



STATE OF MAINE  
DEPARTMENT OF  
ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PAUL MERCER  
COMMISSIONER

February 13, 2017

Mr. Joseph Madigan  
Orono Water Pollution Control Facility  
P.O. Box 130  
Orono, ME. 04473

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0100498  
Maine Waste Discharge License (WDL) Application #W002673-6D-J-M  
**Final Permit Modification**

Dear Mr. Madigan:

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 modification 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: Nina Caputo, MDEP/EMRO  
Sandy Mojica, USEPOA

Lori Mitchell, MDEP/CMRO  
Olga Vergara, USEPA

Michael Riley, DEP/CMRO  
Marelyn Vega, USEPA

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



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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

TOWN OF ORONO	)	MAINE POLLUTANT DISCHARGE
WATER POLLUTION CONTROL FACILITY	)	ELIMINATION SYSTEM PERMIT
ORONO, PENOBSCOT COUNTY	)	AND
PUBLICLY OWNED TREATMENT WORKS	)	WASTE DISCHARGE LICENSE
ME0100498	)	
W002673-6D-J-M	)	
APPROVAL	)	<b>MODIFICATION</b>

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et. seq. and *Conditions of licenses*, Maine Law 38 M.R.S., Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of the TOWN OF ORONO (Town/permittee hereinafter), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

The permittee has submitted an application to the Department to modify combination Maine Pollutant Discharge Elimination System (MEPDES) permit # ME0100498/Maine Waste Discharge License #W002673-6D-H-R (permit hereinafter), which was issued by the Department on November 13, 2012, for a five-year term. The permit approved the discharge of up to a monthly average flow of 1.84 million gallons per day (MGD) of secondary treated sanitary wastewater from a municipal wastewater treatment facility and an unspecified quantity of untreated storm water and sanitary wastewater from one combined sewer overflow (CSO) to the Penobscot River, Class B, in Orono, Maine.

More specifically, the permittee has requested the Department modify the milestone date in Special Condition K(4), *Conditions For Combined Sewer Overflows*, which requires the permittee to submit a CSO Master Plan Update and abatement schedule to the Department for review and approval on or before December 31, 2016. The permittee is requesting the date be revised to November 13, 2017, as agreed to by the Department in a letter to the permittee dated October 3, 2013.

**PERMIT SUMMARY**

This permitting action is modifying the milestone date from December 31, 2016, to November 13, 2017.

**CONCLUSIONS**

BASED on the findings on page 1 of this permit 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, 38 M.R.S. 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;

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  - (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 (including the CSO) will be subject to effluent limitations that require application of best practicable treatment.

**ACTION**

THEREFORE, the Department APPROVES the above noted application of the TOWN OF ORONO requesting a modification of a milestone date in Special Condition K(4), *Conditions For Combined Sewer Overflows*, of MEPDES permit #ME0100498/WDL#W002673-6D-H-R, which was issued on November 13, 2012, for a five-year term, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits," revised July 1, 2002, copy attached to MEPDES permit #ME0100498/WDL#W002673-6D-H-R, which was issued on November 13, 2012, for a five-year term.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit #ME0100498/WDL#W002673-6D-H-R, which was issued on November 13, 2012, for a five-year term, not modified by this permit modification remain in effect and enforceable.
4. This permit modification and the authorization to discharge become effective upon the date of signature below and expire at midnight on November 13, 2017. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this modification, the authorization to discharge and the terms and conditions of this modification 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. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (effective October 19, 2015)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

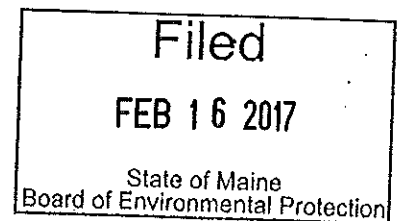
DONE AND DATED AT AUGUSTA, MAINE, THIS 15<sup>th</sup> DAY OF February, 2017.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kubus  
for Paul Mercer, Commissioner

Date of initial receipt of application: January 6, 2017

Date of application acceptance: January 9, 2017



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

This Order prepared by Gregg Wood, BUREAU OF WATER QUALITY

**SPECIAL CONDITIONS**

**K. CONDITIONS FOR COMBINED SEWER OVERFLOWS (cont'd)**

On or before November 13, 2017, [ICIS Code 81699] the permittee must submit a CSO Master Plan Update and abatement schedule to the Department for review and approval.

To modify the date and or project specified above (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 Control documentation as approved by EPA on August 12, 1997. Work performed on the Nine Minimum Controls during the year shall be included in the annual *CSO Progress Report* (see below).

6. CSO Compliance Monitoring Program (see 06-096 CMR 570 § 6)

The permittee must conduct block testing or flow monitoring according to an approved *Compliance Monitoring Program* on all CSO points, as part of the CSO Master Plan. Annual flow volumes for all CSO locations must be determined by actual flow monitoring, or by estimation using a model such as EPA's Storm Water Management Model (SWMM).

Results must be submitted annually as part of the annual *CSO Progress Report* (see below), and shall include annual precipitation, CSO volumes (actual or estimated) and any block test data required. Any abnormalities during CSO monitoring shall also be reported. The results shall be reported on the Department form, "*CSO Activity and Volumes*" (Attachment E of MEPDES permit #ME0100498/WDL#W002673-6D-H-R, issued on November 13, 2012) or similar format and submitted to the Department in an electronic format approved by the Department. CSO control projects that have been completed shall be monitored for volume and frequency of overflow to determine the effectiveness of the project toward CSO abatement. This requirement shall not apply to those areas where complete separation has been completed and CSO outfalls have been eliminated.

CSO control projects that have been completed shall be monitored for volume and frequency of overflow to determine the effectiveness of the project toward CSO abatement. This requirement shall not apply to those areas where complete separation has been completed and CSO outfalls have been eliminated.



# 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.

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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.**