

## Looking for a deal



Wallace Nutting



Mark Johnston



Ken Farley



John McCurry



Ron Michaud



David Tripp

**THE NEGOTIATORS** — Representatives from Biddeford and Saco have been meeting behind closed doors with MERC’s owners for nearly two years. Recently, the negotiations have divided the two cities, forcing the company to negotiate separately with both cities. The team includes Biddeford Mayor Wallace Nutting, Saco Mayor Mark Johnston; Biddeford City Councilors Kenneth Farley and John McCurry; and Saco City Councilors Roland Michaud and David Tripp.

By Randy Seaver  
Editor

In last week’s installment of this series, James Bohlig, president of Casella Waste Systems, said city officials in Biddeford and Saco need to make a decision soon about whether they want to pursue an out-of-court settlement with his company.

“We’ve come a long way, but if we can’t settle this by early summer then it’s likely not a situation we can reasonably address outside of court,” Bohlig told the *Courier* when asked about the ongoing negotiations between his company and the two cities that serve as host communities for the MERC plant.

At issue is a difference of opinions about whether MERC was sold in 1999, when Casella acquired its former parent company, Kuhr Technologies, Inc. (KTI). A clause in the current “host communities” contract, which was renegotiated in 1991 when the company fell upon hard financial times, allows the city to share in MERC’s value if the plant is sold.

Casella officials say the plant was not sold, but rather simply acquired as part of a larger purchase of all KTI assets. The two cities, however, say the 1999 acquisition triggered the clause that would allow them to share 20 percent of the plant’s residual value at the time of the sale.

Three years ago, both cities filed lawsuits against Casella. Those lawsuits remain pending in York County Superior Court while all sides continue negotiating toward a possible settlement that could save both sides significant money instead of engaging in full-throttle litigation.

But MERC’s parent company also has two other legal issues to address with officials in Biddeford, where the controversial trash-to-energy incinerator is located.

First, the company is challenging Biddeford’s property tax assessment of the plant. Secondly, the company mounted a legal challenge to Biddeford’s Air Toxics Ordinance, which they claim is unreasonable and was designed for the sole purpose of driving the company out of its downtown location by imposing air emission standards that are more stringent than state or federal guidelines.

Sources close to the negotiations say tension is mounting between the two cities about how to settle their collective problems with MERC. Publicly, officials from both cities remain tight-lipped about the closed-door negotiations, saying only that they are hoping for a positive outcome.

Privately, however; an increasing sense of frustration — between Biddeford, which stands to lose considerable more tax revenue if the plant is eventually closed; and Saco, which a short while ago pursued unilateral negotiations with the company — has become plainly evident.

The idea of a settlement, Bohlig hopes, “will close the door on the past” and serve as an impetus for a new and much more beneficial relationship between his company and both communities.

“All options are on the table,” Bohlig told the *Courier* during an exclusive Feb. 24 interview with the *Courier*. “We’re offering a buy-out option . . . we’re willing to do just about anything as long as it represents a win-win for everyone involved.”

That statement provides a stark contrast for what Bohlig said to a joint meeting of the Biddeford and Saco city councils in January

2000, a few weeks after Casella shareholders approved the KTI acquisition.

At that time, Bohlig dismissed the idea of his company relocating the plant out of its downtown location. “That is not an option,” he said flatly.

### What’s on the table?

In January of last year, Casella settled a lawsuit that was filed by the Tri-County Solid Waste Committee, which represents 13 York County towns that use MERC for their solid waste disposal and also signed onto the renegotiated disposal contracts that both Biddeford and Saco signed with MERC’s former owners in 1991.

Bohlig said the same deal that those communities took advantage of last year is now being offered to both Biddeford and Saco with even better terms and added perks.

According to Bohlig, officials in Biddeford and Saco are now being offered a \$13.48 per ton discount on tipping fees for the next 72 months, which could collectively save the two communities roughly \$4 million over the next few years.

Furthermore, the company has agreed to “lock-in” the communities’ tipping fees for whatever term the cities decide. The lock-in rate would be \$58 per ton, plus transportation costs and CPI (Consumer Price Index) adjustments, regardless of where the trash is taken, Bohlig said.

Thus, even if the MERC plant is closed, Biddeford and Saco would still be paying far less than what other Maine communities would have to pay for solid waste disposal.

Bohlig said that offer represents a better deal for the cities than anything they could hope to win in court, not to mention saving significant legal and court fees by settling.

The settlement offer is somewhat similar to what was offered to the Tri-County member communities last year. The Tri-County towns, which include Dayton, Old Orchard Beach and Kennebunk, also felt that they were entitled to share in a residual payment because of the 1999 Casella acquisition.

But after looking at other disposal options, the towns eventually opted to settle their lawsuit in favor of negotiating new individual contracts with the company that would “lock-in” their waste disposal costs, even if the MERC plant is someday closed.

