



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PAUL MERCER  
COMMISSIONER

Mr. John Fancy  
Superintendent  
Thomaston Water Pollution Control Facility  
P.O. Box 299  
Thomaston, ME. 04861  
e-mail: [thompcd@midcoast.com](mailto:thompcd@midcoast.com)

June 12, 2017

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0100668  
Maine Waste Discharge License (WDL) #W002643-6C-H-M  
**Final Permit Modification**

Dear Mr. Fancy:

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 permit/license renewal 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: Denise Behr, DEP/CMRO    Lori Mitchell, DEP/CMRO  
Sandy Mojica, USEPA    Marelyn Vega, USEPA    Olga Vergara, 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 THOMASTON	)	MAINE POLLUTANT DISCHARGE
THOMASTON, KNOX COUNTY, MAINE	)	ELIMINATION SYSTEM PERMIT
PUBLICLY OWNED TREATMENT WORKS	)	AND
ME0100668	)	WASTE DISCHARGE LICENSE
W002643-6C-H-M	)	<b>MODIFICATION</b>
		<b>APPROVAL</b>

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, *et. seq.* and *Conditions of Licenses*, 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 THOMASTON (Thomaston/permittee) with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

The Town of Thomaston has submitted an application to the Department to modify combination Maine Waste Discharge License (WDL) #W-002643-6C-G-R and Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0100668, that was issued by the Department on April 10, 2013, for a five-year term. The MEPDES Permit / WDL authorized the operation of an aerated facultative sanitary wastewater treatment lagoon system with two wastewater disposal options. From January 1 through March 31 each year, the permittee was authorized to discharge up to a monthly average flow of 0.9 million gallons per day (MGD) of treated sanitary wastewater to the St. George River, a Class SB water in Thomaston, Maine. From April 1 through November 30 each year, the permittee was authorized to spray irrigate up to a maximum of 81,457 gallons/acre/week via a surface wastewater disposal system onto land in Thomaston, Maine.

Thomaston is requesting authorization to create a new and separate surface waste water disposal system to dispose of up to 30 million gallons per season (December 1 – March 31) of treated waste water via the creation of ice piles provided the climatic conditions are conducive to making ice.

## PERMIT SUMMARY

This permitting action is carrying forward all the terms and conditions of the April 10, 2013, permitting action except that this permit is:

1. Authorizing the Thomaston to construct and operate a surface waste water disposal system to dispose of up to 30 million gallons per season (December 1 – March 31) of treated waste water via the creation on ice piles provided the climatic conditions are conducive to making ice.

## CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated April 26, 2016, 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 that the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 MRSa 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.

**ACTION**

THEREFORE, the Department APPROVES the above noted application of the TOWN OF THOMASTON for the disposal of up to 30 million gallons per season (December 1 – March 31) of treated waste water via the creation of ice piles onto land in Thomaston, Maine, SUBJECT TO THE FOLLOWING 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 Maine WDL #W002643-6C-G-R /MEPDES permit #ME0100668 issued by the Department on April 10, 2013, for a five-year term.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of Maine WDL #W002643-6C-G-R /MEPDES permit #ME0100668 issued by the Department on April 10, 2013, not modified by this permitting action remain in effect and enforceable.
4. This permit modification becomes effective upon the date of signature below and expires at midnight five on April 10, 2018, concurrent with Maine WDL #W-002643-6C-G-R/MEPDES permit #ME0100668, that was issued by the Department on April 10, 2013, for a five-year term. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit modification, the terms and conditions of this permit modification 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) (effective October 19, 2015)].

DONE AND DATED AT AUGUSTA, MAINE, THIS 6<sup>th</sup> DAY OF June 2017.

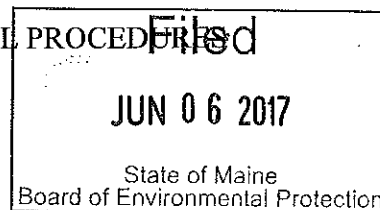
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns  
Paul Mercer, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURE

Date of initial receipt of application: August 31, 2015  
Date of application acceptance: September 1, 2015

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



This Order prepared by Gregg Wood, BUREAU OF WATER QUALITY  
ME0100668 MR 2016 6/6/17

**SPECIAL CONDITIONS**

**A. LIMITATIONS AND MONITORING REQUIREMENTS – (ICE PILES)**

**December 1 – March 31 each year**

The application of wastewater to the land via a surface waste water disposal system to create ice piles shall be limited to the time period **December 1 to March 31 of each calendar year**. The **ICE PILE FIELD (FLD#6)** shall be limited and monitored as specified below.

