

Chapter 373: FINANCIAL CAPACITY STANDARD OF THE SITE LOCATION LAW

SUMMARY:These regulations describe the scope of review of the Board in determining a developer's compliance with the "financial capacity" standard of the Site Location Law (38 M.R.S.A., Section 484(1); the information which shall be submitted, when appropriate, within an application for approval; and, the terms and conditions which the Board may impose on the approval of an application to ensure compliance with the standard.

1. Financial Capacity to Meet Pollution Control Standards

- A. Scope of Review.** In determining whether the developer has the financial capacity to meet state air and water pollution control standards, the Board shall consider all relevant evidence to the effect that the developer has the financial capacity to construct, operate, and maintain all aspects of the development, and not just the pollution control aspects.

NOTE: The Supreme Judicial Court of Maine stated in the case of *In re: Maine Clean Fuels, Inc.*, 310 A. 2d 736, 755 (1973) that "it is clear that the ability to finance the cost of meeting pollution standards is inexorably a part of the ability to obtain total financing." Furthermore, the Board's experience with developers has shown that air and water pollution control equipment is usually installed after all other aspects of the development are completed. If the developer's funds run low or run out toward the end of development, the pollution control aspects of the development may be slighted. Therefore, in determining financial capacity, the Board requires proof of adequate funding for the completion of a development, including the pollution control aspects.

- B. Submissions.** Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that the developer has the financial capacity to undertake the proposed development, including information such as the following, when appropriate:

- (1) Accurate and complete cost estimates of the development.
- (2) The time schedule for construction and for satisfying pollution abatement measures.
- (3) A letter from a financial institution, governmental agency, or other funding agency indicating a commitment to provide a specified amount of funds and the uses for which the funds may be utilized.
- (4) In cases where funding is required but there can be no commitment of money until approvals are received, a letter of "intent to fund" from the appropriate funding institution indicating the amount of funds and their specified uses.
- (5) The most recent corporate annual report indicating availability of sufficient funds to finance the development together with explanatory material interpreting the report, when requested.
- (6) Copies of bank statements or other evidence indicating availability of funds, when the developer will personally finance the development.

C. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has the financial capacity to meet state air and water pollution control standards, such as:

- (1) Requiring the posting of a performance bond to ensure that the air and water pollution control plans are completed as approved.

2. Technical Ability to Meet Air and Water Pollution Control Standards

A. Preamble. The Board is concerned that the developer have not only the financial capacity but also the technical ability and skilled manpower to meet pollution control standards, particularly when a large scale development includes sophisticated pollution abatement measures.

B. Scope of Review. In determining whether the developer has the technical ability to meet state air and water pollution control standards, the Board shall consider all relevant evidence to that effect, such as:

- (1) Evidence that project personnel are capable of properly installing, operating and maintaining pollution control devices.
- (2) Evidence that, even if the applicant's technical personnel have never before constructed or operated a development like the one proposed, competent engineering and field operational personnel will be available and can adapt their training and experience to accomplish the required tasks.
- (3) Evidence regarding the developer's prior conduct as a measure of willingness to meet all terms and conditions of approval established by the Board.

C. Submissions. Applications for approval of a proposed development shall include evidence that affirmatively demonstrates that the developer has the technical ability to undertake the proposed development, including information such as the following, when appropriate:

- (1) A statement of the developer's prior experience or appropriate training, or both, relating to the nature of the proposed development.
- (2) A description of the types of personnel who will be employed to design, install, and operate pollution control measures.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has the technical ability to meet state air and water pollution control standards, such as:

- (1) Requiring the developer to employ a capable engineer or other professional knowledgeable and experienced in the disciplines necessary to ensure that state air and water pollution control standards are met.

- (2) Requiring a training program for the appropriate personnel to acquaint them with the operation and maintenance of pollution control equipment.
- (3) When the development is of substantial size and of a complex nature, requiring provision for an independent consultant to conduct on-site inspection, at the developer's expense, to ensure proper execution of plans as approved, including any conditions imposed by the Board.

