

WESTMINSTER BOARD OF HEALTH

In the Matter of:

FITCHBURG/WESTMINSTER
SANITARY LANDFILL
101 Fitchburg Road, Westminster

Public Hearing On Application
for Major Modification of
Site Assignment

Application No. 21-SW38-0002-APP

PREHEARING ORDER

Resource Control, Inc., a subsidiary of Waste Management of Massachusetts, Inc., (the “Applicant”) has applied to the Town of Westminster Board of Health (the “Board”) for a major modification of the existing site assignment issued on February 26, 2002 under M.G.L. c. 111, § 150A, 310 CMR 16.00 for a landfill located at 101 Fitchburg Road, Westminster, Massachusetts (the “Site Assignment”).¹ In addition to the Site Assignment, the landfill is subject to a solid waste permit authorization to operate (ATO) issued by the Massachusetts Department of Environmental Protection (“MassDEP”) issued on February 23, 2006.

The landfill is located on approximately 223.8 acres of adjoining parcels of land. The landfill currently permits acceptance of municipal solid waste, industrial waste, ash, soil, sludge, asbestos containing material, and special wastes, which will not change. Operation is authorized at a maximum daily waste acceptance rate of 1,725 tons/day, 312 days per year, which will also remain unchanged. The Applicant is seeking to modify the existing site assignment for the Fitchburg/Westminster Sanitary Landfill for the purpose of increasing the maximum height from 1,080 feet to approximately 1,158 feet above mean sea level and increasing the total site assigned area from approximately 188.7 acres to 190.51 acres. The proposed increase of approximately 1.81 acres in site assigned area is to accommodate the existing stormwater basin 2A, proposed

¹ The landfill was previously granted minor modifications of the Site Assignment in 2002 and 2017.

stormwater basin 9, and the existing City of Fitchburg solid waste and recycling center. The existing waste disposal footprint will be increased by approximately 2.5 acres and is located entirely within the current site assigned area. The Applicant is requesting that the Board of Health issue a major modification of the Site Assignment to approve this expansion. The proposed change will not alter the current hours of operation for the facility or conflict with any conditions under the current site assignment.

MassDEP issued a Positive Site Suitability Report on August 23, 2021. Pursuant to MassDEP's Site Assignment Regulations for Solid Waste Facilities, 310 CMR 16.20(7), the Board shall timely notice and commence a public hearing on the Applicant's application. The Board has retained me as Hearing Officer pursuant to 310 CMR 16.20(11).

I have consulted with counsel for the Applicant and for the Board on certain scheduling, procedural and substantive matters. The Public Hearing Notice, as amended and published, incorporates a commitment "to the extent feasible" to provide remote access by video conference or telephone. It provides a website link to the Applicant's legal counsel for updates on remote access. In prehearing telephone consultations and in later sidebar consultations between the parties as reflected in emails, the parties agreed to use a hybrid hearing, with some people in-person and others participating remotely. The Board requires the Applicant and its witnesses to participate in-person, with the public participating remotely. In accordance with the Board's preference, I will conduct the hearing in person.

The Applicant assumed responsibility for setting up a system to allow the hearing to be hybrid, and agreed to cover the costs associated with setting up a hybrid hearing, and to consult with Westminster's IT person on logistics.

I applaud and support the use of the hybrid system to provide public participation during this pandemic. A remote participation system will also provide a “backstop” if a future Emergency Declaration requires Zoom-like hearings for all participants.

Based upon those discussions, I hereby order as follows:

1. I order the Applicant to consult with the Board and the Town to provide remote access by videoconference or telephone. The Applicant will consider every feasible option to establish the remote access system. Insurmountable problems will be brought to my attention for a prehearing telephone conference, and may require postponing the hearings to ensure appropriate public participation.

