



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

BOARD ORDER

IN THE MATTER OF

TOWN OF HARTLAND	)	APPEALS OF
HARTLAND, SOMERSET COUNTY, MAINE	)	SOLID WASTE LICENSE
SECURE SLUDGE LANDFILL	)	
LICENSE RENEWAL	)	FINDINGS OF FACT
#S-003463-WD-N-R	)	AND ORDER
(DENIAL OF APPEALS)	)	ON APPEALS

Pursuant to the provisions of the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 Maine Revised Statutes (“M.R.S.”) §§ 1301 to 1319-Y; the *Rule Concerning the Processing of Applications and Other Administrative Matters*, 06-096 Code of Maine Rules (“C.M.R.”) ch. 2 (last amended June 9, 2018); the *Solid Waste Management Rules: General Provisions*, 06-096 C.M.R. ch. 400 (effective May 24, 1989 and last amended April 6, 2015), *Landfill Siting, Design and Operation*, 06-096 C.M.R. ch. 401 (last amended April 12, 2015), and *Water Quality Monitoring, Leachate Monitoring, and Waste Characterization*, 06-096 C.M.R. ch. 405 (last amended April 12, 2015) (collectively, the “Rules”), the Board of Environmental Protection (Board) has considered the appeal filed jointly by the Hartland Environmental Advisory Team (“HEAT”) and the appeals filed individually by Mr. Linwood Violette (“Mr. Violette”), Mr. Rod Pease and Mrs. Judy Pease (referred jointly as “Appellants Pease”) and Mr. Rick Sanborn (“Mr. Sanborn”) (collectively, the appellants) of Department License #S-003463-WD-N-R, issued to the Town of Hartland (“Applicant”). Based upon materials filed in support of the appeals, the responses to the appeals, comments received, and other related materials in the Department’s file, the Board FINDS THE FOLLOWING FACTS:

1. APPEAL SUMMARY

On February 18, 2020, the Board received five timely appeals of Department License #S-003463-WD-N-R (“2020 Relicense”), issued on January 24, 2020 to the Applicant, which approved the relicensing of the Hartland Secure Sludge Landfill (“SSLF”). The Appellants are requesting that the Department’s decision on the 2020 Relicense be reversed and the SSLF be closed as soon as possible.

2. TERMS AND ACRONYMS

The following terms and acronyms can be found in this Order and are listed in Table 1 for ease of reference:

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**Table 1: License Terms and Acronyms**

1977 Board Order	Board Order #00-3463-25140, issued March 25, 1977, which approved the non-secure sludge landfill
1986 Board Order	Board Order #L-003463-07-B-N, issued October 8, 1986, and now designated as #S-003463-WD-B-N, which approved the sludge landfill expansion and final closure of non-secure landfill
1992 Application	Hartland's application for the renewal of Board Order #S-003463-WD-B-N
2020 Relicense	Department License #S-003463-WD-N-R, issued January 24, 2020
Applicant	Town of Hartland
Board	Maine Board of Environmental Protection
C.M.R.	Code of Maine Rules
Department	Maine Department of Environmental Protection
FOF	Findings of Fact
Hartland	The Town of Hartland
HEAT	Hartland Environmental Advisory Team
HDPE	High-Density Polyethylene
M.R.S.	Maine Revised Statutes
Non-Secure Sludge Landfill	The deep trench sludge landfill approved by Board Order #00-3463-25140 on March 25, 1977
PFAS	Perfluoroalkyl and polyfluoroalkyl substances
Solid Waste Rules or Rules	The Department's Solid Waste Management Rules, including 06-096 C.M.R. chs. 400, 401, and 405
SSLF	Secure Sludge Landfill
WWTP	Waste Water Treatment Plant

### 3. LICENSING HISTORY

The following history is a summary of relevant licensing events and does not include all licensing actions:

- A. On March 25, 1977, the Applicant received Board Order #00-3463-25140 ("1977 Board Order") granting conditional approval to construct and operate a deep trench sludge landfill (hereafter referred to as the "non-secure sludge landfill") to dispose of tannery waste and sewage treatment plant sludge.
- B. On March 27, 1983, the Applicant received Board Order #00-3463-25410 approving the after-the-fact continued operation of the non-secure sludge landfill.
- C. On November 9, 1983, the Applicant received Board Order #00-3463-25410 granting conditional approval to construct and operate an Interim Cell to provide additional capacity at the non-secure sludge landfill.

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- D. On October 8, 1986, the Applicant received Board Order #L-003463-07-B-N, and now designated as #S-003463-WD-B-N (“1986 Board Order”), granting approval for the Secure Sludge Landfill (“SSLF”). The 1986 Board Order also required the final closure of the existing non-secure sludge landfill and the installation of a toe-drain along the south side of the non-secure sludge landfill to collect contaminated ground water. The SSLF was approved to accept waste water treatment plant (“WWTP”) sludge from the Hartland treatment plant; and pre-treatment plant waste, grease, hair, paint chips and blue hide scrap from the local tannery.
- E. On February 10, 1988, the Applicant received Department License #L-003463-07-C-M for complying with Conditions #10, #15 and #16 of Board Order #L-003463-07-B-N which required submission of the sieve analysis results for the sand filter, liner system construction quality control program, and final construction drawings and bid specifications prior to construction.
- F. On May 20, 1988, the Applicant received Department License #L-003463-7C-H-C for complying with Condition #8 of Board Order #L-003463-07-B-N, which required the submittal of a final closure plan for the non-secure sludge landfill. Final cover system construction occurred in phases with the east slope of the landfill being the last to receive final cover during 1994.
- G. On November 26, 1990, the Applicant received Department License #S-003463-7C-J-M approving a revision to the cover soil specifications for the final closure system of the non-secure sludge landfill. This License approved the reduction in hydraulic conductivity of the barrier soil.
- H. On February 6, 1992, the Applicant received Department License #S-03463-17-L-R renewing the 300-foot Disposal Law Variance originally approved in Board Order #L-003463-07-B-N.
- I. On October 2, 1992, the Applicant submitted an application for the renewal of the 1986 Board Order.
- J. On July 12, 2010, the Applicant received Department approval (#S-003463-WD-O-M) to replace the leachate pond liner system and repair the leachate breakouts on the east slope of the closed non-secure sludge landfill. In addition, the Applicant received Department approval to weld the primary and secondary high-density polyethylene (“HDPE”) geomembranes together within the western anchor trench of the SSLF in order to prevent leachate from the closed non-secure sludge landfill and/or ground water from entering the SSLF’s leak detection system.

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- K. On July 30, 2015, the Applicant received Department approval (#S-003463-WD-P-M) to construct the Phase III liner system for the SSLF and to dispose of WWTP sludges from other Maine municipalities. The Phase III liner system created a wedge connecting the Phase II liner system and extending the liner system onto the eastern slope of the adjacent non-secure sludge landfill.
- L. On September 16, 2016, the Applicant received Department approval (#S-003463-WU-Q-N) to dispose various special wastes in the SSLF as approved by the Department.
- M. On December 17, 2018, the Applicant received Department License #S-003463-WD-R-C for complying with Conditions #4, #5 and #6 of Department License #S-003463-WD-P-M. These Conditions required the submittal of a leak detection baseline monitoring program for Phase III, a revised Operations Manual and Cell Development Plan, and a Response Action Plan, respectively.
- N. On January 24, 2020, the Department issued License #S-003463-WD-N-R, approving with conditions the renewal of the 1986 Board Order and subsequent solid waste licenses associated with the operations of the SSLF.

#### 4. PROCEDURAL HISTORY

##### A. Department License #S-003463-WD-N-R

Department License #S-003463-WD-N-R, the subject of this appeal, was issued on January 24, 2020. The license renewed the 1986 Board Order, which approved the secure sludge landfill, required the final closure of the existing non-secure sludge landfill and the installation of a toe-drain along the south side of the non-secure sludge landfill to collect contaminated ground water. The license also approved the acceptance of WWTP sludge from the Town of Hartland's treatment plant; and pre-treatment plant waste, grease, hair, paint chips and blue hide scrap from the local tannery. The application for renewal of the 1986 Board Order was submitted on October 2, 1992. In accordance with *Processing of Applications*, 38 M.R.S. § 344(1-A), the 1992 Application was processed under the May 24, 1989 regulations which were in effect on the date the 1992 Application was accepted for processing, except that 06-096 C.M.R. ch. 400, § 2(A)(2) requires that all solid waste facilities must comply with the most current operating requirements of the Solid Waste Management Rules pertinent to the type of solid waste facility. For the SSLF, the applicable operating requirements are found in 06-096 C.M.R. ch. 401 and 06-096 C.M.R. ch. 405. Relevant portions of 06-096 C.M.R. ch. 400 are also applicable.

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During the processing of Hartland's Application several items required resolution including a plan to discretely monitor the secure sludge landfill, the replacement of the leachate pond liner system, and information to support Hartland's financial ability. Further, Hartland requested that the Department put a hold on its Application in a December 17, 2012 letter to the Department, pending negotiations with the local tannery. Hartland noted that the negotiations would occur in January and February of 2013 and that it was working to ensure that the local tannery would absorb some liability with capital improvements or debt. Hartland voluntarily established a reserve account in 2016 to fund closure and post-closure care of the SSLF, provided proof of liability and pollution control insurance, and notified the Department that it became a bondable municipality in a letter dated October 24, 2018; thereby showing the financial ability to operate, close, and provide post-closure care of the landfill facility. The Department provided a 30-day comment period on an October 28, 2019 Department draft decision of the 2020 Relicense that ended on November 27, 2019.

