d) *business activities (e.g. trash hauling, landfill or incineration operation, composting, tire shredding, etc.); and*
 - (e) *date on which the company was acquired or commenced operations within the State of Maine.*

Response: Attachment A is a list of all companies owned, operated or otherwise affiliated with Casella Waste Systems ("Casella") that conduct business in the State of Maine.

2. *A chronology comprising the history of the company as a whole, with particular attention to its operations in the State of Maine.*

Response: The following is a brief history of Casella:

The Casella company was founded by Doug Casella in 1975 in Rutland, Vermont with a single pick-up truck earned with money from his after school job on a local farm. He named his new business "Casella Refuse Removal."

The company grew within Vermont, providing collection, recycling, transportation, and disposal services to the smaller, more rural municipalities. The company, renamed Casella Waste Management, built the first recycling facility in the state of Vermont in 1977, recognizing that this activity was destined to become an important part of a comprehensive, effective approach to managing municipal solid waste.



In 1993, the company was incorporated as Casella Waste Systems and began a period of rapid growth in rural New England as state and local governments, and business and industry looked for well-capitalized, highly skilled partners to play a role in meeting the mandates of dramatic public policy changes in the management of solid waste. Casella continued to position itself as an "integrated" waste management services provider to a marketplace that was demanding an entire range of MSW solutions from the curb to disposal, or from the curb to recycling facility.

In early 1996, Casella began serving communities in Maine, through its acquisition of the Sawyer companies, which included Sawyer Environmental Services (collection and transportation) and Sawyer Environmental Recovery Facilities (disposal). The Sawyer companies provided recycling services, including a tire recycling facility.

In 1997, the Casella completed an initial public offering of its common stock, and is currently a publicly traded company on the NASDAQ exchange.

In early 1999, Casella announced its intention to acquire KTI, Inc., a waste processing company with facilities and operations throughout the U.S., including Maine. KTI, in addition to an expertise and capability in waste-to-energy disposal facilities, also possessed a network of recycling facilities and technologies that enhanced Casella's integrated waste management approach to the market. These capabilities range from waste paper marketing to cellulose insulation manufacturing to cryogenic tire recycling and the production of crumb rubber.

Attachment A in response to Question 1 provides more detail about Casella in Maine from 1996 to present. Current waste management capabilities in Maine include: beneficial reuse, recycling, transportation services, incineration, and landfilling.

3. *A chronology of significant regulatory and/or court decisions which have had a significant impact on the company's operations over the past decade.*

Response: Solid waste management policy has been the subject of considerable deliberation by the Maine Legislature over the last thirteen years. Just over a decade ago, Maine was in the midst of a solid waste crisis, marked by diminishing disposal capacity, scores of leaking open burning municipal dumps, and an anemic recycling rate. This crisis resulted from a patchwork of State policies that left primary responsibility for solid waste management in its traditional place – with each municipality via its home rule authority. In 1987, the Legislature declared that the State needed to pursue and implement a comprehensive and integrated solid waste management strategy, based on certain priorities, but stressed that sound environmental policy and economics of scale required a preference for "solid waste management planning and implementation on a regional and state level." (Study of Solid Waste Management and Disposal Policy in Maine, Joint Standing Committee on Energy and Natural Resources, 1987).

Since the 1987 Study process, the issue of solid waste management in Maine has been revisited in the Legislature and at the DEP, the principal solid waste regulatory agency, numerous times, including:

- Comprehensive Overhaul of DEP Solid Waste Management Rules, 1998-1989;
- Maine Hazardous Waste, Septage and Solid Waste Management Act, 1989;
- Report of the Task Force on Solid Waste Landfills to the Joint Standing Committee on Natural Resources, 1996;
- Update and Refinement of DEP Solid Waste Management Rules, 1998-1999; and
- Solid Waste Management Policy Task Force, 1999.

The result of this legislative and regulatory activity has been the creation and refinement of a comprehensive state-wide solid waste management program. As Casella noted in its remarks at the August 28, 2000 Task Force meeting, the solid waste private sector as it exists today is largely the result of and reaction to this deliberate public policy. A few examples are provided below:

Public policy: Legislatively created solid waste management hierarchy, with waste reduction, reuse and recycling the top priorities and incineration and land disposal the bottom ones. (38 M.R.S.A. §§ 1302, 2101.)

Result: Focus on recycling and waste reduction has led to significantly increased municipal and commercial recycling rates with concomitant business challenges and opportunities for private waste management companies. While incineration and land disposal are the last priorities, there has been a recognition that the incineration and disposal facilities that do exist are critical components of the successful management of Maine's solid waste stream. Most citizens understand that no matter how much we "reduce, recycle and reuse", there will always be a need for incineration and disposal facilities. Stringent regulation of these facilities has meant they must operate efficiently and in an environmentally safe manner. Inefficient and environmentally unsafe facilities, such as many municipal "dumps", have closed.

Public policy: Ban on new commercial solid waste disposal facilities. Existing commercial facilities licensed by the DEP prior to October 6, 1989 that meet the public benefit determination may expand contiguously onto land owned prior to December 31, 1989. (38 M.R.S.A. §1310-X). Legislature declares that environmentally suitable sites for waste disposal represent a "critical natural resource." (38 M.R.S.A. § 1302.)

Result: Amendments to §1310-X were adopted in 1995 specifically to allow additional expansion at SERF. For the past four years, Casella has focused its efforts on expansion of the Sawyer landfill because expansion of an existing commercial disposal facility is the only feasible option for Casella to continue to own and operate a landfill. As a DEP approved site, it also conforms with State policy of utilizing environmentally suitable disposal sites—a critical natural resource—in a responsible manner.

Public policy: Automatic intervenor status and intervenor grant (up to \$100,000 paid by the applicant) for host community in DEP review of landfill expansion applications (38 MRSA §§ 1310-S, T)

Result: The ability for the host community to delay final approvals of a landfill expansion is substantially increased, essentially at the landfill owner's expense.

Public policy: Basing solid waste disposal facility siting decisions on the needs of the entire state (public benefit determination, 38 MRSA §1310-N, 3-A) and prohibiting municipalities from adopting and enforcing ordinances regulating solid waste facilities that are more strict than state law or regulation (38 MRSA §1310-U).

Result: This is the foundation of Casella's position in the SERF litigation (see below); that a municipality may not implicitly or explicitly ban a solid waste disposal facility or expansion that has been licensed by the DEP.

Public policy: Closure of municipal landfills.

Result: Disposal options are much fewer and highly centralized. Individual homeowners no longer make a weekly trip to the town dump for disposal of their trash. A network of collection, transfer, and trucking infrastructure has developed to transport residential and commercial trash to a limited number of disposal facilities.

Public policy: Establishment of rigorous siting, design, construction, closure, and post-closure standards for expanded landfills (DEP Regulations, Chapter 401).

Result: The cost to design, license, construct, operate, close, and monitor a landfill have been greatly increased. The capital investment and staffing required sets a very high threshold standard on the companies that can participate in the solid waste disposal business.

Public policy: Closure of municipal landfills and centralization of disposal sites (see above) has resulted in municipal contractual and/or debt service obligations that require communities participating in the four waste-to-energy incinerators in Maine to deliver under a "put or pay" requirement, resulting in de-facto flow control.

