

Agenda

Item #14



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners

From: Benjamin Dyer, Political Committee and Lobbyist Registrar

Date: January 15, 2015

Re: Request for Waiver of Late-Filing Penalty by Environment Maine PAC

In the thirteen days before an election, all political action committees, ballot question committees and political parties must file a report within 24 hours of receiving any single contribution of \$5,000 or more or making any expenditure of \$1,000 or more. On October 31, 2014, the Environment Maine PAC (the PAC) received a contribution of \$10,000. It was required to disclose this contribution in a 24-hour report by November 1, 2014, but did not do so until December 11, 2014.

LEGAL REQUIREMENTS

Political action committees are required to report any single contribution of \$5,000 or more received or single expenditure of \$1,000 or more made during the 13 days before an election within 24 hours of that transaction. (21-A M.R.S.A. § 1059(2)(E)) If a political action committee is late in filing the 24-hour report, the amount of the penalty is set by a formula which takes into consideration the amount of the transaction, the number of prior violations within a two-year period, and the number of days the report is late. (21-A M.R.S.A. § 1062-A(3))

DISCUSSION AND STAFF RECOMMENDATION

On October 31, 2014, the PAC received a \$10,000 contribution from NextGen Climate Action Committee – Maine PAC.¹ The PAC was required to file a 24-hour report by November 1, 2014 but filed it 40 days late on December 11, 2014.

¹ NextGen Climate Action Committee – Maine PAC reported making the contribution in a 24-Hour Report filed on October 31, 2014.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount totals \$4,000, calculated as follows:

Contribution Date	Amount	Penalty Rate	Days Late	Preliminary Penalty
10/31/2014	\$10,000	1%	40	\$4,000

The PAC asks that the Commission waive the penalty, in whole or in part, for three reasons: the PAC made a bona fide effort to file the report on time; the PAC and its treasurer are inexperienced; and the size of the penalty would be disproportionate to the harm suffered by the public from the late disclosure. The Commission may consider these factors in determining whether to waive a penalty. (21-A M.R.S.A. § 1062-A(2))

The PAC relates that it understood its reporting obligations and successfully filed other 24-hour and independent expenditure reports during the applicable time period. The PAC was expecting to receive the contribution by check and was prepared to report its receipt. However, the contribution was made by wire transfer directly to the PAC's account, not by check, and the PAC was unaware that the contribution had been made. The PAC further argues that it is an inexperienced organization, having been founded in September of 2014 and its treasurer having never served in that position in the past. The PAC also argues that the harm to the public from its late disclosure of the contribution was minimal. The contributing organization timely reported making the contribution in its 24-hour report and, because the PAC did not realize it had received the contribution, it did not spend any of that contribution for any purposes.

Violations of the 24-hour reporting requirements can be serious matters. These reports play an important role in informing the electorate about who is trying to influence their vote in the critical days just before an election. In this situation, the PAC received a contribution of \$10,000 four days before the election and did not disclose this transaction for over a month, depriving the public of important information just before the general election.

In the staff's view, the PAC's argument that it made a bona fide effort to file the report is unpersuasive. While the PAC may have expected the contribution to be made by check and not by wire transfer, it was nonetheless responsible for monitoring its contributions and expenditures during the 24-hour reporting period to see whether a report was required. Moreover, an intention to file is not the same as making a bona fide effort to file. However, the staff views the failure to file the report as unintentional. The PAC filed a 24-hour report on October 30, 2014 to report receiving a \$12,000 contribution from the same organization, NextGen Climate Action Committee – Maine PAC. The staff believes that the PAC was trying to be diligent and would have filed the 24-hour report for the \$10,000 contribution on time had it been aware of its receipt.

More persuasive, however, is the argument that the preliminary penalty is disproportionate to the harm suffered by the public. The public was aware that the \$10,000 contribution had been made because the contributing organization filed a timely 24-hour report. Additionally, the PAC is correct in saying that it did not spend any of the \$10,000 before the election because it had sufficient funds on hand to cover its expenditures without the \$10,000 contribution. The PAC has had no previous violations and has been otherwise compliant with the reporting requirements.