B. Appeals Received

Five timely appeals of the 2020 Relicense were filed with the Board. The HEAT and Appellants Pease filed appeals on February 18, 2020; Mr. Sanborn filed his appeal on February 19, 2020; and Mr. Violette filed his appeal on February 21, 2020.

C. Proposed Supplemental Evidence and Request for a Stay

(1) **Criteria for Supplemental Evidence.** The criteria for the Board to admit proposed supplemental evidence is found in 06-096 C.M.R. ch. 2, § 24(D)(2) of the Department's *Rule Concerning the Processing of Applications and Other Administrative Matters*. The Board may allow the record to be supplemented on appeal when it finds that the evidence offered is relevant and material and that:

- (a) The person seeking to supplement the record has shown due diligence in bringing the evidence to the attention of the Department at the earliest possible time; or
- (b) The evidence is newly discovered and could not, by the exercise of reasonable diligence, have been discovered in time to be presented earlier in the licensing process.

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- (2) Supplemental Evidence Provided by Mr. Violette. Mr. Violette’s appeal contains the following supplemental evidence: analytical results from Katahdin Analytical Services for samples SM8041-001 (water), SM8041-002 (soil), and SM8041-003 (cattails), with a report date of August 15, 2019 consisting of three pages; analytical results from ClearWater Laboratory for water samples 2017-11-046DW and 2018-08-434DW which were collected from his kitchen sink faucet, and which have report dates of November 9, 2017 and August 29, 2018 respectfully.
- (3) Supplemental Evidence Provided by Mr. Sanborn. Mr. Sanborn’s appeal contains the following supplemental evidence: analytical results from ClearWater Laboratory for sample 2018-08-293DW, with a report date of August 21, 2018, and associated documentation consisting of four pages; analytical results from Katahdin Analytical Services for samples SM9048-001 (soil) and SM9048-002 (water) with a report date of September 9, 2019, and associated documentation consisting of eight pages; and eight photographs documenting the sampling activities.
- (4) Request for a Stay. The HEAT and Appellants Pease appeals also requested a stay be put on any expansion work at the SSLF site until a decision has been made on their appeals.
- (5) The Applicant’s Response to Supplemental Evidence and Request for a Stay. In a letter prepared by Attorney Andrew Hamilton (“Mr. Hamilton”) and dated March 19, 2020 (“March 19, 2020 Hamilton letter”), the Applicant provides comments regarding the admissibility of the proposed supplemental information presented by Mr. Violette and Mr. Sanborn, as well as the HEAT and Appellant Pease’s request for a stay on any expansion work at the SSLF site. Mr. Hamilton states that “the materials submitted by Messrs. Sanborn and Violette are neither timely nor both relevant and material to the matters at hand.” (March 19, 2020 Hamilton letter, page 2). In the case of the test results submitted by Mr. Violette, Mr. Hamilton notes that Mr. Violette could have submitted the test results prior to the end of the 30-day comment period on the October 28, 2019 Department draft decision that ended on November 27, 2019. Mr. Hamilton further states that Mr. Violette’s property “is located to the southwest of the landfill” and the “direction of groundwater flow at the landfill site is from the northwest to southeast in bedrock and north to south in the overburden.” (March 19, 2020 Hamilton letter, page 4). Further, Mr. Hamilton notes that “insufficient additional detail was provided to determine the exact sample locations” for the surface water, cattails and soil samples taken from Mr. Violette’s property. (March 19, 2020 Hamilton letter, page 4). In the case

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of the test results submitted by Mr. Sanborn, Mr. Hamilton notes the analytical report dates and points out that Mr. Sanborn could have also submitted the test results prior to the end of the 30-day comment period on the October 28, 2019 Department draft decision of the 2020 Relicense that ended on November 27, 2019. Mr. Hamilton also states that “[a]lthough Mr. Sanborn’s property abuts the landfill property his [drinking] water is provided by Consumers MaineWater Company and not from a private well on his property.” (March 19, 2020 Hamilton letter, page 3). Regarding the metals testing from soil and surface water collected from Mr. Sanborn’s property, Mr. Hamilton notes that Mr. Sanborn’s property “is located to the north, and topographically higher than the landfill property” and that “[t]his change in elevation prevents the flow of surface water to his property.” (March 19, 2020 Hamilton letter, page 3).

- (6) Board Chair’s Ruling on Proposed Supplemental Evidence and Request for a Stay on any Expansion Work at the SSLF Site. In a letter dated March 23, 2020 (“March 23, 2020 Draper letter”), Board Chair Mark Draper (“Chair Draper”) provided his ruling on the proposed supplemental evidence and request for a stay as follows:
- (a) The water sample collected from Mr. Violette’s kitchen sink faucet labeled 2018-08-434DW is not in the record and will be admitted and considered by the Board in its review of the Appeals as staff was aware that Mr. Violette was periodically sampling his private water supply. The sample collected from Mr. Violette’s kitchen sink faucet labeled 2017-11-046DW is already in the licensing record and therefore is not supplemental evidence. The analytical reports for the soil, water, and cattails samples are not admitted to the record as the documents were available on Augusta 15, 2019 which is well before the November 27, 2019 deadline for comments on the draft 2020 Relicense decision and could have been brought to the attention of the Department prior to issuance of the 2020 Relicense. Chair Draper further states that the samples are not relevant to the 2020 Relicense decision.
- (b) The supplemental evidence submitted by Mr. Sanborn is not admitted to record. The soil and water analytical reports for the samples that were collected from Mr. Sanborn’s property were available on August 21, 2018 and September 9, 2019 which is well before the November 27, 2019 deadline for comments on the draft 2020 Relicense decision and could have been brought to the attention of the Department prior to issuance of the 2020 Relicense.

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Chair Draper further states that the samples are not relevant to the 2020 Relicense decision citing that it is his understanding that Mr. Sanborn is served by public water that is monitored in accordance with Department of Health and Human Services requirements, is not a private well, and that it is not clear where from where the soil and water samples labeled SM9048-001 and SM9048-002 and analyzed by Katahdin Analytical Services were collected.

- (c) Request for Stay on Expansion Work at the SSLF Site. Chair Draper denied the HEAT and Appellants Pease requests for a stay of the licensing decision citing that pursuant to the provisions of 06-096 C.M.R. ch. 2, § 24(A) “[t]he filing of an appeal does not stay a licensing decision.” Further, the *Maine Administrative Procedures Act*, 5 M.R.S. § 11004, provides a mechanism for a person to seek a stay of a license decision if certain demonstrations can be made. Specifically, Chair Draper notes that “the person seeking a stay must show irreparable injury to the petitioner, a strong likelihood of success of the merits, and no substantial harm to parties or the general public.” (March 23, 2020 Draper letter, page 3). Further, Chair Draper specifies that the HEAT and Appellants Pease “have not made such a demonstration and one is not apparent from the information provided.” (March 23, 2020 Draper letter, page 3).

## 5. BOARD MEETING

The Board heard oral arguments by the parties at its August 20, 2020 meeting. At the August 20, 2020 meeting, the Board tabled its decision on the appeals of the 2020 Relicense and directed the Department to modify the draft Order to incorporate provisions for additional odor monitoring and provisions for public notice to persons located within 1,000 feet of the landfill facility. The Board also requested that the Department clarify language regarding the hydrogen sulfide ambient air guidelines in Findings of Fact (“FOF”) #10(H).

## 6. STANDING

06-096 C.M.R. ch. 2, § 24 states that final license decisions of the Commissioner may be appealed to the Board by persons who have standing as aggrieved persons. The term aggrieved person is defined in 06-096 C.M.R. ch. 2, § 1(B) as “any person whom the Board determines may suffer particularized injury as a result of a licensing or other decision. The Board will interpret and apply the term “aggrieved person”, whenever it appears in statute or rule, consistent with Maine state court decisions that address judicial standing requirements for appeals of final agency action.”



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In the submitted appeals, the Appellants generally state that they qualify as aggrieved persons based on their location relative to the facility and their assertion that the continued operation of the SSLF could mean more nuisance odors, contamination issues, vector problems and operational conditions deleterious to their quality of life, property values, and environmental integrity. The Board states that the issuance of the 2020 Relicense and therefore the continued operation of the SSLF may impact the Appellants based on their proximity to the landfill facility.

The Board finds that the Appellants have demonstrated that they are aggrieved persons as defined in 06-096 C.M.R. ch. 2, § 1(B) and may bring the appeals before the Board.

## 7. PROJECT DESCRIPTION

In its 1992 Application associated with the 2020 Relicense, the Applicant requested approval to continue operating its SSLF located on the west side of Route 43 in Hartland, Maine. The Hartland landfill facility consists of two abutting landfill units: the closed non-secure landfill including the interim sludge disposal cell and the operating SSLF. The non-secure sludge landfill is not part of the license renewal application since it is not an operating landfill but was included in the 2020 Relicense for historical purposes only. The landfill facility is located on land previously leased from the Irving Tanning Company and now owned by the Applicant. The SSLF encompasses approximately 7 acres.

The SSLF is being operated in phases, Phase I (previously known as Cells 1 and 2), Phase II (located between Phase I and the non-secure sludge landfill), and Phase III (directly adjacent to Phase II and extending up the east slope of the non-secure sludge landfill). The remaining licensed SSLF footprint yet to be constructed is approximately 5 acres (Phase IV).

