



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

BOARD ORDER

IN THE MATTER OF

STATE OF MAINE
BUREAU OF GENERAL SERVICES
JUNIPER RIDGE LANDFILL EXPANSION
City of Old Town, Town of Alton
Penobscot County, Maine
#S-020700-WD-BI-N
#L-024251-TG-C-N

) APPLICATION FOR
) MAINE HAZARDOUS WASTE, SEPTAGE and
) SOLID WASTE MANAGEMENT ACT, and
) NATURAL RESOURCES PROTECTION ACT
) PERMITS, and
) WATER QUALITY CERTIFICATION
)
) SIXTH PROCEDURAL ORDER

On September 14, 2016, the Chair of the Board of Environmental Protection (Board) held a pre-hearing conference at the Cross Office Building in Augusta, Maine regarding the application for expansion of the Juniper Ridge Landfill (JRL). The purpose of the pre-hearing conference was to review procedures and a draft schedule for the hearing. This procedural order summarizes matters discussed at the conference and sets forth the rulings of the Board Chair, sitting as the Presiding Officer.

Persons present:

James Parker, Board Chair and
Presiding Officer
Mary Sauer, Assistant Attorney General (AAG)
Cynthia Bertocci, Board Executive Analyst
Ruth Ann Burke, Board Admin. Assistant
David Burns, Acting Director, DEP Bureau of
Remediation & Waste Management (BRWM)
Victoria Eleftheriou, DEP BRWM
Kathy Tarbuck, DEP BRWM Project Manager
Lynn Caron, DEP Bureau of Land Quality
Michael Barden, Dept. of Econ. & Comm. Dev.
for Bureau of General Services

William Laubenstein, III, AAG
for Bureau of General Services
Thomas Doyle, Pierce Atwood
for NEWSME Landfill Operations, LLC
(NEWSME)
Don Meagher, Casella Waste Systems, Inc.
(Casella) and NEWSME
Michael Booth, Sevee & Maher for NEWSME
Jim Katsiafas, Perkins Thompson
for intervenor City of Old Town
Dana Snowman, Intervenor
Edward Spencer, Intervenor

1. Organization and General Conduct of the Hearing

The conduct of the hearing is governed by the *Maine Administrative Procedure Act*, Title 5 M.R.S. §§ 9051-9064; DEP statutes Title 38 M.R.S. § 341-D(2), § 344, § 345-A, and § 1310-S(2); and the Department's *Rules Governing the Conduct of Licensing Hearings*, 06-096 C.M.R. ch. 3.

Matters discussed at the conference and the Presiding Officer's determinations are summarized below.

- A. Commencement of Hearing. The hearing will begin at 9:00 a.m. on Tuesday, October 18, 2016 and will continue, as needed, on Wednesday, October 19th beginning at 8:30 a.m. The Presiding Officer will hold a pre-hearing conference with the parties at 8:30 a.m. on Tuesday, October 18th. Parties should assume that the conference will be held at the hearing room. The purpose of the conference will be to discuss any issues that may have arisen and to ensure that all parties are ready to proceed.
- B. Presiding Officer's Opening Statement. As set forth in Chapter 3, § 19(A), the Presiding Officer will open the hearing with a statement of the purpose for the hearing and the general procedures governing its conduct, and staff will enter the application file into the hearing record. There will be no opening statements by parties at the commencement of the hearing. A party presenting witnesses will have up to five minutes to introduce witnesses immediately prior to the presentation of that party's case.
- C. Sequence of Presentation by the Parties. The sequence of presentation of witnesses by the parties will be: Bureau of General Services/NEWSME's witnesses, Edward Spencer and his witness, followed by the City of Old Town and its witnesses.
- D. Summary of Pre-Filed Testimony and Cross-Examination. As stated in Chapter 3, § 19(B), all witnesses must be sworn. Persons who have pre-filed testimony must be present at the hearing and are subject to cross-examination by the other parties and questioning by Board members and staff. Parties are reminded that Board members will have read the pre-filed direct and rebuttal testimony; therefore, parties are asked to limit presentations by their witnesses to a concise summary of the major points of their testimony. Since each witness will summarize his/her testimony only once, each witness should, in the summary, weave together his/her direct and rebuttal testimony. In instances where portions of pre-filed testimony were not admitted, the witness must not summarize testimony that was not admitted to the record.

Cross-examination of witnesses will proceed in the following order: Applicant (BGS/NEWSME), Mr. Spencer, City of Old Town, Mr. Snowman, and then Mr. Laite on behalf of SSR, LLC. Cross-examination of BGS/NEWSME's witnesses will occur in two panels: one panel consisting of witnesses Barden and King; the other panel, witnesses Sevee, Booth, Emerson, and Labbe.