2. The public hearing will commence on **Monday, September 20, 2021 at 4:00 p.m.** at the gymnasium at the Meetinghouse School, 8 South Street, Westminster, Massachusetts. To the extent feasible, the Applicant will arrange for videoconferencing and/or telephone capabilities to allow remote participation in the public hearing. When such remote access capabilities are provided, information for the public to utilize the remote access will be provided in advance via the web page: www.bdlaw.com/boh-hearing-info, which was included in the public hearing notice and on the Board of Health’s/Town’ webpage. If the hearing must be continued, additional dates will be scheduled subject to the availability of the Board, counsel, and witnesses.

3. Written comments will be accepted by the Board in advance of the public hearing when delivered to the Board by electronic mail or in paper for receipt on **Wednesday, September 15, 2021 by 5 p.m.**

4. As specified in 310 CMR 16.20(9)(a) and (b), any person who wishes to intervene in this proceeding must file with the Hearing Officer, a written petition for leave to intervene and

a registration statement indicating the basis for the request, for delivery by electronic mail, **no later than 5:00 p.m. on Wednesday, September 15, 2021.**

5. Pursuant to 310 CMR 16.20(9)(d), other persons specifically affected by the proceeding shall be allowed to participate. Any person who wishes to participate in this proceeding must file with the Hearing Officer, a written petition explaining how they are specifically affected by the proceeding for delivery by electronic mail **no later than 5:00 p.m. on Wednesday, September 15, 2021.**

6. Responses, if any, by the Applicant and the Board to requests to intervene or participate shall be received by the Hearing Officer for delivery by electronic mail **no later than 12 noon on Thursday, September 16, 2021.**

7. The Hearing Officer will issue decisions on any petitions by electronic mail **no later than 4:00 p.m. on Wednesday, September 16, 2021.**

8. Pursuant to 310 CMR 16.20(8)(b), the Applicant shall file with the Board and serve on the other parties and the Hearing Officer, written prefiled direct testimony of each expert witness whom they expect to testify at the hearing, including all exhibits they intend to offer in evidence, by electronic mail **no later 5:00 p.m. on Thursday, September 16, 2021.**

9. Intervenors, if any, shall file with the Board and serve on the other parties and the Hearing Officer their written prefiled testimony, if any, by electronic mail **no later than 5:00 p.m. on Friday, September 17, 2021.**

10. The Board shall file with the Board and serve on the other parties, Intervenors, and the Hearing Officer its written prefiled testimony, if any, **by electronic mail no later than 5:00 p.m. on Friday, September 17, 2021.**

11. All exhibits to be offered in evidence shall be pre-marked for identification with one continuous series of numbers for all parties. The Applicant shall prepare a Joint Exhibit List for the Administrative Record.

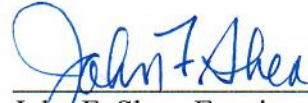
12. The Applicant shall retain a stenographer to make a record of the proceedings. The Applicant shall pay for the cost of the recording but not for transcription. Any party may request a transcript and shall bear its own costs, pursuant to 310 CMR 16.20(10)(i) and 16.30(3)(d).

13. Oral public comments will be accepted at the hearing at the discretion of the Hearing Officer and subject to restrictions on, among other things, applicability of topic to the current application and length of comments.

14. Due to the continuing COVID-19 pandemic, the hearings will be conducted in accordance with applicable public health guidelines and rules. In person participants, including intervening parties, at a minimum will be masked and comply with distancing guidelines, or other state or federal directives or guidelines. In addition, in recognition that many persons are working remotely due to the pandemic, I am granting a waiver from the service requirements of 310 CMR 16.20(6)(e) to the extent that parties to this proceeding shall deliver documents by electronic mail to the addresses listed in the current Service List and paper copies to follow by U.S. Mail or other delivery to the Board of Health offices for purposes of maintaining the official record. Members of the public are encouraged to use electronic mail for delivery of written comments and petitions for intervention and participation and email addresses shall be included in the public notice for such purposes.

15. The current Service List for this hearing is attached hereto.

So ordered,



John F. Shea, Esquire
Hearing Officer

Dated: August 27, 2021

SERVICE LIST
(As of August 27, 2021)

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