

# Report of the Solid Waste and Recycling Advisory Committee to the Gardiner City Council

October 23, 2014

## INTRODUCTION

In its order dated November 30, 2012, the Gardiner City Council amended its 2008 order establishing the Recycling Advisory Committee. Specifically:

- a. The name of the committee was changed to the Solid Waste and Recycling Advisory Committee;
- b. The committee composition was amended to consist of up to eight (8) voting members, including up to two (2) city councilors, and the public works director as an ex-officio member; and
- c. The committee was directed to begin researching options for solid waste disposal, including an alternative to Hatch Hill and a potential transfer station and/or recycling center in Gardiner.

Subsequently the Council appointed members of the committee, and the newly constituted committee held its first meeting on October 23, 2013.

The initial meetings of the committee were devoted to familiarizing new members with how Hatch Hill Landfill operates with respect to its member communities; with issues being raised by the town of Pittston as a Hatch Hill member including the possibility of dropping its membership; and with the study done previously by a regional committee regarding ways to improve recycling in the region and prolong the life of the Hatch Hill landfill.<sup>1</sup> The committee also reviewed the state statute that requires municipalities to “provide waste disposal services” for waste generated within the municipality,<sup>2</sup> as well as Maine’s solid waste hierarchy<sup>3</sup> for management of solid waste.

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<sup>1</sup> Judy Dorsey served as the representative to the regional committee from Gardiner for both the initial study and the follow-up meetings that were convened to develop an action plan. Unfortunately the city of Augusta’s decision to consider contracting with a vendor to build a waste-to-diesel facility that would do away with most recycling torpedoed the action plan efforts.

<sup>2</sup> 38 MRSA § 1305(1)

<sup>3</sup> 38 MRSA § 2101; the hierarchy sets the following priorities for solid waste management, in order of preference: waste reduction at the source, waste reuse, waste recycling, waste composting, waste processing that reduces the volume of waste needing disposal, and last, land disposal.

In this same timeframe, Pittston's displeasure with the per capita fee of \$15 that all member communities except Augusta must pay to Hatch Hill on an annual basis spurred a series of articles in the Kennebec Journal that included the fact that Gardiner was also unhappy with this arrangement and would be considering its options. As a result, City Manager Scott Morelli was contacted by Augusta for a meeting, and he and committee chairman Judy Dorsey met with officials of Augusta<sup>4</sup> for a wide-ranging discussion that included our making clear Gardiner's displeasure with both the per capita fee and the inadequate recycling options offered at Hatch Hill.<sup>5</sup> Regarding recycling, Augusta made it clear at the meeting that it has no intention of expanding its recycling options. Regarding the per capita fee, Augusta officials suggested the possibility of giving member communities some kind of a break on the fee if they were willing to sign a Hatch Hill contract longer than the usual one year (which would require increasing tipping fees to make up the difference in income), but nothing has come of that possibility. (Several months after the meeting, Judy Dorsey contacted Lesley Jones, Director of Public Works, to find out whether a decision had been made. Ms. Jones told her to contact the finance director, which she did. She received no response, likely because of the demise of LD 1483 – see discussion below.)

After the initial meetings of the Solid Waste and Recycling Advisory Committee to get everyone up to speed, as described above, the committee then spent its time reviewing current options for both trash disposal and recycling in the region.

## **SECTION 1: TRASH DISPOSAL**

The statutory requirement that Gardiner provide waste disposal services is not as clear or as onerous as one might expect. The committee has been informed that if the city does not provide the services directly, it is not required to have a contract in place for these services, although the Maine Municipal Association recommends that we do so.

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<sup>4</sup> City Manager William Bridgeo, Asst. City Manager and Finance Director Ralph St. Pierre, and Public Works Director Lesley Jones

<sup>5</sup> Hatch Hill does not take any plastics other than #2 clear or any type of fiber other than cardboard, newspapers, and magazines. Plastics and fiber-based materials such as junk mail and paperboard (cereal boxes, etc.) make up a large proportion of most residents' waste stream.

There are currently two categories of alternatives for disposing of trash in Maine: waste-to-energy incineration and landfilling. At this time, incineration is not a realistic option for Gardiner, for the following reasons.