## 8. BASIS FOR APPEALS AND REMEDIES REQUESTED

### A. HEAT

- (1) Objections and Basis for Appeal. The HEAT objects to the Department's issuance of the 2020 Relicense approving the Applicant's continued operation of the SSLF. The HEAT's appeal addresses a lessened quality of life due to odors and flies, various health issues, devaluation of property, damage to property from rat infestations, and ground water and soil contamination. The HEAT's appeal also contests the following: public notice was not properly given; the applicant has not demonstrated adequate financial ability to fund landfill closure and post-closure costs; the financial assurances of Tasman for closure costs; the concern for a new geological survey to be done because of the possible change in plume; the applicant

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has not established odor control measures that meet the intent of State rules; the applicant has not submitted information necessary to address all of the requirements of the outstanding conditions of 1986 Board Order; the applicant's slow or no response to non-compliance items; landfill 1,000-foot setback requirement; classification of blue scraps and buffing dust as non-hazardous waste; Special Condition #6 of the 2020 Relicense; and, the continued operation of the SSLF will continue to pollute the waters of the State, contaminate the ambient air, constitute a hazard to health and welfare and create a nuisance to the citizens of Hartland. The HEAT's appeal further requests that a stay be put on any expansion work at the SSLF until a decision has been made on their appeal.

- (2) Remedy Requested. The HEAT requests that the Board overturn the Department's decision approving the 2020 Relicense and order the closure of the SSLF as soon as possible. The HEAT further requests that a stay be put on any expansion work at the landfill until a decision has been made on their appeal. As specified in FOF #4(C)(6)(c) of this Order, Chair Draper denied the HEAT's request for a stay.

B. Appellants Pease

- (1) Objections and Basis for Appeal. Appellants Pease object to the Department's issuance of the 2020 Relicense approving the Applicant's continued operation of the SSLF. Appellants Pease's appeal specifies the same issues raised in the HEAT appeal.
- (2) Remedy Requested. Appellants Pease request that the Board overturn the Department's decision approving the 2020 Relicense and order the closure of the SSLF as soon as possible. Appellants Pease further request that a stay be put on any expansion work at the landfill until a decision has been made on their appeal. As specified in FOF #4(C)(6)(c) of this Order, Chair Draper denied the Appellants Pease request for a stay.

C. Mr. Sanborn

- (1) Objections and Basis for Appeal. Mr. Sanborn objects to the Department's issuance of the 2020 Relicense approving the Applicant's continued operation of the SSLF. Mr. Sanborn's appeal addresses the proximity of his property to the landfill, the claim that public notice was not properly given, contamination of property, landfill odors, impact on health, and concerns with landfill operational history.

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- (2) Remedy Requested. Mr. Sanborn’s appeal requests that the Board overturn the Department’s decision approving the 2020 Relicense.

D. Mr. Violette

- (1) Objections and Basis for Appeal. Mr. Violette objects to the relicensing of the SSLF. Mr. Violette’s appeal generally discusses contamination of his soil and drinking water from the closed, non-secure sludge landfill and continued contamination of his soil, drinking water and ambient air associated with the additional waste types being accepted by the SSLF.
- (2) Remedy Requested. Mr. Violette requests that the Board grant him “protected and standing status”.

E. Applicant’s Responses to the Appeals

The Applicant submitted a response to the merits of the appeals on April 13, 2020 (“Applicant response to appeals”), as discussed in FOF #10 of this Order.

9. STATUTORY AND REGULATORY FRAMEWORK

The relevant review criteria for the subject Order include, but are not limited to, the following applicable statutes and Rules:

- A. *Department of Environmental Protection Organization and Powers*, 38 M.R.S. §§ 341-A-349-B (2017), as applicable.
- B. *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S. §§ 1301-1319-Y (2017), as applicable.
- C. *Rule Concerning the Processing of Applications and Other Administrative Matters*, 06-096 C.M.R. ch. 2 (last amended June 9, 2018), as applicable.
- D. *Solid Waste Management Rules: General Provisions*, 06-096 C.M.R. ch. 400 (effective date May 24, 1989 and last amended April 6, 2015), *Landfill Siting, Design and Operation*, 06-096 C.M.R. ch. 401 (effective date May 24, 1989 and last amended April 12, 2015), and *Water Quality Monitoring, Leachate Monitoring, and Waste Characterization*, 06-096 C.M.R. ch. 405 (last amended April 12, 2015), as applicable.

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## 10. DISCUSSIONS AND FINDINGS

### A. Control of Nuisance Odors – HEAT, Appellants Pease and Mr. Sanborn Appeals

- (1) The HEAT, Appellants Pease, and Mr. Sanborn state a general concern for nuisance odors with the continued operation of the Hartland SSLF. The HEAT and Appellants Pease reiterate that the 2020 Relicense states “[t]he Hartland landfill has had a history of odor complaints based, in part, on the type of waste disposed at the landfill and the close proximity of the residential neighborhood to the north of the landfill.” (HEAT appeal, page 4; Pease Appeal, page 4). Further, the HEAT and Appellants Pease reference a document which states “[i]t should be noted that Ransom collected a sample of the fresh sludge from the Brewer POTW during our site walk on August 23, 2017. Because of the concerns over the od[o]r of the sample, the geotechnical testing laboratory would not accept and test the sample.” (HEAT appeal, page 4; Pease Appeal, page 4). Mr. Sanborn notes that “[t]here have been odor complaints in 1998, 1999, 2017, 2018, 2019, and now 2020 and there has been no action taken.” (Sanborn appeal, page 1).
- (2) Applicant’s Response to the Appellants’ Appeals. The Applicant states that “nuisance odor is not defined in the solid waste management regulations that govern landfill operation. Odor, odor control, and nuisance odor are not included in the 1989 version of [the General Licensing Criteria of] Chapter 400, which is the applicable regulatory chapter under which this relicensing application was submitted and therefore governs this issue. Regardless of applicability, the applicant has voluntarily instituted many of the operational requirements of Chapter 410 [*Maine Solid Waste Management Rules: Composting Facilities*] relating to odor including: providing methods to control, reduce or eliminate odor; implementing provisions to monitor and document odor; implementing a procedure to record and respond to odor complaints; and implementing provisions to record odor related information including waste acceptance, weather data and waste placement practices.” (Applicant response to appeals, page 7).

The Applicant states that the “Department must make the determination that a nuisance odor exists in order for the Town to be in violation; this ‘nuisance odor’ determination has not ever been made by the Department.” (Applicant response to appeals, page 7). The Applicant states that “odors have been a historical concern at the Hartland Secure Sludge Landfill due to the type of waste that has historically been accepted. The first recorded odor complaints occurred in 1998.” (Applicant response to appeals, page

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7). From 1987 to 2015, the SSLF operated as a monofill landfill, accepting only sludge from the Town's WWTP. The Applicant notes that, during this time period, the Department determined that the disposal of sludge at the SSLF did not require the placement of daily cover and a variance to the daily cover requirement was approved through revisions to the facility's Operations Manual. In response to localized waste instability at the SSLF in 2017 and the need to relocate some wastes that created odors, the Applicant notes that they implemented numerous odor reduction measures to include the following: the placement of daily cover and long-term intermediate cover; the use of an odor neutralizing spray system; the burial of sludge within 2 hours; use of compost; and, the direct application of lime. The Applicant further notes that they initiated an odor complaint system, installed a weather station, and performs visits into the Martin Street neighborhood to determine the presence of odors offsite. The Applicant states that it "has voluntarily undertaken efforts that go beyond applicable regulatory requirements in order to address odors and, with that, to address the odor complaints", and that the 2020 Relicense "imposes a focused and strict framework to address odor concerns, consistent with the solid waste licensing rules." (Applicant response to appeals, page 8).

(3) Board Analysis and Findings – Control of Nuisance Odors

The Board finds that the analysis and findings presented by the Department in the 2020 Relicense regarding the control of nuisance odors is appropriate and that the Applicant has established several provisions for odor control at the SSLF in the Applicant's Operations Manual ("O & M Manual") that satisfy the operating requirements of 06-096 C.M.R. ch. 401, § 4(C)(8)(a). These provisions include the application of daily cover and may include the application of solid lime; utilization of a portable lime solution spraying system; utilization of an odor neutralizing spray system along the landfill's northern fence line and northern slope; and the establishment of an Odor Complaint Response System. Regarding the statement made about the geotechnical laboratory not wanting to accept and test the sludge sample, the Department stated in a February 5, 2020 e-mail to Ms. Debbie Rice-Cooper, HEAT's spokesperson, that "the laboratory was most likely not equipped to test the waste sample. For example, the laboratory might not have equipment that is properly ventilated. Not all laboratories are capable of testing all types of samples." Further, the Department stated that the September 19, 2017 document that included this information was considered draft and was never finalized. As such, the Department does not know the name of the laboratory nor their specific capabilities.

