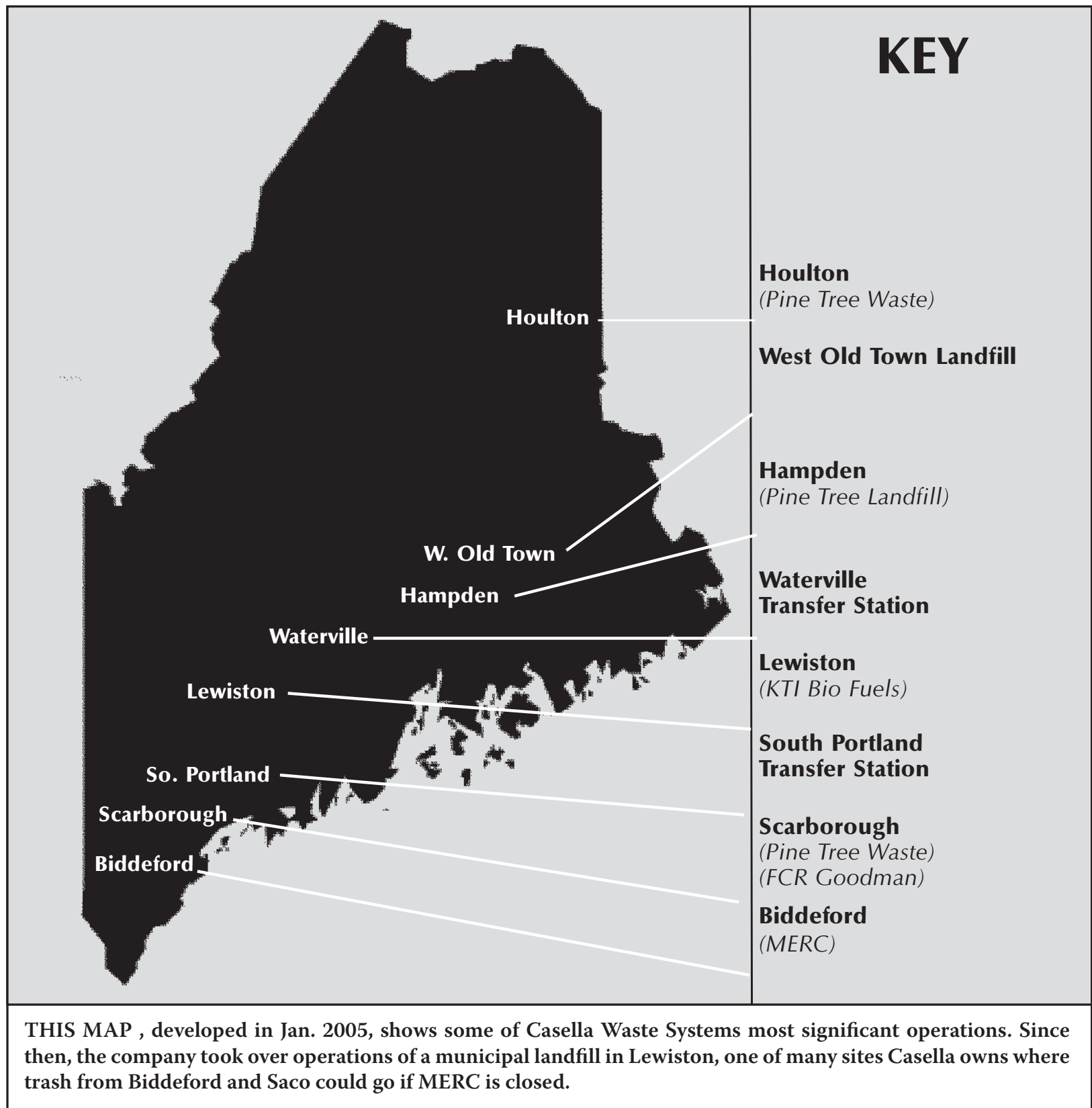


## The way life should be?



By Randy Seaver  
Editor

While Maine touts itself as an idyllic tourist destination and as “the way life should be” for its residents, there is growing evidence that “Vacationland” has a serious trash problem.

A little more than two years ago — just a few weeks before state officials turned to Casella Waste Systems for help with acquiring a landfill in West Old Town — the Maine Attorney General’s office released a 168-page report that says “competition in Maine’s solid waste industry is eroding and disposal fees are rising.”

Casella Waste Systems, based in Rutland, Vt., acquired Biddeford’s MERC plant in Dec. 1999. And since then, the company has been steadily increasing its presence in Maine, causing critics to raise concerns about the company’s aggressive marketing plan in a state where the development of commercial landfills has been banned since 1989.