The closest incinerator, Mid-Maine Waste Action Corp. (MMWAC) in Auburn, is about 35 miles away. MMWAC is a quasi-governmental organization set up in 1986 as a non-profit corporation and consisting of 12 municipal members that together constructed the facility in 1992 utilizing a bond. The facility serves communities other than the 12 municipal co-owners; however, for Gardiner to take advantage of that option, it would need to take direct control of waste disposal in the city, because MMWAC requires municipalities that use it to guarantee that their trash will go there. (It wants to be sure that the amount of incineration waste it gets is predictable and reliable.) The only way that Gardiner can legally make that guarantee is to do the trash collection and disposal itself or contract with a hauler or haulers to do the collection and disposal. We cannot require private haulers to take waste to a particular facility merely because we license them.<sup>6</sup>

Leaving Hatch Hill and taking control of waste disposal so that trash could be taken to MMWAC raises several issues. (Since the city cannot afford to acquire the equipment and hire the employees that would be needed to do the collection and disposal itself, the only viable option is a contract or contracts.) First, the distance to MMWAC would make transportation costs significant. Second, while the tipping fees are reasonable now, they are unlikely to stay that way (see discussion of LD 1483 below). Third, the city would need to figure out where it and/or individual residents could take bulky waste (furniture, etc.) and other waste of the type collected during fall cleanup, as well as scrap wood, scrap metal, and other materials that are now taken to Hatch Hill but not buried. Fourth, the committee believes that City Council would face substantial opposition from some of its residents if it chose to take over control of waste disposal from the multiple private haulers currently licensed here, even though contracting for collection/hauling and incorporating that contract into the city budget and tax base would very

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<sup>6</sup> The U.S. Supreme Court has made it clear that “flow control” ordinances are legal only if the municipality imposing flow control within its borders owns the facility to which the waste will be taken. Augusta, for example, is allowed to have, and has, a flow control ordinance because it owns Hatch Hill. *United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority*, 550 U.S. 330 (2007). We can, however, control flow by contract.

likely save residents significant money. The committee has not taken the time to figure out exactly what it would cost to go the contract route (and what residents would save), because there are other factors that strongly suggest we should not do so at this time.

The primary factor is that Maine's three incinerators are all facing major financial difficulties due to the expiration of their PURPA contracts. The Public Utility Regulatory Policy Act (PURPA) was passed by Congress in 1978 during the energy crisis.<sup>7</sup> Its purpose was to reduce dependence on foreign oil, promote alternative energy sources and energy efficiency, and diversify the electric power industry. Among other things, PURPA allowed entities other than utilities to begin producing power to be sold, and it required utilities to buy power from those entities that could produce power more cheaply than the utilities themselves could produce it. As a result, three incinerators were built in Maine that were able to sign long-term contracts with CMP and Bangor Hydro for purchase of the electricity they generated from incineration of waste – Ecomaine in South Portland, MMWAC in Auburn, and the Penobscot Energy Recovery Company (PERC) in Orrington.

At the time those long-term contracts were signed, electricity rates were substantially higher than they are now, and appeared to be trending higher. As a result, PURPA contracts were negotiated that paid the waste-to-energy facilities very good prices for the electricity they generated. As these contracts have expired (Ecomaine's and MMWAC's contracts have already expired, and the PERC contract will expire in 2018), these generators are faced with a harsh reality: their electricity is (or in PERC's case will be) worth much less than in the past<sup>8</sup>, and they must find other ways to make up for the lost income that keeps them operating. That, in turn, means that the communities that use them are (or will be) facing very substantial increases in tipping fees. In the case of Ecomaine, some communities have already abandoned the facility and turned to existing landfills to dispose of their waste. In MMWAC's case, it has for the time being decided to operate in the red to avoid large tipping fee increases, using reserves that it had gradually put away. In PERC's case, the tipping fee increase in 2018 would be so high that the facility will be

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<sup>7</sup> Pub.L. No. 95-617

<sup>8</sup> The difficulty of getting sufficient quantities of natural gas into Maine as electric utilities have switched to cheaper natural gas and demand has risen from residents and businesses that have also switched, means that winter electricity rates will rise this year. Until that issue is resolved, at best the money that incinerators receive for their electricity on the spot market will fluctuate significantly.

forced to close its doors or find some new technology for handling solid waste. (The current tipping fee is very low due to PERC's very favorable PURPA contract, which is why many of the 187 communities that use it have been able to afford the transportation costs in spite of the distances they must travel to deliver their trash to PERC.)

In light of the financial woes that incinerators saw coming, two years ago a bill was introduced in the Legislature, LD 1483, that proposed requiring all landfills to subsidize incinerators by paying a fee to the state based on the amount of waste taken in. The fees would go into a fund to which incinerator users could apply to offset their increased tipping fees. The bill was held over to the most recent legislative session and eventually amended to remove the subsidy fee provisions.<sup>9</sup> (Needless to say, the many municipalities that are forced to landfill their waste due to their lack of access to an incinerator were up in arms.) However, the future is anything but certain.