Considering these circumstances, especially the lack of harm to the public, the staff recommends that the Commission find that the PAC failed to file a timely 24-hour report and impose a penalty of \$500.

Thank you for your consideration of this memo.

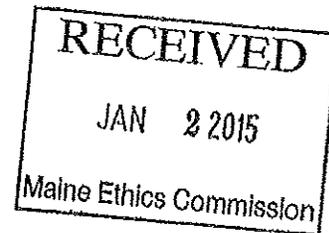


142 High Street, Ste. 624
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www.EnvironmentMaine.org

Info@EnvironmentMaine.org
ph: (207) 253-1965

12/30/2014

Benjamin P. Dyer
Political Committee and Lobbyist Registrar
Commission on Governmental Ethics and Elections Practices
135 State House Station
Augusta, Maine 04333-0135



Re: Waiver Request on Behalf of Environment Maine PAC

Dear Mr. Dyer:

On behalf of Environment Maine PAC ("EM PAC") and its treasurer Taryn Hallweaver, we acknowledge receipt on December 22, 2014, of the Commission's notice of Late Filing of 24-Hour Report dated December 19, 2014. Through this letter, EM PAC respectfully requests a waiver of the preliminary penalty determination as permitted under 21-A MRSA §1062-A based on the mitigating factors described below. We request that the preliminary penalty be waived, in whole or in part, because the PAC made a bona fide effort to file the report on time, the PAC and its treasurer are inexperienced, and the preliminary penalty would be disproportionate to any harm suffered by the public.

Background

Environment Maine PAC was formed in 2014 and is based in Portland, Maine. The 2014 general election was the first time EM PAC had engaged in substantial advocacy on candidate elections and the first time its Treasurer had served as a PAC official. In compliance with Maine campaign finance law, the organization registered as a Maine political action committee that could accept contributions and make expenditures in support of and in opposition to candidates in Maine elections. EM PAC supported the candidates most likely to improve the quality of the environment and protect Maine's air, water, and open spaces. Most of EM PAC's work was supported by contributions from other non-profit advocacy groups and their related committees, and EM PAC's expenditures were made to operate a grassroots voter outreach effort in coalition with other similarly focused groups.

In the days immediately prior to the 2014 general election, EM PAC expected to receive a contribution from NextGen Climate Action Committee – Maine ("NextGen"). EM PAC was expecting the contribution in the form of a check. Instead, the \$10,000 contribution was wired directly into EM PAC's bank account. EM PAC's treasurer was unaware that the contribution had been received and therefore failed to report it within the applicable 24-hour window. It was not until EM PAC followed up with NextGen about the anticipated contribution that EM PAC was informed that the deposit had already been made. At that point, EM PAC promptly entered the contribution into the electronic filing system, and filed the 24-Hour Report.



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On December 22, 2014, EM PAC received a notice of Late Filing of 24-Hour Report indicating that Commission staff had made a preliminary determination that EM PAC owed a penalty of \$4,000. EM PAC has no previous violations for late filings of reports.

Bona Fide Effort to File On Time

Despite its small size and limited resources, EM PAC was fully informed of its legal responsibilities and consistently made best efforts to and did comply with its reporting obligations. EM PAC's diligence in its legal compliance efforts is clearly demonstrated by the fact that all of its other required 24-Hour and Independent Expenditure Reports were complete and timely filed. In this case, despite being aware of the law and prepared to file immediately as required, EM PAC was simply unaware that the contribution at issue had been received. As described above, the money was deposited via wire transfer with no participation of EM PAC, while EM PAC awaited a check. The report was promptly filed as soon as EM PAC was aware that it was required. We respectfully request that EM PAC's preliminary penalty be waived or mitigated on account of its bona fide efforts to file on time in this case and throughout its existence.

Inexperience of PAC and Treasurer

EM PAC was initially formed on September 1, 2014, less than two months prior to receiving the contribution that resulted in the preliminary fine at issue. EM PAC's treasurer, Taryn Hallweaver, had not previously served as a PAC treasurer. The scale of EM PAC's advocacy activities during the 2014 election cycle, and thus the frequency and complexity of its reports, was minimal.