Result: Haulers are, for the most part, must deliver waste to a designated disposal site at the pre-determined disposal price for that facility. Thus, private sector waste haulers have little or no ability to lower the disposal portion of the pricing structure for municipal solid waste hauling services by directing waste to other facilities. This cost is embedded into the pricing structure for hauling services. Since the ability to adjust pricing to offset capital costs is very limited, cost containment becomes focused on achieving route efficiency.

In addition to these developments in Maine, there have been substantial regulatory changes at the federal level that have impacted Casella's business and affected its business operations.

4. *Information on any ongoing litigation in which the company is currently involved which has any significant implications for its operations in Maine.*

Response: The following ongoing litigation in which Casella is currently involved has significant implications for the company's operations in Maine:

a. Expansion of the SERF Landfill in Hampden, Maine.

Local obstacles to an expansion of the SERF landfill, which has been licensed by the DEP, have led to three interrelated lawsuits:

- Maine Supreme Court – Town's appeal of Superior Court Justice Kravchuk's decision affirming SERF's rights under the Town's Zoning Ordinance (Docket No. PEN-00-83)
- Penobscot County Superior Court -SERF appeal of Town Council's denial of landfill expansion application under the Town's Waste Disposal Facility Licensing Ordinance (*SERF v. Town of Hampden*, Docket No. AP-99-52).
- Penobscot County Superior Court – SERF's appeal related to local definition of "expansion" that is inconsistent with DEP regulations (*SERF v. Town of Hampden, et al.*, Docket No. AP-00-27).

SERF owns and operates a commercial landfill in Hampden. SERF has operated a landfill on its Hampden property, which is located in an Industrial zoning district, for twenty-five years. The facility is used for the disposal of a variety of waste streams originating both within the State of Maine and elsewhere. The SERF facility is one of only two operating commercial solid waste landfills in the entire state; the other commercial landfill is Waste Management's Norridgewock facility.

In the mid-1990's, SERF recognized that it would need to expand in order to continue to operate and serve its customers. State statute (38 M.R.S.A. §1310-X) expressly provides for contiguous expansion of the two existing commercial landfills, provided certain conditions are met. SERF designed a proposed expansion and met with DEP staff, Town officials, and an independent consultant retained by the Town over a period of two years to refine the plans and supporting analyses. In the fall of 1998, the Town's representatives in the DEP process informed the Town Council and DEP that all of their questions and concerns resolving the proposed project had been satisfied. DEP found that SERF met all statutory and state regulatory conditions for the expansion, made an express finding of public benefit, and issued a license for the expansion on October 20, 1998.

Despite its participation in the DEP process, the Town and a group of its citizens filed appeals of the DEP Order approving SERF's expansion. The Board of Environmental Protection dismissed both appeals. This decision was not appealed, and became final.

The Town, however, refuses to let any expansion proceed, based primarily on its arguments that the local Zoning Ordinance does not permit landfills or landfill expansions, and that the project does not satisfy local standards for "integration with the environment." SERF has argued that the Solid Waste Management Act preempts the Town's actions and that previous permits support SERF's right to continue this use of its property.

The following is a detailed chronology of the history of the SERF landfill in Hampden that provides the context and the basis for this litigation. The chronology illustrates the high level of regulatory risk and development expense that characterizes the solid waste industry, as described during Casella's presentation at the August 28, 2000 Task Force meeting.

- September 30, 1974 The Hampden Zoning Board of Appeals issued a permit to Truck-A-Way System, Inc. to operate a sanitary landfill on three parcels of land in the Industrial zoning district. This land was eventually acquired by SERF and related companies.
- March 12, 1975 DEP approved construction and operation of the area known as the Conventional Landfill.
- April 16, 1975 The Hampden Planning Board reviewed and approved SERF's plans for the Conventional Landfill.
- December 3, 1990 The Hampden Town Council granted SERF a waste disposal facility license approving operation of the landfill.
- September 10, 1991 DEP approved the Secure III portion of landfill, Phases I – V. These areas are located over and adjacent to the easterly sideslope of the Conventional Landfill.
- October 7, 1991 The Hampden Town Council granted a waste disposal facility license for Secure III, Phases I – V.
- November 7, 1994 The Hampden Town Council approved renewal of SERF's waste disposal facility license and the continued operation of Secure III, Phases I - V.
- October 31, 1996 DEP issued a Determination of Environmental Feasibility for development of Secure III, Phases VI, VII and VIII. The Town, which received notice of this Determination, neither commented or appealed.
- December 1, 1997 The Hampden Town Council approved renewal of SERF's waste disposal facility license, and the continued operation of Secure III, Phases I – V.
- June 26, 1997 DEP issued a Determination of Substantial Public Benefit related to the

Project, finding that “the proposed expansion of Secure III will meet immediate, short-term and long-term capacity needs of the State.” Again, the Town neither commented on nor appealed this Determination.

- March 20, 1998 SERF submitted its application for Secure III, Phases VI, VII and VIII, to DEP.
- May 5, 1998 The Town was granted status as an automatic municipal intervenor in DEP’s review of SERF’s plans. The Town used a \$50,000 intervenor assistance grant to contract for an independent technical consultant to review SERF’s application. The Town also appointed a representative to review the DEP application on its behalf.
- November 1996 through September 1998 A series of Stakeholder Meetings were held between SERF, DEP staff members, and the Town’s representatives, to review the proposed design and operation of the Project. The Town’s representatives concluded at the end of this process that all of the Town’s comments had been addressed. SERF’s application was also reviewed by numerous state agencies, including DEP’s Bureau of Remediation and Bureau of Land and Water Quality, the Department of Inland Fisheries and Wildlife, the Atlantic Sea Run Salmon Commission, the Department of Marine Resources, the Maine Historic Preservation Commission, the Department of Conservation, the Department of Transportation, and the State Planning Office.
- October 20, 1998 DEP approved the construction and operation of Secure III, Phases VI, VII and VIII.
- November 3, 1998 Voters in Hampden defeated a proposal to adopt amendments to the Zoning Ordinance that would have made landfills a conditional use in the Industrial District, subject to specific application review and performance standards.
- November 16, 1998 Despite its participation in the Stakeholder process, the Hampden Town Council voted to appeal the October 20, 1998 DEP Approval Order, and authorized funding up to \$10,000 to engage legal counsel to prepare and file the appeal with DEP. A group called the Hampden Citizen’s Coalition also filed an appeal.
- November 20, 1998 SERF filed applications with the Hampden Town Council and Planning Board for further landfill development on the three lots identified in the September 30, 1974 Hampden Zoning Board of Appeals approval.