Before they opted to settle, the charter communities paid roughly \$66 for each ton of trash they took to MERC. Meanwhile, other Maine communities, such as Portland, today pay anywhere between \$80 and \$85 per ton for trash taken to other facilities — including Regional Waste Systems, a municipally owned incinerator in Portland.

Because Biddeford and Saco are MERC’s host communities, they pay roughly \$41 per ton in tipping fees to Maine Energy. The lower host community tipping fees are designed to offset other inconveniences such as increased truck traffic and noise.

Casella offered the Tri-County towns renewable contracts in five, 10 and 15-year terms, which would allow individual communities to reduce their tipping fees by as much as 10 percent. The longer the contract’s term, the greater savings each community could realize.

As an added incentive, the towns were also offered an opportunity to reduce their current tipping fees through the end of their current contract. In Kennebunk’s case, for example, opting for a new five-year contract would mean the town would immediately begin saving roughly \$14 for every ton of trash taken to MERC.

Since Kennebunk currently sends roughly 7,200 tons of trash to MERC each year, the reduced tipping fees and added incentives had the capacity to save the town more than \$100,000 each year, depending on its increase in trash disposal.

Future tipping fees would be calculated by using the Consumer Price Index as a base factor, ensuring a stable set of costs in the now unstable and escalating solid waste marketplace.

Barry Tibbetts, Kennebunk's town manager, said the new contracts are much simpler than what was formerly in place. "This was a way for us to lock in our rates and save some serious money," Tibbetts said during a prior interview. "It's a tremendous deal and a good solution for the towns."

#### **How much is MERC worth?**

But beyond the residual payment issue, the city of Biddeford and Casella are still faced with a disagreement over how much the MERC plant is worth, a situation that could greatly affect any buy-out option, such as what Saco Mayor Mark Johnston is hoping to pursue.

Two years ago, shortly after Biddeford's Air Toxics ordinance was enacted, Casella officials filed a tax abatement request with the city, which then assessed the plant at roughly \$74 million.

Bohlig said an independent assessment report concluded the plant was worth somewhere in the neighborhood of \$60 million. The company, however, believes the plant should be assessed at roughly \$30 million.

If Casella prevails on the tax issue in court, the city would have to pay tax rebates to the company for the past four years. Since the MERC is Biddeford's largest taxpayer (approximately \$1.3 million annually), the city could potentially lose as much as \$3 million if it loses that court battle, not including court costs and legal fees.

Other factors in MERC's market value include current power sale contracts that now allow the company to charge roughly 7 cents for each kilowatt hour of electricity it produces from burning trash. Those contracts will soon expire and deregulation has resulted in lower market rates for surplus electricity, which is now roughly 3.5 cents per kilowatt hour, half of what the company earns now.

#### **More than money**

Critics of the plant, however, say there is a lot more at stake in the negotiations than lower tipping fees, including health concerns, odor complaints, increased truck traffic and the stigma associated with hosting a regional trash facility smack dab in the middle of a city that is hoping for downtown revitalization.

Mike Eon, a spokesperson for Twin Cities Renaissance, said his grassroots group is seeking to complete an economic impact study of the MERC plant's presence in downtown Biddeford.

Others, such as State Rep. Joanne Twomey (D-Biddeford) and former Biddeford mayor Donna Dion, have consistently raised health concerns about the MERC plant and what is coming out of its ventilation stack as trash from all over New England is burned in downtown Biddeford.

In response, Bohlig said his company is completely funding the update of a health risk assessment study that is already underway. Once that study is completed, Bohlig said the two cities will choose a third party firm to peer review the study.

"By doing this, we have essentially eliminated the issue of health risks," Bohlig said. "We are providing the lion's share of the funding and giving the cities the benefit of the doubt on that issue. Honestly, I don't know how much more we could be expected to do."

Furthermore, Bohlig said the company is willing to close or at least relocate the plant, a position that changed as Casella gained increased market share in Maine, including the purchase of Pine Tree Waste and a deal secured last year to manage a state-owned landfill in West Old Town.

"If they want us to go, we will go," Bohlig said. "But it has to be an agreement that will work for everyone. This type of discussion needs to be framed within the context of what is realistic. There are costs and benefits to just about everything. You can't have all the benefits without any of the costs."

When asked about the role of Twin Cities Renaissance, a grassroots, citizen group that was formed five years ago with the goal of someday closing MERC, Bohlig said the organization is currently playing a constructive role, especially in its approach to the issue of MERC's future in downtown Biddeford.

"I believe most people have come to the logical conclusion that grandstanding doesn't offer solutions to real problems," he said. "Creating something through compromise and true negotiation is hard work. Then again, good solutions only come from hard work."

Negotiations between Casella and the two cities have continued on and off for a little more than four years. Bohlig described the effort as worthwhile, and hopes the process will conclude soon and on a positive note.

"We're very confident that we will succeed if we go to court, but we would much rather work proactively with both cities and collectively — through a lot of give and take — find a solution that works for everyone," he said.