Because it is caught between member municipalities that depend on incinerators and those that depend on landfills, the Maine Municipal Association (MMA), which helped kill the incinerator subsidy proposal, has undertaken an in-depth effort to make recommendations to the upcoming Legislature about how to resolve the financial problem for incinerators – and more broadly, how to begin to grapple more realistically and on a statewide basis with Maine's many solid waste issues. As an MMA member, Gardiner has been providing input in that process and will continue to do so where possible.

Also as a result of the failure of passage of the incinerator subsidy provisions, the Municipal Review Committee (MRC), which represents the 187 communities that now use PERC and have a 22% ownership stake in it, has started looking at alternatives. It has already applied to DEP for a Determination of Public Benefit to build a landfill in Argyle or Greenbush, near Old Town. Since landfilling is at the very bottom of the state's solid waste hierarchy, and since DEP has been charged by the Legislature with incorporating that hierarchy into landfill licensing requirements,<sup>10</sup> the outcome of that request is uncertain at best. If a Determination of Public

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<sup>9</sup> LD 1483, now PL 2014, c. 458.

<sup>10</sup> See PL 2014, c. 458. The incinerator subsidy provisions were replaced with direction to DEP to incorporate the solid waste management hierarchy into landfill licensing requirements, in an apparent effort to slow the defection of incinerator customers to landfilling.

Benefit cannot be obtained, PERC users will no doubt be looking at existing landfills as one way to meet their needs until some other option is available. Whether or not Hatch Hill would be willing to take new customers is anyone's guess – if some communities that use it now such as Gardiner opt out, it is not out of the realm of possibility that some other community or communities would be happy to step in to fill the revenue gap that would be created by our departure.

There are landfills other than Hatch Hill that City Council could consider in order to avoid Hatch Hill's per capita fee. The closest is the Bath Landfill, approximately 35 miles away. In addition to the relatively long distance, the substantially higher tipping fees (\$95/ton for trash) would add significantly to haulers' costs – which could be passed on to customers but would still likely cause the smaller haulers licensed by Gardiner to stop doing business here.

The next closest option is Waste Management's Crossroads Landfill in Norridgewock, over 40 miles away. Tipping fees of \$60-70/ton are available if a contract is signed. If not, the tipping fee is \$88/ton. Again, smaller haulers are likely to stop doing business in Gardiner under this scenario. For both alternative landfill options, the transportation costs would be substantial and would likely rule out the city's ability to provide fall cleanup services at a reasonable cost.

Our committee looked carefully at the possibility of going the route that Pittston has gone, which is to leave Hatch Hill and suggest that individuals and private haulers who operate in the town take solid waste to the West Bath Transfer Station. There are several drawbacks to that solution, the largest of which is that West Bath takes the waste it accepts up to PERC in Orrington for incineration. (Other drawbacks include the distance from Gardiner to West Bath, the very high tipping fees that the transfer station charges, and the fact that it is not open on the weekend for individuals who cannot get there during weekday hours. Regarding the latter, Pittston has begun to pay Dresden to allow residents to use that facility for bulky wastes, etc.) We also investigated taking waste to other transfer stations in the region, but none of them are willing to accept new customers for trash.

Finally, the committee also discussed the possibility of establishing a transfer station for trash in the city. For several reasons, we decided that such a facility would not be practical or otherwise beneficial:

- a. Getting DEP approval for a transfer station for trash is a lengthy, complicated and expensive process;
- b. The cost of building and operating such a facility would also be considerable, requiring the hiring of additional staff or contracting with a private entity to operate it;
- c. Establishing such a facility would not solve the problem of where to take the trash for final disposal. We would still be faced with the options discussed above.

Of course, City Council has the option of deciding to leave Hatch Hill and letting haulers decide for themselves where they want to take the trash they collect. That seems to be a risky alternative, given what their options would be. Who would decide to stay and who would not? Would Gardiner residents and businesses that used haulers who decided not to stay be able to find new haulers in a timely manner? If things didn't work out, would we be able to go back to Hatch Hill? Possibly not, given the pressures that current incinerator users are/will be facing to find alternatives for their own trash.

#### **RECOMMENDATION:**

*In light of the uncertainty surrounding the state's three operating waste-to-energy incinerators and the lack of other viable options at this point in time, the committee recommends that the City Council continue to contract with Hatch Hill for disposal services.*

*The committee also recommends that even if the opportunity arises, the City should NOT sign a contract with Hatch Hill for a period longer than one year, at least until the waste disposal landscape has been clarified.*