



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

DEPARTMENT ORDER

IN THE MATTER OF

PACHIOS BROS I, LLC AND LACONIA, LLC) SOLID WASTE LICENSE
PORTLAND, CUMBERLAND COUNTY, MAINE)
BENEFICIAL USE OF SOLID WASTE)
USE ADDITIONAL SECONDARY MATERIAL)
#S-022545-W3-C-M)
(APPROVAL WITH CONDITIONS)) MINOR REVISION

Pursuant to the provisions of the Maine Hazardous Waste, Septage, and Solid Waste Management Act, 38 M.R.S. §§ 1301 through 1319-Y, the Department's *Solid Waste Management Rules: General Provisions*, 06-096 C.M.R. ch. 400 (last amended February 9, 2021), and *Solid Waste Management Rules: Beneficial Use of Solid Waste*, 06-096 C.M.R. ch. 418 (last revised July 8, 2018), the Department of Environmental Protection ("Department") has considered the application of Pachios Bros I, LLC and Laconia, LLC ("the applicant"), with its supportive data, staff summary, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

- A. Application: The applicant has applied for a minor revision to Department Order # S-022545-W3-A-N, which allowed the beneficial use of secondary material from the Back Cove South Storage Facility in Portland. This is the second minor revision to # S-022545-W3-A-N.
- B. History: The applicant is rebuilding a parking lot at 11 Forest Avenue in Portland. The original beneficial use license approved the use of approximately 3,500 cubic yards of secondary material that consisted of granular fill exported during excavation work for the Back Cove South stormwater storage facility. The excavated secondary material was needed to fill a former 6,000 square foot bowling alley beneath the parking lot. During the project additional voids were discovered, and the applicant applied for and received a minor revision (Department Order # S-022545-W3-B-M) to use additional secondary material to fill them.
- C. Project Summary: Under the previous minor revision, the applicant received approval to bring in 2,000 cubic yards of secondary material from a redevelopment project at the University of Southern Maine ("USM") in Portland to fill the additional voids discovered during excavation. The USM project was modified to use additional material on site and therefore generated only about 900

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cubic yards of material, which was not sufficient to complete filling and grading. The applicant has applied for a second minor revision to its beneficial use license to use an additional 1,100 cubic yards of secondary material to complete the project.

2. PROJECT DESCRIPTION

The applicant proposes to beneficially use approximately 1,100 cubic yards of secondary material being excavated from a USM property at 44 Bedford Street in Portland. This property is enrolled in the Department’s Voluntary Response Action Program (“VRAP”) and will be the site of the new Portland Commons Residence Hall and Career & Student Success Center. The ongoing parking lot reconstruction at the 11 Forest Avenue beneficial use location has been reviewed and approved as a Level 1 Site Alteration by the City of Portland.

3. WASTE CHARACTERIZATION and TECHNICAL COMPARISON OF MATERIALS

The secondary material consists of fine to coarse sand and silt with varying amounts of gravel, and is expected to perform as an adequate substitute for virgin construction fill or common borrow. In situ sampling of the secondary material was conducted by Woodard & Curran during subsurface investigations in April and December of 2021 and January of 2022. Chemical analysis was performed on a total of 15 samples taken from borings and test pits during these investigations.

Analytical results were below the screening levels of 06-096 C.M.R. ch. 400, Appendix A (“Appendix A”) with the following exceptions:

- One sample contained 0.2 mg/kg naphthalene, which exceeds the Appendix A screening level of 0.078 mg/kg;
- Two samples contained benzo(a)pyrene with levels of 1.6 and 3.1 mg/kg, which exceed the Appendix A screening level of 1.3 mg/kg;
- Five samples contained arsenic at levels exceeding the Appendix A screening level of 7.9 mg/kg. Values exceeding this level were 13.9, 14.7, 14, 11.6, and 18.6 mg/kg.

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The Department finds that it has identified an arsenic level of 16 mg/kg as the background level for undeveloped locations in Maine. The Department also finds that the applicant has adequately characterized the material from the USM property, the secondary material will serve as an adequate substitute for common borrow for this project, and the proposed use of the secondary material will not include the use of any hazardous wastes.

4. RISK TO PUBLIC HEALTH AND THE ENVIRONMENT

Except as noted above, the concentrations of chemicals in the secondary material were below the Department's Appendix A screening levels. One sample exceeded the Appendix A screening level for naphthalene, two samples showed minor exceedances of the Appendix A screening for benzo(a)pyrene, and five samples exceeded the Appendix A screening level for arsenic. Arsenic in four of these samples did not exceed the Maine background level for undeveloped locations of 16 mg/kg and one slightly exceeded it. The secondary material will be used to fill voids beneath a parking lot in an existing, previously developed urban location and will be covered with pavement when the project is complete. The Department finds that the proposed use of secondary material from the USM site will not pollute any waters of the State, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance.

5. ALL OTHER

All other Findings of Fact, Conclusions, and Conditions remain as approved in Department Order #S-022545-W3-A-N.

BASED on the above Findings of Fact, the Department makes the following CONCLUSIONS:

The proposed beneficial use of 1,100 cubic yards of additional secondary material from the USM site will not pollute any waters of the State, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance.

THEREFORE, the Department APPROVES the above noted application of Pachios Bros I, LLC and Laconia, LLC, SUBJECT TO THE ATTACHED CONDITONS, and all applicable standards and regulations.

