

## Politics, lawyers and trash.

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Editor

Four years ago, the owners of the Maine Energy Recovery Company told city officials they would never consider relocating their trash incinerator facility out of downtown Biddeford.

Within the last two years, that message has drastically changed.

The turnaround is likely the result of continuing closed-door negotiations between company officials and city officials from both Biddeford and Saco, not to mention increasing public opposition to both the plant's location and operation.

The negotiations began roughly two years ago, shortly after both cities filed separate lawsuits against the company. All sides are reportedly hoping to avoid excessive legal expenses and an unpredictable court decision. The case is still pending in York County Superior Court.

The cities' civil lawsuits stem from the 1999 acquisition of Maine Energy by Casella Waste Systems, one of the country's largest waste handling companies, headquartered in Rutland Vermont.

This week, we will continue to examine the history of events that led us to where we are today in relation to the controversial trash-to-energy company.

After renegotiating a new contract with its so-called host communities of Biddeford and Saco in 1991, MERC's parent company agreed to remove its namesake acronym from the plant's main, 244-foot ventilation stack.

From there, tensions between the company and its host communities cooled considerably. The 1990 lawsuit filed by Saco was settled out of court. The company's stack no longer billowed plumes of ash. The next five years were described as a "honeymoon."

### Good news, bad news

But in June 1997, Ted Hill, then president of KTI (MERC's parent company), called the mayors of Biddeford and Saco into his office for a meeting.

Biddeford Mayor James Grattelo and Saco Mayor Mark Johnston were both completing their final terms as their city's respective mayor.

"We got to Ted's office on Saco Island, and he told us he had good news," Johnston recalled. "He said Central Maine Power Company opted to buy out the remainder of their power purchase agreement. Suddenly, the company had a lot of cash."

Under the terms of MERC's new and extended contract with the two cities, the company was required to immediately notify municipal officials of any changes to its financial or operational status.

The cities wanted MERC to use their new-found wealth (roughly \$90 million) to improve the plant, especially its odor problems. The cities also wanted their tipping fees reduced. The company agreed to the former request but balked at the latter, arguing that they were under no obligation to lower tipping fees.

But when the company revamped its internal air handling systems, it was fined by the Occupational Safety and Health Administration (OSHA). As time wore on, Johnston said, the company continuously increased the amount of trash it accepted to fuel its boilers.

Johnston said the renegotiated contract prohibits the company from accepting anything more than 212,000 tons of trash. Today, he estimates, the company processes in excess of 312,000 tons of trash each year.

In order to comply with the OSHA ruling, the company kept exterior doorways opened to improve inside air quality. The result was a significant increase in odor complaints that led to mounting citizen frustration and eventual political polarization.

Once considered to be too cozy with municipal officials, the company was now facing increasing pressure from its host communities to clean up its act or — better yet — get out of town. A new tone of getting tough on the company emerged from both city halls.

By the summer of 1998, a series of explosions in the company's main shredder, coupled with increasing odor complaints, morphed into a fever pitch of resentment that was aimed directly at MERC. The troubled company also became the focal point of several political hopefuls as they planned their upcoming municipal election campaigns.

In December 1998, the Biddeford City Council drew first blood in what eventually became an all-out effort to shut down the company. A

new ordinance was passed that levied significant fines for any calls the city's fire department was forced to respond to at the incinerator.

In the summer of 1999, Jim Boldebook, the owner of an advertising agency best known for its Jolly John radio ads, launched a new website called stoptheodor.com

### A focus for political leaders

With the November 1999 municipal elections looming, anti-MERC statements and positions seemed to be a favorable position for several candidates who formed an alliance devoted to "getting tough" on MERC.

A series of newspaper advertisements, labeled "This Stinks," featured the names and photographs of political hopefuls from both Biddeford and Saco, including State Rep. Stephen Beaudette (D-Biddeford), who was then the Biddeford City Council president and a mayoral hopeful. Saco City Councilors Leslie Smith and Arthur Tardif were also featured in the ads, along with Johnston who was then attempting a political comeback by vying for a city council seat in Saco.

The ads, paid for by Johnston, contained information about MERC's operations, encouraging readers to elect candidates who would take a hard stand against the company.

Saco and Biddeford both had new mayors. Both Bill Johnson and Donna Dion were hoping for a second term. Although they were not as publicly vocal in their criticisms of the company, they each pledged to keep a close eye on the company and its operations.

But company officials were not about to lie down and play dead.

"These advertisements are examples of guerilla warfare," said Ted Hill, KTI's president, in an October 1999 interview with the Courier. "These ads don't look at the broader picture."



**SAM ZAITLIN, a former Saco mayor and senior vice president of KTI (MERC's former owners), says many local politicians have used the incinerator to accomplish their own, personal political agendas.**

And Samuel Zaitlin, a former Saco mayor who was then a KTI vice president, criticized the ads and candidates for telling "half-truths" and "distorting facts."