When contacted last week, Assistant Attorney General Francis Ackerman declined to say whether Casella is being investigated by his office under Maine’s anti-trust statutes.

“We have a rigid policy that does not allow us to comment upon any ongoing investigations,” Ackerman said. “Furthermore, I cannot confirm nor deny any investigation of that company is taking place.”

But Casella’s name is mentioned often in the report that Ackerman co-authored with University of Maine economist Dr. Ralph Townsend in 2003. And Casella found itself at odds with the Maine Attorney General’s office in the weeks just before the company acquired the MERC plant.

In 1999 the Attorney General filed a lawsuit challenging Casella’s

acquisition of KTI (MERC’s former owners). According to the Ackerman-Townsend report, the filing of that lawsuit “provided some of the impetus for (the) report.”

According to the report, Casella’s acquisition of MERC allowed the company to increase its share of Maine’s disposal capacity. At the time, Casella also acquired interest in the PERC (Penobscot Energy Recovery) plant in Orrington.

Since then, Casella sold its shares of the PERC plant and the facility is now owned by a coalition of municipalities that use the trash-to-energy incinerator for the disposal of their municipal solid waste.

Casella’s acquisition of Kuhr Technologies, Inc., (MERC’s former parent company) in Dec. 1999 was eventually allowed to proceed under the conditions set forth in a consent decree.

According to the Ackerman-Townsend report, the Casella Consent Decree placed several conditions on the acquisition, including the company’s ability to use so-called “evergreen” contracts in Maine’s nine northern and easternmost counties.

This condition, the report’s authors say, was designed to address “horizontal market power concerns.” Under the consent decree, Casella’s commercial hauling contracts must permit termination on 30 days notice with restrictions upon early termination fees.

Evergreen contracts typically are automatically renewable and provide severe penalties for early withdrawal, hindering the emergence of new providers and more robust competition.

According to the report, negotiation of the Casella Consent Decree represents “the most significant instance of state antitrust enforcement in the solid waste industry in recent years.”

### Casella's presence in Maine

On the cover of their 2002 annual report, Casella uses the following motto to identify its corporate vision: "Casella Waste Systems is really cleaning up."

Although the company was obviously referring to its broad diversity of businesses in the solid waste industry, the phrase also seems to be an all too obvious statement of its expanding market share, especially in Maine where it now dominates the industry.

Beyond the MERC plant in Biddeford, Casella also owns and operates a variety of other solid waste businesses in Maine, from Houlton to Scarborough. Those companies range from rural trash collection services to recycling centers, transfer stations and landfills.

Former U.S. Senator George Mitchell, who now serves as chair of Disney and brokered the 1998 peace accord in Northern Ireland, served on Casella's board of directors from 2000 until 2003, the same period in which Casella experienced its most significant acquisitions in Maine.

Despite the Attorney General's concerns about "erosion of competition" in Maine's solid waste market, Casella makes no bones about its marketing strategies that — similar to other corporate trends, such as in the banking industry — rely heavily upon mergers and acquisitions.

"We have historically grown and intend to continue to grow through acquisitions," wrote John Casella in the opening statement's of his company's 2004 annual report.

The company divested its 64 percent interest in the PERC plant in 2001, but it still owns the Pine Tree landfill in Hampden, just south of Bangor. Last year, the company was granted a 30-year lease to operate the West Old Town Landfill, which went from a capacity of 3.3 million cubic yards to more than 10 million cubic yards.

Ironically, even in the face of the Attorney-General's report about a lack of competition, Casella was the only bidder for the 30-year operation rights to run the West Old Town landfill.

In Scarborough, South Portland, Bath and Waterville, Casella owns and operates transfer stations. The company also owns recycling centers in Houlton, Bath and Lewiston.

According to Casella's annual reports, the company's landfill capacity nearly tripled in size between 2002 and 2004. Maine, however, established a ban on the development of new commercial landfills in 1989, which the Ackerman-Townsend report said contributed to the lack of competition in the state's solid waste industry.

### Is there a problem?

While state officials, including representatives from the State Planning Office, say Maine is facing a solid waste crisis as its landfills near capacity, not everyone sees it that way.

In a report they prepared in March, Melvin Burke, a professor of economics at the University of Maine, and Pamela Bell, who holds a master's degree in community economic development, say the state still has plenty of landfill capacity — at least enough for Maine residents and businesses.

The Burke-Bell report, using statistics from the State Planning Office, details one very big concern for many of those who spend their time criticizing operations such as MERC or the expansion of the West Old Town Landfill — the amount of out-of-state waste that comes into Maine from beyond its borders.

But even trash critics conceded there is not much that can be done about limiting out-of-state waste. The U.S. Supreme Court ruled against boundary prohibitions by describing waste, such as construction and demolition debris, as a commodity.