- December 11, 1998 through February 12, 1999 A series of meetings, including Town representatives, Hampden Citizen's Coalition members, SERF representatives, "Vote Yes" committee members (Hampden residents who had favored the proposed zoning amendments), the Municipal Review Committee, and state legislators, were held to discuss solid waste management issues and potential negotiated resolutions to the dispute between SERF and the Town. The participants did not reach final agreement on a mutually acceptable outcome.
- December 14, 1998 The Hampden Town Council adopted a 90-day moratorium on the processing of applications under the Waste Disposal Facility Licensing Ordinance.
- January 25, 1999 The Hampden Town Council voted to adopt proposed amendments to the Waste Disposal Facility Licensing Ordinance. In addition, following a public hearing, the Council voted to repeal the moratorium on accepting and processing applications under the Ordinance.
- January 28, 1999 The Hampden Code Enforcement Officer ("CEO") issued his determination that Phases VI and VII of the SERF project, as described in SERF's site plan modification application filed with the Town on November 20, 1998, would constitute the prohibited expansion of a nonconforming use, but that Phase VIII could be developed because it would be located on top of previously landfilled areas. The CEO also referred the application to the Planning Board for review.
- February 16, 1999 The Hampden Town Council held a public hearing and adopted additional amendments to the Waste Disposal Facility Licensing Ordinance, requiring negotiation of a host community benefits package (already required by state law) as part of the local landfill licensing process.
- March 25, 1999 SERF filed an action in Superior Court, seeking declaratory judgment and injunctive relief on the basis that the Town's Zoning Ordinance is preempted by state law. *SERF v. Town of Hampden*, Docket No. CV-99-57.
- April 21, 1999 The Hampden Zoning Board of Appeals denied SERF's administrative appeal from the Code Enforcement Officer's January 28, 1999 determination. SERF subsequently amended its complaint in Docket No. CV-99-57 to include an appeal from the Board of Appeals' decision.
- May 12, 1999 The Hampden Planning Board voted that it did not have jurisdiction to consider SERF's application for construction of Phases VI and VII of the

landfill project SERF proposed to the Town, because of the CEO's and ZBA's decisions. SERF appealed this decision to Superior Court (Docket No. AP 99-26), which appeal was consolidated with Docket No. CV-99-57.

- May-June 1999 SERF filed revised applications with the Planning Board and Town Council, seeking approval for the portion of Phase VIII ("Phase VIII-A") that could be constructed in compliance with the CEO's January 28, 1999 decision. The Town Council application revision requested separate Town Council decisions for Phase VIII-A and the remainder of the project, Phases VI, VII and VIII-B.
- August 23, 1999 The Hampden Planning Board issued site plan approval for Phase VIII-A, which will provide approximately 200,000 cubic yards of additional landfill capacity, or 6 percent, of the capacity licensed by DEP.
- September 7, 1999 Town Attorney Russell notified the Town Council that a purported 1995 amendment to the Zoning Ordinance had been "discovered." This amendment, which prohibits all increases in volume of a nonconforming use, whether vertical or horizontal, was not published in the Town's official version of the Zoning Ordinance.
- September 20, 1999 The Town Council voted that it would not apply the 1995 Zoning Ordinance amendment to Phase VIII-A of SERF's proposed project, because the amendment had not been published after its adoption. The Council did not take a position on the application of the amendment to Phases VI, VII and VIII-B.
- October 4, 1999 The Town Council voted to issue a license for the construction and operation of Phase VIII-A under the Town's Waste Disposal Facility Licensing Ordinance. The Town Council also voted to deny a license for Phases VI, VII, and VIII-B, on the basis of noncompliance with the Zoning Ordinance and "integration with the environment" standards in the Licensing Ordinance.
- November 15, 1999 The Town Council issued its written Notice of Decision regarding the denial of a license for Phases VI, VII and VIII-B. SERF filed an appeal of this decision in Superior Court, with independent claims for declaratory and injunctive relief, based on preemption, due process violations, commerce clause violations, and inverse condemnation. *SERF v. Town of Hampden*, Docket No. AP-99-52.
- January 14, 2000 Justice Kravchuk issued her decision in Docket Nos. CV-99-57/AP-99-26

(consolidated), upholding SERF's position and reversing the CEO's and Zoning Board of Appeals' decisions that the Landfill is a nonconforming use which cannot be expanded.

- February 9, 2000 The Town of Hampden appealed Justice Kravchuk's decision to the Maine Law Court. Docket No. PEN-00-83.
- April 19, 2000 SERF sent a letter to the Town's CEO requesting his formal determination on the permissibility of "Phase VIII-C," which would provide approximately 100,000 cubic yards of capacity (3 percent of the capacity licensed by DEP) and would involve a small vertical, but not a lateral, increase in the capacity of the Landfill. The purpose of Phase VIII-C is to preserve the status quo while litigation is pending.
- May 4, 2000 The CEO issued a letter stating that he would not follow Justice Kravchuk's ruling in Docket No. CV-99-57 and would continue to treat the Landfill as a nonconforming use, and that Phase VIII-C is prohibited by the "discovered" 1995 Zoning Ordinance amendment.
- June 6, 2000 The ZBA denied SERF's appeal of the CEO's Phase VIII-C decision, finding that the landfill "is a nonconforming use," and that the 1995 Zoning Ordinance amendment prohibits all landfill expansions. SERF appealed this decision to the Maine Superior Court on July 19, 2000. *SERF v. Town of Hampden, et al.*, Docket No. AP-00-27.
- June 12, 2000 SERF and the Town argued their respective positions before the Maine Law Court, in Docket No. PEN-00-83.
- June 27, 2000 SERF and the Town argued their respective positions before the Maine Superior Court, in Docket No. AP-99-52.
- July 25, 2000 The Town filed a motion to stay proceedings in Docket No. AP-00-27. SERF opposed this motion, seeking an expedited briefing and argument schedule in the action.
- September 25, 2000 The Superior Court (Mead, J.) granted the Town's motion to stay proceedings in AP-00-27, over SERF's objection.

b. The Penobscot Energy Recovery Company (PERC)

I

Overview of PERC

The Penobscot Energy Recovery Facility ("PERC") in Orrington, Maine accepts waste from 130 municipalities in eastern, central, and northern Maine under long-term waste disposal agreements, and also accepts waste from other sources. Over-sized bulky waste ("OSBW") and other non-combustible materials (front-end process residue or "FEPR") are removed from the waste stream, and the balance of the waste is incinerated at the plant. Ash residue from incineration, and FEPR from the plant, are disposed of under contracts with landfills.

Casella's Interest in PERC

Casella acquired an interest in the PERC facility as a result of its merger with KTI, Inc. which became effective on December 12, 1999. Prior to the merger, KTI Holdings, a subsidiary of KTI, Inc., was the general partner in PERC Management Company, Limited Partnership ("PMC"). PMC is one of the two general partners in The Penobscot Energy Recovery Company, Limited Partnership (the "PERC Partnership") which operates the Orrington facility.

Organization and Management Structure of PERC

The PERC Partnership was originally formed in 1983 for the purpose of constructing, owning and operating the PERC plant. It operates under a Third Amended and Restated Agreement of Limited Partnership, dated June 26, 1998 (the "Partnership Agreement"). The general partners in the PERC Partnership are PERC Management Company, Limited Partnership ("PMC") and Energy National, Inc. ("ENI"). Both are also limited partners. PMC is the managing general partner. Certain Equity Charter Municipalities which have exercised equity participation options are also limited partners in the PERC Partnership.

The Municipal Review Committee, Inc. ("MRC") is a nonprofit corporation formed by the PERC Charter Municipalities to assist them in their dealings with the PERC Partnership and to act as an agent for the Equity Charter Municipalities.

