



STATE OF MAINE
DEPARTMENT OF
ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

October 25, 2017

Mr. Kenneth W. Locke,
Superintendent
Brewer Water Pollution Control Facility
80 N. Main St.
Brewer, ME. 04412

Maine Pollutant Discharge Elimination System (MEPDES) Permit #0100072
Maine Waste Discharge License (WDL) Application #W002679-5M-J-R *ml*
Final Permit Modification

Dear Mr. Locke:

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: Clarissa Trasko, MDEP/EMR Lori Mitchell, MDEP/CMRO Michael Riley, DEP/CMRO
Sandy Mojica, USEPA Olga Vergara, USEPA Marelyn Vega, USEPA

AUGUSTA
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AUGUSTA, MAINE 04333-0017
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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

CITY OF BREWER)	MAINE POLLUTANT DISCHARGE
PUBLICLY OWNED TREATMENT WORKS)	ELIMINATION SYSTEM PERMIT
BREWER, PENOBSCOT COUNTY, MAINE)	AND
ME0100072)	WASTE DISCHARGE LICENSE
W002679-5M-J-M)	MODIFICATION
APPROVAL		

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), the Department has considered the application of the CITY OF BREWER (Brewer/permittee), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

The permittee has requested the Department modify combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0100072/Maine Waste Discharge License (WDL) #W002679-5M-I-R issued by the Department on May 10, 2016, for a five-year term. More specifically, the permittee has requested Special Condition K(4) *Combined Sewer Overflows(CSOs)*, be modified to change the completion date of the sewer separation projects referred to as Category I projects (North/South/East/West Roads and Church Street) in the most recently approved Master Plan. North/South/East/West Roads were to be completed by December 31, 2016, and Church Street was to be completed June 1, 2017. The permittee is requesting a completion date of December 1, 2018, for all Category I projects due to unforeseen delays in securing easements from property owners and their mortgage companies along the project area.

MODIFICATIONS GRANTED/DENINED

The request by the permittee to extend the deadline for Category I projects to December 1, 2018, is acceptable to the Department.

CONCLUSIONS

BASED on the findings in this permit dated September 15, 2017, 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 national resource, that water quality will be maintained and protected;
 - (c) Where the standards of classification of the receiving waterbody are not met, the discharge will not cause or contribute to the failure of the waterbody to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving waterbody 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 waterbody, 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 (including the four CSOs and the CSO related bypasses of secondary treatment) will be subject to effluent limitations that require application of best practicable treatment as defined in *Conditions of licenses*, 38 M.R.S. § 414-A(1)(D).

ACTION

THEREFORE, the Department APPROVES the application of the CITY of BREWER to modify the completion date of the sewer separation projects referred to as Category I projects to December 1, 2018, SUBJECT TO ALL APPLICABLE STANDARDS AND REGULATIONS AND THE FOLLOWING CONDITIONS:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits," revised July 1, 2002, copy attached to MEPDES #ME0100072/WDL #W002679-5M-I-R issued by the Department on May 10, 2016, for a five-year term.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions established in MEPDES #ME0100072/WDL #W002679-5M-I-R issued by the Department on May 10, 2016, not modified by this permit remain in effect and enforceable.
4. This permit becomes effective upon the date of signature below and expires at midnight on May 10, 2021, concurrent with MEPDES #ME0100072/WDL #W002679-5M-I-R issued by the Department on May 10, 2016. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of this permit 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 October 19, 2015).

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 1ST DAY OF November 2017.

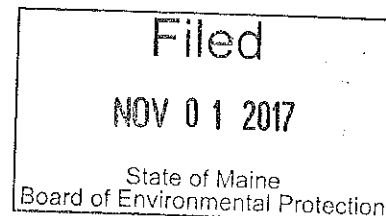
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Keelus
PAUL MERCER, Commissioner

Date of initial receipt of application February 5, 2016

Date of application acceptance February 8, 2016

Date filed with Board of Environmental Protection _____



This Order prepared by Gregg Wood, Bureau of Water Quality
ME0100072 MR 2017 10/25/17

SPECIAL CONDITIONS

K. COMBINED SEWER OVERFLOWS (CSO's) (cont'd)

4. CSO Master Plan [see 06-096 CMR 570(3) and 06-096 CMR 570(4)]

The permittee must implement CSO control projects in accordance with an approved CSO Master Plan and abatement schedule. The CSO Master Plan entitled *Sewer System Master Plan For CSO Abatement*, dated June 1993 was approved on April 12, 1995 and the abatement project schedule was last amended on January 15, 2004 and approved by the Department on January 26, 2004. The most current Master Plan, *Updated Sewer System Master Plan for CSO Abatement* dated December 2014 with abatement schedule was approved on November 2, 2015.

On or before December 31, 2017, (ICIS Code CS010) the permittee must provide a Status/Progress report confirming that the remaining Category II projects will be constructed or provide justification as to why some or all of the listed projects may no longer be needed.

On or before December 31, 2018, (ICIS Code CS016) the permittee must complete the sewer separation projects referred to as Category I projects in the most recently approved Master Plan.

On or before December 31, 2021, (ICIS Code 81699) the permittee must submit to the Department for review and approval an updated CSO Long Term Control Plan, a.k.a. Master Plan that analyzes the effectiveness of the abatement projects to date and if necessary, includes an implementation schedule for additional abatement projects.

To modify the dates and or projects specified in Special Condition A(4) of this permit (but not dates in the Master Plan), the permittee must file an application with the Department to formally modify this permit. The work items identified in the abatement schedule may be amended from time to time based upon approval by the Department. The permittee must notify the Department in writing prior to any proposed changes to the implementation schedule.

5. Nine Minimum Controls (NMC) [see 06-096 CMR 570(5)]

The permittee must implement and follow the Nine Minimum Controls documentation as approved by USEPA on May 29, 1997. Work performed on the Nine Minimum Controls during the year must be included in the annual CSO Progress Report (see below).



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

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) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in 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.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 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.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE 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 after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal 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.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
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 arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

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, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide 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 questions regarding applicable requirements.
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. 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, including 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, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. 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, a 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.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & 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. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

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.A. § 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.
