



BOARD ORDER

IN THE MATTER OF

STATE OF MAINE) APPLICATION FOR
BUREAU OF GENERAL SERVICES) MAINE HAZARDOUS WASTE, SEPTAGE AND
JUNIPER RIDGE LANDFILL EXPANSION) SOLID WASTE MANAGEMENT ACT, and
City of Old Town, Town of Alton) NATURAL RESOURCES PROTECTION ACT
Penobscot County, Maine) PERMITS and
#S-020700-WD-BI-N) WATER QUALITY CERTIFICATION
#L-024251-TG-C-N) FIRST PROCEDURAL ORDER
) DESIGNATION OF INTERVENORS

This matter comes before the Board of Environmental Protection (Board) to take action on Petitions for Intervention in the matter of the applications by State of Maine Bureau of General Services (BGS) for Maine Hazardous Waste, Septage and Solid Waste Management Act and Natural Resources Protection Act (NRPA) permits and water quality certification for construction of a 9.35 million cubic yard expansion of the Juniper Ridge Landfill in the municipalities of Old Town and Alton, Penobscot County, Maine. The applications have been consolidated for processing and are hereafter referred to as the “application.” The application was accepted as complete for processing on August 7, 2015. On September 17, 2015, the Board voted to assume licensing jurisdiction over the application and hold a public hearing on the proposed project. Notice of opportunity to petition to intervene in the Board’s proceeding was published in the Bangor Daily News and Kennebec Journal on November 19, 2015 and sent to persons on the interested persons list. The deadline for receipt of Petitions for Leave to Intervene was December 17, 2015.

After reviewing the petitions that were filed, considering comments from representatives of the petitioners and the applicant, and considering the recommendation of Department staff, the BOARD FINDS THE FOLLOWING FACTS:

1. The Maine Administrative Procedures Act (MAPA) (5 M.R.S. § 9054(1)) provides that: “[o]n timely application made pursuant to agency rules, the agency conducting the proceeding shall allow any person showing that he is [or] may be, or is a member of a class which is or may be, substantially and directly affected by the proceeding, or any other agency of federal, state or local government, to intervene as a party to the proceeding.” Additionally, the Board “may, by order, allow any other interested person to intervene and participate as a full or limited party to the proceeding.” 5 M.R.S. §9054(2).
2. The Department’s *Rules Governing the Conduct of Licensing Hearings*, 06-096 CMR 3, require that a petition include “identification of the petitioner, a description of the effect of the proposed activity on the petitioner; specific contentions regarding the subject matter of the hearing and the relevant review criteria; the name of the spokesperson for the petitioner; and a statement regarding the ability of the petitioner to participate in the proceeding. If the petitioner is a group or organization, the petition shall include a general description of the purpose and membership of

the group or organization. A petition shall be granted if it demonstrates that the petitioner is or may be, or is a member of a class which is or may be, substantially and directly affected by the proceeding. A petition for leave to intervene may be granted to allow participation as a full or limited party to the proceeding.”

3. Title 38 M.R.S. § 1310-S(3) of the Maine Hazardous Waste, Septage and Solid Waste Management Act provides that municipal officers, or their designees, from the municipality in which the facility would be located have intervenor status if requested within 60 days of receiving notice of the intent to file the application. The City of Old Town requested intervenor status on June 4, 2015 and has been provided financial assistance in accordance with 38 M.R.S. § 1310-S(4). The Town of Alton notified the Department on July 30, 2015 that it would not be requesting intervenor status.
4. Title 38 M.R.S. § 1310-S(3-A) provides that an abutting property owner has intervenor status if the property owner requests it within 10 days following public notice of the hearing. To date the Board has received two requests from abutting property owners Jesse Pekkala of Telluride, Colorado and SSR, Inc. Mr. Pekkala owns Lot #113 on Alton Tax Map #8 which abuts the proposed project. SSR, Inc. owns Lots 1B, 45 B, 50A, 53, 54B, and 58B on City of Old Town Tax Map #3. As abutters, Mr. Pekkala and SSR, Inc. have intervenor status by right. The deadline for abutting property owners to request intervenor status has not passed so additional requests from abutting property owners may be received.
5. The Board received three requests for intervenor status from the following interested persons: Antonio Blasi, Dana C. Snowman, and Edward S. Spencer.
6. On January 5, 2016, BGS and NEWSME Landfill Operations, LLC (NEWSME) filed “Opposition of State Bureau of General Services and NEWSME Landfill Operations, LLC to Petition to Intervene of Antonio Blasi and Comment on Other Intervenor Petitions.” In their filing, BGS and NEWSME argue that Mr. Blasi does not meet the standard for intervention. They also argue that some of the issues cited in the petitions are not relevant to the licensing criteria and, therefore, not subject to review in the current proceeding. BGS and NEWSME do not object to the petitions of Mr. Snowman and Mr. Spencer.
7. In his petition, Mr. Blasi states that the proposed project will result in decreased earnings potential due to environmental disruption. He states that there will be increased toxicity to the Penobscot River due to runoff and accidental dumping, and that he does not believe the State can effectively manage an expanded landfill. Mr. Blasi, whose mailing address is in Hancock, does not state that his home or business is located in the vicinity of the landfill, and he does not explain how he will be directly affected by the proposed project. While some of Mr. Blasi’s issues regarding solid waste management may be relevant to the licensing criteria, the Board finds that the petition does not demonstrate that Mr. Blasi may be substantially and directly affected by the proceeding.
8. Mr. Snowman states in his petition that he lives less than a mile from the project and has been a long-time member of the Landfill Advisory Committee. He states that he is concerned about the amount of waste from outside the state that is being disposed of at the landfill. A review of the

