



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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Susan M. Lessard, Chair

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Executive Analyst

Terry Dawson

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GOVERNOR

MEMORANDUM

To: Board of Environmental Protection

From: Cynthia Bertocci, Board Executive Analyst

Date: May 3, 2012

Re: Appeal by Charles Leithiser of the Decision by Board Chair Dismissing Mr. Leithiser's Appeal of Department Order # S-020700-W5-AU-N, Public Benefit Determination for Juniper Ridge Landfill Expansion

Statutory and regulatory references:

Title 38 § 1310-N(3-A)(B) and 38 MRSA § 1310-AA(2) specify the process for a public benefit determination and any appeals thereof. The Department's *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (last amended April 1, 2003) governs, among other things, the processing of applications and appeals of Commissioner licensing decisions.

Project location: Between Routes 16 and 46 in Old Town, Maine; the entrance road is off Route 16 in Alton, Maine

Background: The State of Maine, acting through the State Planning Office (SPO), owns the Juniper Ridge Landfill (JRL) in Old Town, Maine. SPO contracts with Casella Waste Systems, Inc. (Casella) for the operation of JRL. Under the terms of the operating contract, Casella is required to fund all costs associated with development of capacity, operations and closure activities at the landfill, including the submission of an application to expand the landfill. NEWSME Landfill Operations, LLC, a subsidiary of Casella, is the operator of JRL.

In the first regular session of the 124th Legislature, the public benefit determination (PBD) statute (38 M.R.S.A. §1310-AA) was amended to extend applicability to new state-owned facilities or expansions to existing state-owned facilities. On September 15, 2011, the applicant filed an application for a determination of public benefit. The Department held a public meeting on October 24, 2011 and also accepted written comments on the application. On January 31, 2012, the Commissioner issued partial approval of the JRL PBD application.

Procedural history: On February 28, 2012, Charles Leithiser filed an appeal of the Commissioner's Juniper Ridge Landfill PBD to the Board of Environmental Protection (Board). On March 15, 2012, Pierce Atwood, LLP, representing SPO and NEWSME Landfill Operations, LLC, filed with the Board a motion to dismiss the appeal. In part, the motion argued that Mr. Leithiser failed to establish that he would be aggrieved because he did not demonstrate that he has suffered a particularized injury from the issuance of the PBD. In a letter dated March 20, 2012, the Board Chair offered Mr. Leithiser the opportunity to respond to the applicant's motion to dismiss his appeal for lack of standing as an aggrieved person. On March 26, 2012, Mr. Leithiser filed a response to the applicant's motion to dismiss. Following review of these submissions, the Board Chair dismissed Mr. Leithiser's appeal on April 2, 2012 finding that Mr. Leithiser had not demonstrated a particularized injury. On April 8, 2012, Mr. Leithiser appealed the Chair's dismissal of his appeal to the full Board.

Discussion: Title 38 § 1310-N(3-A)(B) provides that for publicly owned solid waste disposal facilities such as Juniper Ridge, "the commissioner shall make the determination of public benefit in accordance with section 1310-AA, and the commissioner's determination under that section is not subject to review by the department or the board as part of the licensing process under this section." Title 38 § 1310-AA provides that "the commissioner's decisions under this section may be appealed to the board, but the board is not authorized to assume jurisdiction of a decision under this section." In brief, statute provides that the Commissioner's determination of public benefit may be appealed to the Board; however, following final agency action on the public benefit determination, the public benefit determination cannot be challenged during the subsequent licensing proceeding for the construction of the landfill or landfill expansion.

Section 24.B(1) of the Department's Chapter 2 rules provides that "an aggrieved person may appeal to the Board for review of the Commissioner's decision". Section 24.B(2) of the rule states that written notice of appeal must include evidence demonstrating the appellant's standing as an aggrieved person. Section 1.B defines "aggrieved person" as "any person whom the Board determines may suffer particularized injury as a result of a licensing or other decision." Section 24.B(1) provides that "if the Chair decides an appellant is not an aggrieved person, the Chair may dismiss the appeal. The Chair's ruling to dismiss an appeal for lack of standing as an aggrieved person is appealable to the full Board."

Mr. Leithiser contends that he has standing as a member of the Maine public and as a taxpayer of the State and of Old Town. Mr. Leithiser further contends that property values in Old Town may be impacted by the expansion. In addition, Mr. Leithiser contends that he is impacted by trash truck traffic, and that he has filed many odor complaints, although the odor issues have improved.

Question before the Board: The Board must determine whether Mr. Leithiser is an aggrieved person i.e., a person who may suffer a particularized injury as a result of the PBD, the issuance

of which allows the applicant to submit an application for the expansion of the Juniper Ridge Landfill. If the Board finds that Mr. Leithiser is an aggrieved person, the Board will consider his specific objections to the JRL PBD at a later date.

Presenter: Cynthia Bertocci, Board Executive Analyst

Estimated time for this agenda item: 1 hour

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