

7-25-79

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AUGUSTA, MAINE 04330

BOARD ORDER

IN THE MATTER OF



STATLER INDUSTRIES, INC.	)	Site Location and Solid Waste Management
Augusta, Maine, Kennebec County	)	
SLUDGE DISPOSAL SITE	)	Petition for Reconsideration and Request
#00-4892-11020	)	for Stay

After review of a Petition for Reconsideration and request for Stay of Order submitted on behalf of abutting landowners to a solid waste disposal facility approved with conditions by the Board in its Order of June 27, 1979, and review of the record upon which that Order was based, acting pursuant to Department of Environmental Protection's Regulations for Processing of Applications, C.1, Sec. 15(a), the Board finds the following facts:

1. The Board approved the application of Statler Industries, Inc. on June 27, 1979 to establish a papermill wastewater sludge landfill in Augusta.
2. Abutting landowners submitted a Petition for Reconsideration of the Board's approval and a Petition for a Stay of the Order on July 9, 1979.
3. Paragraph 1 of the Reconsideration Petition questions whether all Board members had adequate opportunity to analyze the evidence in the project.
4. A transcript of the public hearing was mailed directly to each Board member well in advance of the Board's June 27, 1979 meeting. All exhibits submitted at the public hearing have been maintained at the Department's office in Augusta since their receipt and were available to any Board member for examination.
5. The schedule of the Public Hearing was made available to each Board member well in advance of the hearing. All but one member attended the first day of the Public Hearing. Three members attended the second day of the hearing.
6. Paragraph 1 of that petition also contends that the Board's Order reflects no consideration of the abutter's proposed findings dated June 1 and June 5, 1979.
7. Copies of the abutter's proposed findings dated June 1 and June 5, 1979 were mailed to each Board member in advance of the Board's June 27 meeting. The minutes of the June 27 meeting indicate that the Board heard that the abutters' attorney, Mr. Peter Dawson, had examined the staff's recommended Order to the Board, and had objected that the abutter's proposed findings were not considered. No modification of the Order or other Board action was deemed necessary.
8. Paragraph 2 of the Petition contends that Finding #5 of the Board's Order, which states that the operation of the facility generates no solid waste, compels the conclusion that the application should be reviewed pursuant to 38 M.R.S.A. §1320.
9. The operation of the sludge landfill will not generate solid waste. The facility is a disposal site for a specific type of solid waste. The process of disposing of solid waste at this site does not in itself, generate solid waste. This is the meaning of Board's Finding #5 in its June 27 Order, and does not affect its jurisdiction over the project under the Solid Waste and Site Location Laws.

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10. The waste to be disposed at this facility is solid waste. It will be consolidated. A fluid can not be consolidated.
11. Title 38 M.R.S.A. §1320 regulates the disposal of septic tank and cesspool sludge and fluid hazardous wastes. To be a "fluid hazardous waste", the Board must have defined a component of the fluid as hazardous. The Board has not established any material as hazardous waste. The abutters raised the issue of the appropriateness of review pursuant to 38 M.R.S.A. § 1320 at the public hearing and in their proposed findings.
12. In paragraph 3, the Petition contends that Findings #6 and 7 of the Board's Order are inconsistent with respect to possible odor generation at the facility.
13. Findings #6 and 7 are not inconsistent. Both acknowledge the possible generation of odor, and Condition #6 orders the applicant to redesign the facility, pursuant to Board approval, such that possible odor generation is eliminated.
14. Paragraph 4 of the Petition contends that the Board's findings are vague and ambiguous with respect to the major conditions, including Condition #3.
15. Condition #3 of the Board's Order requires the applicant to implement a landfill performance monitoring program, subject to pre-operation approval by the Board. The elements which this program must include are clearly specified in the Condition. The foundation for this condition is clearly established in Findings #15 and 16.
16. Paragraph 5 of the Petition asserts that the Findings are not supported in the record by substantial evidence, and that the Order granted is inconsistent with the Findings which show that Department regulations have not been complied with.
17. The Findings are supported by substantial evidence in the record. Negative Findings in the Order relating to noncompliance with Department Regulations are deemed insubstantial and are redressed by Conditions which require the applicant to comply with the appropriate Regulations within times suited to the nature of the information required.
18. Paragraph 6 of the Petition contends that the Findings are predicated upon illegal evidence, in that the report of Dr. Alexander was presented over objection and without benefit of cross-examination.
19. The abutter's attorney, Mr. Peter Dawson, objected to the submission of an unsigned transcription of Dr. Alexander's report when it was first presented during the first day of the Public Hearing (page 229-230 of the transcript). A signed report by Dr. Alexander was reintroduced during the second day of the Public Hearing, and Attorney Dawson renewed his objection, except insofar as the signature cured part of his first objection. Dr. Alexander was not present at either session of the Hearing.
20. No attempt was made by the abutters to require the presence of Dr. Alexander at the Hearing. Dr. Alexander was subject to subpoena through the presiding officer. Unsworn documents are admissible even in the absence of the author. The absence of cross-examination of Dr. Alexander was considered in giving weight to his report.

