



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
ACTING COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection

FROM: Paula Clark, Director, and Cyndi Darling, Project Analyst, of Division of Solid Waste Management, Bureau of Remediation and Waste Management

RE: Dismissal of Petition to Revoke, Modify or Suspend filed by Municipal Review Committee, Inc. and Penobscot Energy Recovery Company, LP of Maine Hazardous Waste, Septage and Solid Waste Management Act Approval #S-020700-WD-W-M for a Minor Revision to the License for the Juniper Ridge Landfill in Old Town

DATE: September 1, 2011

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Statutory and Regulatory References: The applicable statutory and regulatory framework for this petition to modify a minor revision license is 38 M.R.S.A. §341-D(3) and 06-096 CMR 2 §27 *Rules Concerning the Processing of Applications and Other Administrative Matters*. 38 M.R.S.A. §341-D(3) provides that, after written notice and opportunity for hearing, the Board of Environmental Protection may act in accordance with the Maine Administrative Procedure Act to revoke, modify or suspend a license, whenever the Board finds that one of the following criteria are met:

- A. The licensee has violated any condition of the license;
- B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;
- C. The licensed discharge or activity poses a threat to human health or the environment;
- D. The license fails to include any standard or limitation legally required on the date of issuance;
- E. There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license;
- F. The licensee has violated any law administered by the Department; or
- G. The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990.

Section 27 of the *Rules Concerning the Processing of Applications and Other Administrative Matters* provides that any person may petition the Board to modify, revoke or suspend a license. The Board, after notice and opportunity for the petitioner and the licensee to be heard, shall then either dismiss the petition or schedule a hearing on the petition. Whether to dismiss the petition or proceed to an adjudicatory hearing is discretionary with the Board.

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Location: The project site is located between Route 16 (Bennoch Road) and Route 43 (West Old Town Road) in Old Town, Maine.

Procedural History and Project Description: On October 3, 2006 the licensee submitted a minor revision application to increase a license limit (310,000 tons per year) on the total amount of unprocessed municipal solid waste (MSW) that may be handled at the Maine Energy incinerator in Biddeford and Juniper Ridge Landfill in Old Town; the license limit is in the Juniper Ridge Landfill amendment license. At Maine Energy, the unprocessed MSW is the waste that is delivered to the incinerator by its customers; at Juniper Ridge Landfill the unprocessed MSW is limited to MSW bypassed from Maine Energy when a bypass event is called in accordance with its contracts with its customers. On December 10, 2009 the licensee modified the still-pending minor revision application to remove the request to increase the 310,000 tons per year limit to 325,000 tons per year. Instead, the 310,000 tons per year limit would not include MSW bypass that Maine Energy sent to Juniper Ridge Landfill for use in the protective "soft layer" required by the Solid Waste Management Rules to be the first lift placed in newly-constructed base landfill cells. .

The Department approved the minor revision application on September 10, 2010. A timely joint appeal to the Board was filed on October 13, 2010 by the Municipal Review Committee, Inc. ("MRC") and the Penobscot Energy Recovery Company, LP ("PERC"). The appeal included a request for a public hearing. On March 3, 2011, the Board unanimously voted to dismiss the appeal. The Board amended the Department Order to clarify that MSW bypass from all 4 Maine incinerators may be used for soft layer material in new cells, and that the portion of this cubic yardage that comes from Maine Energy will be separate and excluded from the 310,000 tons per year limit imposed on Maine Energy and Juniper Ridge. Neither the MRC nor PERC appealed the Board's decision on the appeal to Superior Court.

On May 27, 2011, PERC and MRC jointly filed with the Board a petition to modify the same minor revision license; the petition alleges the permittee has violated criteria in paragraphs A, B, C and F of 06-096 CMR 2 §27. On July 6, 2011 the permittee submitted its response to the petition.

Issue Before the Board: The Board may dismiss the petition or schedule a public adjudicatory hearing. In making its decision, the Board may consider whether the petition describes a sufficient factual basis that, if proven at hearing, would support modification of the license.

Department Recommendation: The Department recommends that the Board dismiss the petition to modify minor revision license #S-020700-WD-W-M. The petitioners have not demonstrated a violation of a condition of the license they seek to modify, or the amendment license (DEP #S-020700-WD-N-A, dated April 9, 2004) that is the base license for the Juniper Ridge Landfill. The petitioners have not demonstrated that the licensee misrepresented or failed to disclose relevant facts. The petitioners have not demonstrated that the licensed activity poses a threat to human health or the environment. The petitioners have not demonstrated there has

been a change in condition or circumstance that requires a modification to the minor revision license. In many ways, the petition is duplicative of the appeal previously denied by the Board. As such, the Department recommends that no public hearing be held.

Estimated Time: 2 hours

Board Packet Materials:

- Memo from Department staff pg. 025
- Project Location Map pg. 029
- Draft Board Order, with attachments: pg. 031
 - Attachment A: Board Response to Appeal of Minor Revision License by PERC and MRC, dated March 3, 2011 pg. 049
 - Attachment B: the minor revision license, dated September 10, 2010 pg. 073
 - Attachment C: Department staff review memorandum from Amanda Wade, P.E., to Cynthia Darling, re: analysis of Denis St. Peter, P.E. affidavit (Exhibit 4 of the petition) pg. 085
 - Department staff table "Juniper Ridge Landfill – Tracking of Some Categories of Waste", updated through May 31, 2011 deliveries pg. 109
- Petition to Modify, with exhibits: pg. 113
 - Exhibit 1: proposed revisions to the minor revision license pg. 125
 - Exhibit 2: the amendment license pg. 137
 - Exhibit 3: affidavit of Michael Mains, dated February 17, 2011 pg. 201
 - Exhibit 4: affidavit of Denis St. Peter, P.E., dated February 21, 2011 pg. 225
- Permittee's Response to Petition to Modify, with attachments: pg. 273
 - Attachment A: example of MERC authorization letter pg. 289
 - Attachment B: example of monthly report from JRL pg. 291
 - Attachment C: example of PERC bypass authorization letter pg. 295
 - Attachment D: accurate example of how Maine Energy and NEWSME account for MSW bypass pg. 297
 - Department memorandum, Juniper Ridge Landfill, Landfill Liner Protective Systems, dated November 8, 2010 pg. 319

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