Casella Waste Systems, Securities and Exchange Commission 2005 Annual Report

http://www.sec.gov/Archives/edgar/data/911177/000110465906043029/a06-14010_110k.htm

[. . .] ITEM 3. LEGAL PROCEEDINGS

The New Hampshire Superior Court in Grafton County, NH ruled on February 1, 1999 that the Town of Bethlehem, NH could not enforce an ordinance purportedly prohibiting expansion of the Company's landfill owned by its subsidiary North Country Environmental Services, Inc. ("NCES"), at least with respect to 51 acres of NCES's 105 acre parcel, based upon certain existing land-use approvals. As a result, NCES was able to construct and operate "Stage II, Phase II" of the landfill. In May 2001, the Supreme Court denied the Town's appeal. Notwithstanding the Supreme Court's 2001 ruling, the Town continued to assert jurisdiction to conduct unqualified site plan review with respect to Stage III (which is within the 51 acres) and further stated that the Town's height ordinance and building permit process may apply to Stage III. On September 12, 2001, the Company filed a petition for, among other things, declaratory relief. On December 4, 2001, the Town filed an answer to the Company's petition asserting counterclaims seeking, among other things, authorization to assert site plan review over Stage III, which commenced operation in December 2000, as well as the methane gas utilization/leachate handling facility operating in connection with Stage III, and also an order declaring that an ordinance prohibiting landfills applies to Stage IV expansion. The trial on these claims was held in December 2002 and on April 24, 2003, the Grafton Superior Court upheld the Town's 1992 ordinance preventing the location or expansion of any landfill, ruling that the ordinance may be applied to any part of Stage IV that goes beyond the 51 acres; ruling that the Town's height ordinance is valid within the 51 acres; upholding the Town's right to require Site Plan Review, except that there are certain areas within the Town's Site Plan Review regulation that are preempted; and ruling that the methane gas utilization/leachate handling facility is not subject to the Town's ordinance forbidding incinerators. On May 27, 2003, NCES appealed the Court ruling to the New Hampshire Supreme Court. On March 1, 2004, the Supreme Court issued an opinion affirming that NCES has all of the local approvals that it needs to operate within the 51 acres and that the Town cannot therefore require site plan review for landfill development within the 51 acres. The Supreme Court's opinion left open for further review the question of whether the Town's 1992 ordinance can prevent expansion of the facility outside the 51 acres, remanding to the Superior Court four issues, including two defenses raised by NCES as grounds for invalidating the 1992 ordinance. On April 19, 2005, the Superior Court judge granted NCES' motion for partial summary judgment, ruling that the 1992 ordinance is invalid because it distinguishes between "users" of land rather than "uses" of land, and that a state statute preempts the Town's ability to issue a building permit for the methane gas utilization/leachate handling facility to the extent the Town's regulations relate to design, installation, construction, modification or operation. After this ruling, the Town amended its counterclaim to request a declaration that another zoning ordinance it enacted in March of 2005 is lawful and prevents the expansion of the landfill outside of the 51 acres. In the Fall of 2005 NCES and the Town engaged in private mediation in an effort to resolve the disputes between them, but the mediation was unsuccessful. NCES filed a motion with the court on December 15, 2005 for partial summary

judgment asserting six different arguments challenging the lawfulness of the March 2005 amendment to the zoning ordinance, and the town filed a cross-motion on January 13, 2006 for partial summary judgment on the same issue. On February 13, 2006, NCES filed its objection with the Grafton Superior Court to the Town's cross-motion for summary judgment. In April 2006, the court ruled against NCES on the applicability of all six arguments challenging the lawfulness of the March 2005 ordinance and NCES filed a motion for reconsideration. On May 30, 2006, the judge issued a ruling on the motion for reconsideration, reversing herself with respect to two of the six arguments she ruled earlier to be invalid, thereby preserving such arguments for trial. Additionally, several issues related to the March 2005 amendment that were not the subject of such motions remain to be decided by a trial, in addition to the issues remanded by the Supreme Court, which include whether the Town can impose site plan review requirements outside the 51 acres, and whether the 1992 ordinance contravenes the general welfare of the community. On June 6, 2006, the

Town rejected a settlement proposal from NCES at a special town meeting. A conference will be held on June 30, 2006 with the judge to establish a discovery schedule and a potential trial date.