- E. Additional Technical Consultants. At the conference, Mr. Doyle stated that the Applicant did not pre-file testimony on some aspects of the application, such as the scenic impact assessment, that were not contested by the intervenors. However, the Applicant will have technical consultants, in addition to those who pre-filed testimony at the hearing, present to respond to any questions Board members and staff may have on any aspect of its application and supporting documents.

In the event Board members have questions on aspects of the application that were not addressed in pre-filed testimony, the Board may ask DEP staff to direct Board members to the location in

the record where evidence on that matter is found. If Department staff members are not able to direct Board members to the appropriate location in the record, the Board may ask the Applicant and its consultants to locate the information. If Board members require further explanation, the Applicant's witnesses, and the Applicant's technical consultants who did not pre-file testimony, may respond at the discretion of the Presiding Officer. The Presiding Officer will allow cross-examination if requested by a party.

- F. PowerPoint Presentations and Other Demonstratives. Persons testifying may use PowerPoint presentations and other demonstratives (such as enlargements of maps) when summarizing their testimony. PowerPoint slides should generally be limited to a text summary of the main points of a witness' testimony and/or enlargement and projection of an exhibit from pre-filed testimony. Documents used in presentations must be clearly labeled as to source and location in the record. The compilation of data from multiple sources in a form not pre-filed as an exhibit will not be permitted. PowerPoint presentations and other demonstratives will not be entered into the record.
- G. Evidence and Objections. Parties are reminded that testimony must be relevant. In accordance with Chapter 3, § 20(E), objections to testimony during the course of the hearing must be made at the time a party believes an objectionable action has occurred. Rulings on objections made during the course of the hearing are final and not appealable to the full Board. The Board will encourage members of the public to focus their testimony on the relevant licensing criteria.
- H. Questions from the Public. In accordance with Chapter 3, § 19(D), if a member of the public in attendance at the hearing would like to pose a question to a witness, that person is required to submit the proposed question in writing to the Presiding Officer. Paper will be provided for this purpose. If the Presiding Officer determines that the question is relevant and not repetitive, the Presiding Officer may pose the question to the witness as time permits.
- I. Public Testimony. The Board has reserved the evening of Tuesday, October 18th to receive testimony from members of the public. Parties were reminded that the public testimony session is an opportunity for persons to comment on the proposed landfill expansion; it is not a public informational question and answer session. The evening session will begin at 6:00 p.m.

Persons testifying during the public session will be asked to state their name, town of residence, affiliation if any, and whether they are speaking on behalf of themselves or any group. To the extent a person speaking in the public session is affiliated with a party to the proceeding, the person should speak on his/her own behalf and should not present evidence that should have been provided by the party during the time allotted for its case. Persons testifying will be encouraged to focus their testimony on the relevant licensing criteria. Time limits may be imposed by the Presiding Officer if needed to ensure that all persons have an opportunity to testify.

At the conference, concern was expressed that the Tuesday evening session may not provide sufficient time for public testimony. If public testimony is not concluded Tuesday evening, additional public testimony will be taken on Wednesday, October 19th at 1:00 p.m.

- J. Regulation of Certain Devices. In accordance with Chapter 3, § 19(F), it was noted that the use of cameras, recording devices, and similar equipment is allowed at the hearing. The placement of such equipment may be regulated by the Presiding Officer so that the equipment does not interfere with the conduct of the hearing.
- K. Disruptive Conduct. To ensure an orderly, fair and productive hearing, the Board will not allow the placement of signs in support of or opposition to the proposed project, applause, or comment by persons not recognized by the Presiding Officer.
- L. Closing Statements/Argument. The Board does not intend to hear closing statements or argument at the conclusion of testimony and cross-examination. Parties have the opportunity to file post-hearing briefs in accordance with Chapter 3, § 23.
- M. Conclusion of the Hearing. In accordance with Chapter 3, § 22, at the conclusion of the hearing, the evidentiary record will close. No other evidence will be allowed into the record, except as specified by the Presiding Officer. The deadline for written comment is 5:00 p.m. on October 19, 2016.

2. Post-Hearing Procedures

- A. Post-hearing Brief and Proposed Findings. In accordance with Chapter 3, § 23, “All parties have the right to submit briefs and proposed findings of fact in writing after the close of the hearing and the record, within such time as specified by the Presiding Officer.” Post hearing briefs must not contain new evidence; rather, they are limited to argument regarding compliance with the relevant licensing criteria and what the Board should decide in this case. At the close of the hearing, the Presiding Officer will set a deadline for the submission of post-hearing briefs.
- B. Board Deliberations. Following receipt of post-hearing briefs, the Board will hold one or more deliberative sessions with Department staff to discuss the evidence and formulate a decision on the application. Deliberative sessions are open to the public; however, participation is limited to Board members and staff. No additional evidence or argument is heard at a deliberative session.
- C. Draft License Decision. In accordance with provisions of Chapter 3, § 27(B), the Board will issue a draft license decision for comment by the parties and interested persons. The draft license decision will be available for at least fifteen (15) working days before the Board takes final action on the application.