Thus, preventing the shipment of out-of-state waste from crossing Maine's borders would be a violation of federal interstate commerce laws. Furthermore, once waste is processed in Maine — whether through incineration at MERC or by sorting at the Lewiston transfer station — it automatically becomes in-state waste.

According to the Burke-Bell report, between 1997 and 2003, Maine's population grew only 3.9 percent while its gross domestic product increased 17.3 percent during the same period.

At the same time, Maine's municipal solid waste (MSW) capacity increased by 124.5 percent and its overall landfill capacity increased by 274.1 percent.

"How single digit growth rates in population and economic activity can generate double and triple-digit in waste and landfills can only be explained by the fact that this waste is not actually generated in Maine," the report's authors conclude.

In 2003, according to the SPO, Maine disposed of 937,483 tons of

waste at its various landfills. Casella will be allowed to bring in 550,000 tons of waste each year to the West Old Town Landfill.

While landfill disposal and tipping room fees are dropping in other states, Maine's market for disposal fees is steadily trending upward.

According to the Burke-Bell report, Maine had capacity for 4,759,000 cubic yards of waste, including construction and demolition debris in 1997. By 2003, that number jumped to 17, 203,677 cubic yards.

One ton of waste equals roughly .70 cubic yards.

Critics of state waste policies say residents and businesses need to do a better job of recycling. "It's crazy," said State Rep. Joanne Twomey (D-Biddeford), a member of the Natural Resources Committee. "We don't even use recycled paper at the state house."

In Saco, Mayor Mark Johnston said his city has done well by instituting mandatory recycling policies and starting automated waste pickup at the curbside two years ago.

In 1989, Saco was taking roughly 12,000 tons of waste each year to MERC for incineration. Roughly 15 years later, the city has curbed its trash appetite and now disposes of roughly 10,000 tons per year at MERC, a 16 percent decrease.

According to the State Planning Office, 832,935 tons of waste was taken to incinerators such as MERC and PERC in 2001. Of that amount, roughly 45 percent was municipal solid waste.

### What alternatives?

Even in West Old Town, where the state purchased a private sludge mill to for increased disposal capacity, the town's former landfill is closed and capped. "Nothing seems to grow on the side of that hill these days," said Paul Schroeder, a member of We The People, a grassroots group opposed to the development of the West Old Town Landfill.

In fact, the catalyst for MERC's creation followed upon the heels of the forced closure of landfills in both Biddeford and Saco, both of which were found to be in violation of tightening state and federal environmental standards.

Thus, incineration became a key component of Maine's solid waste policies, which seem diametrically opposed to the idea of state assistance for closing MERC.

Jack Cashman, Gov. John Baldacci's commissioner of economic development, said the West Old Town deal made sense because only the state can place limits on out-of-state waste.

"That facility (WOTL) will be closely monitored and regulated," Cashman said, pointing out that the West Old Town site is a "state-of-the-art" double-lined landfill. "It's a far cry from the open-burning dumps that people like you and I can remember from the 1970s."

Cashman said it is very likely that Maine will soon need another landfill, one in the southern part of the state. But when the state tried to develop what was commonly known as Site 9 on the Biddeford-Arundel town line in the early 1990s, public opposition to the concept was overwhelming and the state quickly scrapped its plans.

"Nobody wants a landfill," Cashman said. "But let's face it, trash is not going to simply go away. We have closed dumps in Milford, Bradley and Old Town. Just what are we supposed to do with the trash?"

According to George McDonald, manager of the waste recycling division at the State Planning Office, Maine is consistently in the top-10 when it comes to national recycling rates.

Maine, McDonald says, recycles roughly 35 percent of its waste. Nationally, the Environmental Protection Agency says the target should be closer to 39 percent, but unlike Maine's numbers, the EPA does not include construction and demolition debris in their target calculations.

"Solid waste management is part of the public's essential infrastructure," McDonald said. "Everyone wants clean rivers and more jobs. Well, there's a cost for that."

"Unfortunately, most people just want their trash to go away after they leave it at the curbside," he continued. "Most people don't want to see where the trash goes from there. But the reality of our lives does not match the perfect world scenario. The trash has to go somewhere."

MERC opponents such as Twomey and Richard Rhames, a former Biddeford city councilor and environmentalist, say the cities of Biddeford and Saco could open a transfer facility to effectively deal with their own solid waste instead of hosting a regional facility.

The cost of such a project is unknown, but its location would undoubtedly be a tough sell for any location where such a facility, including a double-lined landfill, could be built.

"It's not rocket science," Rhames said during a previous interview. "It's something that could be done if there were the political will to make it happen. Is there that political will in Biddeford? I doubt it."