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Admitted in: ME

January 5, 2016

James Parker, Chair
Board of Environmental Protection
c/o Ruth Ann Burke
17 State House Station
Augusta, ME 04333-0017

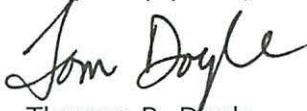
Re: Juniper Ridge Landfill Expansion #S-020700-WD-BI-N and #L-024251-TG-C-N

Dear Chairman Parker:

On behalf of the Bureau of General Services ("BGS") and NEWSME Landfill Operations, LLC, ("NEWSME"), please find enclosed the Opposition of BGS and NEWSME to Petition to Intervene of Antonio Blasi and Comment on Other Intervenor Petitions.

Thank you for your attention to this matter.

Very truly yours,



Thomas R. Doyle

TRD/dcu
Enclosure

cc: Service list
Antonio Blasi
Ed Spencer
Dana Snowman
Jesse Pekkala

**STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

STATE OF MAINE
OLD TOWN, PENOBSCOT COUNTY, MAINE
JUNIPER RIDGE LANDFILL EXPANSION
#S-020700-WD-BI-N & #L-024251-TG-C-N

SOLID WASTE AND NATURAL
RESOURCES PROTECTION ACT
PERMITS FOR LANDFILL EXPANSION

**OPPOSITION OF STATE BUREAU OF GENERAL SERVICES
AND NEWSME LANDFILL OPERATIONS, LLC
TO PETITION TO INTERVENE OF ANTONIO BLASI AND
COMMENT ON OTHER INTERVENOR PETITIONS**

The Bureau of General Services (“BGS”) and NEWSME Landfill Operations, LLC (“NEWSME”) hereby oppose the petition to intervene filed by Antonio Blasi. Mr. Blasi has not demonstrated that he will be substantially and directly affected by the proposed expansion, and, as a result, he does not meet the standard for intervention as a party. Mr. Blasi should instead participate in this proceeding as an interested person.

In addition, although BGS and NEWSME do not oppose the petitions to intervene filed by Dana Snowman and Edward Spencer, out of an abundance of caution we offer preliminary comments on their petitions to ensure that the lack of opposition is not construed in any way as acquiescence to their claims.

DISCUSSION

BGS, as the owner of the Juniper Ridge Landfill (“JRL”), and NEWSME, as its operator, have filed applications to expand JRL pursuant to the Solid Waste Management Act, 38 M.R.S. § 1301 through § 1310-AA, and the Natural Resources Protection Act, 38 M.R.S. § 480-A through 480-FF. The proposal would extend the solid waste footprint of the existing landfill by about 54 acres and add approximately 20 acres of additional infrastructure (such as roads,

sedimentation ponds, and buildings). The expansion consists of six additional landfill cells, built one-by-one, as needed, with construction anticipated to begin during the 2018 construction season. Ultimately, the expansion will provide approximately 9.35 million cubic yards of disposal capacity, as approved by the Department of Environmental Protection (the “Department”) in a Public Benefit Determination issued on January 31, 2012 (#S-020700-WS-AU-N).

At the Commissioner’s recommendation, the Board of Environmental Protection (the “Board”) voted on September 17, 2015, to assume jurisdiction over the expansion applications and to hold a public hearing. The Department then issued a notice advising the public of the requirements to intervene as a party in that public hearing. Three individuals, along with the City of Old Town, filed petitions seeking to intervene, including Mr. Blasi.

I. Mr. Blasi Does Not Meet The Standard For Intervention.

As an initial matter, Mr. Blasi does not meet the standard for intervention, and therefore his petition to intervene should be denied.

A. The Standard For Intervention Is Strict.

The standard for intervening in a public hearing is strict. This is not surprising, as parties are given the opportunity to provide direct evidence and testimony, cross-examine witnesses, and participate in pre-hearing conferences. Thus, pursuant to the Maine Administrative Procedure Act (“APA”):

On timely application made pursuant to agency rules, the agency conducting the proceedings shall allow any person showing that he is [or] may be, or is a member of a class which is or may be, *substantially and directly affected* by the proceeding, or any other agency of federal, state or local government, to intervene as a party to the proceeding.

5 M.R.S. § 9054(1) (emphasis added).¹

Thus, any individual or entity asking to be granted party status as of right has the burden under the APA to show either (1) a substantial and direct interest in the pending application or (2) that it is an agency of a federal, state, or local government. Petitioners who cannot make such a showing are not excluded from the process. Rather, they may participate as interested persons by providing written or oral comments as part of the hearing process.

To aid the Board in making this determination, the Department's rules provide that an individual seeking intervention must include in a petition, among other things, "a description of the effect of the proposed activity on the petitioner," and "specific contentions regarding the subject matter of the hearing and the relevant statutory criteria." 06-096 CMR 3 § 11(A)(1). These requirements are intended to solicit detailed information from the petitioner about how the project will impact him and what he plans to assert at the hearing so that the Board can determine if he is "substantially and directly affected" by the proposed project.