**ICE PILE FIELD (FLD#6)**

MONITORING CHARACTERISTIC REQUIREMENTS	LIMITATIONS		MINIMUM MONITORING	
	Monthly <u>Average</u> as specified	Daily <u>Maximum</u> as specified	Measurement <u>Frequency</u> as specified	Sample <u>Type</u> as specified
Flow (Total for the Month) [51128]	Report millions of gallons [3R]	---	1/Month [01/30]	Measure [MS]
Flow (Cumulative Total for the Season) [51128]	Report millions of gallons [3R]	---	1/Month [01/30]	Calculate [CA]
Flow (Total for the Season) [51128]	30 millions of gallons [3R]	---	1/Season [01/SN]	Calculate [CA]

## SPECIAL CONDITIONS

### J. GENERAL OPERATIONAL CONSTRAINTS

1. All wastewaters must receive biological treatment through a properly designed, operated and maintained lagoon system prior to disposal via spray irrigation.
2. The spray irrigation and snowmaking facilities must be effectively maintained and operated at all times so that there is no discharge to surface waters, nor any contamination of groundwater which will render it unsatisfactory for usage as a public drinking water supply.
3. The spray irrigation and snowmaking facilities must not cause the lowering of the quality of the groundwater below the State Primary and Secondary Drinking Water Standards specified in the Maine State Drinking Water Regulations pursuant to Maine Law 22 M.R.S.A. § 2611.

In the event the groundwater sampling results indicates adverse effects, the licensee may be required to take immediate remedial action(s), which may include but not be limited to, adjustment of the irrigation schedule or application rates, a reduction of the pollutant loading, or ceasing operation of the system until the Department determines that such actions are no longer required.

4. The Department must be notified as soon as the licensee becomes aware of any threat to public health, unlicensed discharge of wastewater, sanitary system overflows (SSO's) or any malfunction that threatens the proper operation of the system. Notification must be made in accordance with Standard Condition D(1)(f), *Twenty four hour reporting*, of MEPDES permit #ME0100668/WDL #W002643-6C-G-R issued on April 10, 2013 for a five-year term. A *sanitary sewer overflow* (SSO) is the release of raw sewage from a sanitary collection system prior to reaching the treatment plant or facility. Spills out of manholes, into basements, onto municipal or private property, etc, and into the waters of the State are all considered to be SSO's.
5. The licensee must maintain a file on the location of all system components and relevant features. Each component must be mapped and field located sufficiently to allow adequate inspections and monitoring by both the licensee and the Department.
6. All system components including collection pipes, tanks, manholes, pumps, pumping stations, spray / snow disposal fields, and monitoring wells must be identified and referenced by a unique identifier (alphabetic, numeric, or alpha-numeric) in all logs and reports.

## SPECIAL CONDITIONS

### J. GENERAL OPERATIONAL CONSTRAINTS

7. The licensee must at all times maintain in good working order and operate at maximum efficiency all wastewater collection, treatment and/or control facilities. **Within one hour after start-up of the spray-irrigation and snowmaking systems**, the licensee must inspect the spray-irrigation and snowmaking site *or* have other means to check the system for leakage in the piping system and determine if individual sprayheads and pump(s) are functioning as designed, and verify that application rates are appropriate for the existing site conditions. The procedures used to determine the system is functioning as designed must be described in the facility's O&M manual. Should significant malfunctions or leaks be detected, the licensee must shut down the malfunctioning/leaking sections of the spray and snowmaking system and make necessary repairs before resuming operation. The licensee must cease irrigation if runoff is observed outside the designated boundaries of the spray and snowmaking field(s). The licensee must field calibrate equipment to ensure proper and uniform spray applications when operating. Calibration involve collecting and measuring application rate at different locations within the application area. A description of the calibration procedures and a log sheet that have been used for recording calibration results must be included as part of the Operations & Maintenance manual.