Charter Municipalities that entered into waste disposal agreements with the PERC Partnership on or before September 30, 1998, or which otherwise qualify, receive Performance Credits under their waste disposal agreements equal to 1/3 of "distributable cash" from the PERC Partnership. The Equity Charter Municipalities have the right, in the sole discretion of the MRC, to apply their Performance Credits, up to \$39 million, in exchange for limited partnership interests sufficient to provide them with a 5/9th interest as limited partners, constituting a 50% interest in the capital and profits of the PERC Partnership. At the current time, the Equity Charter Municipalities have applied \$10 million of Performance Credits to acquire a limited partnership interest in PERC. The Charter Municipalities also have the right to elect, between March 31,

2018 and December 31, 2018, to purchase all of the interests in the PERC Partnership (not already owned by Equity Charter Municipalities) for fair market value.

Pursuant to the Partnership Agreement, the general partners, PMC and ENI, have established a two person Management Committee which oversees the general management of PERC, with certain significant actions reserved to the general partners for acceptance or rejection. Each of the Management Committee members (and each of the general partners) has a 50% vote on partnership matters, with deadlock votes of the general partners subject to arbitration. The limited partners, in their capacity as limited partners, do not have the right to take part in the management of PERC.

Overview of the History of PERC

The PERC plant began operation in early 1988. At that time, many Charter Municipalities entered into long-term waste disposal agreements with PERC. Over the 30-year life of the waste disposal agreements with PERC, tipping fees were to be adjusted annually for inflation.

In mid-1989, PERC owners announced that sustained financial losses required increases in tipping fees. Between 1989 and 1991, PERC and the contract municipalities negotiated revised long-term waste disposal agreements which:

- divided the tipping fee into a fixed portion, adjusted annually for inflation, and a variable portion, reconciled quarterly for :
 - changes in the cost of residue disposal (ash, front end process residue, and oversized bulky waste),
 - changes in the interest rates on bonds issued to finance the plant;
 - costs resulting from changes in law and changes in debt interest rates, and
 - the cost of supplemental fuel necessary to offset reduced waste flows due to recycling programs;
- established a Capital and Unplanned Maintenance Reserve Account funded through tipping fees;
- shared half of PERC's net annual profits with the municipalities;
- created the Municipal Review Committee (MRC);
- gave Charter Municipalities (municipalities which had entered into the original waste disposal agreements) the right to purchase half ownership in PERC for \$1 or full ownership for at the book value at the end of the 30-year term of the waste disposal agreements.

In 1997 and 1998, the waste disposal agreements with the municipalities were again amended to address the adverse effect of electric utility deregulation on the PERC power sale contract between PERC and the Bangor Hydroelectric Company. These amendments:

- split the distribution of annual net profits equally between PERC, Charter Municipalities, and Bangor Hydro;
- granted to the PERC Partnership and to the Charter Municipalities each the right to purchase 1 million shares of Bangor Hydro stock at \$7 per share (Bangor Hydro is currently trading at approximately \$26 per share);
- required Bangor Hydro to pay \$40,000 per year to the MRC;
- eliminated early termination options in the waste disposal agreements; and
- granted Charter Municipalities which entered into waste disposal agreements on or before September 30, 1998, the right to purchase up to a 50% interest in the capital and profits of by using Performance Credits (equal to 1/3 of the distributed cash from PERC).

Under the most recent waste disposal agreement amendment, exercise of Bangor Hydro stock warrants and distributable cash in the form of Performance Credits has been sufficient for the Charter Municipalities to maintain a net tipping fee of approximately \$45 per ton, to purchase partial ownership of the PERC plant as described above..

The Consent Decree Negotiated with the Office Maine Attorney General

In connection with the merger of Casella and KTI, the two companies participated in negotiations with the Maine Attorney General's office to address competitive issues raised by the Attorney General relating to the transaction. Much of the discussion focused on the fact that a Casella subsidiary, Sawyer Environmental Recovery Facilities, Inc. ("SERF"), which Casella acquired in 1996, operates the commercial landfill in Hampden, Maine, and that after the merger, Casella would also have an interest in the PERC Partnership through a KTI subsidiary. PERC disposes of part of its ash and FEPR residue at the Hampden landfill through a Residue Disposal Agreement with SERF.

After months of negotiations involving the Attorney General's office, Casella, KTI, MRC and ENI, the parties agreed on the provisions of a Consent Decree, subsequently filed in the Kennebec County Superior Court, directed to certain aspects of the operations of PERC. The Consent Decree requires:

- the operation of the gate, scalehouse and disposal area of PERC under terms no less favorable to other haulers than to Casella or KTI vehicles hauling waste;
- any contract for the disposal of residue from PERC to be let through a competitive bidding process;
- that Casella and KTI be recused from negotiations, bid package preparation, solicitation, review and evaluation of bids on behalf of PERC with respect to such competitively bid contracts;
- that Casella and KTI vote in favor of the recommendation of the other general partner of the PERC Partnership with regard to the letting of the competitively bid contracts

- unless it in good faith believes that the recommendation is unreasonable, arbitrary or clearly not in the interest of the Partnership; and
- arbitration of any deadlocks over such recommendations.

While Casella did not believe the foregoing provisions were necessary, they provide more than ample safeguards against any perceived potential for competitive detriment resulting from its interest in the PERC facility.

Litigation Commenced by the MRC

In December 1985, PERC and SERF entered into a Residue Disposal Agreement for the disposal of residue generated by PERC. The Agreement was amended several times, and was last amended by Amendment No. 3, dated September 10, 1992. That Amendment provided for continued disposal of PERC residue at SERF for a term expiring on September 20, 2001, with provisions for earlier termination by SERF in certain circumstances if a portion of the Hampden Landfill, known as Secure Site III, no longer had capacity to accept residue.

The MRC has taken the position that the capacity of Secure Site III has been exhausted, and the PERC Partnership has the right to terminate the Residue Disposal Agreement. SERF maintains that the capacity of Secure Site III has not been exhausted, and further, even if it were, that only SERF would have the option to terminate the Residue Disposal Agreement before the September 20, 2001.

As a result of this disagreement, the MRC filed an action against PMC and ENI in the Penobscot County Superior Court, and an arbitration proceeding with the American Arbitration Association, alleging that PMC and ENI had breached the PERC Partnership Agreement and fiduciary duties by failing to declare the Residue Disposal Agreement terminated. PMC (in which Casella has an interest) vigorously contests these allegations. In any event, these proceedings involve differing interpretations of the Residue Disposal Agreement, and do not involve antitrust or competition laws.

I hope that this information is helpful to the Task Force's effort to understand Casella's role in the complex dynamics of the solid waste industry. We look forward to working with you during the Task Force process.