1. The Standard Conditions of Approval, a copy attached as Appendix A.

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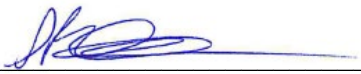
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2. The invalidity or unenforceability of any provision, or part thereof, of this license shall not affect the remainder of the provisions or any other provisions. This license shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

DONE AND DATED AT AUGUSTA, MAINE, THIS 21st DAY

OF April, 2022.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:  *for*

Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURE

Date of initial receipt of application: March 30, 2022

Date of application acceptance: March 30, 2022

Date filed with the Board of Environmental Protection:

XEH89388

FILED
APR 21, 2022
State of Maine
Board of Environmental
Protection

Appendix A

STANDARD CONDITIONS TO ALL SOLID WASTE FACILITY LICENSES

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL. VIOLATIONS OF THE CONDITIONS UNDER WHICH A LICENSE IS ISSUED SHALL CONSTITUTE A VIOLATION OF THAT LICENSE AGAINST WHICH ENFORCEMENT ACTION MAY BE TAKEN, INCLUDING REVOCATION.

1. **Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed by the licensee. Any consequential variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
2. **Compliance with All Applicable Laws.** The licensee shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
3. **Compliance with All Terms and Conditions of Approval.** The licensee shall submit all reports and information requested by the Department demonstrating that the licensee has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
4. **Transfer of License.** The licensee may not transfer the solid waste facility license or any portion thereof without approval of the Department.
5. **Initiation of Construction or Development Within Two Years.** If the construction or operation of the solid waste facility is not begun within two years of issuance or within 2 years after any administrative and judicial appeals have been resolved, the license lapses and the licensee must reapply to the Department for a new license unless otherwise approved by the Department.
6. **Approval Included in Contract Bids.** A copy of the approval must be included in or attached to all contract bid specifications for the solid waste facility.
7. **Approval Shown to Contractors.** Contractors must be shown the license by the licensee before commencing work on the solid waste facility.
8. **Background of key individuals.** A licensee may not knowingly hire as an officer, director or key solid waste facility employee, or knowingly acquire an equity interest or debt interest in, any person convicted of a felony or found to have violated a State or federal environmental law or rule without first obtaining the approval of the Department.
9. **Fees.** The licensee must comply with annual license and annual reporting fee requirements of the Department's rules.
10. **Recycling and Source Reduction Determination for Solid Waste Disposal Facilities.** This condition does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

The solid waste disposal facility shall only accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by 38 M.R.S. Chapter 13.

Appendix A

STANDARD CONDITIONS TO ALL SOLID WASTE FACILITY LICENSES

- 11. Deed Requirements for Solid Waste Disposal Facilities.** Whenever any lot of land on which an active, inactive, or closed solid waste disposal facility is located is being transferred by deed, the following must be expressly stated in the deed:
- A. The type of facility located on the lot and the dates of its establishment and closure.
 - B. A description of the location and the composition, extent, and depth of the waste deposited.
 - C. The disposal location coordinates of asbestos wastes must be identified.



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: August 2021

Contact: (207) 314-1458

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SUMMARY

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner.

Except as provided below, there are two methods available to an aggrieved person seeking to appeal a licensing decision made by the DEP Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development ([35-A M.R.S. § 3451\(4\)](#)) or a general permit for an offshore wind energy demonstration project ([38 M.R.S. § 480-HH\(1\)](#)) or a general permit for a tidal energy demonstration project ([38 M.R.S. § 636-A](#)) must be taken to the Supreme Judicial Court sitting as the Law Court.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

A person filing an appeal with the Board should review Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); the Maine Administrative Procedure Act, 5 M.R.S. § [11001](#); and the DEP's [Rule Concerning the Processing of Applications and Other Administrative Matters \(Chapter 2\)](#), 06-096 C.M.R. ch. 2.

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

Not more than 30 days following the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The filing of an appeal with the Board, in care of the Board Clerk, is complete when the Board receives the submission by the close of business on the due date (5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

HOW TO SUBMIT AN APPEAL TO THE BOARD

An appeal to the Board may be submitted via postal mail or electronic mail and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection
c/o Board Clerk
17 State House Station
Augusta, ME 04333-0017
ruth.a.burke@maine.gov

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee; and if a hearing was held on the application, (3) any intervenors in that hearing proceeding. **Please contact the DEP at 207-287-7688 with questions or for contact information regarding a specific licensing decision.**

REQUIRED APPEAL CONTENTS

A complete appeal must contain the following information at the time the appeal is submitted.

1. *Aggrieved status.* The appeal must explain how the appellant has standing to bring the appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions of law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing criteria that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license to changes in specific license conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for hearing must be filed as part of the notice of appeal, and it must include an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any witnesses would testify. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed supplemental evidence must be submitted with the appeal. The Board may allow new or additional evidence to be considered in an appeal only under limited circumstances. The proposed supplemental evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Requirements for supplemental evidence are set forth in [Chapter 2 § 24](#).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made accessible by the DEP. Upon request, the DEP will make application materials available to review and photocopy during normal working hours. There may be a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing the appeal.* DEP staff will provide this information upon request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a licensee may proceed with a project pending the outcome of an appeal, but the licensee runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will acknowledge receipt of an appeal, and it will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials admitted by the Board as supplementary evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the application, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant, the licensee, and parties of record are notified in advance of the date set for the Board's consideration of an appeal or request for a hearing. The appellant and the licensee will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding the merits of the appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the licensee, and parties of record of its decision on appeal.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see [38 M.R.S. § 346\(1\)](#); 06-096 C.M.R. ch. 2; [5 M.R.S. § 11001](#); and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 bill.hinkel@maine.gov, or for judicial appeals contact the court clerk's office in which the appeal will be filed.

Note: This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. The DEP provides this information sheet for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
