



For a thriving New England

CLF Maine 53 Exchange Street, Suite 200
Portland, ME 04101
P: 207.210.6439
F: 207.221.1240
www.clf.org

July 8, 2021

SENT VIA ELECTRONIC MAIL

Mark C. Draper, Chair
Board of Environmental Protection
c/o Ruth Ann Burke
17 State House Station
Augusta, ME 04333-0017
ruth.a.burke@maine.gov

**RE: Appeal of Department Order S-010735-WD-YB-N
Response to notice of receipt of appeal and deadline for comment on proposed
supplemental evidence.**

Dear Chair Draper,

Conservation Law Foundation (“CLF”) writes to urge the Board of Environmental Protection (the “Board”) to reconsider its decision to strike several of the footnotes contained in our appeal of the Department of Environmental Protection’s (the “Department”) order approving the Phase 14 expansion of Waste Management Disposal Services of Maine’s (“WMDSM”) Crossroads Landfill (Department Order S-010735-WD-YB-N) for a number of reasons.

First, several of the footnotes struck from the record contain information that is already a part of the administrative record prepared by the Department’s staff. Second, the remaining footnotes include evidence that, while not explicitly contained in the administrative record, directly relate to concerns that were repeatedly raised by CLF and other commenters throughout the application process. Third, the evidence in these footnotes is publicly available information that was provided to give additional context relevant to the Board’s evaluation of whether the Department gave sufficient consideration to the claims raised throughout the permit review process. As such, the information provided in the footnotes struck by the Chair is central to determining whether the Department’s individual findings and overall decision is unlawful, unsupported by substantial evidence on the whole record, and/or arbitrary, capricious, or characterized by an abuse of discretion.

I. Information Already Contained in the Administrative Record.

In your letter of June 28, 2021, you struck footnotes 19, 37, 52, 63, 68, and 84 from consideration in this appeal on the basis that these footnotes contained materials that are not in the administrative record. However, all the information contained in these footnotes are in fact a

part of the administrative record. The following table outlines where each footnote can be found in the existing record.

Footnote	Location in the Administrative Record
Footnote 19	Contained in CLF’s comments submitted to the Department on October 13, 2020, specifically in footnote 88 on page 18.
Footnote 37	<p>Contained in CLF’s comments submitted to the Department on May 4, 2021, specifically, in footnote 46 on page 13.</p> <p>Additionally, this citation is to the Maine Solid Waste Generation and Disposal Capacity Report for 2018 & 2019. This report is prepared by the Department and created to provide information on the statewide generation of solid waste, statewide recycling rates, and available disposal capacity for solid waste. As such, this report should be informing all the Department’s decision making related to solid waste management, including decisions concerning the need to develop new landfill capacity.</p>
Footnote 52	Contained in CLF’s comments submitted to the Department on October 13, 2020, specifically footnote 105 on page 21. Also found in CLF’s comments submitted to the Department on May 4, 2021, specifically in footnote 23 on page 6.
Footnote 63	Contained in CLF’s comments submitted to the Department on October 13, 2020, specifically footnote 113 on page 23. Also found in CLF’s comments submitted to the Department on May 4, 2021, specifically in footnote 38 on page 10.

Footnote 68	Contained in CLF’s comments submitted to the Department on October 13, 2020, specifically footnote 11 on page 3. Also found in CLF’s comments submitted to the Department on May 4, 2021, specifically in footnote 40 on page 11.
Footnote 84	Contained in CLF’s comments submitted to the Department on May 4, 2021, specifically in footnote 27 on page 7.

Additionally, you struck these footnotes because they contain electronic links in violation of 06-096 CMR Ch. 2 § 24(B)(2). But § 24(B)(2) governs the use and submission of exhibits to appeals. The documents referenced in footnotes 19, 37, 52, 63, 68, and 84 are not being submitted as exhibits as they are already in the administrative record, as discussed above. CLF provided electronic links to them for ease of access to the cited materials in an attempt to make the review process more convenient for you, the Board, the Board’s staff, participants to the appeal, and all interested parties. For instance, in footnote 52 we cite to the Department’s June 22, 2020, Response to Comments on Phase 14 Solid Waste Permit Application to demonstrate that the Department expressed concern over the hydrogeologic assessment. CLF felt it would be more convenient for all parties to have direct access to these comments in the appeal document itself, rather than combing through the administrative record. CLF can provide the appropriate cites to the Administrative Record.

II. Footnote 55 – Evidence from the U.S. Drought Monitor.

In your June 28, 2021, letter you also struck footnote 55 from consideration in this appeal, ruling that it referenced materials that are outside of the administrative record. Footnote 55 contains data from the U.S. Drought Monitor demonstrating that the location of the proposed new landfill, Kennebec County, Maine, experienced significant levels of drought between 2017 and 2021. While this data is not in the administrative record, the issue of whether the hydrogeologic assessments performed by Golder Associates on behalf of WMDSM was done during a period of drought was raised repeatedly throughout the review process and is relevant to the issue of the Department’s degree of diligence when considering the comments received on the application.

The Department was put on notice about the issue of drought conditions impacting the validity of the hydrogeologic assessments by Golder Associates during its review of the application. The draft license was issued on April 23, 2021, and the Department received a total of 87 written comments on the draft license prior to the deadline of May 4, 2021. Of those 87 comments, 29 specifically expressed concern over the fact that the hydrogeologic assessments occurred during periods of drought. However, the Department never addressed these concerns.