Department's record indicates that Mr. Snowman's residence is located on Old Stagecoach Road in the vicinity of the proposed project. Because Mr. Snowman's residence is located close to the landfill and his concerns appear to be relevant to the licensing criteria, the Board finds that Mr. Snowman has demonstrated that he may be substantially and directly affected by the proceeding.

9. In his petition, Mr. Spencer states that he lives less than two miles from the Juniper Ridge Landfill and is able to hear noise from landfill operations at his home and can detect odors from the landfill on his property. He further states that he may suffer a decrease in property value as a result of an expansion of landfill operations and is unable to implement forest harvesting plans on his property without potentially increasing both noise and visual impacts from the landfill. Mr. Spencer asserts that the State has failed to adequately control the landfill and has not independently accounted for the amounts, sources, and types of wastes entering the landfill and whether the waste hierarchy is being enforced. He argues that the landfill may leak and poses a threat to air, water, and living beings. With reference to the alternatives analysis required by the NRPA, Mr. Spencer argues that there are ways to avoid expansion of the landfill at this time.

While not all of the issues raised by Mr. Spencer appear to be relevant to the licensing criteria, the Board finds that Mr. Spencer, who resides in Old Town in the vicinity of the proposed project and has specific contentions related to the licensing criteria, has demonstrated that he may be substantially and directly affected by the proceeding.

10. The Board has considered BGS's and NEWSME's comments questioning the relevancy of certain issues cited in the petitions. The designation of intervenor status in this Order does not signify that all issues that have been, or will be, raised by intervenors are relevant to this proceeding or will be considered by the Board. The Presiding Officer will review the relevant licensing criteria and issues for consideration in this proceeding with the parties at a pre-hearing conference. The Board takes this opportunity to note that, pursuant to 38 M.R.S. § 1310-N(3-A)(B), the Department's finding of public benefit for a 9.35 million cubic yard expansion of the Juniper Ridge Landfill is not subject to review by the Department or the Board as part of the current licensing process.

Based on the above Findings of Fact, the Board GRANTS the petitions of Dana C. Snowman and Edward S. Spencer and DENIES the petition of Antonio Blasi to intervene in the Juniper Ridge Landfill Expansion licensing proceeding. The Board establishes the following requirements and schedule:

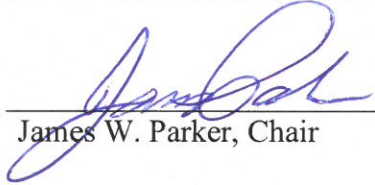
1. In order to ensure that the proceeding moves forward in a timely and efficient matter, intervenors or their designated representatives must participate in the pre-hearing conferences and adhere to all schedules and deadlines established by the Board or the Presiding Officer in this matter. Failure to do so may result in appropriate sanctions, including the rejection of argument, evidence, or testimony the party seeks to offer.
2. A pre-hearing conference is tentatively scheduled for Tuesday, February 9, 2016 at 10:00 a.m. Any party that does not participate waives its right to object to matters discussed and resolved by way of procedural order following the conference.

3. The Presiding Officer may require consolidation of intervenors in part or in whole at a later date if the intervenors' interests or contentions are substantially similar and such consolidation would expedite or simplify the hearing without prejudice to the rights of any party.

DONE AND DATED AT AUGUSTA, MAINE THIS 21st DAY OF JANUARY, 2016.

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____



James W. Parker, Chair