



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Janet T. Mills  
GOVERNOR

Gerald D. Reid  
COMMISSIONER

IN THE MATTER OF

WASTE MANAGEMENT	)	APPLICATION FOR CROSSROADS
DISPOSAL SERVICES OF MAINE	)	LANDFILL EXPANSION PERMIT
NORRIDGEWOCK, SOMERSET	)	MAINE HAZARDOUS WASTE, SEPTAGE
	)	AND SOLID WASTE MANAGEMENT ACT
	)	PUBLIC HEARING
# S-010735-WD-YB-N	)	SECOND PROCEDURAL ORDER

This Second Procedural Order (Order) sets forth the Presiding Officer’s decisions with respect to matters discussed at the first pre-hearing conference held virtually using Microsoft Teams on May 28, 2020 at 1:00 pm. The purpose of the conference was to review the responsibilities of the parties, the relevant statutory and regulatory review criteria, the issues to be addressed at the public hearing, and the procedures of the public hearing.

**ATTENDEES OF THE PRE-HEARING CONFERENCE**

1. The following parties and interested persons attended the virtual pre-hearing conference on May 28, 2020:
  - a. Presiding Officer
    - Susanne Miller, Presiding Officer
  - b. Applicant: Waste Management Disposal Services of Maine (Waste Management):
    - Sherwood McKenny, Waste Management
    - Juliet Browne, Verrill
    - Mathew Todaro, Verrill
    - Scott Luettich, Geosyntec Consultants
  - c. Intervenor: Town of Norridgewock:
    - Richard LaBelle, Town Manager
    - Bob Grillo CMA Engineers Inc.
  - d. Department of Environmental Protection (Department) staff:
    - David Burns, Director, Bureau of Remediation and Waste Management
    - Victoria Eleftheriou, Deputy Director, Bureau of Remediation and Waste Management

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- Molly King, Director, Division of Technical Services
  - Linda Butler, Project Manager
  - Gail Lipfert, Environmental Hydrogeology Specialist
  - Kathy Tarbuck, Senior Environmental Engineer
- e. Counsel to the Department:
- Katherine Tierney, Assistant Attorney General
  - Peggy Bensinger, Assistant Attorney General
- f. Interested Persons:
- Sean Mahoney, Conservation Law Foundation
  - Isabella Shelton, Conservation Law Foundation

**GENERAL EXPECTATIONS OF THE PARTIES**

2. At the pre-hearing conference the Presiding officer summarized the roles and responsibilities of all participating in the hearing as follows:
- a. Presiding Officer: The Presiding Officer will rule upon evidentiary issues, regulate the course of the public hearing, rule on procedural issues, establish time deadlines, administer oaths, and take such other action that is necessary for the efficient and orderly conduct of the public hearing, consistent with applicable statutes and regulations.
  - b. Applicant: The Applicant has the burden of proof in this licensing matter as set forth in Chapter 2, § 11(F) of the Department’s rules, which states “An applicant for a license has the burden of proof to affirmatively demonstrate to the Department that each of the licensing criteria in statute or rule has been met. Unless otherwise provided by law, all applications, including renewal, amendment and transfer applications, are subject to the substantive laws and rules in effect on the date the application is accepted as complete for processing.” The Applicant has the right to present witnesses in support of its application and to cross-examine the witnesses of other parties.
  - c. Intervenors: The Intervenors have the right to present evidence at the hearing regarding the licensing criteria which are relevant to the proposed project and to cross-examine the witnesses of the other parties. An Intervenor may choose not to present witnesses, but simply to cross-examine the witnesses of the Applicant and the other party. If an Intervenor

for any reason no longer desires to participate at the level of an intervenor, they may send an email or letter to the Department's Project Manager, Linda Butler, withdrawing as an intervenor and may then simply participate as a member of the public.