"If you repeat a story long enough, and if you make unsubstantiated claims loud enough — it becomes very easy to play into the hands of certain cynicism," Zaitlin said. "What many of these people don't realize is that if they are elected, they will have to begin a reasoned and civilized process in order to seek reasonable solutions."

### Was it a sale?

But political pressure on the company continued, bolstered in part by the Dec. 15, 1999 announcement that MERC and its parent company were being acquired by Casella Waste Systems of Vermont.

As part of the 1991 contract, the cities included a clause that would entitle them to 20 percent of the plant's value if it were sold. The cities claimed the merger represented a sale. The company countered by saying it was an acquisition, not a sale.

A bitter legal battle was on the horizon, and the two cities opted to take sharply different approaches. Meanwhile, MERC's new owners pledged to "overwhelm and eliminate" the plant's odor problems.

Saco officials, led by then Mayor Bill Johnson, began meeting with company officials behind closed doors in order to hammer out a new agreement that would give the city significantly lower tipping fees and address potential health concerns. The city also began exploring increased recycling options, such as its automated waste collection system that was eventually launched in Jan. 2003.

Biddeford officials, on the other hand, began reviewing legal strategies and eventually struck back at their neighbors across the river by re-routing all departing trash trucks from the company through Saco in April 2000.

Both Grattelo and Johnston had returned to elected office as city councilors in their respective communities and each called for keeping constant pressure on the company.

### **New owners come to town**

Shortly after his company acquired the Maine Energy Recovery Co., John Casella, president and founder of Casella Waste Systems, sat down with city councilors and the mayors from Biddeford and Saco during a joint-council workshop meeting in Jan. 2000.

During that meeting, Casella and other company officials told local leaders that their company was anxious to become good corporate citizens. They promised to “overwhelm” continuing odor problems at the downtown Biddeford trash incinerator. They said they wanted to be part of the community’s long range planning by providing “innovative leadership” in the areas of recycling and solid waste removal.

But they also said that Maine Energy was here to stay, and that they had no intentions of shutting the plant down.

The public meeting, held at the McArthur Library, was intended to allow each side to “size-up” the other. It was a sometimes tense discussion that was attended by more than 100 concerned residents and business owners, including a group of men and women who were then working behind the scenes to form a new environmental watchdog organization.

### **A new voice of opposition**

A significant shift was taking place in public opposition to the plant.

In February 2000, less than 30 days after Casella met with local leaders, the formation of Twin Cities Renaissance, a non-profit, environmental watchdog group, was announced. Unlike previous plant critics, the new group promised to work in a “reasonable manner” through a series of “pragmatic steps” to eventually relocate or close the company.

“It’s time to stop complaining,” said Mark Robinson, one of TCR’s founding members. “It’s time to do something.”

That “something” was outlined in TCR’s three-pronged mission statement, which includes ensuring that the company fulfills all of its contractual, regulatory and legal obligations; to encourage independent research that quantifies the economic, social and health impacts of the facility; and to explore alternative methods of waste disposal that includes a possible relocation of the plant.

“Solid waste disposal is an infrastructure challenge that confronts every city,” Robinson said as he explained his group’s mission statement during a press conference. “Biddeford and Saco have the unique and additional burden, however, of frequently suffering the pungent stench of garbage in the very heart of our downtown districts.”

Members of TCR, including bank presidents, environmentalists, health care providers and teachers, said their approach would stay clear of personality issues and instead focus upon any possible solutions to the overall problem.

### **Two different approaches**

During the next year, even as Saco officials continued negotiating with the company, Biddeford officials began deliberating the passage of a new ordinance that would provide more stringent air emission standards than what were then required by either state or federal agencies.

But Biddeford’s proposed air toxics ordinance soon proved to be controversial. Other manufacturing firms raised concerns about the new standards, questioning whether the ordinance would be either effective or realistic.

In March 2002, the city of Saco was poised to renew an independent contract with the company. Then, after TCR rallied more than 150 residents to show up at City Hall and protest the move, the city council reversed its position, instead opting to follow Biddeford’s course and file a lawsuit against the company’s Vermont-based owners.

### **How much is it worth?**

The central component of the pending lawsuits that were filed by both Biddeford and Saco involves the plant’s market value, which is still being disputed.

While the towns believe the plant could be worth as much as \$74 million, the company said last year that those estimates were grossly inaccurate. Citing diminishing electric power sales, company officials said the plant is worth somewhere in the neighborhood of \$22 million.

Although existing contracts allow the company to charge roughly 7 cents for each kilowatt hour of electricity it produces from burning trash, the current market price for surplus electricity is much lower — roughly 3.5 cents per kilowatt hour.

