



STATE OF MAINE  
DEPARTMENT OF  
ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

MELANIE LOYZIM  
ACTING COMMISSIONER

December 21, 2018

Mr. Richard Knowlton  
Maine Water Company  
93 Industrial Park Road  
Saco, ME. 04072

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0000035  
Maine Waste Discharge License (WDL) #W002545-5S-F-M  
**Final Permit Modification**

Dear Mr. Knowlton:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL **modification** which was approved by the Department of Environmental Protection. Please read this document and its attached conditions carefully. Compliance with this permit/license will protect water quality.

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled "*Appealing a Commissioner's Licensing Decision.*"

If you have any questions regarding the matter, please feel free to call me at 287-7693. Your Department compliance inspector copied below is also a resource that can assist you with compliance. Please do not hesitate to contact them with any questions.

Thank you for your efforts to protect and improve the waters of the great state of Maine!

Sincerely,

Gregg Wood  
Division of Water Quality Management  
Bureau of Water Quality

Enc.

cc: Stuart Rose, MDEP/SMRO    Lori Mitchell, MDEP/CMRO  
Sandy Mojica, USEPA    Shelley Puleo, USEPA    Marelyn Vega, USEPA

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# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: November 2018

Contact: (207) 287-2452

### SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 C.M.R. ch. 2.

#### DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

#### HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

### INFORMATION APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time the appeal is submitted:

1. *Aggrieved Status.* The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing requirements that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

### OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a license holder may proceed with a project pending the outcome of an appeal, but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

### **WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD**

The Board will formally acknowledge receipt of an appeal, and will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the license holder, and interested persons of its decision.

### **II. JUDICIAL APPEALS**

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see 38 M.R.S. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

### **ADDITIONAL INFORMATION**

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452, or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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**Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

**IN THE MATTER OF**

|                                   |   |                           |
|-----------------------------------|---|---------------------------|
| THE MAINE WATER COMPANY           | ) | MAINE POLLUTANT DISCHARGE |
| BIDDEFORD, YORK COUNTY, MAINE     | ) | ELIMINATION SYSTEM PERMIT |
| DRINKING WATER TREATMENT FACILITY | ) | AND                       |
| #ME0000035                        | ) | WASTE DISCHARGE LICENSE   |
| #W002545-5S-F-M                   | ) | <b>MODIFICATION</b>       |
| <b>APPROVAL</b>                   | ) |                           |

In compliance with the *Federal Water Pollution Control Act*, Title 33 USC, §1251, *Conditions of licenses*, 38 M.R.S. § 414-A, and applicable regulations, the Department of Environmental Protection (Department) has considered the application of THE MAINE WATER COMPANY (MWC/permittee), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

On November 1, 2018, the Department accepted as complete for processing an application from the MWC for a modification of combination Waste Discharge License (WDL) #W002545-5S-D-R/ Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0000035, which was issued on October 5, 2015, for a five-year term. The 10/5/15 permit authorized the discharge of up to a monthly average flow of 0.150 million gallons per day (MGD) of filter cleaning (backwash) wastewater to the Saco River, Class A, in Biddeford, Maine.

**MODIFICATION(S) REQUESTED**

MWC is requesting the Department modify the permit to include a discharge of finished water from a leaking storage tank utilized to backwash filters at the treatment facility. The flow rate is estimated to be 20 gallons per minute (gpm) or 28,800 gallons per day (gpd). The MWC has indicated this discharge is a temporary situation as it is currently in the design phase of a new waste water treatment facility that will relocate the entire facility farther from the river.

**PERMIT SUMMARY**

The request by MWC is acceptable to the Department. This permit is designating the discharge from a four (4) inch diameter pipe as Outfall #002 and is establishing a reporting requirement for flow and a best practicable treatment (BPT) limitations of 1.0 mg/L for total residual chlorine (TRC) and 6.0 – 8.5 standard units (su) for pH.