Sincerely,
CASELLA WASTE SYSTEMS



Jim Hiltner
Vice-President, Casella Waste Systems, Eastern Division

ATTACHMENT A

Trade Name	Location	Territory	Relationship	Business Activity	Date Acquired
Boyd Sanitation (incl.below)	Mars Hill, now Houlton	Northern Maine	asset purchase	Transfer, Hauling	1998
Whight Knight *	Oakfield		asset purchase	Hauling	1998
Spellman's Trucking *	Houlton		asset purchase	Hauling	1998
Andino Waste *	Houlton		asset purchase	Transfer, Hauling	1998
Sawyer Environmental (incl.below)		Central & Eastern Maine	asset purchase	Transfer, Hauling	1996
BFI **	Brewer		asset purchase	Hauling	1996
Ray's Trucking **	Hampden		asset purchase	Hauling	1996
Jordan Trucking **	Ellsworth		asset purchase	Hauling	1997
Coastal Disposal **	Southwest Harbor		asset purchase	Hauling	1997
Pinkerton Disposal **	Belfast		asset purchase	Hauling	1999
Penway Waste **	Bangor		asset purchase	Hauling	1998
Ted's Rubbish **	Rickland		asset purchase	Hauling	1999
Bickford Disposal **	Bangor		asset purchase	Hauling	1998
Sawyer Environmental Recovery	Hampden	Maine	asset purchase	Landfill, Paper Baling	1996
Penobscot Energy Recovery Co	Orrington	Central & Eastern Maine	Partnership	Incineration	1999
New England Organics(BFI)	Unity Plantation	Central & Eastern Maine	asset purchase	Composting	2000
Capitol City Transfer (inc. below)	Augusta, now Waterville	Central Maine	asset purchase	Transfer, Hauling	1999
Larry Choate	Sydney		asset purchase	Hauling	1999
Charriers Disposal	Skowhegan		asset purchase	Hauling	2000
Bio Fuels	Lewiston	Maine	asset purchase	Processing	1999
Great Northern Recycling	Mechanic Falls	Maine/Canada	asset purchase	Recycling	1999
Pine Tree Waste (incl.below)	South Portland	Central & Southern Maine	asset purchase	Transfer, Hauling, Recycling	1997
Enviropac ***	Windham		asset purchase	Hauling	1996
T & R Associates	Bath		asset purchase	Transfer, Hauling	1997
Yarmouth Rubbish Removal	Scarborough		asset purchase	Hauling	1999
D & E Sanitation	Bethel		asset purchase	Hauling	1997
Welton's Waste	Damariscotta		asset purchase	Hauling	2000
Maine Energy Recovery Co	Biddeford	Southern Maine	Partnership	Incineration	1999
I Zaitlin & Sons	Biddeford	Maine	asset purchase	Metal Recycling	1999
Casella T.I.R.E.S.	Eliot	Maine	asset purchase	Tire Processing	1996

* operating as Boyd Sanitation

** operating as Sawyer Environmental Services

*** operating as Pine Tree Waste





WASTE MANAGEMENT

4 Liberty Lane West
Hampton, NH 03842
(603) 929-1935

October 17, 2000

Deborah C. Friedman, Esq.
Ms. Alison Ames
Maine State Legislature
Office of Policy and Legal Analysis
13 State House Station
Augusta, ME 04333-0013

RE: Task Force Study -- Responses to Questions to Waste Management, Inc.

Dear Ms. Friedman and Ms. Ames:

This letter is in response to your letter of September 13, 2000 to Jeff McGown of Waste Management, Inc. ("Waste Management" or "the Company") in which you requested information from and about the company. Waste Management is, as has been its practice, willing to cooperate with such inquiries from the State and, to that end, the company's responses are set out below. If you need further information, please contact myself or the company's outside antitrust counsel, James R. Weiss, at (202) 662-8425.

Question:

1. A list of all companies owned, operated or otherwise affiliated with Waste Management that conduct business in the State of Maine, showing, in each case

- (a) trade names used (if other than company name);
- (b) territory served within the State of Maine;
- (c) the exact nature of the relationship between Waste Management and the company (e.g., 20% owner; contractual rights, etc.);
- (d) business activities (e.g., trash hauling, landfill or incinerator operation, composting, tire shredding, etc.); and
- (e) date on which the company was acquired or commenced operations within the State of Maine.

Response:

1. Waste Management Disposal Services of Maine, Inc.

- a) Waste Management Disposal Services of Maine – Crossroads; Crossroads Landfill; Norridgewock Landfill; f/k/a CWS; f/k/a Consolidated Waste Services, Inc.
- b) Serves the entire State of Maine.
- c) A Maine corporation, which is a subsidiary of Waste Management Holdings, Inc., a Delaware corporation, which in turn is a subsidiary of Waste Management, Inc., a Delaware corporation and the parent company.
- d) Provides secure waste disposal & recycling services.
- e) Acquired by Waste Management of Maine, Inc. on October 15, 1990.

2. Waste Management New England Environmental Transport

- a) Logano Waste Management; Logano Trucking Company; Logano Transportation Company, Inc.; USA Waste of CT; Waste Management N.E.E.T., Inc.
- b) Currently serves Portland, Ellsworth, Westbrook, Bath, Augusta, New Gloucester, Lewiston, Scarborough, Pittsfield, Old Town, Poland Spring, and Bristol.
- c) A Delaware corporation which is a subsidiary of Waste Management of Connecticut Inc., a Delaware corporation, which in turn is a subsidiary of Waste Management Holdings, Inc., a Delaware Corporation, which in turn is a subsidiary of Waste Management, Inc., a Delaware corporation and the parent company.
- d) Transportation of hazardous and State regulated waste.
- e) Commenced operations within the State of Maine on April 12, 2000. (Formerly operated under the Logano name by Waste Management from December 4, 1998 through April 11, 2000).

3. Waste Management of Maine, Inc.

- a) Waste Management of Maine – Portland; Waste Management of Portland.
- b) Serves the entire State of Maine for industrial and special waste hauling; Serves the Portland South, Lewiston/Auburn, Midcoast, Central Maine/Augusta/ Waterville, Greater Ellsworth and Bangor areas for municipal waste hauling.
- c) A Maine corporation, which is a subsidiary of Waste Management Holdings, Inc., a Delaware corporation, which in turn is a subsidiary of Waste Management, Inc., a Delaware corporation and the parent company.

- d) Collection, transportation, and disposal of municipal solid waste.
- e) Commenced operations within the State of Maine on September 5, 1962.

4. Waste Management of New Hampshire, Inc.

- a) Waste Management of New Hampshire – Rochester; Waste Management of Rochester.
- b) Serves Berwick, Fryburg, Kittery, Lebanon, North Berwick, South Berwick, York Beach, York Harbor, and York.
- c) A Connecticut corporation, which is a subsidiary of Waste Management Holdings, Inc., a Delaware corporation, which in turn is a subsidiary of Waste Management, Inc., a Delaware corporation and the parent company.
- d) Collection, transportation, and disposal of municipal solid waste.
- e) Commenced operations within the State of Maine on March 4, 1987.

5. Wheelabrator Sherman Energy Company, G.P.

- a) Wheelabrator Sherman; Signal Sherman.
- b) Serves Northern Maine.
- c) A Maine general partnership, which is a subsidiary of Wheelabrator Sherman Station Two, Inc., a Delaware Corporation, which in turn is a subsidiary of Wheelabrator Environmental Systems, Inc., a Delaware corporation, which in turn is a subsidiary of RESCO Holdings Inc., a Delaware corporation, which in turn is a subsidiary of Wheelabrator Technologies, Inc., a Delaware corporation, which in turn is a subsidiary of Waste Management Holdings, Inc., a Delaware corporation, which in turn is a subsidiary of Waste Management, Inc., a Delaware corporation and the parent company.