3. Adequate Provision for Solid Waste Disposal

A. Scope of Review. In determining whether the developer has made adequate provision for solid waste disposal, the Board shall consider all relevant evidence to that effect, such as evidence that:

- (1) All solid waste will be disposed of in a manner which ensures that:
 - (a) No adverse effects on the natural environment will result;
 - (b) Public health, safety, and welfare will not be adversely affected; and
 - (c) The wastes will not combine with other wastes, water, or other natural or man-made substances to create additional harmful effects to the natural environment or the public health, safety, and welfare.

B. Submissions. Applications for approval of a proposed development shall include evidence that affirmatively demonstrates that the developer has made adequate provision for solid waste disposal, including information such as the following, when appropriate:

- (1) The types and estimated quantities of solid waste to be generated by the development and the proposed method of disposal.
- (2) A letter from the operator of a solid waste disposal facility or a municipality stating that adequate capacity exists for solid waste generated by the development and that the development may utilize the solid waste disposal facility.

NOTE: The Board may deny approval if the solid waste disposal facility proposed to be used is not in compliance with applicable state laws and regulations.

- (3) When the proposed development is or includes the establishment of a solid waste disposal facility, the developer shall supply evidence of compliance with the Solid Waste Management Act (38 M.R.S.A., Section 1301 et seq.).

C. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has made adequate provision for solid waste disposal, such as requiring:

- (1) a groundwater quality monitoring program;
- (2) on-site construction supervision or engineering inspection by a certified engineer or geologist;

(3) operational inspections and reports by an independent consultant.

4. Adequate Provisions for the Control of Odors

A. Preamble. The Board recognizes that offensive odors may be generated by solid waste disposal facilities and certain types of commercial and industrial developments and that these odors can have an undesirable effect on surrounding uses and people living in the area.

B. Scope of Review. In determining whether the developer has made adequate provision for the control of odors, the Board shall consider all relevant evidence to that effect.

C. Submissions. Applications for approval of any development likely to be the source of offensive odors shall include evidence that affirmatively demonstrates that the developer has made adequate provision for the control of odors, including information such as the following, when appropriate:

(1) the identification of any sources of odors from the development;

(2) an estimation of the area which would be affected by the odor, based on general experience in dealing with the material or process used in the development, or similar materials or processes;

(3) proposed systems for enclosure of odor-producing materials and processes, and proposed uses of technology to control, reduce or eliminate odors.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has made adequate provision for the control of odors.

5. Adequate Provision for Securing and Maintaining Sufficient and Healthful Water Supplies

A. Scope of Review. In determining whether the developer has made adequate provision for securing and maintaining a sufficient and healthful water supply, the Board shall consider all relevant evidence to that effect.

B. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that the developer has made adequate provision for securing and maintaining a sufficient and healthful water supply, including information such as the following, when appropriate:

(1) A letter from the appropriate utility or water district that a sufficient and healthful water supply exists and may be utilized by the development.

(2) If water is to be supplied on-site, a letter from a geologist or well driller knowledgeable about the area where the development is located that a sufficient and healthful water supply is likely to be available.

- (a) If there is reasonable doubt that a sufficient and healthful water supply can be provided by means of on-site wells, the following may be required:
 - (i) water from wells located in close proximity to the development site be tested for potability; and/or
 - (ii) a test well be dug or drilled on the development site and a report prepared indicating the volume and potability of water obtained from the well.
- (3) If water supply and sewage disposal are to be handled on-site, and if lots are less than 2 acres in size, identification of the location of wells and on-site sewage disposal systems for each lot. The separation distance between wells and on-site sewage disposal areas shall be at least the minimum distance established in the State of Maine Plumbing Code.
- (4) If water is to be provided by a common source:
 - (a) evidence that there will be sufficient water to serve the development;
 - (b) evidence that the common water supply system will be constructed in conformance with the Maine Drinking Water Regulations, authorized by 22 M.R.S.A., Section 601; and
 - (c) evidence that adequate provision has been made for the establishment of a mechanism to ensure proper operation and maintenance of the water supply system.

C. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure the adequate provision of a sufficient and healthful water supply, such as requiring that:

- (1) One or more central wells be installed with adequate water for the development.
- (2) An applicant arrange for adequate water service with a local utility or water district, or provide an adequate off-site common well, in cases where the Board determines that on-site water supplies may not be adequate.
- (3) The location of wells and on-site sewage disposal areas be established by deed conditions.

AUTHORITY: 38 M.R.S.A. Section 343

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