On January 10, 2002, the City of Biddeford, Maine filed a lawsuit in York County Superior Court in Maine alleging breach of the waste handling agreement among the Biddeford-Saco Waste Handling Committee, the cities of Biddeford and Saco, Maine and the Company's subsidiary Maine Energy for (1) failure to pay the residual cancellation payments in connection with the Company's merger with KTI and (2) processing amounts of waste above contractual limits without notice to the City. On May 3, 2002, the City of Saco filed a lawsuit in York County Superior Court against the Company, Maine Energy and other subsidiaries. The complaint in that action, which was amended by the City of Saco on July 22, 2002, alleges breaches of the 1991 waste handling agreement for failure to pay the residual cancellation payment, which Saco alleges is due as a result of, among other things, (1) the Company's merger with KTI and (2) Maine Energy's failure to pay off certain limited partner loans in accordance with the terms of the agreement. The complaint also seeks damages for breach of contract and a court order requiring the Company to provide an accounting of all transactions since May 3, 1996 involving transfers of assets to or for the benefit of the equity owners of Maine Energy. On June 6, 2002, the additional 13 municipalities that were parties to the 1991 waste handling agreements ("the Tri-County Towns") filed a lawsuit in York County Superior Court against Maine Energy alleging breaches of the 1991 waste handling agreements for failure to pay the residual cancellation payment which they allege is due as a result of (1) the Company's merger with KTI; and (2) failure to pay off the limited partner loans when funds were allegedly available. On July 25, 2002, the three actions were consolidated for purposes of discovery, case management and pretrial proceedings. On December 23, 2003, the action brought by the Tri-County Towns against Maine Energy was stayed pursuant to a court order as a result of a conditional settlement reached by the parties. The settlement became final, and, on or about July 8, 2004, the Tri-County Towns' action was dismissed with prejudice pursuant to stipulation by the parties. The litigation brought by the remaining Cities of Biddeford and Saco is currently in the discovery phase.

Simultaneously, the Company is engaged in settlement negotiations with the City of Biddeford concerning the claims asserted in these actions and other matters, however, at this stage it is impossible to predict whether a settlement will be reached. The Company has vigorously contested the claims asserted by the cities. The Company believes it has meritorious defenses to these claims.

On or about December 3, 2003, Maine Energy was served with a complaint filed in the United States District Court for the District of Maine. The complaint was a citizen suit under the federal Clean Air Act ("CAA") and similar state law alleging (1) emissions of volatile organic compounds ("VOCs") in violation of its federal operating permit; (2) failure to accurately identify emissions; and (3) failure to control VOC emissions through implementation of reasonably available control technology. In addition, the complaint alleged that Maine Energy was negligent and that the subject emissions cause odors and constitute a public nuisance. The allegations related to Maine Energy's waste-to-energy facility located in Biddeford, Maine and its construction, installation and operation of a new odor control system which redirects air from tipping and processing buildings to a boiler building for treatment by three air vents. The complaint sought an unspecified amount of civil penalties, damages, injunctive relief and attorney's fees. The court allowed the City's requests to amend its complaint to assert (1) an additional CAA claim that Maine Energy filed with the Maine DEP a compliance certification for calendar year 2002 which failed to disclose required information concerning VOC emissions, and (2) an additional claim that the installation of the odor control system constituted a major modification under the Maine DEP air rules, which required Maine Energy to obtain emission offsets and to apply the most stringent level of emission control known as the Lowest Available Emission Rate or LAER. This latter amendment sought additional relief in the form of an order requiring that Maine Energy obtain emission offsets and apply LAER to emissions from its tipping and processing operations. On June 2, 2004, the City of Biddeford dismissed the subject complaint without prejudice while settlement negotiations take place. On or about May 25, 2004, Maine Energy received a revised 60-Day Notice of Intent to Sue under the CAA from the Cities of Biddeford and Saco. The Notice states that the Cities intend to refile suit under the CAA in the event that the ongoing settlement negotiations do not resolve the claims. On or about July 22, 2004 and March 28, 2005, Maine Energy received from the United States Environmental Protection Agency ("EPA") a request for information pursuant to section 114(a)(1) of the CAA, which states that the EPA is evaluating whether the Maine Energy facility is in compliance with the CAA, CAA regulations, and licenses issued under the CAA. Maine Energy has fully cooperated with the EPA in connection with these requests for information pertaining to VOC emissions issues and is currently engaged in settlement discussions.

