



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA MAINE 04333

DEPARTMENT ORDER

IN THE MATTER OF:

STATE OF MAINE EXECUTIVE DEPARTMENT,)	LICENSE
STATE PLANNING OFFICE'S ACQUISITION OF)	TRANSFERS
KATAHDIN PAPER COMPANY LLC'S)	(Solid Waste;
LANDFILL FACILITIES IN EAST MILLINOCKET, MAINE)	Site Location)
(#S-000796-WR-AJ-T))	

Pursuant to Maine's Environmental Laws, 38 M.R.S.A. § 481, *Site Location of Development*, and §§ 1301-1319Y, *Maine Hazardous Waste, Septage and Solid Waste Management Act*; Maine Department of Environmental Protection (Maine DEP) regulations promulgated pursuant to these laws; the *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (April 1, 2003), and the *Solid Waste Management Rules: General Provisions*, 06-096 CMR 400 (July 20, 2010) Maine DEP has considered the application of the Maine State Planning Office ("SPO") with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

A. Application. SPO submitted an application to Maine DEP for the transfer of Department licenses. The application sought to transfer to SPO all active Maine DEP licenses, as defined in 06-096 CMR 2.1(J), any modifications, condition compliance orders, all other approvals, and all applications pending in the name of Katahdin Paper Company LLC ("KPC") relating to landfill facilities (collectively, "the Dolby landfills") in East Millinocket, Maine. A schedule of licenses and applications pertaining to the transfer is set forth in Appendix A. Maine DEP accepted SPO's license transfer application as complete for processing on September 7, 2011. Under 06-096 CMR 2.21(C)(1), before Maine DEP may transfer a license a transferee is required to demonstrate to Maine DEP's satisfaction the financial and technical capacity and intent to: (a) comply with all terms and conditions of the applicable license, and (b) satisfy all applicable statutory or regulatory criteria. SPO currently proposes to use the remaining licensed capacity of Dolby III for the disposal of waste streams from the Millinocket and East Millinocket mills recently purchased by the GNP Companies. The waste streams will be similar in type and volume to the wastes delivered to the Dolby III landfill when KPC owned the same 2 mills.

B. History

(1) The Transaction. On August 30, 2011, KPC and SPO entered into an Acquisition Agreement, signed by Glen McMillan, Vice President, KPC; and Darryl N. Brown, Director, State Planning Office, under which SPO will acquire from KPC the Dolby landfills and related properties.

(2) Operations. Solid wastes generated by the integrated pulp and paper mills in

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Millinocket and East Millinocket, including sludges from paper making and wastewater treatment, wood ash, and boiler residues, are disposed of in a 70 acre landfill that consists of 17 disposal areas, or cells, known as the Dolby III Landfill. Dolby I and Dolby II landfills have been filled and are closed. The last Maine DEP inspection report for the landfills is dated September 8, 2011 and includes a listing of the required and recommended actions needed at the facility.

2. TRANSFER REQUIREMENTS

The following information regarding SPO was submitted in support of the transfer application:

A. Full Name and Address. The full name and address of the new owner is:

Maine State Planning Office
19 Union Street, 38 State House Station
Augusta, Maine 04333-0038

B. Title, Right, or Interest. Pursuant to Revolve 2011 chapter 90, the Maine legislature authorized SPO to acquire the Dolby landfills by donation. SPO submitted a copy of the Acquisition Agreement between KPC and SPO which set forth that acquisition. Upon closing, all the assets subject to that agreement, including the Dolby Landfills licensed by Maine DEP, will be transferred to SPO.

C. Financial Capacity and Intent. SPO has the authority to seek legislative appropriations, as necessary, to fund SPO's anticipated operations and maintenance of the facility. According to 06-096 CMR 400(11), the State of Maine is not required to provide financial assurance for closure and post-closure care.

D. Technical Capacity and Intent. SPO has contracted for immediate landfill management and operations with an engineering firm familiar with the site and having the technical ability to manage the operation and maintenance of the landfill. SPO intends subsequently to contract with the same, or other, qualified service provider on a long-term basis. SPO intends to invite Maine DEP to participate in the review of long-term potential service providers responsible for environmental compliance in order to satisfactorily demonstrate their technical ability to operate the facilities in accordance with applicable laws, regulations, and license and permit conditions.

F. Solid Waste Facility Disclosure. The disclosure statement provided by SPO in accordance with the *General Provisions*, 06-096 CMR 400.12, of Maine's Solid Waste Management Rules reveals that the agency has no record of any criminal, civil violations or consent decrees in the last five years. Based on the information provided, Maine DEP finds that SPO has presented clear and convincing evidence that the information supplied meets the intent of State law and regulations.

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G. Municipal Disposal Capacity Needs. The Dolby III Landfill was not sited and developed, and is not currently being operated, to meet the capacity needs of municipalities.

BASED ON THE ABOVE FINDINGS OF FACT, the Maine DEP CONCLUDES that SPO has demonstrated the technical and financial capacity and intent to comply with the conditions of all Maine DEP licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto, condition compliance orders and pending applications associated with the facilities described in this Order's findings, including specifically those licenses and applications listed in Appendix A, and to satisfy all applicable statutory and regulatory criteria. SPO's intent to maintain operations as currently licensed, or seek amendment of those licenses, and financial capacity representations, should protect waters of the State and ambient air, prevent hazards to health or welfare or nuisance creation, and not result in pollutant release increases.