### **A settlement option**

Facing mounting legal costs and the prospect of losing a low-cost source of trash disposal in 2007, when the municipal contracts expire, several of the charter towns that also use Maine Energy for the disposal of their municipal solid waste opted to settle their own collective lawsuit against the company earlier this year.

In exchange, the Tri-County collaborative, which includes the towns of Old Orchard Beach, Arundel, Kennebunk and Dayton, received a new and simpler contract, which provides significant savings in tipping fees for its 19 member communities.

“I would describe this as a big win for all the communities,” said Barry Tibbets, Kennebunk’s town manager, during an interview with the Courier last year.

The settlement followed upon the heels of a September 2002 announcement by company officials that they would be “willing to explore all options on the table within the parameters of a logical and reasonable discussion focused upon long-range solutions.”

But Biddeford officials, especially, seemed unfazed by the company’s gesture, saying the reversal was simply the result of their refusal to negotiate an out-of-court settlement.

Company officials, however, say they have not changed their position.

“If you stop and think about it, our position has never changed,” said James Bohlig, senior vice president of Casella Waste, during a Jan. 2003 interview. “We were asked if we would be willing to just pack up and go home — and that answer would still be no. On the other hand, are we willing to explore all options for a win-win solution? The answer to that question has always been yes.”

### **Unwilling to settle**

But the mayors of both Biddeford and Saco seemed to bristle when asked if they would consider settling their differences with MERC outside of the courtroom. Donna Dion, then Biddeford’s mayor, and Bill Johnson, Saco’s mayor, pointed to Zaitlin as a point of contention in the summer of 2002.

Zaitlin left the company in April 2000 in order to pursue a master’s degree at Harvard’s John F. Kennedy School of Government. He was hired as a consultant by Casella in 2002 and charged with assisting the company with its ongoing negotiations with MERC’s host communities.

In previous interviews, Zaitlin said he has been meeting on a regular basis since the summer of 2002 with TCR representatives. It was at about the same time as state officials began to take serious notice of TCR’s efforts to relocate the plant.

“The only way to address very complicated issues is through a rational dialogue in which both parties feel that they can be heard and involved,” Zaitlin told the Courier in Sept. 2002. “Regardless of what happens with the lawsuits, these issues are simply not going to disappear. We have to think about the long-term, and we must frame those discussions in a thoughtful, hard look at the entire range of solid waste issues.”

But both Dion and Johnson questioned Zaitlin’s motives, citing his close friendship with then outgoing Gov. Angus King and his past employment with the company after serving as head of the Maine Bureau of Environmental Protection.

Dion and Johnson also rejected an offer by King to help negotiate a settlement, saying the process would likely extend well beyond the remainder of the governor’s term, which was set to expire in January 2003.

TCR officials expressed disappointment about the mayors’ decisions but said they would continue their work.

### Changing dynamics

In November 2003, Johnston returned to the mayor's post in Saco and Gen. Wallace Nutting, a retired U.S. Army General, upset two better known opponents in Biddeford's mayoral race. Zaitlin urged Nutting to seek the office, saying the city needed a "rational" leader who could deal reasonably with MERC.

TCR members, meanwhile, struggled with competing public policy issues that overshadowed the MERC debate, including a proposal to develop a large-scale casino in Biddeford and then a so-called "racino" in Saco.

But during the last few months, TCR again began raising its voice and closely watching the ongoing MERC negotiations that now include the city of Biddeford. Recently, the group has called upon MERC to change the way odor violations are investigated and raised concerns about explosions of disposed propane tanks in the company's shredder.

Despite their willingness to be rational and to steer clear of personality issues, members of TCR also maintain that they want the company to be held accountable for all of its obligations.

"I know that when the company speaks of relocation, it intends that it will be paid \$100 million or so," said Rick Hull, a Biddeford attorney and TCR member, in a previous interview with the Courier last year. "For my part, I believe that if all relevant environmental standards

are strictly applied, the company would be shut down for compliance failures."

### What does the future hold?

But the company's possible closure or relocation remains questionable, despite reports that a state-owned landfill in Old Town would be willing to accept local municipal solid waste.

MERC is still Biddeford's largest taxpayer, and the city's other top-two commercial taxpayers (Interstate Brands Corp., which owns the Nissen Baking plant; and West Point Stevens) have both reported financial problems. Furthermore, public opposition to the Old Town landfill seems to be increasing.

"There are a number of things for both cities to consider as we move down the road," Zaitlin said. "The existing contracts will expire in 2007. The market rate for solid waste disposal is constantly on the increase. And the cities will have to go to the market, and even if they can find another option, they have to consider a number of other variables such as transportation costs and the building of a transfer facility."

Today, the negotiations continue and the pending lawsuit awaits. Meanwhile, many people continue to wonder whether the MERC plant will ever go away or if it will continue to be a fixture in the heart of both host communities.