### V. SNOW/ICE MAKING OPERATIONAL CONSTRAINTS

1. Snow/ice making from effluent must only be made when conditions are conducive to snow/ice making. When conditions are such that the effluent from the snow/ice guns results in a liquid being sprayed on the site, the operator will cease snow/ice making operations until proper conditions exist. Snow/ice making will be interrupted to prevent runoff occurring off the site.
2. **The licensee must maintain a daily log** of all snow/ice making operations which records the date, weather, precipitation and volume of water pumped (gallons) to the disposal site and other relevant observations/comments from daily inspections. The log must be in accordance with the general format of the "*Snow/Ice Making Monthly Operations Log*" form provided as **Attachment A** of this modification, or other format approved by the Department. The *Snow/Ice Making Monthly Operations Log* for each month must be submitted to the Department as an attachment to the monthly DMRs in a format approved by the Department. Copies will also be maintained on site for Department review and for license operation maintenance purposes.

# Attachment A

## Snow/Ice Making Monthly Operations Log

Town of Thomaston (WDL #W002643)

(Month/Year) \_\_\_\_\_

Ice Pile Field #6

A	B	C	D	E	F
Date	Precipitation Previous 24 hours (inches)	Air Temp Minimum(°F)	Air Temp Maximum(°F)	Weather	Total Gallons Pumped (gallons)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
					<b>Monthly Total</b> <b>(Millions of Gallons/Month)</b>

Signature of Responsible Official: \_\_\_\_\_ Date \_\_\_\_\_



**MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
AND  
MAINE WASTE DISCHARGE LICENSE**

**FACT SHEET**

Date: April 26, 2016

MEPDES PERMIT NUMBER:                   **ME0100668**  
MAINE WDL NUMBER:                       **W-002643-6C-H-M**

NAME AND ADDRESS OF APPLICANT:

**TOWN OF THOMASTON  
P. O. Box 299  
Thomaston, Maine 04861**

COUNTY:                                       **Knox County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**THOMASTON POLLUTION CONTROL FACILITY  
33 Clark Street  
Thomaston, Maine 04861**

RECEIVING WATER/CLASSIFICATION:       **Ground Water/Class GW-A  
St. George River/Class SB**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. John Fancy  
(207) 354-2136  
[thompcd@midcoast.com](mailto:thompcd@midcoast.com)**

**1. APPLICATION SUMMARY**

- a. Application - The Town of Thomaston has submitted an application to the Department to modify combination Maine Waste Discharge License (WDL) #W-002643-6C-G-R and Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0100668, that was issued by the Department on April 10, 2013, for a five-year term. The MEPDES Permit / WDL authorized the operation of an aerated facultative sanitary wastewater treatment lagoon system with two wastewater disposal options. From January 1 through March 31 each year, the permittee was authorized to discharge up to a monthly average flow of 0.9 million gallons per day (MGD) of treated sanitary wastewater to the St. George River, a Class SB water in Thomaston, Maine. From April 1 through November 30 each year, the permittee was authorized to spray irrigate up to a maximum of 81,457 gallons/acre/week via a surface wastewater disposal system onto land in Thomaston, Maine.

## 1. APPLICATION SUMMARY (cont'd)

Thomaston is requesting authorization to create a new and separate surface waste water disposal system to dispose of up to 30 million gallons per season (December 1 – March 31) of treated waste water via the creation of ice piles provided the climatic conditions are conducive to making ice. See Fact Sheet **Attachment A** for a location map delineating the ice pile location.

- b. Wastewater Treatment: The Thomaston wastewater treatment facility consists of three aerated facultative treatment lagoons with a total capacity of 21 million gallons, a treated wastewater storage lagoon with a capacity of 36 million gallons, an outfall to the St. George River for winter wastewater disposal, five 10.2-acre spray irrigation fields for summer wastewater disposal, and related infrastructure, located on an approximately 300-acre site.