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21. Paragraph 7 of the petition contends that the Board's Order fails to consider the impact of 38 M.R.S.A. §1305, which provides in part that each municipality shall provide a solid waste disposal facility for domestic and commercial solid waste.
22. 38 M.R.S.A. §1305 does not require each municipality to provide a solid waste disposal facility for industrial waste, nor does it prohibit any person from establishing a solid waste disposal facility independent of a municipality. Evidence was in the record regarding the solid waste disposal ordinance of the City of Augusta, and an Augusta City Councilor testified that the City would not permit the placement of the applicant's sludge at its municipal solid waste disposal facility. The Board must consider any application properly submitted.
23. The papermill wastewater treatment plant sludge generated by the applicant is industrial solid waste.
24. Paragraph 8 of the Petition asserts that the Board should "restructure" its June 27, 1979 Order as a Preliminary Order, because permits from other regulatory bodies must be obtained by the applicant, and because major conditions of the Board's Order must be satisfied prior to site operation. The abutters desire that a final order be granted only after all conditions and other permit requirements are satisfied.
25. In paragraph 9, the Petition contends that allowing construction to commence prior to satisfaction of the conditions of the Board's Order and the obtaining of other permits imposes conditions which make an objective consideration by the Board of submissions pursuant to the Conditions difficult.
26. The measures established by the Board in its Order with respect to review of submissions for condition removals are satisfactory to the Board. The securing of permits from other regulatory agencies is the responsibility of the applicant, who bears liability for the failure to obtain necessary permits. In addition the securing of such permits is required by Standard Condition #2.
27. The second Petition requests that the Board Stay its Order of June 27, 1979.
28. The measures established in the Board's Order to protect the environment are satisfactory to the Board. The asserted defects in the Board's Order are not deemed sufficiently substantial or likely to prevail on appeal to warrant staying the effect of the Order.
29. The Petition's for Reconsideration submitted by the abutters does not present new or additional evidence.
30. The Petition for Reconsideration submitted by the abutters does not contend that any part of the Board's decision is in error and was not intended by the Board.
31. No participants in the Board's hearings on this application were granted intervenor status.

On the basis of the above Findings of Fact, the Board concludes the following:

1. Consideration of the report of Dr. Alexander by the Board was legal and correct. Th

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abutters failed to request the right to question Dr. Alexander. Consideration of Dr. Alexander's report in absence of his appearance is legal and correct.

2. The Board had adequate opportunity to analyze the evidence and record of the application.
3. Review of the application by the Board pursuant to 38 M.R.S.A. §1304, and not pursuant to 38 M.R.S.A. §1320 is correct.
4. The Findings of the Board's Order are consistent and clear, and are supported in the record by substantial evidence.
5. 38 M.R.S.A. §1305 is irrelevant to the Board's consideration of this project.
6. The abutters have not offered new or additional information, or identified errors in the Board's Order.
7. In light of these conclusions with respect to the Petition for Reconsideration, a stay of the Board's Order is not warranted.

THEREFORE, The Board orders that the Petitions for Reconsideration and for a Stay be denied.

DONE AND DATED AT AUGUSTA, MAINE, THIS 25TH DAY OF JULY, 1979.

BOARD OF ENVIRONMENTAL PROTECTION

BY:

  
Henry E. Warren, Chairman

PLEASE NOTE ATTACHED SHEET FOR APPEAL PROCEDURES....