- d. Department Staff: The role of Department staff is essentially the same as it is with respect to any other license application, to gather facts and assess evidence on behalf of the Commissioner. In a public hearing that fact-gathering and evaluation of evidence may include staff asking questions of witnesses or requesting further information. After the public hearing is concluded, Department staff will analyze the record. The public hearing is one part of the record, but not the entire record, with respect to the application. Ultimately, the Commissioner will make a determination on the license application.
  - e. Interested Persons: Interested persons are members of the public who have asked to be placed on a list to receive certain information regarding the public hearing, including procedural orders and notices. Interested persons may submit written comments to the Department until the close of the record or may testify in person at the hearing during the evening portion which will be set aside for testimony from the general public.
3. As a reminder, all testimony including public testimony will be under oath and witnesses are subject to cross-examination by the parties, and questions from the Presiding Officer, Department staff, and Counsel for the Department.
  4. Pre-filed testimony will not be required for this public hearing, however pre-filed exhibits will be required.
  5. All parties are expected to comply with deadlines and filing requirements established by the Presiding Officer. Failure to comply may result in appropriate sanctions, including the rejection of argument, evidence or testimony the party seeks to offer. The representatives of the parties are expected to conduct themselves appropriately in their dealings with the Department, with each other, and with the general public throughout the proceedings.

#### **EX PARTE COMMUNICATIONS**

6. Parties and their representatives may not communicate directly or indirectly with the Presiding Officer or the Commissioner about any issue of fact, law or procedure in this matter, except with notice to all parties and the opportunity for all parties to participate. Parties and their

representatives may direct any questions they may have to Linda Butler, Project Manager, or to Assistant Attorney General Katherine Tierney, (207) 626-8897, [Katherine.tierney@maine.gov](mailto:Katherine.tierney@maine.gov) counsel to the Department in this matter.

### **DESIGNATION OF SPOKESPERSON FOR EACH PARTY**

7. To streamline communication processes, the Presiding Officer requested that each party designate a spokesperson to lead communications for the party. This designation does not mean that other members of the party may not speak, but simply identifies one person as the point of contact for that party. At the pre-hearing conference, the following were determined to be the spokespersons for each party:
  - a. Applicant: Juliet Browne
  - b. Intervenor: Richard LaBelle

### **COVID-19 AND IMPACTS ON THE HEARING**

8. Due to the restrictions on gatherings and maintaining social distancing the Presiding Officer asked parties what their thoughts were on holding a live hearing. Options discussed included holding a live hearing, holding a virtual hearing, holding a hybrid version (some people attend live, the rest virtually) or not having a hearing at all. Parties and the Department agreed that a hearing should be held to allow for the general public to have a public process and for the Town to have its interests preserved as an Intervenor. All agreed that it was too soon to tell if it would be possible to hold a live hearing as far off as October, but that we ought to plan for a live hearing for the time being and reevaluate in August.

### **SITE VISIT**

9. The Presiding Officer, Counsel, and some Department staff would like to have a site visit to better understand the issues and concerns associated with the license application and to ensure the hearing is more efficient. If a site visit takes place it must offer the opportunity for all parties to participate. Parties, however, may waive their right to participate in the site visit. The proposed timeframe for the site visit would be some time in the first half of September.

10. Parties and the Department generally agreed that a site visit is a good idea and that they would work toward making this happen. Amidst COVID-19 concerns however, extra precautions and measures will likely need to occur, and so as the dates get closer parties may want to discuss more details further.

### **RELEVANT STATUTORY AND REGULATORY REVIEW CRITERIA**

11. Prior to the pre-hearing conference, a document was sent to parties on May 21, 2020 which included all the relevant statutory and regulatory review criteria for the license application. Parties were asked to review this prior to the pre-hearing conference so that they could discuss which criteria would be covered during the public hearing. While not all of the criteria will be covered during the public hearing, all of the criteria must be met by the applicant as part of the license application process.
12. At the hearing both the Department and Applicant expressed interest in covering a number of topics. The Town expressed its desire to preserve its interest as an intervenor and didn't have any specific topics of concern. The Applicant also requested that time be provided for them to present background information, including an overview of the facility and its purpose and need.
13. Considering all the topics expressed, the following topics of significance will be covered during the hearing:
  - a. Ground Water Aquifer Protection
    - 38 M.R.S. § 1310-N (2-A). Solid waste facility licenses, Aquifer Protection
    - 06-096 C.M.R. ch. 400, § 4(K). General Licensing Criteria, No Unreasonable Risk That a Discharge to a Significant Ground Water Aquifer Will Occur
  - b. Visibility of the Landfill
    - 38 M.R.S. § 1310-N (2-F). Solid waste facility licenses, Siting Standards
    - 06-096 C.M.R. ch. 400, § 4(E). General Licensing Criteria, Fitting the Solid Waste Facility Harmoniously into the Natural Environment
    - 06-096 C.M.R. ch. 400, § 4(F). General Licensing Criteria, No Unreasonable Adverse Effect on Existing Uses and Scenic Character
  - c. Noise