## CONCLUSIONS

Based on the findings summarized on page 1 of this modification, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, *Classification of Maine waters*, 38 M.R.S. §464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding natural resource, that water quality will be maintained and protected;
  - (c) Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S. § 414-A(1)(D).
5. The applicant has objectively demonstrated to the Department's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available, as required by *Standards for classification of fresh surface waters*, 38 M.R.S. § 465(2) for the discharge to Class A water.

**ACTION**

THEREFORE, the Department APPROVES the above noted application of THE MAINE WATER COMPANY to modify the October 5, 2015, MEPDES permit/WDL by incorporating the discharge of potable water from a leaking storage tank via Outfall #002, to the Saco River, Class A, in Biddeford, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached to MEPDES permit #ME0000035/WDLW002545-5S-D-R issued on October 5, 2015, for a five-year term.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions in combination WDL #W002545-5S-D-R / Maine Pollutant Discharge Elimination System permit #ME0000035, issued on October 5, 2015, for a five-year term, not modified by this permitting action remain in effect and enforceable.
4. This permit and the authorization to discharge become effective upon the date of signature below and expire at midnight on October 5, 2020. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the authorization to discharge and the terms and conditions of this permit and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (amended June 9, 2018)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

DONE AND DATED AT AUGUSTA, MAINE, THIS 20 DAY OF December 2018.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

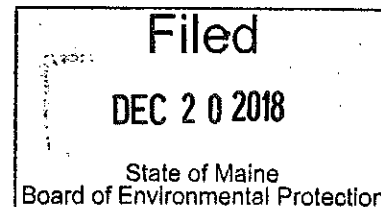
BY:   
*For* Melanie Loyzim, Acting Commissioner

Date of initial receipt of application: November 1, 2018

Date of application acceptance: November 1, 2018

Date filed with Board of Environmental Protection \_\_\_\_\_

This Order by Gregg Wood, BUREAU OF WATER QUALITY



**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

2. The permittee is authorized to discharge **potable water from Outfall #002** to the Saco River. Such discharges are limited and must be monitored by the permittee as specified below<sup>(1)</sup>:

| Effluent Characteristic  | Discharge Limitations     |               |                 | Minimum Monitoring Requirements |                           |                           |
|--|---------------------------|---------------|-----------------|---------------------------------|---------------------------|---------------------------|
|  | Monthly Average           | Daily Maximum | Monthly Average | Daily Maximum                   | Measurement Frequency     | Sample Type               |
| <b>Flow</b><br><i>[50050]</i>                                  | Report MGD<br><i>[03]</i> | ---           | ---             | ---                             | 1/Month<br><i>[01/30]</i> | Calculated<br><i>[CA]</i> |
| <b>Total Residual Chlorine<sup>(2)</sup></b><br><i>[50060]</i> | ---                       | ---           | ---             | 1.0 mg/L<br><i>[19]</i>         | 1/Week<br><i>[01/07]</i>  | Grab<br><i>[GR]</i>       |
| <b>pH</b><br><i>[00400]</i>                                    | ---                       | ---           | ---             | 6.0 – 8.5 SU<br><i>[12]</i>     | 1/Week<br><i>[01/07]</i>  | Grab<br><i>[GR]</i>       |

The italicized numeric values bracketed in the table and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports.

**FOOTNOTES:** See Page 5 of this permit for applicable footnotes



**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

**FOOTNOTES**

1. **Sampling** – All effluent monitoring must be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. Any change in sampling location must be approved by the Department in writing. The permittee must conduct sampling and analysis in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services for wastewater. Samples that are sent to a POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (effective April 1, 2010). If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report.
2. **Total Residual Chlorine (TRC)**. The permittee must utilize a USEPA-approved test method capable of bracketing the TRC limitations specified in this permitting action.

**J. OUTFALL #002 – PIPE EXTENSION**

**On or before June 1, 2019**, the permit must extend the terminus of the Outfall #002 pipe to an elevation below the mean low water such that the discharge is submerged under all flow regimes in the river.