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The Board concurs with the Department that odor control methods have evolved, and will continue to evolve, over time based on waste placement activities, operator experience and an ongoing evaluation of information relating to odor inspections and complaints. Further, the Board concurs with the Department's finding that the Applicant's "odor control provisions meet the intent of 06-096 C.M.R. ch. 401, § 4(C)(8)(a); provided that odor control measures are implemented and continue to be evaluated for effectiveness on an ongoing basis and modified as necessary to control nuisance odor and the O & M Manual is updated with the facility annual report due by April 30, 2020 to include provisions for evaluating and recording meteorological conditions including wind direction and modifying waste placement practices accordingly to mitigate odors." (2020 Relicense, page 12). At the August 20, 2020 Board meeting, the Applicant agreed to establish a Department-approved quantitative odor measurement system to be used within the surrounding neighborhood. The Board finds that the Department's analysis and findings presented in the 2020 Relicense regarding odors are appropriate and that the Applicant has sufficiently demonstrated it has established odor control provisions that meet the intent of 06-096 C.M.R. ch. 401, § 4(C)(8)(a); provided that the Applicant updates its O & M Manual to include the use of a Department-approved quantitative odor measurement system to be used within the surrounding neighborhood. The proposal for a quantitative odor measurement system must be submitted to the Department for review and approval within 30 days of signature of this Order.

B. Control of Nuisance Vectors – HEAT Appeal

- (1) The HEAT states a general concern for nuisance vectors with the continued operation of the SSLF and specifically notes that some residents "have damage to their properties from rat infestations." (HEAT appeal, page 1).
- (2) Applicant's Response to Appellant's Appeal. The Applicant states that "[t]he HEAT claim as to vectors is incorrect as a matter of fact and is, in any event, addressed by the MDEP finding and condition in the [2020 Relicense]." (Applicant response to appeals, page 9). The Applicant also states that the SSLF currently accepts WWTP sludge, construction and demolition debris, auto-shredder fluff, contaminated soil, and other non-putrescible wastes, and that "[t]hese wastes, due to the lack of organic content, do not attract vectors because they do not serve as a food source." (Applicant response to appeals, page 9). The Applicant concludes that "waste placement practices require compaction and daily cover placement which makes it difficult for an animal to live within the waste", and that the

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2020 Relicense including appropriate conditions that address vectors, is amply supported by an extensive record.” (Applicant response to appeals, page 9).

(3) Board Analysis and Findings – Control of Nuisance Vectors

The Board finds that the analysis and findings presented by the Department in the 2020 Relicense regarding vector control are appropriate and that the Applicant has established vector control mechanisms that meet the intent of 06-096 C.M.R. ch. 401, § 4(C)(20). As described in the 2020 Relicense, vector control is addressed in the Applicant’s 2019 O & M Manual and “should situations warrant, a professional exterminator will be retained to eliminate any vector of concern.” (2020 Relicense, page 10). Additionally, the Department stated that it has not found any evidence of rat activity at the landfill during any facility inspections. The Board states that in accordance with the Department’s request, the Applicant has revised the landfill’s daily inspection forms to report any evidence of vectors and these inspection reports are provided to the Department. The Board affirms the Department’s finding that the Applicant has adequately addressed the control of vectors at the SSLF pursuant to 06-096 C.M.R. ch. 401, § 4(C)(20).

C. Contamination of Ground Water – Appellants’ Appeals

- (1) The Appellants make a number of general assertions related to contamination of ground water with the continued operation of the SSLF. The HEAT and Appellants Pease note that the “Hartland Secure Sludge Landfill has and will continue to pollute the waters” (HEAT appeal, page 5; Pease appeal, page 5) while Mr. Sanborn notes that he is “concerned about contamination of [his] water.” (Sanborn appeal, page 1). The HEAT specifies that “there is past and new evidence that the groundwater and soils on our properties are contaminated so that we could not grow a garden without fear of ingesting toxins; well water has been contaminated in the past and there is risk that even the town water could be contaminated either now or in the future (the town gets its drinking water from a well downgradient from the landfill).” (HEAT appeal, page 1). As detailed in FOF #4(C) above, Mr. Violette submitted supplemental evidence claiming contamination of his drinking water from his private water supply well. The water sample collected from Mr. Violette’s kitchen sink faucet labeled 2018-08-434DW was not previously in the record but was admitted to the record by Board Chair Draper and was considered by the Board in its review of the Appeals as Department staff were aware that Mr. Violette was

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periodically sampling his private drinking water supply. Specifically, Mr. Violette highlighted the chromium results and notes that it is “a known carcinogen used in the tanning process.” (Mr. Violette appeal, pages 5 and 6).

- (2) Applicant’s Response to Appellants’ Appeal. The Applicant states that “[a]n offsite drinking water sampling round conducted by the Department in 2019, confirms no offsite impacts by either the [non-secure sludge landfill] or the current [SSLF].” (Applicant response to appeals, page 9). Further, the Applicant states that “[g]roundwater monitoring on the landfill property shows that *on-site* groundwater has been affected by the historical [non-secure sludge landfill] operations” due to the fact that this landfill “is, by design, unlined and the expectation is that the landfill constituents in the groundwater are removed naturally as groundwater flows away from the [non-secure sludge landfill] footprint.” (Applicant response to appeals, page 10). The Applicant further states that the SSLF is lined with a HDPE geomembrane and has leachate collection and leak detection systems, and that leachate “flows have not exceeded the leak-detection system’s action leakage rates indicating that there has been no damage to the landfill liner systems which would lead to a release to groundwater.” (Applicant response to appeals, page 10).

- (3) Board Analysis and Findings – Contamination of Ground Water

The Board states that the Department’s 2020 Relicense decision is relevant to the continued operation of the SSLF and not the non-secure sludge landfill which received final cover in 1994. The Applicant has previously implemented several actions to mitigate impacts from the non-secure sludge landfill which served to improve ground water quality since 1986 at on-site monitoring wells MW-202AR, MW-303AR, and MW-303CR. Further, the Board states that the sample labeled 2017-11-046-DW, previously in the project record, and the sample labeled 2018-08-434DW submitted by Mr. Violette and accepted into the record by Chair Draper does not show any exceedances of current maximum contaminant levels (“MCL”) established by the Environmental Protection Agency. While Mr. Violette specifically highlighted the chromium results, the current MCL for chromium is 100 micrograms per liter while Mr. Violette’s sample result from 2017-11-046-DW was 0.0039 milligrams per liter (“mg/L”) or 3.9 micrograms per liter and the sample result from 2018-08-434DW was 0.0026 milligrams per liter or 2.6 micrograms per liter. Both sample results are below the regulatory-based MCL for chromium. The Board also states that the Department took a sample of Mr. Violette’s drinking water on October 24, 2018 and had the



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sample analyzed for metals, alkalinity, total organic carbon, total dissolved solids and chemical oxygen demand. The results did not show any exceedances of the regulatory-based MCL's. Further, the chromium concentration was non-detect at the laboratory method detection limit of 0.002 mg/L.

In a December 1992 memorandum, the Department recommended the installation of additional ground water monitoring wells to better delineate the extent of contamination from the non-secure sludge landfill and have the ability to monitor the SSLF independently of the non-secure sludge landfill. In response to staff's recommendations, the Applicant installed six additional ground water monitoring wells (MW-202A, MW-301, MW-303, MW-304, MW-305 and MW-401A) in 1995, 1996, 2002 and 2006. In addition, Hartland agreed to provide a dedicated leak detection system beneath the primary landfill liner system of Phase II and the remaining landfill phase(s) of the SSLF for discrete monitoring allowing for the direct and more immediate identification of potential leachate leakage. The environmental monitoring program now includes the monitoring of nine ground water monitoring wells and four leak detection system locations along with three surface water locations and four leachate locations. Monitoring is conducted tri-annually in accordance with 06-096 C.M.R. ch. 401, § 4(C)(18) and 06-096 C.M.R. ch. 405 and the results are submitted tri-annually to the Department along with a comprehensive evaluation of the data, which is submitted with the facility annual report. The Board affirms the Department's finding that Hartland's environmental monitoring program for ground water meets the requirements of 06-096 C.M.R. ch. 401, § 4(C)(18) and 06-096 C.M.R. ch. 405, and thus the relicensing of the SSLF will not pollute any waters of the State.

#### D. Contamination of Soil or Land – Appellants' Appeals

- (1) The Appellants make general assertions related to contamination of soil or land with the continued operation of the SSLF. The HEAT notes that "there is past and new evidence that the groundwater and soils on our properties are contaminated so that we could not grow a garden without fear of ingesting toxins" (HEAT appeal, page 1) while Mr. Sanborn notes that he is "concerned about contamination of [his] water and land." (Sanborn appeal, page 1).
- (2) Applicant's Response to Appellants' Appeal. The Applicant states that there is no credible evidence in the Department's record to support a claim that the SSLF is a source of soil contamination. Further, the Applicant notes

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that the secure landfill has a liner system that reduces the risk of a release to ground water and the subsequent migration through soil. Since construction, the liner system has operated effectively and a release to ground water is not known to have occurred. The Applicant also states that it “employs current operating practices that minimize the risk for release of leachate to soil through surface water from the operating area” and “utilizes operating practices to minimize the generation of dust during waste dumping activities.” (Applicant response to appeals, page 11). The Applicant further states that during warmer months water is used for dust suppression and that it works with contractors to minimize dust production during operations and maintenance activities; dust from the landfill has not been observed leaving the landfill property.

(3) Board Analysis and Findings – Contamination of Soil or Land

The Board notes that the SSLF has a liner system with a dedicated leak detection system to directly monitor for any potential leachate leakage. Further, the Board states that a finding relative to contamination of soil or land is not relevant to the requirements of the 2020 Relicense and that even if contamination of soil or land was a relevant consideration in the 2020 Relicense, there is no evidence in the record to support that any such contamination exists. The Board further states that the siting requirements for the SSLF have already been met with issuance of the 1986 Order approving the SSLF’s expansion footprint and design. The Board finds that a finding relative to contamination of soil or land is not relevant to the 2020 Relicense and there is no evidence in the record to support that any such contamination exists.