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- 06-096 C.M.R. ch. 400, § 4(F). General Licensing Criteria, No Unreasonable Adverse Effect on Existing Uses and Scenic Character
- d. Odors
- 06-096 C.M.R. 400, § 4(G). General Licensing Criteria, No Unreasonable Adverse Effect on Air Quality
- e. Solid Waste Management Hierarchy
- 38 M.R.S. § 2101. Solid Waste Management Hierarchy
  - 06-096 C.M.R. ch. 400, § 4(N). General Licensing Criteria, Solid Waste Management Hierarchy
- f. Recycling
- 38 M.R.S. § 1310-N(5-A). Recycling and source reduction determination
  - 06-096 C.M.R. ch. 400, § 6. Recycling

**ESTIMATED NUMBER OF WITNESSES AND TIME NEEDED AT THE PUBLIC HEARING**

14. At the pre-hearing conference parties were asked based upon the criteria identified above, how many witnesses they planned to call and approximately how much time they would need to present information at the hearing.
15. The Applicant indicated that it anticipated it would not need any more than 10 witnesses and that 3-4 hours should be enough time for the hearing. The Town indicated that it did not plan to bring forth any witnesses at this time but that they preserved the right to ask questions of the applicant's witnesses.
16. When asked by the Presiding Officer, parties thought that maybe 20 or so people might attend the public portion of the hearing to present testimony.
17. Based on this information parties and the Department agreed that a half of a day would be adequate for the public hearing, with an additional time block set aside in the evening for public testimony.

### **LOCATION AND DATE OF THE HEARING**

18. Mr. Labelle indicated that the Town has an agreement with the school in Norridgewock to use the school's large gymnasium when needed, and that the hearing could be held there if it were live. He indicated that the space was large enough, for example, to hold 60-70 people practicing social distancing.
19. The Presiding Officer proposed the week of October 4 for the hearing. She asked all parties to send her and the service list an e-mail with preferred dates for that week by close of business June 5, 2020.
20. On June 3, the Applicant indicated by e-mail that they were available on October 7 or 8, 2020 for the public hearing. That same afternoon, the Town/Intervenor indicated by e-mail that those two days were already booked for Town business and requested the hearing be moved either the week before or the week after. Ms. Butler from the Department expressed preference that the hearing take place the week of September 28 and asked the Applicant to identify days that the hearing would work during that week.
21. On June 4, 2020, the Applicant indicated that September 29, September 30, or October 1, 2020 would work as a hearing date.

### **TRANSCRIPTION**

22. Public hearings are typically transcribed to ensure that after the hearing parties and the general public may review as part of the record. If the hearing is live, a transcriptionist will be present during the entire hearing. If the hearing is virtual, we will need to determine how to get the hearing transcribed.

### **PROPOSED SCHEDULE**

23. Pre-filed exhibits will be required for this hearing. At the pre-hearing conference the Presiding Officer stated that these would be due at 5:00 pm on September 13, 2020. However, it has come to her attention that this is a Sunday, so the exhibits will instead be due at 5:00 pm on Monday September 14, 2020.
24. Any objections to pre-filed exhibits will similarly be due at 5:00 pm on Monday September 28, 2020 (and not Sunday September 27, 2020).

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25. The hearing will take place on October 1, 2020 starting at 1:00 p.m.

Dated: June 9, 2020

A handwritten signature in blue ink, appearing to read 'Susanne Miller', with a long horizontal line extending to the right.

Susanne Miller, Presiding Officer