

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2011 – 01

**MOTION OF BERLIN STATION, LLC FOR
AMENDMENT OF THE CERTIFICATE OF SITE AND FACILITY**

April 16, 2013

**DECISION GRANTING THE MOTION OF BERLIN STATION, LLC FOR A
SECOND AMENDMENT OF THE CERTIFICATE OF SITE AND FACILITY**

Background

On November 8, 2010, the New Hampshire Site Evaluation Committee (Committee) issued a Certificate of Site and Facility (Certificate) to Laidlaw Berlin BioPower, LLC, for the siting, construction, and operation of a 70 MW biomass fueled power facility located in Berlin, Coos County, New Hampshire (Facility). On July 12, 2011, the Committee granted a Motion to Amend the Certificate and to Transfer the Certificate to Berlin Station, LLC.

On November 6, 2012, Berlin Station, LLC (Applicant) filed a Motion to further amend the Certificate (Motion). The Motion seeks to further amend the Certificate in four (4) areas: (1) the Applicant seeks to reconfigure the wood yard area of the facility including (i) the use of an A-frame overhead stack-out conveyer and an under-pile reclaim conveyer system and (ii) a shift of the processing building approximately 250 feet to the south with the installation of a set of two conveyors to be used to handle incoming woodchips and transport them to piles; (2) the Applicant proposes to eliminate the development of an area referred to as the “River Walk”; (3) the Applicant seeks to eliminate some of the fencing requirements due to the elimination of the “River Walk”; and (4) the Applicant seeks to modify the landscaping plan as a result of closer on-site inspection of the site.

Procedural History

The Motion for Amendment of the Certificate of Site and Facility was filed on November 6, 2012. The Motion was accompanied by the pre-filed testimony of Damon Frekker, Managing Director of Development for Cate Street Capital, Inc.

Upon receipt of the Motion, the Committee issued an Order and Notice scheduling a hearing on the Motion for January 10, 2013. The Order and Notice invited interested parties to intervene in the matter and also provided notice that the Committee would hear public comment on the Motion. The Committee did not receive any motions to intervene. The City of Berlin (City) did file a letter in support of the Motion.

On January 10, 2013 the Committee held a public hearing at which it considered the Motion. At the hearing, the Committee heard a brief presentation from counsel for the Applicant followed by a presentation and examination of the witness, Damon Frekker. Counsel for the public was present and participated in the proceedings.

The Motion

The Motion seeks to further amend the Certificate in four (4) areas:

Reconfiguration of the Wood Yard

The Applicant seeks the permission of the Committee to reconfigure the wood yard area of the facility including (i) the use of an A-frame overhead stack-out conveyer and an under-pile reclaim conveyor system and (ii) a shift of the processing building approximately 250 feet to the south with the installation of a set of two conveyors to be used to handle incoming woodchips and transport them out to piles.

Elimination of the “River Walk”

The Applicant proposes to eliminate the development of an area referred to as the “River Walk,” as the City of Berlin has concluded that it would prefer not to proceed with the construction. In lieu of construction of the River Walk, Berlin Station has agreed to provide the City with the funds it intended to use for construction of the River Walk.

Reduced Fencing Requirements

The Applicant seeks to eliminate some of the fencing requirements due to the elimination of the River Walk.

Modification of the Landscaping Plan

The Applicant seeks to modify the landscaping plan as a result of closer on-site inspection of the site.

Positions of the Parties

The Committee did not receive any motions to intervene. The City of Berlin (City) did, however, file a letter in support of the Motion.

Reconfiguration of the Wood Yard

The Applicant asserts that it wishes to reconfigure the wood yard area to incorporate relatively minor changes which will minimize the project’s overall impacts and improve the Facility’s reliability and performance.

The overall footprint of the wood yard and type of handling equipment that will be used remain consistent with what was presented in the Application for Certificate of Site and Facility. The wood chip pile configurations will be revised from three individual roughly square-shaped piles into one pile of similar shape and one oval pile, both of which sit within the same footprint as originally proposed. The Applicant asserts that the oval pile will enable the use of an A-frame overhead stack-out conveyor and an under-pile reclaim conveyor system. This equipment will allow the development and reclaim of the oval-shaped wood pile to be fully automated, thus eliminating one or more pieces of heavy equipment, such as front-end loaders, that would be necessary to manage the pile as originally proposed. The Applicant asserts that eliminating this equipment, which would have been located and operated along the northern edge of the property, will minimize sound impacts directly across the river from the site and reduce emissions from diesel-powered equipment. The Applicant asserts that the sound impacts of the project would be very similar to what was originally presented in the initial filing. The Applicant would well conform with the 70 dBA daytime requirement as impacts are typically around 60 dBA or less, and at nighttime most of the impacts projected to be in the low 50 dBA range, but well in conformance with the 60 dBA nighttime standard. Additionally, the Applicant asserts that allowing the more efficient handling system for the woodchips and biomass will result in less chance of a fire hazard because the chips will be turned over more.

The Applicant also seeks to revise the configuration of the wood chip handling equipment to accommodate the revised pile configurations. While originally, the wood yard was to be equipped with a centrally-located wood processing structure with eight separate conveyors extending from the structure in different directions, in the refined configuration, the wood processing building is shifted approximately 250 feet to the south and under the proposed revisions, two conveyors are used to handle incoming woodchips and transport them out to piles. The height of the wood processing building has been reduced from approximately 60 feet to 45 feet. The Applicant asserts that although the wood processing building is located closer to the property line in the refined configuration, Berlin Station will continue to comply with existing noise requirements, and that the refined configuration will also result in the added benefit of reducing the impervious area on the overall site by nearly 12,000 square feet, with much of the reduction occurring within the protected shoreland area.