E. Possible Contamination of Hartland’s Public Water Supply Well – HEAT and Appellants Pease Appeals

- (1) The HEAT and Appellants Pease make the assertion that Hartland’s public water supply well is downgradient of the landfill and is at risk of contamination with the continued operation of the SSLF.
- (2) Applicant’s Response to Appellants’ Appeal. The Applicant states that there is no evidence that the SSLF has contaminated or even has the potential to contaminate the Hartland Public Water Supply Well. The Applicant states that the Hartland Public Water Supply Well that provides public water for Hartland was sited in compliance with standards established by the Maine Drinking Water Program at the Department of Health and Human Services (“DHHS”). The Applicant states that “[a]t the

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time of siting [the well], it was required that all activities be identified in the well's aquifer that could impact water quality" and that the "[SSLF] was not identified as such an activity by the [DHHS]." (Applicant response to appeals, pages 11 and 12). The Applicant further states that "studies performed on the Public Water Supply Well show the aquifer from which the public well draws is not connected to the groundwater beneath the landfill and that all required testing of the water meets all Primary Maximum Contaminant Levels." (Applicant response to appeals, page 12).

(3) Board Analysis and Findings – Possible Contamination of the Hartland's Public Water Supply Well

In February 2020, the Department evaluated whether Hartland's public water supply well was at risk of potential contamination with the continued operation of the SSLF. In a February 25, 2020 e-mail, the Department stated that the wellhead protection zone for Hartland's public water supply wells is 1,000 feet side-gradient of the landfill facility. The public water supply wells are almost 6,000 feet away and there is a wetland between the water supply wells and the SSLF. Based on this and the fact that the SSLF's design includes a liner system with a dedicated leak detection system to monitor for potential leachate leakage, the Department concluded that it appears unlikely that the landfill facility could impact the public water supply wells. Further, the public water supply wells are regulated by DHHS and monitored periodically. The Board affirms the Department's finding that the relicensing of the SSLF will not pollute any waters of the State.

F. Need for a New Geologic Survey – HEAT and Appellants Pease Appeals

- (1) The HEAT and Appellants Pease assert their concern for "a new geologic survey of the SSLF site to be done because of the possible change in the plume, again because so much time has passed since the original license." (HEAT appeal, page 2; Pease appeal, page 2).
- (2) Applicant's Response to Appellants' Appeals. The Applicant states that a geologic survey was completed at the time of preparation for siting the SSLF in the mid-1980's in order to appropriately locate ground water monitoring wells. Further, the Applicant states that "[t]ri-annual monitoring and recent additional study by its consultant, TRC (to be submitted with the 2019 Annual Report), already addresses the groundwater flow direction" and that "[i]nformation included in these reports [Annual Groundwater Monitoring Assessment Reports] [do] not support the assumption that the plume direction has changed significantly or that offsite

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properties are at risk of being downgradient of the landfill [with respect to groundwater flow].” (Applicant response to appeals, page 12). The Applicant concludes that “the [Appellant’s] assertion that there is a need for a new geologic survey is not required by the DEP licensing criteria for a previously sited Facility” and that the Department already requires a rigorous monitoring regime as part of its renewal license (and the prior license); all of which already address the issue raised by the Appellants and supports the Department’s renewal license approval.” (Applicant response to appeals, page 13).

(3) Board Analysis and Findings – Need for a New Geologic Survey

The Board states that a new geologic survey is not relevant to the SSLF as the SSLF has a liner system; is not a relicensing requirement; and does not need to be addressed as part of the 2020 Relicense. The Board further notes that the Department’s Rules at 06-096 C.M.R. ch. 405 require the development and implementation of a comprehensive environmental monitoring program and the submittal of monitoring results on a tri-annual basis. Additionally, the Board notes that Department’s Rules require that a comprehensive evaluation of the data be submitted with the facility annual report and that this evaluation would be the time to evaluate whether any additional geologic work is necessary. The Board finds that a new geologic survey does not need to be completed as part of the 2020 Relicense nor is the completion of a geologic survey relevant to the requirements of the 2020 Relicense.

G. PFAS Contamination – Mr. Sanborn Appeal

- (1) Mr. Sanborn notes a general concern that “there are contaminants in the sludge like [perfluoroalkyl and polyfluoroalkyl substances (“PFAS”)] that we do not know about.” (Sanborn appeal, page 2).
- (2) Applicant’s Response to Appellant’s Appeal. The Applicant states that “[t]here is no PFAS contamination standard under the DEP licensing criteria for landfills”, and that lined secure landfills, such as the SSLF, are “viewed by the Department as a proper disposal option for wastes that contain PFAS.” (Applicant response to appeal, page 13). The Applicant also states that sampling conducted in 2019 of one of the monitoring wells and landfill leachate for the presence of PFAS “demonstrated compliance with regulatory limits.” (Applicant response to appeal, page 14). The Applicant further states that “[t]his topic is not governed by a licensing criterion for a Secure Landfill”, and that “disposal within a *lined* secure landfill prevents

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the release of PFAS into the environment.” (Applicant response to appeal, page 13).

(3) Board Analysis and Findings – PFAS Contamination

The Board states that the Department’s Rules at 06-096 C.M.R. ch. 405 do not require PFAS testing at landfills but do require the development and implementation of a comprehensive environmental monitoring program. As stated in FOF #10(C)(3) above, the Applicant has established an environmental monitoring program that meets the requirements of 06-096 C.M.R. ch. 401, § 4(C)(18) and 06-096 C.M.R. ch. 405, and the SSLF’s design includes a liner system whereby landfill leachate does not discharge directly to the environment but is collected and conveyed to a Department-licensed waste water treatment facility. The Board affirms the Department’s finding that the Applicant has an environmental monitoring program for the landfill facility prepared in accordance with 06-096 C.M.R. ch. 401, § 4(C)(18) and 06-096 C.M.R. ch. 405.

H. Contamination of the Ambient Air – Mr. Sanborn Appeal

- (1) Mr. Sanborn makes the assertion that there was “air contamination shown by the hydrogen sulfide [“H<sub>2</sub>S”] monitor results done by the DEP” (Sanborn appeal, page 2) and that monitoring should have been continued.
- (2) Applicant’s Response to Appellant’s Appeals. The Applicant states that “hydrogen sulfide monitoring was voluntarily conducted in November 2018” in the Martin Street neighborhood and that “[s]ampling levels did not exceed the Ambient Air Guidelines for H<sub>2</sub>S.” (Applicant response to appeals, page 14). The Applicant further states that operational improvements including the use of compost as treatment at locations where gas was identified on the landfill and the use of lime to raise pH levels were made at the landfill to eliminate off-site gas odors. Once the measures were implemented in the Fall of 2018, the Applicant states that “no measurable levels of H<sub>2</sub>S were recorded and the odor complaint frequency was reduced.” (Applicant response to appeals, page 14). The Applicant concludes that the Rules require rigorous operational practices, including occasional monitoring when necessary, which assures compliance with licensing criteria.

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(3) Board Analysis and Findings – Contamination of the Ambient Air

Based on the Department’s review of H<sub>2</sub>S monitoring data from August and September of 2018, H<sub>2</sub>S above the typical odor detection threshold of 8 parts-per-billion (“ppb”) was apparent, at certain times, within the Martin Street neighborhood. The Board states that the Department’s Rules do not define contamination relative to ambient air, nor do they provide any regulatory-based standards for H<sub>2</sub>S. Instead, tThe Board notes that the Maine Center for Disease Control and Prevention established Ambient Air Guidelines for H<sub>2</sub>S in 2006 of 30 ~~parts-per-billion (“ppb”)~~ for acute (short-term, 30-minute) exposure. The Ambient Air Guidelines are intended to serve as the most recent recommendations regarding ambient concentrations of chemicals below which there is a minimal health risk over an extended period of exposure. The Ambient Air Guidelines are not regulatory standards but are intended to provide health-based benchmarks for interpreting monitoring data. Monitoring data is also used to help determine whether a landfill facility is effectively controlling hydrogen sulfide emissions. The Department found that the monitoring on Martin Street showed that while odors from H<sub>2</sub>S were apparent, at certain times in August and September of 2018, within the Martin Street neighborhood, the ambient air levels of H<sub>2</sub>S did not exceed the acute ambient air guideline for H<sub>2</sub>S and monitoring results showed that H<sub>2</sub>S levels were consistently non-detect in the Martin Street neighborhood prior to cessation of monitoring in November of 2018. Therefore, the Board affirms the Department’s finding that the relicensing of the SSLF will not contaminate the ambient air provided the Applicant continues to operate the facility as required by 06-096 C.M.R. ch. 401, § 4.

I. Health Issues – Appellants’ Appeals

- (1) The Appellants express a general concern regarding the impacts of the SSLF on health and welfare. Further, Mr. Sanborn makes the general assertion in his appeal that he has “observed health problems throughout the neighborhood ranging from hearing loss, strokes, respiratory issues, migraines, vision loss and more.” (Sanborn appeal, page 2).
- (2) Applicant’s Response to Appellant’s Appeal. The Applicant states that it “understands that Hartland residents may experience health issues”; however, it “is not aware of any evidence of a causal connection between operations at the landfill and those health concerns.” (Applicant response to appeals, page 15). The Applicant further states that “[a]s a factual and regulatory matter, the Hartland Secure Sludge Landfill is operated in

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compliance with all applicable Solid Waste Regulations that are explicitly established to be ‘protective of human health and the environment’.” (Applicant response to appeals, page 15).