On March 2, 2005, the Company's subsidiary Casella Waste Management of Pennsylvania, Inc. ("CWMPA") was issued an Administrative Order by the Pennsylvania Department of Environmental Protection ("DEP") revoking CWMPA's transfer station permit for its 75-ton-per-day transfer station located in Wellsboro, Pennsylvania and ordering that the site be closed. The DEP based its decision on certain alleged violations related to recordkeeping and site

management over a five-year period. On March 10, 2005, CWMPA appealed the Order to the State's Environmental Hearing Board ("EHB"). The Pennsylvania Attorney General's Office is also conducting a criminal investigation of the allegations. On March 17, 2005, CWMPA and the DEP mutually agreed to a Supersedeas Order approved by the EHB which superseded the March 2, 2005 DEP Order, stating that CWMPA agreed to (i) voluntarily cease operations at the transfer station until May 16, 2005; (ii) relocate its hauling company before May 16, 2005; and (iii) develop a Management and Operation Plan for the transfer station by May 16, 2005. On May 17, 2005, the EHB judge extended the Supersedeas Order until June 10, 2005 and authorized the transfer station to resume operations upon completion of the relocation of the hauling company and receipt of a permit modification related to the weighing of bag waste from individual customers. CWMPA satisfied the conditions and recommenced operations at the transfer station on May 20, 2005. On June 9, 2005, CWMPA and the DEP filed a stipulation with the EHB withdrawing and voiding the March 2, 2005 Order revoking the permit, while reserving the DEP's right to seek civil penalties and the Company's right to defend against any such penalties. On March 9, 2006, the Company reached an agreement with the Attorney General's Office that resolved its investigation with a misdemeanor fine in the amount of $35,000 plus a $15,000 contribution to a non-profit environmental organization. The Company has reached a settlement in principal with the DEP whereby the Company expects to pay a civil penalty in the amount of $400,000. The Company plans to finalize the settlement in June 2006.

On March 10, 2005, the Zoning Enforcement Officer ("ZEO") for the Town of Hardwick, Massachusetts rendered an opinion that a portion of the current Phase II footprint of the Company's Hardwick Landfill is on land on Lot 1 that is not properly zoned. On April 7, 2005, the Company appealed the opinion to the Hardwick Zoning Board of Appeals ("ZBA"). On July 13, 2005, the ZBA denied the Company's appeal. On August 1, 2005, the Company appealed the ZBA's decision to the Massachusetts Land Court. The Company proposed a plan to implement an interim closure of the affected Lot 1 which included relocation of waste from an unlined area on Lot 2 (a lot unaffected by the decision) to the affected Lot 1. The ZEO issued a letter prohibiting the Company from relocating waste onto Lot 1. The Company appealed the ZEO decision to the ZBA and the ZBA denied the appeal on November 29, 2005. The Company appealed the ZBA decision to the Land Court and had it consolidated with the other appeal filed with the Land Court. On January 18, 2006, the Massachusetts Attorney General approved new general bylaw articles of the town which, among other things, prohibit the use of construction and demolition debris as grading, shaping or closure materials. Such articles may have an adverse impact on the Company's ability to relocate some or all of the waste onto the affected lot. The Company and the Town executed a Host Community Agreement on June 7, 2005, which provides the Town with certain immediate benefits and will provide certain deferred benefits upon receipt of approvals for the rezoning of the existing landfill area and an expansion area, which the Company expects to apply for in the future. On November 16, 2005, the adjacent town of Ware adopted regulations restricting truck traffic in a manner that affects certain routes into the landfill. On December 20, 2005, the Company filed an action challenging the regulations and seeking a preliminary injunction. On December 30, 2005, the Court denied the preliminary injunction. The Company is continuing to pursue its challenge to the Ware regulations and the case has entered the discovery phase. On May 22, 2006, the ZEO for the Town of Hardwick, Massachusetts rendered an opinion that the current Phase II footprint of the Company's