The Committee accepts the representation of the Applicant that the reconfiguration of the wood yard area presents a better and more efficient alternative than what was presented in the Application for Certificate of Site and Facility. Therefore, the Committee will allow the change in the configuration of the wood yard.

Elimination of the “River Walk”

Incorporated into the Certificate of Site and Facility is an agreement with the City of Berlin (“Berlin Agreement”). The Berlin Agreement requires the Applicant to fund the design, development, and construction of a “River Walk” in the vicinity of the Facility along the east bank of the Androscoggin River. The City of Berlin has determined, for various reasons, that the River Walk cannot be constructed as anticipated. The Applicant asserts that it does not own the property along the river on the north end of the site and thus the River Walk would become a

dead-end at that point. Additionally, various portions of the River Walk would by necessity be located in close proximity to industrial equipment on the Berlin Station site, thereby presenting safety concerns. The City of Berlin has concluded that it would prefer not to proceed with the construction of the River Walk. The Applicant has agreed to provide the City with the funds it had intended to use for construction of the River Walk.

The Committee finds that the Applicant's request to eliminate the River Walk is due to the City of Berlin's decision not to proceed with the construction of the River Walk, and that providing the City with the funds in lieu of construction is fair and reasonable alternative. The Committee will approve the request to amend the Certificate of Site and Facility to eliminate the required construction of the River Walk.

Reduced Fencing Requirements

The Applicant seeks to eliminate some of the fencing requirements due to the elimination of the River Walk. The Berlin Agreement also requires the Applicant to erect a new fence along the perimeter of the Facility's site inside of the River Walk along the Androscoggin River. As the construction of the River Walk has been eliminated, the City has determined that fencing is not required along the site boundary that abuts the river. The City and the Applicant agree that such fencing is only necessary along the roads that border the site. The Applicant has agreed to provide the monetary savings from the reduced fencing needs to the City of Berlin. The elimination of a portion of the fencing requirements will not pose any added dangers. The Applicant asserts that the site will be secured on all of the boundaries by fencing and by security personnel at the site on a 24-hour basis. The public would have no access to the site from any of the property boundaries beyond the river.

The Committee will approve the request to eliminate the fencing requirements along the site boundary that abuts the river.

Modification of the Landscaping Plan

As a result of closer on-site inspection of the site, the Applicant seeks to modify the landscaping plan. On November 1, 2011, in accordance with the provisions of the Berlin Agreement, the Applicant submitted two copies of a landscaping plan which was initially approved by the City of Berlin to this Committee. The Applicant asserts that based upon a closer review of the site during the spring and summer conditions, the City of Berlin has determined that it is impractical to fully implement the landscaping plan as initially designed because the plan calls for plantings in certain areas that cannot, for various reasons such as the presence of ledge, sustain vegetation of any appreciable size. The Applicant has been working closely with the City of Berlin and the New Hampshire Bureau of Trails to modify the landscaping plan to the satisfaction of all parties and has agreed to submit a revised plan upon receipt of their respective approvals. The Committee is satisfied that the Applicant and the City will be able to come to a mutually agreeable landscaping plan. The Committee will approve the request to modify the landscaping plan.

Conclusion

For the reasons set forth above, the Applicant's Motion for Amendment of the Certificate of Site and Facility is granted.

The Certificate of Site and Facility is amended as follows:

The wood yard area will be reconfigured to include (i) the use of an A-frame overhead stack-out conveyer and an under-pile reclaim conveyer system and (ii) a shift of the processing building approximately 250 feet to the south with the installation of a set of two conveyors to be used to handle incoming woodchips and stack out to piles.

The provision of the Berlin Agreement requiring the Applicant to fund the design, development, and construction of a "River Walk" in the vicinity of the Facility along the east bank of the Androscoggin River is eliminated.

The provision of the Berlin Agreement requiring the Applicant to erect new fencing along the site boundary that abuts the Androscoggin River is eliminated.

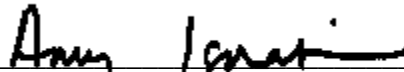
The Applicant will be allowed to submit a revised landscaping plan that has been approved by the City of Berlin and the New Hampshire Bureau of Trails.

The Certificate shall be further amended to require any and all changes to the original plans to be submitted to the State Preservation Office, the Division of Historical Resources for its review as noted both in the Certificate and the Section 106 findings.

SO ORDERED this 16th day of April, 2013 by the Site Evaluation Committee.



Thomas Burack, Chairman
Department of Environmental Services



Amy Ignatius, Vice Chairman
Public Utilities Commission



Philip Bryce, Director
Dept. of Resources & Economic Development
Division of Parks & Recreation

David J. Brillhart, Assistant Commissioner
Department of Transportation

Craig A. Wright

Craig Wright, Acting Director
Department of Environmental Services
Air Resources Division

Robert Scott

Robert Scott, Commissioner
Public Utilities Commission

Michael Harrington

Michael Harrington, Commissioner
Public Utilities Commission

Elizabeth H. Muzzey

Elizabeth Muzzey, Director
Department of Cultural Resources
Division of Historical Resources

Randall S. Knepper

Randall Knepper, Staff Engineer
Public Utilities Commission