



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM  
COMMISSIONER

## Prehearing Conference Order

### IN THE MATTER OF

ARIES PINE TREE LLC  
SANFORD, YORK COUNTY  
AIR EMISSION LICENSE  
APPLICATION (A-1195-71-A-N) AND  
SOLID WASTE PROCESSING  
FACILITY LICENSE APPLICATION  
(S-100033)

### FOURTH PROCEDURAL ORDER

A Prehearing Conference in this matter was held on September 16, 2026. The Conference was noticed by Procedural Order issued on August 12, 2026. The Conference was attended by the following individuals: Joel Thornton, representative for the Applicant, Aries Pine Tree LLC (Aries); counsel for the Applicant, Rachael Becker McEntee; counsel for the Intervenors Sanford Clean Water & Air Coalition and Conservation Law Foundation, Katherine O'Brien and Torie Atkinson. In addition, the following individuals from the Department of Environmental Protection (Department) were in attendance: Commissioner Melanie Loyzim, Derek DeCastro, Victoria Eleftheriou, Jane Gilbert, Ben Goundie, Dawn Hallowell, Eric Hamlin, Carla Hopkins, Eric Kennedy, Susanne Miller and Kevin Ostrowski. Assistant Attorneys General Valerie Wright and Emma Akrawi, who advise the Department, were also in attendance.

Through this Fourth Procedural Order, the Presiding Officer issues a Prehearing Conference Order, which reflects the discussions held during the Prehearing Conference, provides a schedule for the submission of briefs and pre-filed testimony by the Parties, and outlines the process that will precede the conduct of the hearing, which will be noticed at a future date.

### Applicable Procedural Rules

The Presiding Officer conducted the prehearing conference in accordance with Section 15 of Chapter 3 of the Department's rules (Rules Governing the Conduct of Licensing Hearings, 06-096 C.M.R. ch. 3). This adjudicatory proceeding is governed by Chapter 3 and by Subchapter 4 of the Maine Administrative Procedure Act, 5 M.R.S. §§ 9051-9064. The Parties should familiarize themselves with these provisions of statute and rule.

## Service List

In previous Procedural Orders, the Presiding Officer established a Service list as required by 06-906 C.M.R. ch. 3, § 3. At the Prehearing Conference, the Parties confirmed that the Service List established in the Third Procedural Order issued on September 9, 2026, correctly identifies the Parties and their representatives that are to receive service of papers and communications on the Parties' behalf. Any changes to the Service List must be communicated to the Presiding Officer using the dedicated email assigned to this adjudicatory proceeding, [AriesHearing.DEP@maine.gov](mailto:AriesHearing.DEP@maine.gov), with a copy to all individuals in the Service List.

## Consolidation of Presentation

Subsection 11(A)(6) of Chapter 3 provides that the Presiding Officer may consolidate the presentations to be made by Intervenors. During the Conference, the Intervenors confirmed the assertion made in their Petition to Intervene that they will consolidate the presentation of their case during this adjudicatory proceeding.

## Scope of Hearing

In their Petition to Intervene filed on July 27, 2026, the Intervenors provided a list of six issues they considered to be the subject matter for hearing in this adjudicatory proceeding. During the Conference, the Intervenors affirmed that this list comprised the issues they believed were in dispute in this matter and for which they were prepared to provide legal argument and evidence.<sup>1</sup>

The Presiding Officer concludes that the issues presented by the Intervenors represent an appropriate scope of hearing. As discussed at the Conference, the issues set forth in this list contain legal issues as well as factual issues, and, in some instances, mixed questions of fact and law. This Order will address each of these issues in turn and provide the Parties with guidance as to how to prepare and submit pre-filed testimony and legal briefing. The Presiding Officer assigns each issue a letter designation that corresponds to the method in which the Intervenors presented the issues on pages 5 and 6 of their Petition to Intervene.

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<sup>1</sup> The Intervenors reserved the right to expand the list of issues to include issues related to the recently submitted BACT analysis, which is discussed later in this Order.

*A. Whether the Facility constitutes a new commercial solid waste disposal facility, which DEP lacks authority to license pursuant to 38 M.R.S. § 1310-X.*

The Department considers this issue as raised by the Intervenor to be a question of law in that it raises a threshold question as to the Department's authority to act on the Applicant's application for a license to operate the proposed facility. The Department has accepted the application for review and adjudication. It is the Department's position that it has the statutory and regulatory authority to make a determination as to whether to grant the license based on the application as filed.

During the Conference, the Intervenor agreed that this question requires legal analysis and interpretation, but they asserted that there are factual components to the issue and that they wish to present expert testimony that would assist the Department in deciding this issue.

The Presiding Officer regards the issue, and certain other issues listed below, to be primarily legal in nature and thus not appropriate for testimonial presentation. The Intervenor may file a brief making legal arguments on this issue, and the other legal issues listed below. The Intervenor may submit limited pre-filed testimony of a factual nature on these issues but only to the extent that it is offered in support of the legal argument.