Wheelabrator Sherman Station One, Inc., a Delaware corporation and a Waste Management subsidiary, holds an 11% interest in the partnership. Wheelabrator Sherman Station Two, Inc., a Delaware corporation and a Waste Management subsidiary, holds a 49% interest in the partnership. The remaining interest is held by Sherman Power Company, which is not a subsidiary, affiliate or parent of Waste Management.

- d) Burning lumber mill waste to produce electric power.
- e) Commenced operations within the State of Maine on July 16, 1985.

Question:

2. A chronology comprising the history of the company as a whole, with particular attention to its operations in the State of Maine.

Response:

The Company was incorporated in Oklahoma in September 1987 under the name USA Waste Services, Inc. Acting as a holding company, the Company provided, through its wholly owned subsidiary, solid waste collection, transfer, disposal and specialized services in Oklahoma. In June 1988, the Company effected an initial public offering of its common stock and began trading on the NASDAQ. By year-end 1990, the Company was operating in Oklahoma and Texas through its two subsidiaries. As of December 31, 1991, the company operated through 12 subsidiaries in Oklahoma, Texas, Illinois, North Dakota and Ohio. At the end of 1992, the Company had fifteen subsidiaries, had begun recycling services, and was also operating in Indiana. By year-end 1993, the Company was also performing soil-remediation services through its 19 subsidiaries and had expanded into Arizona, Pennsylvania and West Virginia.

In May 1994, the Company acquired Envirofil, Inc., a solid waste and recycling services company operating in New Jersey, Washington, California and Illinois. At the end of 1994, the Company was operating in twelve states through 37 subsidiaries.

In April 1995, the Company effected a reincorporation merger pursuant to which it became a Delaware corporation. In June 1995, the Company acquired Chambers Development Company, Inc., an integrated solid waste services company with operations in Florida, Georgia, Illinois, Maryland, Mississippi, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia. By the end of 1995, the Company was operating in 21 states through its subsidiaries.

In May 1996, the Company acquired Western Waste Industries, an integrated waste services provider with operations in California, Texas, Louisiana, Florida, Colorado and Arkansas. In August 1996, the Company acquired Sanifill, Inc., a non-hazardous waste disposal, treatment, collection, transfer and recycling business. As of December 31, 1996, the Company was operating in 36 states, the District of Columbia, Mexico and Puerto Rico through over 250 subsidiaries.

In March 1997, the Company acquired all of the Canadian solid waste services subsidiaries of Allied Waste Services, Inc. In August 1997, the Company acquired United Waste Services, Inc., which included among its many operations a small collection company in the Portland metropolitan area. By year-end 1997, the Company was operating in 48 states, the District of Columbia, Canada and Puerto Rico.

In May 1998, the Company acquired TransAmerican Waste Industries, Inc. In July 1998, the company acquired Waste Management, Inc., a leading international provider of waste management services (including recycling services, portable sanitation services, industrial cleaning services, hazardous waste management services, and radio active waste management services) and a leading developer of facilities for, and provider of

services to, the trash-to-energy and waste-fuel powered independent power markets. Most of the Company's operations in Maine were acquired in the Waste Management acquisition. At the time of the Waste Management acquisition, the Company changed its name from USA Waste Services, Inc. to Waste Management, Inc. and changed the acquired Waste Management, Inc.'s name to Waste Management Holdings, Inc. In December 1998, the Company acquired Eastern Environmental Services, Inc., a solid waste management company operating principally throughout the eastern United States.

Since the Waste Management acquisition, the Company has made two acquisitions in Maine. On February 1, 1999, it acquired the assets of Trash Disposal Services, Inc., a small collection company (1 commercial/residential route) that served the Waterford/Augusta area. On August 6, 1999, it acquired the assets of Roy's Disposal, a small collection company (1 commercial, 1 residential and 1 roll-off route) that served the Madison, Maine area. Both have since been integrated into nearby Waste Management operations. See subpart (e) of the responses to question 1 above for additional information about the history of Waste Management's operations in Maine.

Today Waste Management is the premier company in North America providing comprehensive Waste Management services. Based in Houston, the company operates a network of service facilities throughout the United States, Canada, Mexico and Puerto Rico that serve more than 10 million residential customers and 1 million businesses.

Waste Management's service assets include over 300 state-of-the-art land disposal sites, 16 trash-to-energy plants, more than 300 transfer stations and over 1,400 collection facilities which provide recycling and waste collection resources to thousands of communities large and small. In addition, the company is the largest collector of recyclable materials from businesses and households in the world and its 150 materials recovery facilities (MRF) process more than five million tons of recyclable commodities each year.

Question:

3. A chronology of significant regulatory and/or court decisions which have had a significant impact on the company's operations over the past decade;

Response:

The decision that had the most profound effect on the company's operations over the past decade is the *Carbone* decision, *C&A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383, 114 S. Ct. 1677 (1994). In that case, the Supreme Court held that the solid waste business is a matter of interstate commerce and that neither the states nor their municipality can enact flow control ordinances that prevent its transportation for disposal

Deborah C. Friedman, Esq.

October 17, 2000

Page 6

across state lines. There have been numerous decisions since *Carbone*, none of which have involved operations in the State of Maine, that have similar holdings.

In addition, since the Waste Management merger on July 16, 1998, the company has entered into the following consent decrees with the United States Department of Justice and various states that required divestitures of assets in conjunction with the approval of mergers or acquisitions:

United States of America, et al. v. USA Waste Services, Inc.; Dome Merger Subsidiary; and Waste Management, Inc. 1:98CV1616 (ND Ohio)¹

*United States of America, et al. v. Waste Management, Inc., Ocho Acquisition Corp., and Eastern Environmental Services, Inc., Civil Action No. CV 98 7168 (ED NY)*²

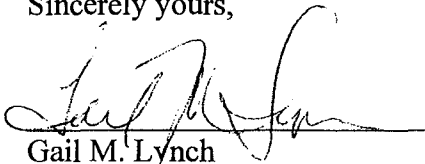
Question:

4. Information on any ongoing litigation in which the company is currently involved which has any significant implication for its operation in Maine.

Response:

Waste Management is not aware of any ongoing litigation in which it is involved that could have any significant implication for its operations in Maine.

Sincerely yours,



Gail M. Lynch
New England Regional Counsel

cc: LeeAnn Diehl
Jeff McGown
James R. Weiss, Esq.

K:\28106\00006\JRW_L2080

¹ Other plaintiffs included the States of Ohio, Arizona, California, Colorado, Florida, Maryland, Michigan, New York, Texas, Washington and Wisconsin and the Commonwealths of Kentucky and Pennsylvania. Assets had to be divested in each of these States.

² Other plaintiffs included the States of Florida and New York and the Commonwealth of Pennsylvania. Assets had to be divested in each of these States.