This evidence is relevant and material to the board’s review of the Department’s licensing decision as testing during drought conditions would likely not provide an accurate understanding of the hydraulic connectivity below the proposed landfill during normal or high-water table conditions. Moreover, the U.S. drought monitoring data is publicly available information that the Department could have and should have accessed before attempting to understand the impact these drought conditions would have on the hydraulic connectivity. Therefore, this evidence is relevant to the Board’s evaluation of the Department’s handling of a significant concern that was raised repeatedly during their review of the application.

III. Footnotes 70, 71, 72, 73, 89, and 90 – Evidence Related to Waste Management’s Operation of the Turnkey Landfill in New Hampshire.

You also struck footnotes 70, 71, 72, 73, 89, and 90 for referencing materials that are outside of the administrative record. All these footnotes reference Waste Management’s operation of its Turnkey Landfill in New Hampshire. Footnotes 70, 71, 72, and 73, refer to the fact that despite accepting the exact same type of solid waste, Waste Management is building a double liner system for the expansion of its New Hampshire Turnkey Landfill and is only using a less protective single liner system for the Phase 14 expansion of its Crossroads Landfill here in Maine. Similarly, footnotes 89 and 90 highlight this same double standard with respect to how Waste Management treats leachate in New Hampshire as compared to Maine – in New Hampshire, Waste Management is currently pretreating all leachate from the Turnkey Landfill, a process which Waste Management will not undertake here in Maine at the Crossroads Landfill.

CLF repeatedly raised the fact that Waste Management was proposing significantly weaker measures in its Phase 14 expansion of the Crossroads landfill, compared to its expansion of the Turnkey Landfill in New Hampshire. In both our comments submitted to the Department, CLF raised the issue of Waste Management only utilizing a single liner system despite using a more protective double liner system as part of its expansion of the Turnkey Landfill. CLF raised this concern on page 23 of our comments submitted on October 13, 2021, and again on page 11 of our comments submitted on May 4, 2021.¹ Additionally, in the same comments, CLF raised the fact that Waste Management had not proposed any onsite pretreatment of leachate at the Crossroads Landfill, despite being required to do so in New Hampshire at its Turnkey Landfill.

¹ See, Conservation Law Foundation, Waste Management Disposal Services of Maine’s application for Landfill Expansion, Crossroads Landfill, Norridgewock, Maine (Somerset County), #S-010735-WD-YB-N, p. 23 (October 13, 2020); Conservation Law Foundation, Crossroads Landfill - Draft Phase 14 Expansion License Decision #S-010735-WD-YB-N, p. 11 (May 4, 2021).



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CLF raised this concern on pages 25 and 31 of our comments submitted on October 13, 2021, and again on page 12 of our comments submitted on May 4, 2021.²

CLF urges the Board to allow the evidence contained in footnotes 70, 71, 72, 73, 89, and 90, to remain part of the appeal. We raised these issues previously throughout the comment process as noted above and the specific information contained in the footnotes is publicly available and intended to provide greater context to our previous claims. This additional context is relevant to the Board's evaluation of the Department's handling of our repeated concerns about the disparity in how Waste Management provides less protective measures for the environment in Maine than it does in Maine's neighboring state of New Hampshire.

IV. Conclusion

CLF urges you to reconsider your decision to strike footnotes 19, 37, 52, 55, 63, 68, 70, 71, 72, 73, 84, 89, and 90 from the record. Footnotes 19, 37, 52, 63, and 84 are all already part of the administrative record. Footnotes 55, 70, 71, 72, 73, 89, and 90 should be included as they are directly linked to the comments and critiques consistently made by CLF and members of the public. The evidence is relevant and material to the Board's evaluation of whether the Department gave sufficient consideration to those comments and critiques, and whether the Department's individual findings or overall approval of the Phase 14 expansion is valid.

Thank you for your time and consideration of this request.

Respectfully submitted,

Peter W. Blair Jr., Esq.
Staff Attorney
Conservation Law Foundation
53 Exchange Street, #200
Portland, ME 04101
pblair@clf.org

Cc:
William F. Hinkel, Board of Environmental Protection

² See, Conservation Law Foundation, Waste Management Disposal Services of Maine's application for Landfill Expansion, Crossroads Landfill, Norridgewock, Maine (Somerset County), #S-010735-WD-YB-N, p. 25, and 31 (October 13, 2020); Conservation Law Foundation, Crossroads Landfill - Draft Phase 14 Expansion License Decision #S-010735-WD-YB-N, p. 12 (May 4, 2021).



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Katherine Tierney, Office of Attorney General
Peggy Bensinger, Office of Attorney General
Susanne Miller, Department of Environmental Protection
Victoria Eleftheriou, Department of Environmental Protection
Molly King, Department of Environmental Protection
Susan Parmelee, Department of Environmental Protection
Gail Lipfert, Department of Environmental Protection
Kathy Tarbuck, Department of Environmental Protection
Kirstie Pecci, Conservation Law Foundation
Sherwood McKenny, Waste Management Disposal Services
Juliet Browne, Verrill Dana