The Applicant may file a legal brief responding to the Intervenor's legal argument on this issue and the other issues listed below and may also provide pre-filed testimony limited to facts offered in support of legal argument.

*B. Whether, assuming the Facility constitutes a solid waste processing facility under 38 M.R.S. § 1303-C(32-A), the Applicant has demonstrated that the Facility satisfies the licensing criteria established in 38 M.R.S. § 1310-N and 06-096 C.M.R. chapters 403 and 409, including but not limited to whether the Applicant has demonstrated that: (1) the Applicant has the financial and technical ability to design, construct, operate, maintain, close, and accomplish post-closure care of the Facility in compliance with applicable requirements; and (2) the Facility's emissions of PFAS and other pollutants will not unreasonably adversely affect air or water quality.*

The issues set forth in this paragraph are an appropriate subject of pre-filed testimony from the Parties. During the Conference, the Presiding Officer asked the Intervenor to clarify what was meant by the statement at the end of the paragraph with respect to water quality. The Intervenor agreed that the Applicant had not submitted an application relating to wastewater discharge and that they intended only to address the statutory and regulatory standards that would apply to the application as filed.

*C. Whether the Facility constitutes an incinerator that must obtain an operating permit under Title V of the Clean Air Act, 40 C.F.R. part 70, and 06-096 C.M.R. chapter 140; and must comply with applicable New Source Performance Standards under 42 U.S.C. § 7429, 40 C.F.R. part 60, 06-096 C.M.R. chapter 143 and incinerator emissions standards under 06-096 C.M.R. chapters 104 and 403.*

Similar to issue A above, the Presiding Officer regards the issue as primarily one of law, and as such it is not appropriate for testimonial presentation. In response to the Intervenor's argument that issue C presents a mixed question of law and fact, the Presiding Officer will allow the Intervenor to provide legal argument in a brief and submit pre-filed testimony of a factual nature on this issue but only to the extent that it is offered in support of the legal argument.

The Applicant may present legal argument in response to this issue in their brief and may also provide pre-filed testimony from a witness limited to facts that support legal argument.

*D. Whether, if the Facility does not constitute an incinerator, the applicant has demonstrated that the Facility's controlled emissions will be below applicant minor source thresholds.*

The issues set forth in this paragraph are an appropriate subject of pre-filed testimony by the Parties.

*E. Whether the Applicant's proposed compliance monitoring conditions satisfy applicable requirements of 06-096 C.M.R. chapter 117.*

At the Conference, the Intervenor expressed a desire to provide expert testimony on monitoring conditions that they believe should apply to the Facility in issue. The Applicant objected on the grounds that it has not submitted an application that would subject the Facility to such monitoring conditions at present.

Issue E is really two issues that need to be addressed in different ways. The first issue is whether 06-096 C.M.R. chapter 117 applies to the application. On that issue, the Presiding Officer seeks briefing on the threshold legal question of whether Chapter 117 applies and will allow the Intervenor to provide limited pre-filed testimony of a factual nature on this issue but only to the extent that it is offered in support of the legal argument. The Applicant may present legal argument in response to this issue in their brief and may also provide pre-filed testimony from a witness limited to facts that support legal argument. The second issue is the issue as expressed in Intervenor

Issue E with respect to the proposed monitoring conditions. On that issue the Parties may provide pre-filed testimony.

*F. Whether the Applicant has provided all information that is required by 06-096 C.M.R. chapter 115 and is necessary to evaluate their air emission license application.*

The issues set forth in this paragraph are an appropriate subject of pre-filed testimony by the Parties.

### BACT Analysis

During the Conference, the Intervenors pointed out that the Department's request for the Applicant to submit additional information relating to Best Available Control Technology (BACT) standards in support of its application for an air emission license was a recently raised issue and would require time for review.

On August 14, 2026, the Department issued a request to the Applicant for additional information in the form of a BACT analysis addressing emissions of perfluoroalkyl and polyfluoroalkyl substances (collectively referred to as PFAS). This request was made pursuant to Chapter 115 of the Department's rules (Major and Minor Source Air Emission License Regulations) and to recently enacted legislation, An Act to Improve the Management of Landfill Leachate and Wastewater Treatment Plant Sludge at Solid Waste Landfills. P.L. 2025, ch. 651 (emergency, effective April 13, 2026). The Department also sought additional information in the form of BACT analyses for carbon monoxide (CO) and volatile organic compounds (VOC). On September 15, 2026, the Applicant submitted analyses in response to this request.<sup>2</sup>

At the Conference, the Department confirmed that it had not yet had an opportunity to review the submission by the Applicant and has not yet determined whether any additional information may be required.