APPENDIX C

Solid Waste Market Experience in Other States

SOLID WASTE MARKET EXPERIENCE IN OTHER STATES

STATE	General Observations about Trends in the Market	Evidence of Market Problems	Studies; Proposed legislation; Litigation; Other solutions
ALASKA	There is increasing concentration in the industry. Waste Mgt. has acquired most of the certified refuse utilities serving the urban areas of the state; it now has 95% of customers in the State. Alaska regulates this industry as a public utility. Certified refuse utilities are exempt from state antitrust laws.		Corporations and individuals furnishing collection and disposal services are public utilities and their rates are regulated by the Regulatory Commission of Alaska.
COLORADO	Has seen trend toward horizontal concentration and vertical integration There are 2 major haulers in the Denver metro area: BFI and Waste Mgt.	Market power reveals itself through “evergreen clauses”	No studies; no proposed legislation
CONN.	There is a general trend toward increased concentration and vertical integration		Attorney General’s office is currently investigating levels of concentration, but there is no conclusion yet. Attorney General’s office has proposed that trash haulers be registered
IOWA	Haulers are being bought out or going out of business (some because of	Most landfills are municipally-owned and municipalities provide hauling or contract	No studies, but vertical integration is a concern and will be discussed at the

	inability to compete with services and lower prices of vertically integrated companies)	out; commercial business is done by private haulers, which often are vertically integrated. Trash may be hauled to facilities they own out of state (and some is brought into Iowa from other states (MN.))	next upper Midwest summit meeting in November. They have initiated discussions with neighboring states and are watching Penn., New York, Virginia and Illinois
KENTUCKY	There is a trend toward consolidation in hauling and vertical integration, esp. in the metro counties	Industry is exercising market power with increasing rates and service cutbacks, esp. with regard to specialty markets	
MISSOURI	Mo. has concerns about vertical integration; they have a dominant hauler in the Kansas City area with 60% of market; another company with 30% may be up for sale soon.		They are currently analyzing a merger case affecting Kansas City
NO. DAKOTA	National mergers have resulted in significant concentration of private landfill ownership; following acquisition of landfills, the companies are aggressively acquiring haulers. This is a problem particularly in the rural areas, since the cities have municipal trash pick-up.		No studies or legislative proposals known Atty. General office has very limited resources and does not get involved unless there is a merger; the Health Department, which licenses landfills, brought the most recent merger concerns to the AG's attention. Attorney General did become involved in a merger a couple of years ago; company agreed to conditions, including a 7-year freeze on rates (for landfills?), with only cost-of-living increases allowed.

PENN.	<p>There s a trend toward consolidation and vertical integration in hauling and disposal.</p> <p>Small and independent landfills have been targeted for acquisition by large companies that serve large East Coast cities</p>		<p>Penn. Attorney General has investigated many proposed mergers for horizontal and vertical issues; they have worked with the U.S. Justice Department on many of the cases, which are of multi-state interest</p>
SOUTH DAKOTA	<p>Have no specific data, but there is anecdotal evidence of increased concentration</p>		
UTAH	<p>There is increased concentration; significant vertical integration and expansion of waste companies into related fields</p>	<p>There is not widespread evidence of anticompetitive practices or misuse of market power</p>	<p>No studies or legislation</p> <p>Attorney General’s Office reviewed the impact of proposed merger of BFI and Allied Waste and has concerns in one area of the state; They approved the merger with several conditions.</p>
WEST VA.	<p>Following national trend toward consolidation and vertical integration</p>	<p>Industry is highly regulated – rates are controlled by Public Service Commission</p> <p>There have been problems in the commercial hauling market (where the PSC does not regulate rates) – with evergreen clauses and use of landfill ownership to engage in below-cost pricing of hauling services</p>	<p>Public Service Commission licenses and sets rates for landfills, waste transport and residential refuse collection. PSC has authority to regulate commercial hauling rates, but does not currently do so.</p>

G:\OPLALHS\LHSSTUD\Solid waste\otherstates.doc

APPENDIX D

**Pilot Data Collection Project: Calculation of the Herfindahl-Hirschman Index
for the Market for Solid Waste Hauling to the Tri-Community Landfill**

Herfindahl-Hirschmann Index

Solid Waste Hauled to the Tri-Community Landfill (Fort Fairfield) (Including Houlton Tonnage)

Hauler	Market Share	HHI
Adams	7	49
Bob's	<1	
Boyd's	41	1681
Bouchard	3	9
Brooker	1	
City Sanitation	5	25
Crown of Maine	8	64
Deschaine	2	4
Gary's Sanitation	1	1
Gil's Sanitation	1	1
Landeen	2	4
Maple Grove	5	25
McNeal's	10	100
Saucier	6	36
Searles	2	4
Star City	<1	
Residential	6	36
TOTAL HHI		2039

**Solid Waste Hauled to the Tri-Community Landfill (Fort Fairfield)
(Excluding Houlton Tonnage)**

Hauler	Market Share	HHI
Adams	10	100
Bob's	<1	
Boyd's	9	81
Bouchard	5	25
Brooker	1	1
City Sanitation	8	64
Crown of Maine	12	144
Deschaine	4	16
Gary's Sanitation	1	1
Gil's Sanitation	1	1
Landeen	4	16
Maple Grove	8	64
McNeal's	16	256
Saucier	9	81
Searles	3	9
Star City	1	1
Residential	8	64
TOTAL HHI		924

Houlton Tonnage Only

Hauler	Market Share	HHI
Boyd's	100	10000

	HAULER with tons collected								Tri-Community Landfill, Fort Fairfield													
	Adams	Bobs	Boyds	Bouchard	Brooker	City San.	Crown of ME	Deschaines	Gary's San.	Gil's San.	Landeen	Maple Gr.	McNeal's	Saucier	Searles	Star City	Residential	Totals (in tons)				
COMMUNITY																						
Allagash									12.73													
AVSWDD ¹												101.18										
Blaine			20.96																			
SAR ²			667.63																			
Caribou						99.29	66.57			7.56			204.09		38.14	2.40	75.78					
Cary Plt.			5.09																			
Caswell					5.55		10.25															
Connor							14.15				3.00											
Cyr Plt.				4.03																		
Easton			69.77																			
Ft. Fairfield	128.80		0.63		2.75		3.76			5.45						6.22	27.07					
Grand Isle				0.52				29.38														
Hamlin				8.52																		
Limestone				53.27			8.54											4.5				
LDA ³			5.88																			
NASWA ⁴														109.25								
New Sweden											16.46											
Sinclair		4.52						18.57														
Stockholm											15.17											
T16 R4											8.08											
Westfield			19.33																			
Westmanland											2.65											
Woodland							56.45			4.92			0.15									
Totals	128.80	4.52	789.29	66.34	8.30	99.29	159.72	47.95	12.73	17.93	45.36	101.18	204.24	109.25	38.14	8.62	107.35	1949.01				
% of total	6.61	0.23	40.50	3.40	0.43	5.09	8.19	2.46	0.65	0.92	2.33	5.19	10.48	5.61	1.96	0.44	5.51	100.00				
¹ Ashland, Garfield, Masardis, Oxbow																						
² Southern Aroostook Region - Houlton, Hodgdon, Monticello, Bridgewater, Oakfield, Ludlow, Linneus																						
³ Loring Development Authority																						
⁴ Eagle Lake, Nashville, New Canada, Portage, Wallagrass, Winterville																						

