

Leithiser: Chair Lessard's April 2, 2012 Ruling

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTIONPAUL R. LEPAGE
GOVERNOR

Susan M. Lessard, Chair

Cynthia S. Bertocci
Executive AnalystTerry Dawson
Office Specialist II

April 2, 2012

Charles Leithiser
394 Fourth Street
Old Town, ME 04468RE: Motion to Dismiss Appeal by C. Leithiser in the Matter of:
State of Maine / State Planning Office
Public Benefit Determination #S-020700-W5-AU-N

Dear Mr. Leithiser:

By letter dated March 15, 2012, attorney Thomas Doyle filed, on behalf of the licensee, a Motion to Dismiss your appeal of the Public Benefit Determination for the proposed expansion of the Juniper Ridge Landfill. In the Motion to Dismiss, Mr. Doyle argues that you do not have standing as an aggrieved person to bring an appeal in this matter. You were subsequently provided with an opportunity to respond to the motion. By letter dated March 26, 2012 you filed your response to the Motion to Dismiss.

The requirements for filing an appeal of the Commissioner's licensing decision are set forth in the Department's Chapter 2 Rules Concerning the Processing of Applications and Other Administrative Matters. Among these is a requirement that the notice of appeal must include "...evidence demonstrating an appellant's standing as an aggrieved person." An "aggrieved person" is defined in rule as "any person whom the Board determines may suffer particularized injury as a result of a licensing or other decision." Further, "if the Chair decides an appellant is not an aggrieved person, "the Chair may dismiss the appeal." The rules provide that the Chair's decision regarding standing may be appealed to the full Board.

I have reviewed your appeal documents dated February 28, 2012, the Motion to Dismiss, and your response to the Motion to Dismiss and have consulted with the Office of the Attorney General regarding the cases cited in these submissions. As required by the rules governing appeals before it, the Board requires an appellant to set forth a particularized injury. You have not set forth in your submissions an injury particular to you. Rather, you recite generalized injuries that would be shared by all taxpayers of Old Town and the State of Maine. You also make cursory references to hypothetical impacts to property values and concerns about potential impacts from increased truck traffic, but again, you have not explained how these injuries are direct and specific to you, as opposed to generalized harm that would be sustained by the population as a whole. While you mention odors, without specifying whether the source is the landfill itself or truck traffic and without specifying the location of such odors, you forthrightly admit that these have improved. These past issues do not present a sufficient present or potential

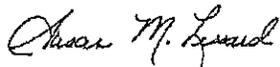
particularized injury in connection with the Public Benefit Determination or the proposed expansion of the landfill. While you argue that any member of the Maine public should have the right to appeal the Public Benefit Determination for a state-owned landfill, the law requires a demonstration of "particularized injury."

Since your appeal lacks evidence showing that you are an "aggrieved person" who may suffer a "particularized injury" as a result of the Public Benefit Determination, I am dismissing your appeal.

As stated above, my ruling in this matter may be appealed to the full Board. Any such appeal must be submitted by Wednesday, April 11, 2012 and will be considered by the Board at its May 3, 2012 meeting.

If you have any questions regarding this ruling, please contact Cynthia Bertocci, the Board's Executive Analyst, at 287-2452 or Nancy Macirowski, Assistant Attorney General, at 626-8868.

Sincerely,



Susan M. Lessard, Chair
Board of Environmental Protection

cc: Service List