(3) Board Analysis and Findings – Health Issues

The Board notes that Department inspections have found the SSLF to be operating in substantial compliance with the Rules, it’s facility licenses and O & M Manual and, as stated in the 2020 Relicense, will not constitute a hazard to health and welfare. As stated in FOF #10(C)(3) above, the Applicant has established an environmental monitoring program that meets the requirements of 06-096 C.M.R. ch. 401, § 4(C)(18) and 06-096 C.M.R. ch. 405 and the results are submitted tri-annually to the Department along with a comprehensive evaluation of the data, which is submitted with the facility annual report. Further, the SSLF’s design includes a liner system and leak detection system whereby landfill leachate does not discharge directly to the environment but is collected and conveyed to a Department-licensed waste water treatment facility. With the submission of the environmental monitoring data tri-annually, the Board states that the Department can evaluate the potential for impacts to public health and address any impacts accordingly. The Board affirms the Department’s finding that the relicensing of the SSLF will not constitute a hazard to health and welfare provided Hartland continues to operate the facility as required by 06-096 C.M.R. ch. 401, § 4.

J. Financial Assurance for Closure – HEAT and Appellants Pease Appeals

- (1) The HEAT and Appellants Pease make the assertion that the Applicant has not provided adequate proof of financial ability to fund closure and post-closure care of the SSLF. The HEAT and Appellants Pease also assert that Tasman, a significant contributor of waste water to Hartland’s waste water treatment plant, should share in those costs and/or financial assurance.
- (2) Applicant’s Response to Appellants’ Appeal. The Applicant states that according to the 1989 version of 06-096 C.M.R. ch. 400, “[a]ny solid waste disposal facility owned by a municipality is exempt from the requirement for an escrow account for closure,” (Applicant response to appeals, page 15) and that this municipal exemption exists in the current version of 06-096 C.M.R. ch. 400. The Applicant also states that this exemption from the escrow account exists because municipalities have the ability to finance landfill projects, including closure, through bonding. The Applicant also states that it has, as noted in the 2020 Relicense, voluntarily established a

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reserve account in 2016, to assist with closure and post-closure care costs associated with the SSLF. The Applicant further states that Tasman is not a licensee subject to Department requirements; therefore, cannot be required to provide financial assurance for the landfill.

(3) Board Analysis and Findings – Financial Assurance for Closure

The Board finds that the Applicant, as a municipality, is not required to provide for financial assurance for the closure and post-closure care of the SSLF per 06-096 C.M.R. ch. 400, § 10(A) (effective date May 24, 1989) which were the rules in effect at the time the Application was filed with the Department. However, in the 2020 Relicense, the Department stated that the Applicant had voluntarily provided for financial assurance which includes a reserve account for landfill closure and post-closure care for the landfill facility through the use of a mechanism that meets the applicable requirements of 06-096 C.M.R. ch. 400, § 11. The Board concurs with the Department’s finding and affirms that the Applicant has demonstrated adequate financial ability to fund landfill closure and post-closure care for the landfill facility in accordance with State law and the Rules and has voluntarily provided for financial assurance for landfill closure and post-closure care for the landfill facility through the use of a mechanism that meets the applicable requirements of 06-096 C.M.R. ch. 400, § 11. Further, the Board finds that Tasman is not a party to this appeal or the Department’s licensing proceeding and is not required by the Rules to provide for financial assurance for the SSLF.

K. Characterization of Blue Scraps (Leather Waste) – HEAT and Appellants Pease Appeals

- (1) The HEAT and Appellants Pease make the assertion that Condition #4 of the 1986 Board Order, requiring characterization of blue scraps from the tannery prior to disposal in the Hartland SSLF, was not met. The Appellants also assert that due to the length of time between the issuance of the 1986 Board Order and the completion of blue scrap characterization testing in 2019, Hartland knowingly disposed of uncharacterized blue scraps within the Hartland SSLF for 27 years.
- (2) Applicant’s Response to Appellants’ Appeal. The Applicant states that in 2015, as requested by the Department, it revised the facility Operations Manual to include disposal practices and testing requirements for all new waste streams approved for acceptance within the landfill, including those related to blue scraps. The Applicant also states that “[w]hen the



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Department required testing in 2019 to meet the requirements of the condition, the Town worked with the Tannery to identify the appropriate test method and initiated testing to ensure the requirement was met.” (Applicant response to appeals, page 17). The Applicant concludes that it “operated the landfill as a monofill until 2015, accepting only Hartland’s treatment plant sludge” (Applicant response to appeals, page 16), and referenced a July 8, 2019 letter from the Department determining that it is appropriate to manage this leather waste in the SSLF.

(3) Board Analysis and Findings – Characterization of Blue Scraps (Leather Waste)

The Board notes that the Department did state in the 2020 Relicense that historical data relating to blue hide scrap and buffing dust (collectively with paint booth scrapings, now termed “leather waste”) was not located in the project record; however, the Applicant submitted test data and supplemental information in 2019 demonstrating that the leather waste from the tannery is non-hazardous and can be accepted at the SSLF. Further, the Department states in the 2020 Relicense that “[p]ursuant to *Identification of Hazardous Wastes*, 06-096 C.M.R. ch. 850 (amended June 11, 2018), waste generated by the leather tanning and finishing industry including trimmings, shavings and buffing dust are not considered hazardous waste as long as the generator can demonstrate that the waste meets the exemption criteria of 40 C.F.R. 261 § 4(b)(6)(i), the waste is managed in a non-oxidizing environment, and if disposed in Maine, is managed in a secure landfill. In a July 8, 2019 letter, the Department determined “that it is appropriate to manage this leather waste in the SSLF.” (2020 Relicense, page 13). In the 2020 Relicense, the Department concludes that the Applicant submitted the information necessary to address the requirements of the outstanding conditions from the 1986 Board Order; therefore, the Department found the Applicant was in substantial compliance with all the conditions listed in 1986 Board Order. The Board concurs with the Department’s findings and affirms that the Applicant is in substantial compliance with Condition #4 from the 1986 Board Order.

L. Chromium Conversion in the Landfill – HEAT and Appellants Pease Appeals

- (1) The HEAT and Appellants Pease make the assertion that there is the potential for the trivalent chromium found in Hartland’s WWTP sludge and the leather waste from the tannery to convert to hexavalent chromium during operations at the SSLF and that the wastes are “exposed to oxygen not only before they are mixed into the waste stream but also whenever a

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slide occurs, exposing the blue hides.” (HEAT appeal, page 2; Pease appeal, page 2).

- (2) Applicant’s Response to Appellants’ Appeals. The Applicant states that “[i]n order for trivalent chromium to undergo chemical conversion into hexavalent chromium, the waste must be in an oxidizing (aerobic) environment with sufficient heat (392 to 572 degrees Fahrenheit) to initiate conversion; temperatures from the sun alone are insufficient to initiate conversion.” (Applicant response to appeals, page 18). Further, the Applicant states that it “employs proper landfill operational procedures including compaction and daily cover placement which lead to anaerobic [without oxygen] conditions within the waste mass” and that because the “Town operates its landfill in this anaerobic manner, chromium conversion is not a concern at the Hartland Secure Sludge Landfill.” (Applicant response to appeals, page 18). The Applicant further states that Appellant’s assertion is not supported by a regulatory requirement or evidence in the record and is simply not relevant to the SSLF given the anaerobic and low temperature conditions of the landfill’s operation.
- (3) Board Analysis and Findings – Chromium Conversion in the Landfill

The Board states that the Department addressed the issue of chromium conversion in the landfill in a July 8, 2019 letter to the Applicant. In that letter, the Department noted that Tasman certified that they use only the trivalent form of chromium in their process. Further, the Department noted in the July 8, 2019 letter that the leather waste disposed in the SSLF will be managed in a non-oxidizing environment. The Board also states that as described in FOF #10(K)(3) above, the Department determined that it is appropriate to manage these wastes in the SSLF and that the Department’s Rules at 06-096 C.M.R. ch. 850 4(a)(xiv) require these wastes to be managed in secure landfills as special wastes under the *Solid Waste Management Regulations*. Further, the Board finds that pursuant to 06-096 C.M.R. ch. 850, waste generated by the leather tanning and finishing industry including trimmings, shavings and buffing dust are not considered hazardous waste as long as the generator can demonstrate that the waste meets the exemption criteria of 40 C.F.R. 261 § 4(b)(6)(i), the waste is managed in a non-oxidizing environment, and if disposed in Maine, is managed in a secure landfill. The Board affirms the Department’s finding that it is appropriate to manage these wastes in the SSLF and that the 2020 Relicense concluded that the SSLF is operating in conformance with the provisions of 06-096 C.M.R. ch. 401, § 4.