One month's data supplied by Tri-Community landfill to SPO 10/00

	HAULER with percent of community share								Tri-Community Landfill, Fort Fairfield								
	Adams	Bobs	Boys	Bouchard	Brooker	City San.	Crown of ME	Deschaines	Gary's San.	Gil's San.	Landeem	Maple Gr.	McNeal's	Saucier	Searles	Star City	Residential
COMMUNITY																	
Allagash									100.00								
AVSWDD ¹												100.00					
Blaine			100.00														
SAR ²			100.00														
Caribou						20.00	13.00			2.00			41.00		8.00	0.50	15.00
Cary Pit.			100.00														
Caswell						35.00		65.00									
Connor								83.00				17.00					
Cyr Pit.				100.00													
Easton			100.00														
Ft. Fairfield	74.00		0.40		2.00		2.00			3.00						4.00	15.00
Grand Isle				2.00				98.00									
Hamlin				100.00													
Limestone				80.00			13.00										7.00
LDA ³			100.00														
NASWA ⁴														100.00			
New Sweden											100.00						
Sinclair		20.00						80.00									
Stockholm											100.00						
T16 R4											100.00						
Westfield			100.00														
Westmanland											100.00						
Woodland							92.00			8.00				0.20			
¹ Ashland, Garfield, Masardis, Oxbow ² Southern Aroostook Region - Houlton, Hodgdon, Monticello, Bridgewater, Oakfield, Ludlow, Linneus ³ Loring Development Authority ⁴ Eagle Lake, Nashville, New Canada, Portage, Wallagrass, Winterville																	
											One month's data supplied by Tri-Community landfill to SPO 10/00						

HAULER with tons collected (Without Houlton Area tons)								Tri-Community Landfill, Fort Fairfield (w/o Houlton)										
	Adams	Bobs	Boyd's	Bouchard	Brooker	City San.	Crown of ME	Deschaines	Gary's San.	Gil's San.	Landeem	Maple Gr.	McNeal's	Saucier	Searles	Star City	Residential	Totals (in tons)
COMMUNITY																		
Allagash									12.73									
AVSWDD ¹												101.18						
Blaine			20.96															
Caribou						99.29	66.57			7.56			204.09	38.14	2.40		75.78	
Cary Pit.			5.09															
Caswell					5.55		10.25											
Connor							14.15				3.00							
Cyr Pit.				4.03														
Easton			69.77															
Ft. Fairfield	128.80		0.63		2.75		3.76			5.45						6.22	27.07	
Grand Isle				0.52				29.38										
Hamlin				8.52														
Limestone LDA ²				53.27			8.54											4.5
NASWA ³			5.88											109.25				
New Sweden											16.46							
Sinclair		4.52						18.57										
Stockholm											15.17							
T16 R4											8.08							
Westfield			19.33															
Westmanland											2.65							
Woodland							56.45			4.92			0.15					
Totals	128.80	4.52	121.66	66.34	8.30	99.29	159.72	47.95	12.73	17.93	45.36	101.18	204.24	109.25	38.14	8.62	107.35	1281.38
% of total	6.61	0.23	6.24	3.40	0.43	5.09	8.19	2.46	0.65	0.92	2.33	5.19	10.48	5.61	1.96	0.44	5.51	65.75
¹ Ashland, Garfield, Masardis, Oxbow																		
² Loring Development Authority																		
³ Eagle Lake, Nashville, New Canada, Portage, Wallagrass, Winterville																		
One month's data supplied by Tri-Community landfill to SPO 10/00																		

HAULER with percent of community share (Without Houlton Area tons)														Tri-Community Landfill, Fort Fairfield			Totals (in tons)
Adams	Bobs	Boyds	Bouchard	Brooker	City San.	Crown of ME	Deschaines	Gary's San.	Gil's San.	Landeem	Maple Gr.	McNeal's	Saucier	Searles	Star City	Residential	Totals (in tons)
COMMUNITY																	
Allagash								100.00									
AVSWDD ¹											100.00						
Blaine		100.00															
Caribou					20.00	13.00			2.00				41.00	8.00	0.50	15.00	
Cary Pit.		100.00															
Caswell				35.00		65.00											
Connor						83.00				17.00							
Cyr Pit.			100.00														
Easton		100.00															
Ft. Fairfield	74.00	0.40		2.00		2.00			3.00						4.00	15.00	
Grand Isle			2.00				98.00										
Hamlin			100.00														
Limestone			80.00			13.00											7.00
LDA ³		100.00															
NASWA ⁴													100.00				
New Sweden										100.00							
Sinclair	20.00						80.00										
Stockholm										100.00							
T16 R4										100.00							
Westfield		100.00															
Westmanland										100.00							
Woodland						92.00			8.00				0.20				
¹ Ashland, Garfield, Masardis, Oxbow ² Southern Aroostook Region - Houlton, Hodgdon, Monticello, Bridgewater, Oakfield, Ludlow, Linneus ³ Loring Development Authority ⁴ Eagle Lake, Nashville, New Canada, Portage, Wallagrass, Winterville																	
														One month's data supplied by Tri-Community landfill to SPO 10/00			



APPENDIX E
Recommended Legislation

DRAFT LEGISLATION

An Act to Extend and Amend the Requirement for Giving Prior Notice of Acquisitions of Solid Waste Businesses

EMERGENCY PREAMBLE (?)

Sec. 1. 38 MRSA §2111 is amended to read:

§ 2111. Acquisition of solid waste and residue hauling assets

1. Prohibition. A person may not acquire, directly or indirectly, controlling stock or substantial assets that include those used in solid waste or residue hauling from a business engaged in and of which more than 1/2 of the revenue is derived from solid waste or residue hauling in the State without prior notice as required under subsection 2.

For the purposes of this subsection, "solid waste or residue hauling" means the collection, transportation or delivery of solid waste or residue to a transfer facility or station, incinerator or disposal site from residential or commercial generators and customers and includes hand pickup, containerized pickup and roll-off services.

2. Notice. The person acquiring controlling stock or substantial assets under subsection 1 shall provide notice of this acquisition to the Department of the Attorney General at least 30 days prior to the date of acquisition. That period may be shortened with the consent of the Attorney General.

~~3. Exception. Notwithstanding subsection 1, this section does not apply if the business from which controlling stock or substantial assets are being acquired employs 5 or fewer individuals.~~

4. Confidentiality. Information received by the Department of the Attorney General as a result of the notice requirement under subsection 2 is confidential.

5. Penalty. A person that violates this section is subject to a civil penalty not to exceed \$10,000, payable to the State. The penalty is recoverable in a civil action. The violation constitutes a prima facie violation of Title 5, section 207.

6. Repeal. This section is repealed 90 days after adjournment of the ~~First~~ Second Regular Session of the 120th Legislature.

SUMMARY

This bill amends the law requiring a person to give notice to the Office of the Attorney General at least 30 days before acquiring a solid waste or residue hauling

business in the state. It removes the 5-employee threshold for application of the notice requirement and extends the repeal date of the requirement to 90 days after adjournment of the Second Regular Session of the 120th Legislature.

G:\OPLALHS\LHSSTUD\Solid waste\legislation amendnoticereqt.doc