As indicated in the penalty matrix, this is EM PAC's first reporting violation. Previous Commission decisions on similar waiver requests have granted waivers of similarly substantial penalties to other small PACs with a similarly limited degree of campaign experience. We respectfully request that EM PAC's preliminary penalty be waived or mitigated on account of its short existence and the inexperience of its treasurer.

Penalty Disproportionate to Harm to Public

The \$4,000 preliminary penalty that is included in the notice letter would be disproportionate to the harm suffered by the public in this case for two reasons. First, the single \$10,000 contribution at issue was publicly reported in a 24-Hour Report by the contributor. NextGen filed a 24-Hour Report containing only the \$10,000 contribution to EM PAC on October 31, 2014. As such, there was no undisclosed campaign finance activity as a result of EM PAC's late filing.

Second, the harm suffered by the public would be minimal in this case because EM PAC was not aware that the unreported contribution had been received and, therefore, did not use the funds during the 24-hour reporting period to fund campaign advocacy or for any other purpose. The public was not harmed by any campaign advocacy with an undisclosed funding source, as the campaign finance laws are



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intended to prevent. We respectfully request that EM PAC's preliminary penalty be waived or mitigated because the \$4,000 preliminary penalty would be substantially disproportionate to any harm to the public caused by EM PAC's failure to file a timely 24-Hour Report.

Conclusion

For the foregoing reasons, Environment Maine Political Action Committee respectfully requests that the Commission waive the preliminary penalty assessed in this case. Environment Maine PAC has consistently made bona fide efforts to file on time, the PAC and its treasurer have limited campaign experience, and there was little if any harm to the public to justify the substantial preliminary penalty determination in this case.

If there is further information that we can provide to assist the Commission in this matter, I can be contacted at thallweaver@environmentmaine.org or 207-712-6351. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Taryn Hallweaver". The signature is fluid and cursive, written over the typed name.

Taryn Hallweaver
Treasurer
Environment Maine PAC

21-A M.R.S.A. § 1059. REPORT; FILING REQUIREMENTS

Committees required to register under section 1052-A, 1053-B or 1056-B shall file an initial campaign finance report at the time of registration and thereafter shall file reports in compliance with this section. All reports must be filed by 11:59 p.m. on the day of the filing deadline, except that reports submitted to a municipal clerk must be filed by the close of business on the day of the filing deadline. [2013, c. 334, §27 (AMD).]

1. Contents; quarterly reports and election year reports.

[2007, c. 443, Pt. A, §35 (RP) .]

2. Reporting schedule. Committees shall file reports according to the following schedule.

A. All committees shall file quarterly reports:

- (1) On January 15th, and the report must be complete as of December 31st;
- (2) On April 10th, and the report must be complete as of March 31st;
- (3) On July 15th, and the report must be complete as of June 30th; and
- (4) On October 5th, and the report must be complete as of September 30th. [2011, c. 691, Pt. A, §19 (RPR).]

B. General and primary election reports must be filed:

- (1) On the 11th day before the date on which the election is held and must be complete as of the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete as of the 35th day after that date. [2007, c. 443, Pt. A, §35 (AMD).]

C. Preelection and post-election reports for special elections or ballot measure campaigns must be filed:

- (1) On the 11th day before the date on which the election is held and must be complete as of the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete as of the 35th day after that date. [2011, c. 389, §45 (AMD).]

D. A committee that files an election report under paragraph B or C is not required to file a quarterly report when the deadline for that quarterly report falls within 10 days of the filing deadline established in paragraph B or C. [1991, c. 839, §29 (RPR).]

 E. A committee shall report any single contribution of \$5,000 or more received or single expenditure of \$1,000 or more made after the 14th day before the election and more than 24 hours before 5:00 p.m. on the day of the election within 24 hours of that contribution or expenditure. The treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses. [2013, c. 334, §28 (AMD).]