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M. Landfill Stability Concern – HEAT, Appellants Pease and Mr. Sanborn Appeals

- (1) The HEAT and Appellants Pease make the assertion that “[t]here is a history of landfill collapses/slides at Maine landfills” (HEAT appeal, page 5; Pease appeal, page 5) including at the Juniper Ridge Landfill in Old Town and the Crossroads Landfill in Norridgewock. Further, the HEAT and Appellants Pease state that “in July of 2017 there was an avalanche of toxic materials at the Hartland Landfill.” (HEAT appeal, page 5; Sanborn appeal, page 5). Mr. Sanborn states that “there [are] rumors around town that the landfill is having another slide. If this is true, this is enough to show the town of Hartland cannot maintain this landfill.” (Sanborn appeal, page 2).
- (2) Applicant’s Response to Appellants’ Appeals. The Applicant states that “[t]he stability issue asserted by the Appellants was reported promptly to the Department and addressed by the Town in 2018, prior to the issuance of the January 2020 renewal order.” (Applicant response to appeals, page 19). The Applicant further states that in 2017, waste movement within the southern end of the landfill was experienced at the SSLF due to the buildup of water pressure within the waste mass and the possible creation of more impermeable layers of waste below. The Applicant states that “[a]lthough the toe of the waste moved within the landfill, no waste left the lined landfill footprint or was released to the environment.” (Applicant response to appeals, page 19). The Applicant also states that in April and May of 2018, a waste relocation program was implemented to stabilize the waste. The landfill’s leachate collection system was also inspected to ensure no damage occurred due to waste movement and additional internal drainage was added to prevent water pressure build-up in the future. Upon completion of the project, a Waste Placement Plan (“Plan”) was developed for ongoing waste disposal. The Plan presents appropriate mixing ratios to maintain a stable waste mass and the Applicant notes that “[n]o additional waste instability has been observed at the site since that observed in 2017.” (Applicant response to appeals, page 19). The Applicant concludes that “[a]lthough Hartland experienced a waste movement event, it was addressed in a manner that demonstrates compliance with solid waste standards – this shows the design and operations of the landfill are sufficient to handle such events, should they occur”, and the “concern in this claim was addressed as to the Hartland facility by the Town in 2018.” (Applicant response to appeals, page 19).

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(3) Board Analysis and Findings – Landfill Stability Concern

The Board states that the Appellants’ concerns regarding historical waste movement at multiple landfills in Maine is not relevant to the 2020 Relicense. While landfill stability was not a specific topic in the 2020 Relicense, the Applicant did evaluate the potential for waste movement to occur at the SSLF as part of the O & M Manual including with the establishment of a facility-specific waste placement plan. Further, the Applicant did conduct a geotechnical assessment including sludge sampling and testing in 2017 to characterize the sludge in the area of waste instability. The Board is aware that the Department was on-site after the waste movement occurred in 2017 and verified that no waste left the solid waste boundary of the lined SSLF. The Department also reviewed and approved the Applicant’s waste relocation and placement plan and agreed that the proposed mixing ratios should help to maintain a stable waste mass. The Department further comments that an approved waste placement plan including mixing ratios has been added to the revised O & M Manual submitted for the 2020 Relicense. The Board affirms the Department’s finding that the Applicant has submitted an O & M Manual that meets the provisions set forth in 06-096 C.M.R. ch. 401, § 6 (effective date May 24, 1989) and is operating in conformance with the provisions of 06-096 C.M.R. ch. 401, § 4 (amended April 12, 2015).

N. Daily Cover Requirements – Mr. Sanborn Appeal

- (1) Mr. Sanborn makes the assertion that daily cover is only required when the landfill is experiencing odor complaints.
- (2) Applicant’s Response to Appellant’s Appeal. The Applicant states that the “[p]lacement of daily cover is required and performed at the end of every operating day as required by the Solid Waste Management Rules.” (Applicant response to appeals, page 20).
- (3) Board Analysis and Findings – Daily Cover Requirements

The Board states that FOF #8 of the 2020 Relicense specifies that the application of daily cover is one of the odor management tools utilized by the Applicant to control the potential for off-site odor. Additionally, the Department found that Applicant’s request for a variance to the daily cover requirement of 06-096 C.M.R. ch. 401, § 4(C)(8)(a) did not meet the intent of the Rules and, therefore, the requested variance was not approved. The Board affirms that the Applicant did not provide clear and convincing

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evidence that the intent of the Rules will be met without the application of daily cover and that daily cover must be placed at the SSLF.

O. Applicant's Slow Response to Issues – HEAT and Appellants Pease Appeals

- (1) The HEAT and Appellants Pease make the assertion that they have “major concerns over slow and sometimes no response by Hartland to non-compliance items.” (HEAT appeal, page 4; Pease appeal, page 4). Specifically, the HEAT and Appellants Pease cite evidence that “[t]here was an obstruction in well MW-301A and samples could not be taken and even though the obstruction was noted in the summer of 2017, the obstruction was not removed until October 18, 2018.” (HEAT appeal, page 4; Pease appeal, page 4).
- (2) Applicant's Response to Appellants' Appeals. The Applicant states that since 2010, the Applicant has “quickly addressed numerous outstanding issues and maintained compliance with Solid Waste Regulations and Department requests.” (Applicant response to appeals, page 20). The Applicant states that the Appellant's claim is also asserted without any context. The Applicant further notes that the Appellants incorrectly state an obstruction was identified within an upgradient monitoring well in the summer of 2017 when it was actually discovered during the summer 2018 monitoring round. Once a plan for investigation and removal was established, the Applicant states that they “returned promptly to the site to clear the obstruction prior to the fall [2018] monitoring round.” (Applicant response to appeals, page 21). The Applicant further states that “landfill operations became a priority for the Town's management in 2010 and numerous changes were put into effect to ensure ongoing improvement and compliant operation.” (Applicant response to appeals, page 21). The Applicant concludes that “[w]hile not a licensing standard in the Department's Solid Waste Management [Rules], compliance and improvement are part of the Town's landfill's operations.” (Applicant response to appeals, page 21).
- (3) Board Analysis and Findings – Applicant's Slow Response to Issues

The Board states that the Appellant's concern relating to the timeliness of the Applicant's response to historical issues at the SSLF and that response time is not relevant to the 2020 Relicense as the Department determined that the Applicant is operating in conformance with the provisions of 06-096 C.M.R. ch. 401, § 4 (amended April 12, 2015). (2020 Relicense, page 10). The Board affirms the Department's finding that the Applicant is operating

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in conformance with the provisions of 06-096 C.M.R. ch. 401, § 4 (amended April 12, 2015).

P. Landfill Setback Variance Approval – HEAT, Appellants Pease, and Appellant Sanborn Appeals

- (1) The HEAT, Appellants Pease, and Mr. Sanborn make the assertion that the setback variance for the SSLF may not have been properly approved as the 1986 Board Order does not actually state that the variance is granted. Additionally, Mr. Sanborn states concern with the setback variance allowing the landfill to be within 1,000 feet of people’s homes and believes the setback variance should be reevaluated.
- (2) Applicant’s Response to Appellants’ Appeals. The Applicant states that “the Appellant’s understanding as to the variance is not correct and that the Department approved the setback variance in the 1986 Board Order.” (Applicant response to appeals, page 21). The Applicant states that the 1986 Board Order describes the landfill’s setting and provides for approval. The Applicant also states there is no need to include a further reference to the variance, since by approving the landfill location in the 1986 Board Order, the Department approved the variance, and there is no error in the 2020 Relicense. The Applicant concludes that these claims in the appeals “do not timely or properly raise any error in the 1986 permit nor is there any proper claim in this regard as to the Renewal Order issued in January 2020.” (Applicant response to appeals, page 21).
- (3) Board Analysis and Findings – Landfill Setback Variance Approval  
The Board states that the landfill setback variance that allowed the landfill facility to be closer than 1,000 feet to the nearest residence was properly approved in the 1986 Board Order and that this was not a licensing criterion for the 2020 Relicense. The 1986 Board Order specifies that “the residential subdivision is located up gradient relative to ground water flow and the proposed expansion cannot be viewed by any of the residences because a wooded buffer separates them from the site.” (1986 Board Order, page 3). The Board states that that the entire solid waste footprint for the SSLF was previously approved in the 1986 Board Order. The Board affirms that the landfill setback requirements of the Rules was not a licensing criterion for the 2020 Relicense.

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Q. Lack of Public Notice – HEAT, Appellants Pease, and Mr. Sanborn Appeals

- (1) The HEAT, Appellants Pease, and Mr. Sanborn make the assertion that sufficient public notice was not provided to them due to the length of time between the filing of the application and the Department’s issuance of the 2020 Relicense.
- (2) Applicant’s Response to Appellants’ Appeal. The Applicant states that it provided evidence of the required public notice of the submission of the SSLF license renewal application to the Department when it was submitted in 1992. This included notice in the local paper and direct notice to the abutters as required. The Applicant also states that in “support of the 2015 Minor Revision for Phase III [of the SSLF], the Town also voluntarily provided public notice to the residents of the Town.” (Applicant response to appeals, page 22). The 2015 Minor Revision was the permit where the Department approved the acceptance of Publicly-Owned Treatment Works sludge from other municipalities. The Applicant also states that in “addition to the 1992 and 2015 public notices by the Town (which were not required by Chapter 400), the Town held a public meeting on September 19, 2018, for which public notice was also given to Town residents.” (Applicant response to appeals, page 22). This meeting was attended by more than 120 residents and provided an opportunity to hear comments and concerns from area residents regarding the SSLF. Department staff also attended this public meeting.

