



September 16, 2011

Mr. Malcolm Burson
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Re: License Transfer Application for Dolby Landfills 1, 2, & 3

Dear Mr. Burson,

We write to you in reference to the Maine State Planning Office's September 2, 2011 License Transfer Application for Dolby Landfills 1, 2, & 3 (the "Dolby Landfills"). We submit the following comments opposing the approval of that Application.

We submit these comments based on the understanding that this Application is related to the sale of the Millinocket and East Millinocket paper mills owned by the Katahdin Paper Company to Great Northern Paper, an affiliate of Cate Street Capital, and specifically that Katahdin's sale of the mills is contingent upon the State acquiring the Dolby Landfills that have for many decades taken waste from those paper mills. We also understand that the State's acquisition of the Dolby Landfills includes assumption of "responsibilities for closure and post closure monitoring and maintenance activities and costs," that Katahdin "shall not be responsible for closure and post closure monitoring and maintenance activities and costs," and that the "State shall not seek from [Katahdin] or its affiliates, directly or indirectly, recovery of or contribution for closure and post closure monitoring and maintenance activities and costs under any Environmental Law." Acquisition Agreement between Katahdin Paper Company LLC and State of Maine, August 2011 ("Dolby Landfills Acquisition Agreement"). We also understand, based on a memorandum from then Deputy Commissioner Patricia Aho dated May 25, 2011, that the costs for the annual operation of the Dolby Landfills is \$254,100, not including the costs associated with existing groundwater contamination issues, and that the estimated costs for closure and remediation of the Dolby Landfill 3 are \$17,019,420. We also understand that the Legislature has not made any provision for the funds necessary for the State to meet these obligations.

Chapter 400 of the Department's Regulations governs the licensing of solid waste facilities such as the Dolby landfills. Section 3 of Chapter 400 sets forth the licensing process for solid waste facilities. The regulations governing the approval of the transfer of a license for a solid waste disposal facility such as the Dolby landfills requires in part "a satisfactory showing that the new licensee can abide by the license terms and conditions . . . and satisfactorily meet the technical and financial ability provisions of this Chapter." 06-096 CMR 400(3)(B)(3). The financial ability provisions of Chapter 400 provide that an applicant "must have the financial ability to design, construct, operate, maintain, close and (if applicable) accomplish post-closure care of the solid waste facility in a manner consistent with all applicable requirements." *Id.* at 400(4)(B)(1)(a).¹ Thus, in order for the State's Application to meet the financial

¹ Generally, the owner of a solid waste disposal facility must also "provide financial assurance for closure, post-closure care and for corrective action for known releases in compliance with the financial assurance requirements of section 11." *Id.* at 400((4)(B)(1)(b). However, as noted by the State Planning Office in its Application, "State or federally owned solid waste facilities . . . are not subject to the requirements of this [financial assurance] section." *Id.* at 400(11).

ability provisions of Chapter 400, it must demonstrate the financial ability to assume the obligation of the Dolby landfills' annual operating costs and closure costs. In this instance, the State cannot make this demonstration at this time because it lacks the authority to assume the costs associated with the closure of the Dolby Landfills, and particularly Dolby Landfill 3.

As acknowledged by the Attorney General in a letter to Senator Cynthia Dill and Senator Elizabeth Schneider dated June 16, 2011 (attached), Article IX, section 14 of the Maine Constitution "establishes a state debt limit, which cannot be exceeded except by issuance of bonds authorized by the Legislature and approved by the voters. The language relevant to the debt limit provides:

The Legislature shall not create any debt or debts, liability or liabilities, on behalf of the State, which shall singly, or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed \$2,000,000 . . . excepting . . . that whenever 2/3 of both Houses shall deem it necessary, by proper enactment ratified by a majority of the electors voting thereon at a general or special election, the Legislature may authorize the issuance of bonds on behalf of the State . . ."

In that letter, the Attorney General concluded that the legislation authorizing the State to acquire the Dolby Landfills, LD 1567, "Resolve, To Authorize the State to Acquire a Landfill in the Town of East Millinocket," did not trigger the debt limit provisions of Article IX, Section 14 because it "did not commit the State to the assumption of any particular debt or liabilities associated with the landfill. . . . While the terms of Article IX, §14 will be relevant to the terms of [any agreement that the State may enter into for the future use or closure of the landfill], the acquisition alone does not create a debt or liability that would trigger the debt limit provisions." In a footnote, the Attorney General noted that his "office has recommended that LD 1567 include a provision that the current owner of the disposal facility is responsible for environmental liability associated with the operation of the disposal facility prior to acquisition by the State; and that the operator of the disposal facility be required to indemnify the State for all liabilities and costs associated with development and operation of the disposal facility." It is our understanding that those recommendations were not followed and no such provisions are in the Dolby Landfills Acquisition Agreement.

The only fair reading of the Dolby Landfills Acquisition Agreement and the Application is that the State has agreed to an unconditional assumption of the costs and liabilities associated with the Dolby Landfills. The Department's own analysis establishes that those costs and liabilities are well in excess of the \$2 million threshold of Article IX, Section 14. Therefore, the State is not authorized to take on that liability unless and until 2/3 of the Legislature authorizes the issuance of bonds to meet those costs that exceed the threshold set by the Constitution and those bonds are approved by the voters. Until such time, the State cannot demonstrate the financial ability to "operate, maintain, close and (if applicable) accomplish post-closure care" of the Dolby Landfills without being in violation of the clear dictates of the Maine Constitution.

Until the State follows the procedure mandated by our Constitution, it cannot meet the requirements necessary for approval of the Application, and accordingly, that Application must be denied.

Very truly yours,



Sean Mahoney
Vice President & Director