[2013, c. 334, §28 (AMD) .]

3. Report of expenditures made after the 11th day and more than 48 hours before any election.

[1989, c. 504, §§28, 31 (RP) .]

21-A M.R.S.A. § 1062-A. FAILURE TO FILE ON TIME

1. Registration. A political action committee required to register under section 1052-A or 1053-B or a ballot question committee required to register under section 1056-B that fails to do so or that fails to provide the information required by the commission for registration may be assessed a fine of no more than \$2,500. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, the amount of campaign and financial activity that occurred before the committee registered, whether the committee intended to conceal its campaign or financial activity and the level of experience of the committee's volunteers and staff.

[2013, c. 334, §30 (AMD) .]

 **2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency of the committee treasurer determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §9 (AMD).]

B. An error by the commission staff; or [1999, c. 729, §9 (AMD).]

C. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. [2007, c. 443, Pt. A, §38 (AMD).]

[2009, c. 190, Pt. A, §29 (AMD) .]

 **3. Basis for penalties.** The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

A. For the first violation, 1%; [1995, c. 483, §21 (NEW).]

B. For the 2nd violation, 3%; and [1995, c. 483, §21 (NEW).]

C. For the 3rd and subsequent violations, 5%. [1995, c. 483, §21 (NEW).]

Any penalty of less than \$10 is waived.



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135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

December 19, 2014

Taryn Hallweaver, Treasurer
Environment Maine PAC
142 High Street, Suite 624
Portland, ME 04101

Re: Late Filing of 24-Hour Report

Dear Ms. Hallweaver,

The Commission staff has made a preliminary determination that the Environment Maine PAC (the PAC) was late in filing the 24-Hour Report required for the \$10,000 contribution that the PAC reported receiving on October 31, 2014. The report was due by 11:59 p.m. on November 1, 2014, but was not filed until December 11, 2014. Under the Commission's statutes, the late filing of a report triggers an enforcement process. (21-A M.R.S.A. § 1062-A(3)). Based on the amount of financial activity in the report, the number of calendar days the report was late, and the PAC's history of violations, the commission staff has determined that a penalty of \$4,000.00 is owed. (Please see attached penalty matrix for the calculation).

The PAC may make a written request that the Commission waive the violation or penalty in whole or in part. Any request for a waiver must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the PAC filed late. Upon receiving your request, the Commission staff will schedule your appeal for an upcoming Commission meeting.

The Commission may waive the penalty if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that the PAC made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

Please call me at (207) 287-6221 or send me an email at benjamin.p.dyer@maine.gov if you have questions.

Sincerely,

Benjamin P. Dyer
Political Committee and Lobbyist Registrar

Enclosure: payment receipt & penalty matrix

Payment Receipt

Mail payment to:

The Maine Ethics Commission
135 State House Station
Augusta, ME 04333

Make checks payable to: "Treasurer, State of Maine."

Taryn Hallweaver, Treasurer
Environment Maine PAC
142 High Street, Suite 624
Portland, ME 04101

Violation:	Late 24-hour Report
Amount Due:	\$4,000.00

Committee Name: Environment Maine PAC

Report Title: 24-Hour Report

Due Date: November 1, 2014

Previous Violation(s): N/A

Filed Date: December 11, 2014

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

Penalty Example:		Your Penalty is calculated as follows:	
The treasurer files the PAC's report two (2) days late. The PAC has not had any previous late violations this biennium. The PAC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is		Contributions / Expenditures:	<u>\$10,000.00</u>
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	X	
		Percent Prescribed:	<u>1%</u>
X .01	Percent prescribed for first violation		<u>\$100.00</u>
		X	
\$25.00	One percent of total contributions	Number of days late:	<u>40</u>
X 2	Number of calendar days late		
\$50.00	Total Penalty	Total penalty accrued:	<u>\$4,000.00</u>

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES

21-A M.R.S.A. Section 1062-A(3)

\$10,000 for Pre- and Post-Election Reports, Quarterly Reports and 24-Hour Reports, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is one-fifth of the amount reported late.