



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



GERALD D. REID
COMMISSIONER

February 4, 2019

Ed Spencer
1140 Kirkland Road
Old Town, ME 04468

RE: Dismissal of Petition for Suspension of the October 10, 2018 Solid Waste Board of Environmental Protection Order on Appeals #S-020700-WD-BM-Z

Dear Mr. Spencer:

The Department has received and considered your December 31, 2018 petition (Petition) for the suspension of the Board of Environmental Protection’s (BEP) October 10, 2018 Board Order #S-020700-WD-BM-Z (Order). The Petition asserts that the Order was obtained after misrepresentations were made by Mr. Thomas Doyle, Esq. during his October 4, 2018 argument before the Board and that pursuant to 06-096 C.M.R. ch. 2 (Chapter 2), § 27(B), the license should be suspended.

Pursuant to Chapter 2, § 25(B), any person may petition the Commissioner to initiate proceedings to suspend a license by specifying the criteria and factual basis for the petition. The Commissioner shall dismiss the petition or initiate proceedings within 21 days following receipt of the licensee’s response to the petition. A decision by the Commissioner to dismiss a petition is within the Commissioner’s sole discretion and is not subject to judicial review (Chapter 2, § 25(F)). For the reasons set forth below, I find that the Petition did not demonstrate a sufficient factual or legal basis for me to conclude that the licensee obtained the Order by misrepresenting or failing to disclose fully all relevant facts. Therefore, I decline to initiate proceedings to suspend the license and hereby dismiss the Petition.

At the October 4, 2018 proceeding before the Board, Mr. Doyle argued on behalf of the Maine Bureau of General Services (BGS) as owner of the Juniper Ridge Landfill (JRL) and NEWSME as the operator of JRL. In support of your argument for suspension, you state that there was at least one false statement to the Board during the appeals proceeding, which may have influenced the Board’s final decision. You quote Mr. Doyle’s statement that “he is not entitled to his own facts,” which was a reference to your preceding argument. In your Petition you assert that, “everything in my testimony is factual, and to have stated otherwise without being specific is a misrepresentation” (Petition, page 1). You further assert that Mr. Doyle made an additional misrepresentation when he stated that “the original license in 2004 for Juniper Ridge, didn’t allow disposal of MSW [municipal solid waste] because the applicants did not request it in their application.” It is your contention that MSW was not licensed as an allowed waste stream for JRL because it was specifically excluded. Based on these two statements made by Mr. Doyle before the Board on October 4, 2018, you have requested that the Department

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PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
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initiate proceedings to determine whether the Order was obtained as a result of misrepresentations to the Board.

The licensee's response to the Petition, dated January 17, 2019 states "[b]ecause Mr. Doyle made no false statements to the Board of Environmental (Board), Mr. Spencer's petition lacks merit and should be summarily dismissed." The licensee's response to the petition includes language from the Operating Services Agreement (OSA), the 2004 License Amendment, and documents associated with the processing of Department licenses in support of their position that the Department was not prohibited from future authorizations of disposal of non-bypass MSW at JRL. The licensee also noted that Mr. Spencer did not appeal the Order to Superior Court.

The OSA defines acceptable waste (OSA, pages 1- 2), excluded wastes (OSA, pages 4 - 5), and assigns a tipping fee to MSW (OSA, page 23). In the OSA's acceptable waste and excluded waste definitions, the applicable law, regulations, and terms and conditions of permits, licenses, authorizations, and approvals are referenced. Although there was a prohibition of MSW in the 2004 License Amendment, applicable licensing procedures were followed for subsequent licensing actions, allowing conditional disposal of MSW.

Although different viewpoints were expressed at the appeal proceeding before the Board, there is insufficient evidence to conclude that Mr. Doyle made any misrepresentations to the Board. For the reasons stated above, I decline to initiate proceedings to suspend the license and hereby dismiss the Petition.

Sincerely,



Gerald D. Reid, Commissioner
Maine Department of Environmental Protection

cc: Katherine Tierney, Maine Asst. Attorney General
David Burns, Director, BRWM
Michael Barden, Maine DECD

ec: Cynthia Bertocci, Board of Environmental Protection
William Laubenstein, Esq., Maine Asst. Attorney General
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Thomas Doyle, Esq., Pierce Atwood