The Presiding Officer agrees that whether and how the issue of the recently submitted BACT analyses will be a disputed subject for hearing is not yet known at this

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<sup>2</sup> The Department's request for the information as well as the Applicant's response are available to the public as part of the Project File, which is accessible through a webpage that is dedicated to this adjudicatory proceeding:

[Aries Project page;https://www.maine.gov/dep/projects/aries/index.html](https://www.maine.gov/dep/projects/aries/index.html)

time. The Department will inform the Parties if additional information is requested of the Applicant. The Presiding Officer urges the Intervenor to continue their review of the BACT analyses for PFAS, CO, and VOC and to take steps to prepare pre-filed testimony if they believe the information provided presents disputed issues for hearing. If necessary, the Presiding Officer will convene a conference to discuss appropriate procedural steps in addressing the recently submitted BACT analyses in this adjudicatory proceeding.

### Schedule for Submission of Briefs and Testimony

During the Conference, the Parties discussed the sequence and timing for the submission of pre-filed testimony and briefs. The Intervenor explained that their expert witness has a compelling obligation during the month of October that would prevent being able to make a filing prior to November. The Intervenor also explained that they will need time to review the recently submitted BACT analyses and determine whether to file expert testimony on this topic. The Applicant urged a more expedient schedule due to the length of time the applications have been pending. The Applicant also agreed to a more contracted schedule to file its testimony and briefs.

The Presiding Officer has conferred with the Department and appreciates and shares the Applicant's desire to resolve this matter in an expeditious manner. Nevertheless, in light of the need for time to review the additional information submitted upon the Department's request, the Presiding Officer agrees that additional time will be needed to prepare for a hearing.

The Presiding Officer issues the following schedule:

- On or before November 13, 2026, the Intervenor will submit pre-filed testimony on issues B, D, and F outlined above.
- On or before November 13, 2026, the Intervenor may submit one brief that provides legal argument with respect to issues A, C, and E outlined above. The Intervenor may also submit pre-filed testimony on these issues but only to the extent that the testimony does not constitute legal argument and is narrowly tailored to support the legal argument by providing factual information.
- On or before December 9, 2026, the Applicant will submit pre-filed testimony and one legal brief in response to the pre-filed testimony and legal brief of the Intervenor as directed in this Order.

The Presiding Officer further rules that to the extent it is feasible, the Parties will submit pre-filed testimony on any disputed issue relating to the recently submitted BACT analyses. As noted above, the Department will inform the Parties if additional information is requested of the Applicant. If it appears that more time will be necessary to address any disputed issues relating to the BACT analyses, the Presiding Officer will convene a Conference to discuss the process and schedule.

At this time, the Presiding Officer will not address a schedule for the filing of rebuttal testimony, or whether such testimony will be necessary prior to the hearing. The Presiding Officer will address further procedural steps in subsequent procedural orders.

### Requirements for Pre-Filed Testimony and Exhibits

Pursuant to subsection 16(C) and 16(D) of Chapter 3, the Presiding Order requires that written direct and rebuttal testimony, as well as exhibits, that a Party in this adjudicatory proceeding intends to present must be pre-filed. Subsection 16(C) of Chapter 3 requires that pre-filed testimony must be sworn: "Written testimony is sworn if the witness declares by oath or affirmation that the testimony is true and correct to the best of the witness's knowledge and belief." Pursuant to 5 M.R.S. § 9057(4), any witness who submits pre-filed testimony must be present and available for oral cross-examination at the hearing.

Pursuant to subsection 16(D) of Chapter 3, any exhibits that a Party's witness intends to rely upon in their testimony must be submitted with their pre-filed testimony. For expert witnesses, their testimony should include specific reference to their educational and/or professional experience that would support their qualification to provide expert testimony on the particular subject for which they offer testimony.

### Service of Filings

During the Conference, the Parties agreed that service of all documents in this adjudicatory proceeding could be effected by e-mail only. The Parties are directed to use the e-mail addresses in the Service List for the Parties and the Department's e-mail address dedicated to this adjudicatory proceeding. In the event that a filing cannot be accommodated by e-mail exchange due to the nature of the document or exhibit and/or its size, the Party will notify the Presiding Officer and an arrangement will be made for alternative delivery of the item.

### Date and Location of Hearing

At the Conference, the Presiding Officer explained that due to the uncertainty surrounding the BACT analyses and the tight timeframe for the submission of pre-hearing filings, it was unlikely that a hearing could be convened before the close of the year. The Presiding Officer explained that it was the Department's intent to work towards scheduling the hearing for January 2027.

Subsection 10 of Chapter 3 requires that the Department strive to hold the hearing "in the area or areas of the State significantly affected by the license application or which are concerned about the issue, or as specified by state or federal law, taking into consideration the needs, costs and convenience of the parties, interested public and Department." At present, the Department has been unable to secure a location in the Town of Sanford that could accommodate the hearing during the daytime hours. The Department is therefore expanding its search for an appropriate location in southern Maine for holding the hearing.

Dated: September 22, 2026

*/s/ Elizabeth J. Wyman*

Elizabeth J. Wyman  
Presiding Officer