3. Hearing Schedule

Staff distributed a draft schedule for discussion at the conference. As stated above, BGS/NEWSME will present its witnesses first, followed by Mr. Spencer, and then the City of Old Town. BGS/NEWSME’s witnesses will be cross-examined in two panels. A revised hearing schedule, with approximate time allocations for testimony and cross-examination, will be distributed in advance of the hearing. If testimony or cross-examination of one party’s witnesses proceeds more quickly than anticipated, the Board will proceed to hear from the next witness or panel of witnesses. If additional time is needed for any witness or panel, the Presiding Officer may allocate additional time and

modify the schedule accordingly. To accommodate his teaching schedule, Dr. Coghlan has been scheduled to testify on Tuesday afternoon. He will be taken out of order if necessary.

4. Hearing Location and Logistics

- A. Location. The hearing will be held at the Cross Insurance Center, 515 Main Street, Bangor.
- B. Equipment. The Board will provide a projection screen and sound. Parties must provide their own presentation equipment.
- C. Meals. The precise timing of lunch and dinner breaks will be dictated by the progress of the hearing, with breaks generally occurring at logical points in the presentation of testimony and cross-examination of witnesses. Lunch breaks will be approximately 45 minutes in length; parties should plan accordingly.

5. Role of Department Staff

The role of Department staff entails gathering facts on behalf of the Board, which includes asking questions of witnesses at the hearing. At the conclusion of the hearing, Department staff will analyze the record, review the record with Board members in one or more deliberative sessions, and draft a recommendation (in the form of a draft Board Order) for the Board's consideration.

6. Ex-partie Communications

The Board's decision on the application must be based on evidence that is in the record and available to all. Therefore, as set forth in the Maine Administrative Procedure Act, 5 M.R.S. § 9055 and Chapter 3, § 6, the parties may not communicate directly or indirectly with any member of the Board in connection with any issue of fact, law or procedure pertaining to this licensing proceeding while the matter is pending except upon notice and opportunity for all parties to participate, such as during the hearing and any pre-hearing conference. The parties may communicate with Department staff, counsel to the Board, the Board's Executive Analyst, and the Board's Administrative Assistant.

7. Other Matters

- A. Question Regarding Potential Conflict of Interest. Mr. Spencer stated that he has heard comment that Board member Mark Draper may have a potential conflict of interest and he asked for clarification. Ms. Sauer pointed out that Mr. Draper disclosed at the Board's September 17, 2015 meeting (the meeting at which the Board considered assuming licensing jurisdiction over the landfill expansion application) that he is the Solid Waste Director for Tri-Community Recycling Facility and Sanitary Landfill in Fort Fairfield which does some business with Pine Tree Waste, a subsidiary of Casella. Ms. Sauer noted that Mr. Draper stated at that time that he believes he does not have a conflict and can fairly and objectively participate in review of the application. It was further noted that there were no objections raised at that Board meeting to Mr. Draper's participation in this licensing proceeding. Mr. Spencer stated that he is not requesting that Mr. Draper recuse himself. Ms. Bertocci will provide Mr. Spencer with a copy of the September 17, 2015 Board meeting minutes and, if Mr. Spencer would like, a copy of the audio tape of the meeting.

- B. Request for Information from the City of Old Town. Ms. Bertocci requested an update on the status of the agreements in principle between the City of Old Town, Bureau of General Services, and NEWSME regarding truck traffic and the wetland preservation area. She noted that the City stated that it would provide finalized copies to the Department and the intervenors (see Third Procedural Order, section 2(A)). Mr. Katsiaficas responded that the agreements are referenced in the pre-filed testimony of City Manager William Mayo and that the Old Town City Council has authorized the City Manager to sign the agreements following issuance of a permit for the proposed expansion. Mr. Katsiaficas stated that he will provide copies of the unsigned agreements to the Department and the other intervenors.

8. Schedule

As stated in section 1(A) of this Order, the Presiding Officer will hold a brief pre-hearing conference with the parties on Tuesday, October 18, 2016 at 8:30 a.m. The hearing will begin at 9:00 a.m. on Tuesday, October 18, 2016 and continue as needed on Wednesday, October 19, 2016 beginning at 8:30 a.m.

DONE AND DATED AT AUGUSTA, MAINE THIS 28th DAY OF SEPTEMBER, 2016.

BOARD OF ENVIRONMENTAL PROTECTION



BY: _____
James W. Parker, Board Chair
and Presiding Officer