Thomaston's treatment lagoons are of two different sizes. At maximum depth, treatment lagoon #1 contains a volume of 10.22 million gallons with a surface area of 2.85 acres. Treatment lagoons #2 and #3 each contain a volume of 5.48 million gallons with surface areas of 1.62 acres. Each of the lagoons' depths range from a minimum of 12 feet to a maximum of 15 feet, with 3-feet of freeboard at maximum depth. Each lagoon is underlain by a 60-mil high density polyethylene liner. During the summer, the treatment lagoons' average daily flow is 0.328 MGD, with a total detention time of 51 days, while during the winter the average daily flow is 0.487 MGD, with a total detention time of 36 days. Treatment lagoon #1 contains 70 fine-bubble aerators, while treatment lagoons #2 and #3 contain 16 and 12 aerators respectively. Following treatment, the wastewater passes from treatment lagoon #3 to the storage lagoon. At maximum depth, the storage lagoon contains a volume of 36 million gallons with a surface area of approximately 6-acres. The storage lagoon depth ranges from a minimum of 4-feet to a maximum of 20-feet, with 3-feet of freeboard at maximum depth. From the storage lagoon, wastewater either flows by gravity and is discharged to the St. George River from January through March, or is pumped and land applied through spray irrigation from April through November. The surface water discharge flow is controlled by a pinch valve, with sodium hypochlorite added as disinfectant as needed to meet bacteria limits and the discharge pipe serving as the contact chamber. The discharge pipe is 14-inches in diameter, 7,100 feet long, and discharges at the former treatment plant at a minimum depth of 6-feet at mean low water. The surface water discharge is limited by this permitting action to between January 1 and March 31 each year.

Thomaston has five 10.2-acre spray irrigation fields, designated as FLD #1-5, upon which it is permitted to discharge its wastewater from April 1 through November 30 at a maximum rate of 830,900 gallons per week which averages out to 3 inches per acre per week (81,456 gal/acre/week). Wastewater is discharged through spray irrigation via approximately 26,000 linear feet of distribution piping, and approximately 130 spray nozzles. One to two spray fields are sprayed per day and each field is typically sprayed twice per week.

## 1. APPLICATION SUMMARY (cont'd)

The Thomaston site contains two background groundwater monitoring wells and six downgradient monitoring wells that are currently monitored to determine any wastewater discharge related groundwater problems and provide for remedial action (see Section 2e below).

A high intensity soil survey of Thomaston's spray irrigation sites was conducted by Albert Frick Associates, Inc. in May 1995. Soil types found in various extents in the spray fields consisted of Colonel, Dixfield, Lyman-Turnbridge-Rock Outcrop Complex, Skerry, and Turnbridge, with slopes ranging from 3-20%. The soil survey indicated the soils in the spray areas are suitable for attenuating pollutant loading based on spray irrigation application rates in this licensing action..

For the new area 1.5-acre ice pile site, Albert Frick Associates, Inc. conducted a soil investigation in June of 2015 and found the soils to be classified as Dixfield soils. Dixfield soils have a moderate infiltration rate and moderate hydraulic permeability. The treated waste water being applied will slowly melt over the April – July timeframe and receive additional treatment by the soil through physical filtration, chelation and cation exchange. General speaking, the seasonal high water table is a 24 inches below the surface of the ground. The State of Maine Soil Scientist also conducted a site visit and stated in a July 16, 2015 memo to the waste water treatment plant superintendent "The site is forested with an organic duff layer and the surface is irregular due to pit and mound topography, forest debris, vegetation and butt swell of trees. This will offer resistance to overland flow of melting snowfluent allowing for it to infiltrate into the soil where it should be polished before reaching a wetland, stream or property line. In summary, I believe the proposed snowfluent stockpile site is an excellent location and should work well for the intended purpose."

## 2. LICENSE SUMMARY

- a. Terms and conditions - This licensing action is carrying forward all the terms and conditions of the previous licensing action except that this license is;
  1. Authorizing Thomaston to construct and operate a surface waste water disposal system to dispose of up to 30 million gallons per season (December 1 – March 31) of treated waste water via the creation on ice piles provided the climatic conditions are conducive to making ice.

### **3. DISCHARGE IMPACT ON RECEIVING WATER QUALITY**

As permitted, the Department has determined the existing groundwater uses will be maintained and protected and the discharge will not cause or contribute to the failure of the groundwater to meet standards for Class GW-A classification.