THEREFORE the Maine DEP APPROVES the application of the Maine State Planning Office, subject to the following:

- 1. Standard Conditions.** The Standard Conditions associated with all approvals that are the subject of this Order apply hereto.
- 2. Point of Effective Transfer.** The transfer of Katahdin Paper LLC's permits and pending applications shall become effective when SPO and KPC jointly certify in writing to the Department that the transfer of Katahdin Paper Company LLC's licensed facilities to the Applicant has occurred.
- 3. Sale Closure.** Within thirty (30) days of the transfer of the deeds to the facilities that are the subject of this Order, SPO shall provide the Department with copies of the deeds.
- 4. Essential Facility Maintenance.** SPO shall cause all required and recommended actions specified in the "Sept 8 2011 KPC Operational Inspection Report" to be completed within thirty (30) days of the effective date of transfer of permits, and submit a Condition Compliance application to that effect to the Division of Solid Waste Management, Bureau of Remediation and Waste Management.
- 5. Review and Approval of Additional Waste Streams.** SPO shall gain the approval of the Department prior to the acceptance of any waste streams from the GNP Companies mills not currently licensed for disposal in Dolby III, and prior to the acceptance of any wastes not generated at the GNP companies mills.

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6. **Severability.** The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

DONE AND DATED AT AUGUSTA, MAINE THIS 28th DAY OF SEPTEMBER 2011.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Patricia W. Aho
Patricia W. Aho, Commissioner

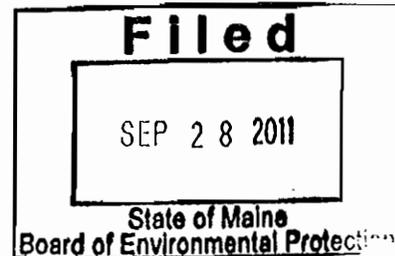
PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: September 6, 2011

Date application accepted for processing: September 7, 2011

Date filed with the Board of Environmental Protection

This Order prepared by Malcolm Burson, Office of the Commissioner.



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APPENDIX A: CURRENT LICENSES AND APPLICATIONS

SOLID WASTE ORDERS

NUMBER	DESCRIPTION	DECISION DATE
26-796-19170	<u>NEW</u> : Dolby I license	9/22/76
26-796-19170	<u>NEW</u> : Dolby II license (amended)	6/14/78
L-796-07-D-M	<u>REVISION</u> : Dolby II -- Condition #3 Compliance	5/21/86
S-796-WD-A-N	<u>NEW</u> : Dolby III Landfill	6/13/84
S-796-WD-B-M	<u>REVISION</u> : Dolby II Operating Manual Revision	6/20/84
S-796-WD-C-A	<u>AMENDMENT</u> : Dolby II	6/20/85
S-796-WD-D-M	<u>REVISION</u> : Condition #2 Compliance	1/30/86
S-796-WD-E-M	<u>REVISION</u> : Cover Variance	4/16/86
S-796-WD-G-M	<u>REVISION</u> : Minor Change Of Acceptance -- Municipal Waste	10/11/85
S-796-WD-H-M	<u>REVISION</u> : Condition Compliance Dolby III	5/21/86
S-796-WD-J-M	<u>REVISION</u> : Acceptance Of Ash From Signal	7/9/87
S-796-WD-L-M	<u>REVISION</u> : Ash Dolby III	3/27/88
S-796-WD-M-C	<u>CC</u> : #4	11/01/88
S-796-WD-O-M	<u>REVISION</u> : Landfill-Additional Waste From Baxter Park-Corrected Order	4/19/90
S-796-WT-P-N	<u>NEW</u> : S.W. Coal Ash From Mills	7/23/90
S-796-Q-M	<u>DOLBY III WOOD WASTE</u>	2/6/92
S-796-WD-R-M	<u>REVISION</u> : Landfill-Waste From Recycled Fiber Plant	12/14/90
S-796-WD-S-M	<u>REVISION</u> : Add 26 Tons/Year Household Waste & 24 C.Y. Construct Debris	2/6/92
S-796-WD-T-C	<u>CC</u> : Dolby III Sampling & Analytical Plan	5/6/94
S-796-WD-U-M	<u>REVISION</u> : Increase Solid Waste Generation Rate From 86 Tpd To 95 Tpd	1/15/92
S-796-WD-V-M	<u>REVISION</u> : To #796-WD-U-M - 10,000-12,000 C.Y. Coal Ash	5/3/94
S-796-WS-X-N	<u>NEW</u> : Special Waste -- For Disposal of Contaminated Soil at Dolby III	10/21/93
S-796-WD-Y-M	<u>REVISION</u> : Dolby III Landfill Minor Revision	4/29/94
S-796-WU Z-N	<u>NEW</u> : SW Program Approval For Dolby III Landfill	9/30/94
S-796-WD-AA-M	<u>Revision</u> : Leachate Pipeline	5/26/95
S-796-WD-AB-C	<u>CC</u> : #4 S-000796-WD-AB-C	8/15/95
S-796-WD-AC-A	<u>AMENDMENT</u> : For S-000796-WD-A-N	6/12/96
S-796-WD-AE-M	<u>REVISION</u> : Dolby Landfill	9/14/98
S-796-WD(7A)-Q-M	<u>Disposal</u> of 250 CY of wood waste from Oakfield Wood Yard	2/6/92
S-796-WU-AF-N	<u>New</u> : Special Waste On Going Disposal/Dolby Landfill/Oily Waste	8/26/99
S-796-WU-AG-N	<u>New</u> : On Going Special Waste Disposal/~17 Tons Per Day/Precipitated Calcium Carbonate/Lime Grit & Trash	6/16/00

SITE LOCATION ORDERS

L-11169-16-A-N	<u>NEW</u> : Gravel Pit For Cover Material	5/9/86
L-11169-16-B-M	<u>REVISION</u> : Condition Compliance	6/18/86
S-11169-WD-C-C	<u>CC</u> : Drainage & erosion control plan for cell 2	6/24/92



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.