



DEPARTMENT ORDER

IN THE MATTER OF

KERRY INC.) SOLID WASTE ORDER
PORTLAND, CUMBERLAND COUNTY, MAINE)
FOOD BY-PRODUCT UTILIZATION PROGRAM APPROVAL)
S-022160-SX-B-T (APPROVAL WITH CONDITIONS)) LICENSE TRANSFER

Pursuant to the provisions of the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S. §§ 1301 to 1319-Y, *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 C.M.R. ch. 2 (last amended June 9, 2018), the *Solid Waste Management Rules: General Provisions*, 06-096 C.M.R. ch. 400 (last amended April 6, 2015) and the *Solid Waste Management Rules: Agronomic Utilization of Residuals* 06-096 C.M.R. ch. 419 (last amended April 12, 2015), the Department of Environmental Protection (Department) has considered the application of KERRY INC. (KERRY INC. or applicant), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

- A. Application: Kerry Inc. requests approval to transfer Department Order S-022160-SF-A-N from X-Cafe, Inc.
- B. History: On May 9, 2003, the Department issued order S-022160-SF-A-N which approved the application of X-Cafe, Inc. for the distribution of dewatered coffee grounds (DCG) for commercial and residential landscaping, as a soil conditioner and source of organic matter and nutrients. The applicant proposed to distribute the residuals under this program license, without the need for individual site licenses. The previous applicant had an approved variance to exempt DCG from the storage requirements in 06-096 C.M.R. ch. 419 §§ 10 and 12. X-Cafe, Inc. proposed to provide a product label and Best Management Practices (BMPs) for storage and handling of DCG to each customer. Recipients of more than 100 cubic yards are required to sign an agreement stating that they will follow the BMPs.
- C. Summary of Proposal: Kerry Inc.'s current operations include generating waste coffee grinds and chaff which are given to a facility licensed by the Department to accept this residual for composting or anaerobic digestion. Kerry Inc. has operated, maintained, and distributed DCG residuals from the former X-Cafe, Inc. facility since 2008, and therefore has applied to transfer Department Order S-022160-SF-A-N to continue distribution and support future agronomic utilization projects.

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2. TITLE, RIGHT, OR INTEREST

Kerry Inc. acquired X-Cafe, Inc. from Paul Kalenian on September 30, 2008, and has provided the Department with a copy of the Purchase Agreement. Since the purchase of the company in 2008, Kerry Inc. has maintained the requirements of the Department Order, paying the appropriate fees and submitting annual reports. As requested by the Department, Kerry Inc. attempted to contact Paul Kalenian to sign the transfer application but was unable to make contact. Therefore, the Department has processed this application pursuant to the provision of 06-096 C.M.R. ch. 2 § 21(C)(4) which states in relevant part, “If the proposed transferee demonstrates that the original licensee no longer has sufficient title, right or interest in the property subject to the license, the Department may allow the transfer application to be processed without the signature of the original licensee.”

The Department finds that the applicant has provided sufficient evidence of title, right, or interest to the residual utilization program which is the subject of this transfer.

3. FINANCIAL CAPACITY

The applicant has provided the Department with the 2019 Kerry Group Annual Report, indicating a revenue of 9.2 billion dollars and 673.4 million dollars of free-flowing cash. Kerry Inc. is a principal subsidiary of Kerry Group. Kerry Inc. has maintained the facility and successfully paid Department fees since it acquired the company.

The Department finds that the applicant has provided adequate evidence of financial capacity to operate the program in accordance with state environmental standards.

4. TECHNICAL ABILITY

Kerry Inc. has successfully operated the residuals utilization program for the past 12 years with no letters of warning or notice of violations. Courtney Blatti is the facility’s Health, Safety and Environmental (HSE) Manager, and has been working in Environmental Health and Safety (EHS) for seven years with an MS in Safety and Occupational Health Sciences and an MPH in Environmental Health Science and Industrial Hygiene. Kerry Inc. also has regional HSE support for this site and can provide assistance when necessary.

The Department finds that the applicant has sufficient technical ability to operate the program in accordance with state environmental standards.

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5. CIVIL/CRIMINAL DISCLOSURE

The applicant has provided the Department with a complete civil and criminal disclosure statement pursuant to 06-096 C.M.R. ch. 400 § 12(A).

The Department finds that the persons required to disclose pursuant to 06-096 C.M.R. ch. 400 § 12(A) have not been subject to convictions, adjudications, orders, or findings that would prevent the license transfer.

6. PUBLIC NOTICE

The applicant has provided the Department with a copy of the public notice published in the Portland Press Herald and online at Maine Public Notices (www.mainenotices.com). The Department finds that the applicant has provided adequate notice of the license transfer application.

7. COMPLIANCE AGREEMENT

The applicant has provided the Department with a statement agreeing to abide by all standards and requirements contained in Department Order S-022160-SF-A-N.

8. ALL OTHER

All other Findings of Fact, not modified by this order, remain as set forth in Department Order S-022160-SF-A-N.

BASED on the above Findings of Fact, and subject to the conditions listed below, the Department makes the following CONCLUSIONS:

1. The applicant has provided sufficient evidence of title, right, or interest.
2. The applicant has provided adequate evidence of financial capacity to operate the program in accordance with state environmental standards.
3. The applicant has provided adequate evidence of technical ability to operate the program in accordance with state environmental standards.
4. The persons required to disclose pursuant to 06-096 C.M.R. ch. 400 § 12(A) have not been subject to convictions, adjudications, orders, or findings that would prevent the license transfer.

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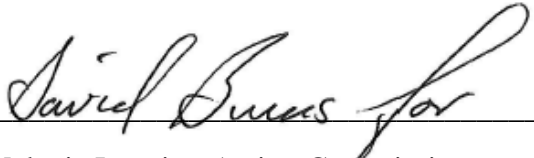
5. The applicant has provided adequate public notice of the license transfer application.
6. All other Conclusions, not modified by this order, remain as set forth in Department Order S-022160-SF-A-N.

THEREFORE, the Department APPROVES the above noted application of KERRY INC., SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached as Appendix A.
2. All other Conditions, not modified by this order, remain as set forth in Department Order S-022160-SF-A-N.
3. The invalidity or unenforceability of any provision, or part thereof, of this license shall not affect the remainder of the provision 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 20th DAY
OF November, 2020.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
Melanie Loyzim, Acting Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

Date of initial receipt of application: 7/20/20
Date of application acceptance: 7/30/20
Date filed with the Board of Environmental Protection

FILED
November 20, 2020
State of Maine
Board of Environmental Protection

This Order prepared by Sarah Gensel, Bureau of Remediation & Waste Management.
XSG86317

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 license. 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.

Appendix A

STANDARD CONDITIONS TO ALL SOLID WASTE FACILITY LICENSES

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 MRSA Chapter 13.

- 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: November 2018

Contact: (207) 287-2452

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (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.

This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules 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

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

INFORMATION APPEAL PAPERWORK MUST CONTAIN

Appeal materials 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 maintain an 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 regarding compliance with the 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 requirements 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 or permit to changes in specific permit 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 public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. 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 evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed 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. Specific requirements for supplemental evidence are found 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 easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an opportunity for photocopying materials. There is 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 your appeal.* DEP staff will provide this information on 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 license holder may proceed with a project pending the outcome of an appeal, but the license holder 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 formally acknowledge receipt of an appeal, and will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the license holder, and interested persons of its decision.

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's Executive Analyst at (207) 287-2452, or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: 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.
