

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION



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Mark C. Draper, Chair

William F. Hinkel
Executive Analyst

Ruth Ann Burke
Board Clerk

August 23, 2021

SENT VIA ELECTRONIC MAIL ONLY

Kirstie L. Pecci, Esq.
Director of the Zero Waste Project
Conservation Law Foundation
62 Summer Street
Boston, MA 02110
kpecci@clf.org

Sherwood McKenny, District Engineer
Waste Management Disposal Services
of Maine, Inc.
P.O. Box 629
Norridgewock, ME 04957
smckenne@wm.com

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

Juliet Browne, Esq.
Verrill Dana
One Portland Square
Portland, ME 04101-4054
jbrowne@verrill-law.com

**Re: Appeal of Department Order S-010735-WD-YB-N
Chair ruling on motion to dismiss**

Dear Participants:

Conservation Law Foundation (CLF) filed with the Board of Environmental Protection (Board) a timely appeal of the May 11, 2021, Order of the Commissioner of the Department of Environmental Protection (Department) conditionally approving the application of Waste Management Disposal Services of Maine, Inc. (WMDSM or Licensee) to construct a 7.75-million cubic yard expansion at the site of the existing WMDSM landfill, located in Norridgewock (Department Order S-010735-WD-YB-N).

On July 13, 2021, WMDSM filed with the Board a motion to dismiss CLF's appeal for lack of standing, and on August 9, 2021, CLF submitted a response to WMDSM's motion.

The requirements for filing an appeal of a Commissioner's licensing decision is governed by Chapter 2, § 24 of the Board's rules (*Rule Concerning the Processing of Applications and Other Administrative Matters*, 06-096 C.M.R. ch. 2.) Pursuant to Chapter 2, § 24(B)(1), the content of an appeal must include evidence demonstrating the appellant's standing as an aggrieved person. Chapter 2, § 1(B) defines "aggrieved person" as "any person whom the Board determines may suffer particularized

injury as a result of a licensing or other decision. The Board will interpret and apply the term ‘aggrieved person,’ whenever it appears in statute or rule, consistent with Maine state court decisions that address judicial standing requirements for appeals of final agency action.” The Department Information Sheet: Appealing a Department Licensing Decision appended to the Department Order elaborates on this requirement, providing, “The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner’s decision.”

Maine’s highest court has held that “[a] particularized injury occurs when a judgment or order adversely and directly affects a party’s property, pecuniary, or personal rights” in a way “that is in fact distinct from the harm experienced by the public at large.” *Nergaard v. Town of Westport Island*, 2009 ME 56, ¶¶ 14, 18, 973 A.2d 735 (quotation marks omitted); see also *Nelson v. Bayroot, LLC*, 2008 ME 91, ¶ 10, 953 A.2d 378. The person filing the appeal has the burden of proving that they meet the definition of an aggrieved person. *Nergaard*, 2009 ME 56, ¶ 14, 973 A.2d 735. “As a general matter, ‘[a]n association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.’” *Conservation L. Found., Inc. v. Town of Lincolnville*, 2001 WL 1736584, at *6 (Me. Super. Feb. 28, 2001) (citing *Friends of the Earth, Inc. v. Laidlaw Env’t Svcs. Inc.*, 528 U.S. 167, 180 (2000)).

With regard to standing, CLF bolstered its initial argument that it has organizational standing to bring the appeal by identifying five members of the public who are also members of the CLF organization and who CLF asserts may suffer a particularized injury as a result of the Commissioner’s decision. Although not determinative of standing, I also note that CLF and its members Debby Maguire, Steven Anderson, MaryAnn Anderson, and Edward Ferreira participated in the underlying licensing proceeding.

In consideration of the above, I conclude that CLF has made the necessary showings that it has standing as an aggrieved person to appeal the Department Order to the Board. See Chapter 2, §§ 1(B), 24(B)(1). CLF has identified club members whose property, pecuniary, or personal rights may be adversely and directly affected by the activity approved by Department Order in a manner that is distinct from the harm that would be experienced by the public at large. Consequently, WMDSM’s motion to dismiss CLF’s appeal is denied.

If you have any questions, you may contact Board Executive Analyst William F. Hinkel at bill.hinkel@maine.gov (207) 314-1458 or Assistant Attorney General Katherine Tierney at katherine.tierney@maine.gov (207) 626-8897.

Respectfully,



Mark C. Draper, Chair
Board of Environmental Protection

cc (via e-mail only): Service List (August 10, 2021)