Hardwick Landfill is on land on Lot 2 that is not properly zoned. The May 22, 2006 order contradicts two prior rulings by the ZEO, which stated that Lot 2 is grandfathered and exempt from zoning. On May 26, 2006, the ZEO stayed his May 22, 2006 order pending the Company's appeal and resolution of any such appeal by the Zoning Board of Appeals.

On May 25, 2005, the Company was served with an antitrust summons by the Office of the Attorney General of the State of Maine pursuant to its investigation of whether the Company and the City of Lewiston have entered into an agreement to operate a municipal landfill in restraint of trade or commerce and whether such an agreement would constitute an acquisition of assets that may substantially lessen competition or tend to create a monopoly. The summons sought the production of documents related to the Company's operations in the State of Maine. In July,

2005, the Maine Department of Environmental Protection ("MEDEP") expressed additional concerns with the Operating Services Agreement related to whether or not it violates a Maine statute prohibiting the development of commercial landfills. On October 12, 2005, the Office of the Attorney General rendered its decision that the proposed transaction violates the ban on commercial landfills because of the Attorney General's belief that the overall effect of the contract constitutes a transfer of meaningful control from the City of Lewiston to the Company. The transaction is on hold indefinitely.

On June 23, 2005, the Company was advised that the State's Attorney for Chittenden County, Vermont has initiated a formal investigation through the State's Inquest process to determine if there is any criminal culpability in connection with the fatality on January 28, 2005 of a driver of the Company's subsidiary All Cycle Waste, Inc. that occurred on the job when the driver's rear-loader trash truck rolled over him when he was behind it. The Company is cooperating with the investigation. On July 21, 2005, the Company settled with the Vermont Occupational Safety and Health Administration, which was conducting a separate civil investigation of potential safety violations, by agreeing to pay a penalty in the amount of $28,000 in connection with four alleged general duty clause violations in connection with the accident. In the on-going criminal investigation, the Company continues to fully cooperate with the State's Attorney.

On December 2, 2005, the Company was served with a petition filed in the Supreme Court of the State of New York by a group of approximately 100 residents of Chemung County, New York seeking to vacate and set aside the Operating, Management and Lease Agreement ("OML Agreement") between Chemung County and the Company pertaining to the Company's operation of the Chemung County Landfill, the Host Community Benefit Agreement between the Town of Chemung and the Company and certain resolutions adopted by the County and the Town authorizing such transactions. The petition alleges that the documents illegally contract away or limit the police power functions of the County or the Town; that the County improperly segmented review of a planned increase in the annual capacity and related physical expansion of the landfill; that the County failed to properly define and describe the future projects; and that the County failed to adequately assess the immediate impacts of the OML Agreement and the

resultant privatization of the landfill as required under the State Environmental Quality Review Act. On February 21, 2006, the judge dismissed the petition in its entirety. Plaintiffs did not appeal.

We offer no prediction of the outcome of any of the proceedings described above. We are vigorously defending each of these lawsuits. However, there can be no guarantee we will prevail or that any judgments against us, if sustained on appeal, will not have a material adverse effect on our business, financial condition or results of operations.

We are a defendant in certain other lawsuits alleging various claims incurred in the ordinary course of business, none of which, either individually or in the aggregate, we believe are material to our business, financial condition, results of operations or cash flows.