The Applicant also states that “[i]n response to a Citizen Petition to cease waste acceptance at the landfill and begin closure activities, the Town of Hartland held a Special Town Meeting [on June 3, 2019] to allow more than 150 residents to vote on the future plans for the landfill.” (Applicant response to appeals, page 22). Further the Application states that “[b]y a strong majority (128-25), the residents voted to approve the [Hartland] Board’s Resolution to Optimize the Solid Waste Management Plan to fund Landfill Closure and move forward with further development of the landfill (including the Town’s renewed request by the Town for action by the Department on the pending Renewal Application). Residents at the Special Town Meeting also rejected by strong majority the Petitioner’s warrant article to cease waste acceptance at the landfill and begin closure activities.” (Applicant response to appeals, page 22). The Applicant concludes that contrary to the assertions in this regard, this “renewal application had both one of the longest notice periods in a Department licensing action and multiple public notices, with a recent extended comment period of 30 days”; therefore, the “Appellant’s assertion is not supported by the record, and

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there is certainly not a lack of public notice.” (Applicant response to appeals, page 22).

(3) Board Analysis and Findings – Lack of Public Notice

In FOF #1(D) of the 2020 Relicense, the Department addressed public participation in the 1992 Application licensing process and made the conclusion that the Applicant has complied with the public notice requirements of 06-096 C.M.R. ch. 400, § 4(D) (effective date May 24, 1989). Further, on October 28, 2019, the Applicant provided additional public notice of the availability of a Department draft license decision to interested persons for an extended time period of 30 days. The Board affirms the Department finding that the Applicant complied with the public notice requirements of 06-096 C.M.R. ch. 400, § 4(D) (effective date May 24, 1989) for the 1992 Application and provided additional public notice of the availability of a draft license decision for the 2020 Relicense to interested persons for an extended time period of 30 days. Additionally, during the August 20, 2020 Board meeting, the Applicant agreed for any future application<sup>1</sup> submitted to the Department, it will provide notice to persons located within 1,000 feet of the landfill facility. The Board finds that, in addition to all applicable public notice requirements in statute or rule, the Applicant shall give public notice of intent to file any application associated with Department License #S-003463-WD-N-R, within 30 days prior to filing the application, to persons located with 1,000 feet of the landfill facility. This additional public notice to persons within 1,000 feet of the landfill facility must be mailed by certified mail or Certificate of Mailing and shall include all information required by 06-096 C.M.R. ch. 2, § 14 for any application associated with Department License #S-003463-WD-N-R.

R. Historical Seep and Pond Issues – Mr. Sanborn Appeal

- (1) Mr. Sanborn makes general references to historical issues related to leachate seeps and the leachate pond.

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<sup>1</sup> For the purposes of this Order, “any future application” is defined as an application formally submitted to the Department which requires the issuance of a license by the Department. Any future application includes but is not limited to an application for an amendment, a minor revision, a license transfer, a special waste disposal, or a condition compliance.



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(2) Applicant’s Response to Appellant’s Appeal. The Applicant states that the 2020 Relicense pertains to the SSLF only, not the non-secure sludge landfill. Historical seep issues were only associated with the non-secure sludge landfill and while they have no bearing on the 2020 Relicense, they have been remediated to the satisfaction of the Department. The Applicant also states that the historical issues with the leachate pond were also addressed with the pond replacement that occurred in 2010 and was approved by the Department. The Applicant further states that “[t]his assertion is not supported by the record, and there is no error in the Renewal Order for the Secure Landfill since these issues related largely to the [non-secure sludge landfill] or were addressed in 2010 with a prior Department approval.” (Applicant response to appeals, page 23). The Applicant concludes that the assertion “is neither timely nor a proper claim as to the 2020 Renewal Order for the Secure Landfill.” (Applicant response to appeals, page 23).

(3) Board Analysis and Findings – Historical Seep and Pond Issues

FOF #2A of the 2020 Relicense states that the Applicant has previously implemented actions to mitigate impacts caused by the non-secure sludge landfill including efforts to mitigate the leachate outbreaks and seeps along the east slope of the non-secure sludge landfill. Additionally, FOF #4 of the 2020 Relicense states that the leachate pond liner system was successfully replaced during the 2011 construction season with an 80-mil HDPE geomembrane, a leak detection layer, and an underdrain system. The Board affirms the Department’s statement that the issues relating to leachate seeps from the non-secure sludge landfill and the replacement of the leachate pond liner system were previously resolved with prior Department approval and that these items were not licensing criteria in the 2020 Relicense.

S. Devaluation of Property – HEAT and Mr. Sanborn Appeals

- (1) The HEAT and Mr. Sanborn make the assertion that they suffer devaluation of their properties due to their close proximity to the SSLF.
- (2) Applicant’s Response to Appellants’ Appeal. The Applicant states that the devaluation of real estate value is not part of the landfill licensing criteria of 06-096 C.M.R. ch. 400.
- (3) Board Analysis and Findings – Devaluation of Property

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The Board states that the Appellant's concern of devaluation of property by the issuance of the 2020 Relicense is not relevant to the 2020 Relicense. The Board finds that the SSLF's effect on property values is not a licensing criterion of 06-096 C.M.R. ch. 400 and does not relate to the 2020 Relicense.

BASED on the above Findings of Fact, the BOARD makes the following CONCLUSIONS:

1. The Appellants have standing as aggrieved persons and have made timely appeals of Department License #S-003463-WD-N-R, issued on January 24, 2020.
2. The Applicant has established odor control provisions that meet the intent of 06-096 C.M.R. ch. 401, § 4(C)(8)(a); provided that the Applicant updates its O & M Manual to include the use of a Department-approved quantitative odor measurement system to be used within the surrounding neighborhood. The proposal for a quantitative odor measurement system must be submitted to the Department for review and approval within 30 days of signature of this Order.
3. The Applicant has established vector control mechanisms that meet the intent of 06-096 C.M.R. ch. 401, § 4(C)(20).
4. A finding relative to contamination of soil or land is not relevant to the 2020 Relicense and there is no evidence in the record to support that any such contamination exists.
5. A geologic survey does not need to be completed as part of the 2020 Relicense nor is the completion of a geologic survey relevant to the requirements of the 2020 Relicense.
6. The Applicant has established an environmental monitoring program for the landfill facility prepared in accordance with 06-096 C.M.R. ch. 401, § 4(C)(18) and 06-096 C.M.R. ch. 405.
7. The issuance of the 2020 Relicense will not pollute any waters of the State, contaminate the ambient air, constitute a hazard to health and welfare, or create a nuisance; provided the Applicant continues to operate the facility as required by 06-096 C.M.R. ch. 401, § 4.
8. The Applicant has adequate financial ability to fund landfill closure and post-closure care for the landfill facility and has voluntarily provided for financial assurance for landfill closure and post-closure care for the landfill facility through the use of a mechanism that meets the applicable requirements of 06-096 C.M.R. ch. 400, § 11.

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9. The Applicant has submitted an O & M Manual that meets the provisions set forth in 06-096 C.M.R. ch. 401, § 6 (effective date May 24, 1989) and is operating in conformance with the provisions of 06-096 C.M.R. ch. 401, § 4 (amended April 12, 2015) as set forth in the 2020 Relicense.
10. The Applicant is in substantial compliance with Condition #4 from the 1986 Board Order.
11. The Applicant is appropriately managing leather waste in the SSLF.
12. Hartland must place daily cover in accordance with the provisions of 06-096 C.M.R. ch. 401, § 4(C)(8)(a).
13. The landfill setback variance was not a licensing criterion for the 2020 Relicense.
14. The Applicant complied with the public notice requirements of 06-096 C.M.R. ch. 400, § 4(D) (effective date May 24, 1989) for the 1992 Application and provided additional public notice of the availability of a draft license decision for the 2020 Relicense to interested persons for an extended time period of 30 days. The Applicant agreed, during the August 20, 2020 Board meeting, to provide notice to persons located within 1,000 feet of the landfill facility within 30 days prior to filing any future application associated with Department License #S-003463-WD-N-R.
15. The historical issues related to leachate seeps and the leachate pond, and the SSLF's effect on property values are not licensing criteria of 06-096 C.M.R. ch. 400 and do not relate to the 2020 Relicense.
16. All other findings, conclusions and conditions remain as set forth in Department License #S-003463-WD-N-R.

THEREFORE, the Board DENIES the appeals of the Hartland Environmental Advisory Team, Mr. Rod Pease, Mrs. Judy Pease, Mr. Rick Sanborn, and Mr. Linwood Violette and AFFIRMS the Department's approval with conditions of the relicense of the Hartland Secure Sludge Landfill as described in Department License #S-003463-WD-N-R, with the following modifications:

1. Condition 9 is added to read: In addition to all applicable public notice requirements in statute or rule, Hartland shall provide notice to persons located within 1,000 feet of the landfill facility within 30 days prior to filing any application associated with Department License #S-003463-WD-N-R. This additional notice to persons located within 1,000 feet of the landfill facility shall be mailed by certified mail or Certificate of Mailing and shall include all information required by 06-096 C.M.R. ch. 2, § 14 for any application associated with Department License #S-003463-WD-N-R.

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2. Condition 10 is added to read: Within 30 days of the signature of this Order, Hartland shall submit a proposal to the Department for review and approval for a quantitative odor measurement system to be used within the surrounding neighborhood.

DONE AND DATED AT AUGUSTA, MAINE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_

Mark C. Draper, Board Chair

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

Date of initial receipt of application: October 2, 1992

Date of application acceptance: October 9, 1992

Date issued and filed with the Board of Environmental Protection: January 27, 2020

Date of initial receipt of appeal: February 18, 2020

