

BOURNE BOARD OF HEALTH

In the Matter of:)

TOWN OF BOURNE)
INTEGRATED SOLID WASTE)
MANAGEMENT FACILITY)
_____)

) Public Hearing on Application for Major
) Modification of Site Assignment
) Application No. 21-SW38-0001-APP

PREHEARING ORDER AND REPORT
(Revised January 18, 2022)

The Bourne Integrated Solid Waste Management Facility (“ISWM”) has applied to the Town of Bourne Board of Health (the “Board”) for a major modification of the existing site assignment for a proposed vertical and horizontal expansion of the landfill. I am Hearing Officer for the site assignment public hearing under the MassDEP Site Assignment Regulations. As Hearing Officer, I have conducted three prehearing conference calls with Michelle N. O’Brien, Esq., Counsel to ISMW, and Steven Torres, Esq., Counsel to the Board. Based in part on these consultations, and in consideration of the tight regulatory and statutory time requirements for commencement of the Hearing and issuance of a Decision, I issue this Prehearing Order and Report.

REPORT

1. The First Prehearing Conference was held on December 15, 2021. We discussed preparation of the Notice of Public Hearing for newspaper publication and certified mailings; potential dates for commencement of the public hearing (depending on the date of issuance and receipt of the MassDEP Site Suitability Report); consideration of Zoom, in-person or hybrid public hearing options; initial assessments by the Board of the Applicant for the Technical and

Public Hearing fees under the MassDEP Site Assignments Regulation at 310 CMR 16.30; and the use of prefiled written testimony.

2. The Second Prehearing Conference was conducted on January 5, 2022. Counsel and I discussed *inter alia*:

- The deadline for commencing the Zoom public hearing is set for February 2.
- The election by the Board to conduct the hearing by Zoom.
- Submission of Applicant's prefiled written direct testimony by January 26, 2022.
- Submission of the Board's technical review report (date to be determined).
- The potential use of a bifurcated procedure: opening the hearing on February 2 and continuing to a date certain for conclusion.
- Receipt of possible petitions to intervene by close of business January 26, 2022. Regulatory requirements and deadline for submissions will be in the Public Notice.
- The use of a stenographer to record the public hearing. Transcription costs by the Party who requests it under 310 CMR 16.20 (10)(i). The time limit for issuing the Decision (45 days from February 2) may not allow time for preparation and use of a transcript.
- The potential for a "dry run" of the Zoom technology at a time to be proposed by Counsel.
- Finalizing the Public Hearing Notice (which the parties completed through electronic mail in review of drafts).
- The Notice was published and mailed by the Board.

The Third Prehearing Conference was conducted on January 13, 2022.

- We confirmed the Notice was published and mailed.
- Technical consultations between the Applicant's expert and the Board's review engineer began on January 13, 2022. A site visit will be conducted in the near future.
- The Board has elected to conduct a bifurcated public hearing, with my concurrence. It will be scheduled as follows:
 - (1) February 2, 2022. Opening and commencement of the Public Hearing. The Hearing Officer will rule on any petitions to intervene and other procedural matters. The Applicant will present its case-in-chief, and answer questions from the Counsel to the Board, Board members, the Board's Agent, its review engineer, and the Hearing Officer. The Hearing will be continued to a date certain.
 - (2) February 16, 2022 at 4:00 p.m. Continued Public Hearing. The Applicant will present additional information (if any) in its case-in-chief, and may be questioned by Counsel to the Board, the Board, its Agent, the Hearing Officer, and by Intervenors if Petitions are allowed under 310 CMR 16(20)(9). The Board's review engineer will present its report, findings and recommendations. The engineer will answer questions from the Applicant's Counsel, the Board, the Agent and the Hearing Officer. Presentations may be made by Intervenors or Registrants, whose witnesses will be subject to cross-examination by Counsel for the Board, the Applicant, the Board and the Hearing Officer. The Applicant may present

Rebuttal. At the close of evidence, the Public Hearing can be Closed, or be Continued again to receive further evidence.

- The Board will retain the Stenographer who will transcribe this Zoom Hearing. Preparation of a Transcript is optional under 310 CMR 16.30(10(i).
- The Board's Technical Review Engineer will file its written report at least 5 days before the Continued Public Hearing occurs.
- A "dry run" of the Zoom technology prior to February 2, 2022 will be scheduled for no later than Monday, January 31, 2022.
- We will continue to evaluate how to best assemble and make part of the Administrative Record the documents considered by MassDEP in its Site Suitability Decision.
- The Hearing Officer will prepare an Advisory for the Board on Public Participation in the Hearing under the Site Assignment Regulations.

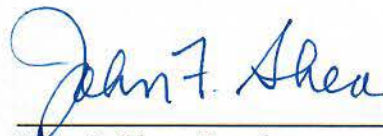
ORDER

THEREFORE, based upon the Prehearing Conferences, and agreements among the Applicant, the Board and the Hearing Officer, I issue this Prehearing Order:

1. The Public Hearing will commence on **February 2, 2022 at 4:00 p.m.**
2. The Continued Public Hearing will be held on **February 16, 2022 at 4:00 p.m.**
3. The Public Hearing will be conducted remotely by Zoom technology. There will be a "dry run" no later than **January 31, 2022.**
4. Petitions to Intervene or Participate shall be filed with the Board by **January 26, 2022.**

5. Applicant's Prefiled Direct Testimony shall be filed with the Board **by January 26, 2022.**
6. The Review Engineer's Report shall be filed with the Board, Applicant, Hearing Officer on **February 9, 2022.**
7. The Hearing Officer will evaluate and rule on any petitions to intervene or participate on or before the **February 2, 2022** public hearing.
8. There may be a fourth Prehearing Conference call as may be requested by Counsel or the Hearing Officer.
9. This Prehearing Order and Report shall be posted on the Board of Health's webpage for this Hearing.
10. This revised Prehearing Order and Report supersedes the January 14, 2022 Prehearing Order and Report.

So Ordered,



John F. Shea, Esquire
Hearing Officer

Dated: January 18, 2022

SERVICE LIST
(Via E-Mail)

Michelle N. O'Brien, Esq., Counsel for the Applicant
Steven Torres, Esq., Counsel to the Board
Terri Guarino, Health Agent (*original by first class mail*)