B. Mr. Blasi Has Failed to Meet The Standard To Intervene.

Because Mr. Blasi makes no claim that he represents any governmental body in this proceeding, he must demonstrate that he has a substantial and direct interest in the JRL expansion application. The entirety of his petition on this critical point, however, says only the following:

Effect of Proposed Activity: Decreased earnings potential due to environmental disruption.

Contention: I predict toxicity to the Penobscot River due to runoff and accidental dumpings. I do not believe that the State can effectively manage an expanded landfill.

Blasi Petition at 1.

¹ In addition to the general right to intervene under the APA, Maine's solid waste statutes also provide an automatic right of intervention for the host municipality and abutting property owners. 38 M.R.S. §§ 1310-S(3) & 1310-S(3-A). Based on Mr. Blasi's petition, neither provision applies here.

Mr. Blasi makes no effort whatsoever to explain any of these statements. He does not say what he does for a living or how the expansion of JRL could affect his earnings potential. He does not even say exactly how he will be impacted, such as, for example, because he can see, smell, or hear landfill operations. On the contrary, he provides no information or even allegations to support his prediction that there will be “environmental disruption,” beyond simply saying that he lacks confidence in the State’s ability to manage the expansion. In addition, despite clear direction about the Department’s rules in the Board’s public notice about the opportunity to intervene, he makes no specific contentions about the project itself or any relevant statutory criteria, instead generically claiming only there will be toxicity to the river due to runoff and accidental dumpings.

Furthermore, Mr. Blasi does not even suggest that his home or business is located anywhere near the expansion project. In fact, although he does not provide his address in his petition, the return address listed on the envelope that he used to submit the petition is from Hancock, Maine, which is at least an hour’s drive from JRL, according to Google Maps, and does not even border the Penobscot River. Thus, Mr. Blasi’s stated interest in these proceedings is no different than that of any member of the general public who is concerned about solid waste issues.

Although Maine courts have not addressed what is required to demonstrate a substantial and direct impact for purposes of intervening in agency adjudicatory public hearings, they have repeatedly addressed the related question of who is sufficiently impacted by an agency’s decision to file an appeal. The courts have even used language in standing analyses that is similar to the standard for intervention, stating that a party must show that the challenged action acts “prejudicially and directly” upon the party’s rights. *Nelson v. Bayroot, LLC*, 2008 ME 91, ¶ 9.

To meet that burden, the injury suffered must be somehow particular to the party filing the appeal, “distinct from any experienced by the public at large.” *Nergaard v. Town of Westport Island*, 2009 ME 56, ¶¶ 18. In other words, generalized policy concerns, no matter how passionately held, are insufficient to show standing to file an appeal.

This approach is instructive in an intervention analysis, too, in which a party must demonstrate that it has a substantial and direct interest to participate in the proceedings on the application in the first instance. At best, Mr. Blasi is expressing general concern about managing stormwater runoff and accidental spills from the expansion. His interest in these issues, however, is no different than that of any member of the general public, and is therefore not particular to him. As a result, Mr. Blasi does not meet the standard of 5 M.R.S. § 9054(1). If it were otherwise, practically any interested citizen could claim status as an intervenor, thus rendering the standard for intervention meaningless.

II. Comments on Additional Petitions to Intervene.

Although BGS and NEWSME do not oppose the petitions to intervene filed by Dana Snowman and Edward Spencer, that lack of opposition, at this stage of the proceedings, should not be construed as acquiescence to their assertions, or that BGS and NEWSME concede that their contentions are even relevant to this proceeding. For example, in asserting that he has standing and in his Contention #3, Mr. Spencer contends that the proposed expansion may decrease the value of his property, but that is not a relevant approval standard under any statute or Department rule.² Additionally, Mr. Spencer appears in his Contention #5 to seek to revisit the Public Benefit Determination or need for this project, but that is clearly outside the purview of this proceeding. 38 M.R.S. § 1310-N(3-A)(B) (“the commissioner’s [public benefit]

² If Mr. Spencer believes that his property value has been impacted, there is a separate process he can pursue to address his contention. *See* 38 M.R.S. § 2175-A.

determination . . . is not subject to review by the department or the board as part of the licensing process under this section.”).

CONCLUSION

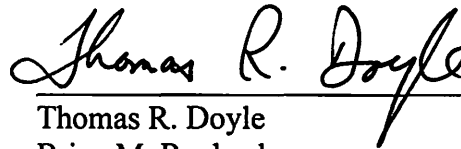
Because Mr. Blasi failed to demonstrate that he is substantially and directly affected by the proposed expansion project, as required by the APA, we respectfully request that the Board deny his petition to intervene. We also reserve the right to comment at a future date on the specific contentions raised by Mr. Snowman and Mr. Spencer.

Dated: January 4, 2016



Edward A. Dahl
Director

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