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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Susan M. Lessard, Chair

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DRAFT
BOARD ORDER

IN THE MATTER OF

VERSO BUCKSPORT, LLC, APPLICANT) SOLID WASTE
JOSEPH AND MICHELLE GREENIER, APPELLANT	) LICENSE
BUCKSPORT, HANCOCK COUNTY, MAINE	) APPEAL OF CHAIR'S
SPECIAL WASTE LANDFILL	) DISMISSAL
#S-007713-WD-BB-A	) FINDINGS OF FACT AND
APPEAL OF DISMISSAL DENIED	) ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 344 and 341-D(4) and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2.24(B) (last amended April 1, 2003) of the Department of Environmental Protection's regulations, the Board of Environmental Protection has considered the appeal of JOSEPH AND MICHELLE GREENIER (Greeniers), their supportive documentation, the response of the applicant, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROCEDURAL HISTORY

On December 29, 2010, Verso Bucksport LLC filed an application for amendment of its Department order relicensing the special waste landfill now owned by Verso (DEP# S-007713-WD-S-R, issued February 27, 2000). The amendment requested approval to increase the licensed final elevation of the landfill by 46 feet. The proposal included construction of a liner system on top of 24 acres of the existing 48-acre landfill, with leak detection and leachate collection capabilities. Verso also proposed to regrade the north slope of the existing landfill, evaluate the leachate collection system at the toe of the north slope, place a final cover system over the north slope, and upgrade the existing leachate pond at the landfill. Verso proposed this amendment with the intention of surrendering a separate order (DEP# S-007713-WD-AD-N) issued on December 22, 2000. The Department approved the amendment application in Department order #S-007713-WD-BB-A, dated January 18, 2012.

On February 22, 2012, Michelle and Joseph Greenier filed an appeal of the Department's decision to the Board of Environmental Protection ("Board") and request for a public hearing.

On March 8, 2012, the Chair of the Board ("Chair") dismissed the appeal, stating that the Greeniers did not submit evidence that would establish that they are aggrieved persons, a requirement in order to bring an appeal in this matter.

VERSO BUCKSPORT, LLC, APPLICANT	2 SOLID WASTE
JOSEPH AND MICHELLE GREENIER, APPELLANT	) LICENSE
BUCKSPORT, HANCOCK COUNTY, MAINE	) APPEAL OF CHAIR'S
SPECIAL WASTE LANDFILL	) DISMISSAL
#S-007713-WD-BB-A	) FINDINGS OF FACT AND
APPEAL OF DISMISSAL DENIED	) ORDER

On March 21, 2012, Michelle and Joseph Greenier filed an appeal to the full Board of the Chair's decision to dismiss their appeal of the licensing decision.

2. REGULATORY FRAMEWORK AND DISCUSSION:

06-096 CMR 2.24.B(1) provide that "an aggrieved person may appeal to the Board for review" of a decision of the Commissioner. As set forth in 06-096 CMR 2.24.B(2), the written notice of appeal must include evidence demonstrating that the appellant is an aggrieved person. 06-096 CMR 2.1.B states that an "aggrieved person" means any person whom the Board determines may suffer particularized injury as a result of a licensing or other decision."

In their response to the Chair's ruling on standing, the Greeniers argued that all citizens of Maine are aggrieved persons when corporations such as Verso Bucksport pollute the air and dump chemicals into the landfill that contaminates the water supply. The Greeniers also argue that all taxpayers are aggrieved persons because they support Verso Bucksport through the BETR and TIF programs. Further, the Greeniers argue that Joseph Greenier suffered health problems as a result of his work at the mill and landfill in the past and other mill workers were negatively affected by chemicals in the past.

The Verso Bucksport landfill is located approximately ½ mile north of the mill in Bucksport, and is separated from the mill by a wooded area and a bulk petroleum storage and distribution facility owned by Webber Tanks. The Greeniers reside in Stockton Springs, over 4 miles (straight line measurement) south of the landfill, across the Penobscot River. Neither Michelle nor Joseph Greenier currently works at the mill.

