



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS  
GOVERNOR

MELANIE LOYZIM  
COMMISSIONER

June 2, 2021

Michael Thompson  
Whole Oceans, LLC  
P.O. Box 904  
52 Main Street  
Bucksport, ME. 04416  
[mthompson@wholeoceans.com](mailto:mthompson@wholeoceans.com)

*Sent via electronic mail  
Delivery confirmation requested*

**RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0037478  
Maine Waste Discharge License (WDL) Application #W009190-6F-B-M  
Finalized Minor Revision MEPDES Permit**

Dear Mr. Thompson:

Enclosed please find a copy of your **final** Minor Revision MEPDES permit and Maine WDL which was approved by the Department of Environmental Protection. Please read this revision and its attached conditions carefully. Compliance with this revision 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 446-3820.

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,

Cindy L. Dionne  
Division of Water Quality Management  
Bureau of Water Quality  
ph: 207-446-3820

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143

Whole Oceans, LLC MR\_2021

June 2, 2021

Page 2 of 2

Enc.

cc: Pamela Parker, DEP

Gary Brooks, DEP

Lori Mitchell, DEP

Angela Brewer, DEP

Alex Rosenberg, USEPA

Sandy Mojica, USEPA

Nathan Chien, USEPA

Richard Carvalho, USEPA



# 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.

---

**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.**

---



DEPARTMENT ORDER

**IN THE MATTER OF**

WHOLE OCEANS, LLC ) MAINE POLLUTANT DISCHARGE  
BUCKSPORT, HANCOCK COUNTY, MAINE ) ELIMINATION SYSTEM PERMIT  
LAND BASED AQUACULTURE ) AND  
ME0037478 ) WASTE DISCHARGE LICENSE  
W009190-6F-B-M ) **APPROVAL** ) **MINOR REVISION**

In compliance with the applicable provisions of *Pollution Control*, 38 M.R.S. §§ 411 – 424-B, *Water Classification Program*, 38 M.R.S. §§ 464 – 470 and *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, and applicable rules of the Department of Environmental Protection (Department hereinafter), the Department has considered the application of WHOLE OCEANS, LLC (Whole Oceans/permittee hereinafter), to initiate a minor revision of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0037478/Maine Waste Discharge License (WDL) #W009190-6F-A-N, (permit hereinafter) dated November 21, 2018. With its supportive data, agency review comments, and other related material on file, the Department FINDS THE FOLLOWING FACTS:

**SUMMARY OF MINOR REVISION REQUEST**

From Michael Thompson (Senior Project Manager at Whole Oceans) letter to Gregg Wood dated April 26, 2021:

“Special Condition G of the referenced MEPDES/WDL approvals for Whole Oceans required ambient water quality monitoring (AWQM) at five designated sites within the Penobscot River, beginning May 1, 2019, at a frequency of twice per month. As required by Special Condition G, AWQM reports have been filed with your office for 2019 and 2020.

Water quality sampling prior to operational discharges was intended to document baseline conditions and we now have two years (2019-2020) of such data. Given that we are not yet operational, we request that Special Condition G be revised to require AWQM at a frequency of once per month until operational discharges are present. All other requirements of Special Condition G would remain in place.

The University of Maine will once again be responsible for conducting the AWQM effort in 2021 and they have developed a proposed schedule for sampling events. If this request for a minor revision is approved, we will provide the DEP with a sampling schedule for once per month sampling.”

**MINOR REVISION REQUEST GRANTED**

The permittee is requesting a revision to Special Condition G, *Ambient Water Quality Monitoring*, to reduce AWQM from 2/Month to 1/Month until “operational discharges” are present. The Department grants this revision with the following conditions:

1. For the purpose of this Minor Revision, “operational discharges” is defined as discharge from Outfall #001B or Outfall #003 while there are fish (in any life stage) present on station.
2. The permittee must notify the Department in writing 30 days prior to fish (in any life stage) being placed on station.
3. All other conditions associated with Special Condition G from the 11/21/18 permit are in effect.

*This space intentionally left blank.*

## CONCLUSIONS

BASED on the findings on page 1 and 2 of this minor revision, 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, 38 MRS Section 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 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 discharge will be subject to effluent limitations that require application of best practicable treatment (BPT).



**ACTION**

THEREFORE, the Department APPROVES a minor revision of combination MEPDES permit #ME0037478/WDL #W009190-6F-A-R, dated November 21, 2018, to amend Special Condition G, *Ambient Water Quality Monitoring* as stated on Page 2 of this revision. The discharges will be 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 #ME0037478/WDL #W009190-6F-A-N, dated November 21, 2018.
2. The attached Special Condition, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit #ME0037478/WDL #W009190-6F-A-N, dated November 21, 2018, not modified by this minor revision remain in effect and enforceable.
4. This minor revision becomes effective upon the date of signature below and expires at midnight on November 21, 2023. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this minor revision, the terms and conditions of this minor revision and all subsequent 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. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (amended June 9, 2018)].

DONE AND DATED AT AUGUSTA, MAINE, THIS 2 DAY OF June 2021.

COMMISSIONER OF ENVIRONMENTAL PROTECTION

BY:  \_\_\_\_\_  
Melanie Loyzim, COMMISSIONER

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application April 26, 2021.  
Date of application acceptance May 5, 2021.

<b>FILED</b>
JUNE 2, 2021
State of Maine Board of Environmental Protection

Date filed with Board of Environmental Protection  
This Order prepared by Cindy Dionne, Bureau Of Water Quality

## SPECIAL CONDITION

### G. AMBIENT WATER QUALITY MONITORING

**On or before February 1, 2019**, the permittee must submit an ambient water quality monitoring plan to the Department for review and approval, to monitor five (5) existing sampling stations established by the Department. The stations to be monitored are P1, P2.9 (replacing P4 in 2019 per Angela Brewer, DEP), P6, P7 and O3. See **Attachment D** of the Fact Sheet of this permit for a map depicting the locations of the monitoring sites. The proposed monitoring plan must conform with a Department approved Quality Assurance Project Plan (QAPP). All sampling and analysis must be conducted by 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.

**Beginning on the effective date of this Minor Revision**, the permittee must commence ambient monitoring at five designated sites established by the Department at a frequency of 1/Month between May 1<sup>st</sup> and October 31<sup>st</sup> of each year. Each monitoring event must be conducted during a three-hour sampling window on the second half of an ebb tide. Minimum parameters to be monitored via a sonde are temperature, salinity, pH, dissolved oxygen, chlorophyll *a*, and turbidity while total phosphorus, total kjeldahl nitrogen, nitrate + nitrite nitrogen, chlorophyll *a* (grab sample for chlorophyll *a* added in this Minor Revision) are to be monitored via grab samples.

Written notice that fish (of any life stage) are to be placed on station must be submitted to the Department 30-days prior to those fish being placed on site.

Following 30-day written notice to the Department that fish (of any life stage) are to be placed on station, the permittee must commence ambient monitoring at five designated sites established by the Department at a frequency of 2/Month between May 1<sup>st</sup> and October 31<sup>st</sup> of each year. Each monitoring event must be conducted during a three-hour sampling window on the second half of an ebb tide. Minimum parameters to be monitored via a sonde are temperature, salinity, pH, dissolved oxygen, chlorophyll *a*, and turbidity while total phosphorus, total kjeldahl nitrogen, nitrate + nitrite nitrogen, chlorophyll *a* (grab sample for chlorophyll *a* added in this Minor Revision) are to be monitored via grab samples.

**On or before December 31<sup>st</sup> of each year**, the permittee must submit a report to the Department summarizing the data collected and report any trends or anomalies with the data.