### **4. PUBLIC COMMENTS**

Public notice of this application was made in the Courier - Gazette newspaper on or about August 27, 2015. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

### **5. DEPARTMENT CONTACT**

Additional information concerning this permitting action may be obtained from and written comments should be sent to:

Gregg Wood  
Division of Water Quality Management  
Bureau of Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

Telephone (207) 287-7693  
Fax (207) 287-3435  
email: [gregg.wood@maine.gov](mailto:gregg.wood@maine.gov)

### **6. RESPONSE TO COMMENTS**

During the period April 26, 2016, through the issuance date of the permit/license, the Department solicited comments on the proposed draft permit/license to be issued for the discharge(s) from the permittee's facility. The Department did not receive comments from the permittee, state or federal agencies or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

# ATTACHMENT A

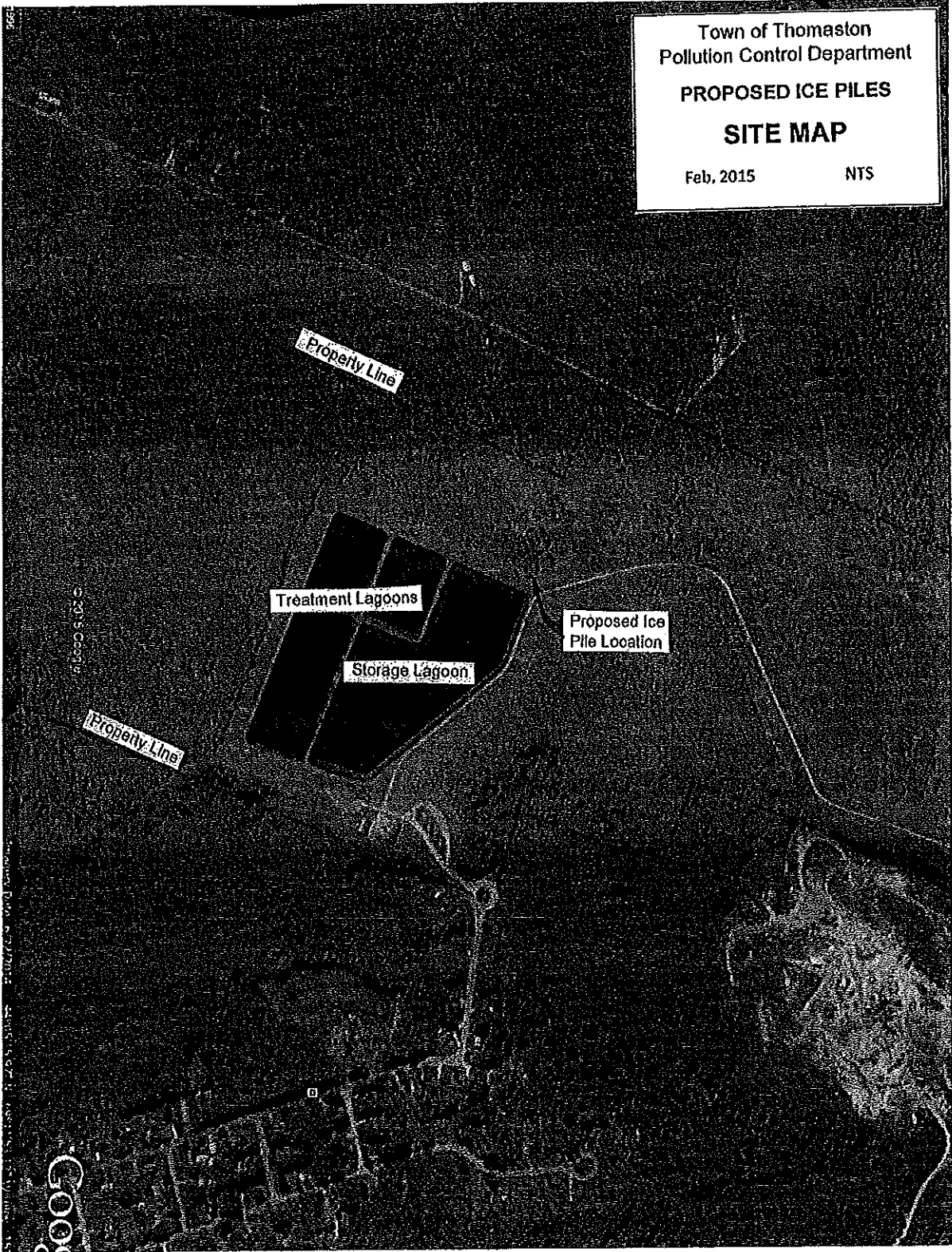
Town of Thomaston  
Pollution Control Department

**PROPOSED ICE PILES**

**SITE MAP**

Feb. 2015

NTS





# 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.**

---