As an initial matter, the Greeniers cannot establish that they are aggrieved persons based upon their status as taxpayers. The Board adopts the approach consistently endorsed by the Maine courts that taxpayer status does not set forth a particularized injury to an individual, as it is a generalized harm. Similarly, any harm that the Greeniers allegedly suffer that is shared by all citizens of Maine would be a generalized harm to the public at large and not a particularized injury, and therefore does not establish standing.

The Greeniers' contentions regarding alleged air and water pollution also are not adequate to establish standing before the Board. Again, the Greeniers allege only generalized harm to the public at large, but do not set forth any fact to establish that they suffer any injury particular and specific to them that would result from the proposed

VERSO BUCKSPORT, LLC, APPLICANT	3 SOLID WASTE
JOSEPH AND MICHELLE GREENIER, APPELLANT	) LICENSE
BUCKSPORT, HANCOCK COUNTY, MAINE	) APPEAL OF CHAIR'S
SPECIAL WASTE LANDFILL	) DISMISSAL
#S-007713-WD-BB-A	) FINDINGS OF FACT AND
APPEAL OF DISMISSAL DENIED	) ORDER

vertical increase in the landfill. With respect to air pollution, the Greeniers do not explain any connection to a vertical increase to the landfill. Any potential air pollution issues would be addressed by a separate air license, not by an amendment to the landfill license. Similarly, the Greeniers do not explain any connection between the increase to the vertical elevation of the landfill and the water supply. The evidence in the record indicates no drinking water supply downgradient of the landfill. The Town of Bucksport water supply, Silver Lake, is located northeast of the landfill, across a ridge. Based on the elevation of the lake and on potentiometric information from wells in the vicinity of the landfill, Verso Bucksport's consultant concludes that deep bedrock groundwater flows from the lake toward the landfill and the Penobscot River, rather than the opposite. Furthermore, as the license amendment sets forth, Verso currently has an environmental monitoring plan for the existing landfill which includes ground water, surface water, and leachate monitoring. The Greeniers have not provided any information showing that their residence four miles away in Stockton Springs will suffer particularized injury due to ground or surface water flowing from the landfill area.

The Greeniers also argue that Joseph Greenier suffered health problems as a result of his past work at the mill and landfill. This alleged injury is more than a decade old. Joseph Greenier no longer works at the mill, and lives four miles from the landfill. Furthermore, the amendment for an increase in licensed final elevation provides for construction of a liner that will separate the vertical increase from the underlying landfill. The older portion of the landfill will no longer be in use when the vertical increase is operational, since the vertical increase will overlie the landfill. Any connection between Joseph Greenier's health problems and an increase to the elevation of the landfill is, at best, abstract and hypothetical, not real and present. This allegation is not sufficient to establish standing for appeal of the amendment to the landfill license.

The Board finds that the Greeniers have not explained how they are aggrieved persons and have not demonstrated particularized injury as required in 06-096 CMR 2.24.B(2). Therefore the Board finds that the Greeniers are not aggrieved persons as defined in 06-096 CMR 2.1.B and the Greeniers may not bring an appeal of the license amendment before the Board.

Based on the above Findings, the Board concludes that:

1. The Greeniers filed a timely appeal.

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BUCKSPORT, HANCOCK COUNTY, MAINE
SPECIAL WASTE LANDFILL
#S-007713-WD-BB-A
APPEAL OF DISMISSAL DENIED

4 SOLID WASTE
) LICENSE
) APPEAL OF CHAIR'S
) DISMISSAL
) FINDINGS OF FACT AND
) ORDER

- 2. The Greeniers did not submit evidence sufficient for the Board to conclude that they are aggrieved persons for the purposed of bringing an appeal of Department Order #S-007713-WD-BB-A.

THEREFORE, the Board UPHOLDS the Board Chair's DISMISSAL of the appeal of MICHELLE AND JOSEPH GREENIER.

DONE AND DATED AT AUGUSTA, MAINE, THIS _____ DAY

OF _____, 2012.

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____
Susan Lessard, Chair