



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF
ENVIRONMENTAL PROTECTION



PAUL MERCER
COMMISSIONER

October 31, 2017

Mr. Michael Harris
Winter Harbor Utilities District
P.O. Box 141
Winter Harbor, ME 04693
mharris@ellsworthmaine.gov

*Sent via electronic mail
Delivery confirmation requested*

**RE: *Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0100731
Maine Waste Discharge License (WDL) Application #W000562-6C-G-M
Finalized Minor Revision***

Dear Mr. Harris:

Enclosed please find a copy of your **final** minor revision for Maine permit/WDL ME0100731/W000562-6C-F-R issued on January 7, 2016. Please read this permit/license minor revision 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 this matter, please contact me at (207)-592-7161 or 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,

Aaron Dumont
Division of Water Quality Management
Bureau of Water Quality

Enclosure

Cc: Nina Caputo, DEP/EMRO Lori Mitchell, DEP/CMRO David Webster, USEAP
Ogla Vergara, USEPA Marelyn Vega, EPA Sandy Mojica, EPA Richard Carvalho, EPA

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, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

| | | |
|------------------------------------|-----------------|---------------------------|
| WINTER HARBOR UTILITIES DISTRICT |) | MAINE POLLUTANT DISCHARGE |
| WINTER HARBOR, HANCOCK CTY., MAINE |) | ELIMINATION SYSTEM PERMIT |
| PUBLICLY OWNED TREATMENT WORKS |) | AND |
| ME0100731 |) | WASTE DISCHARGE LICENSE |
| W000562-6C-G-M |) | MINOR REVISION |
| | APPROVAL | |

Pursuant to the provisions of the *Federal Water Pollution Control Act*, Title 33 USC, §1251, *Conditions of licenses*, 38 M.R.S. § 414-A, and applicable regulations, the Department of Environmental Protection (Department) has considered a request by WINTER HARBOR UTILITIES DISTRICT (District or permittee) to modify combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0100731/Maine Waste Discharge License (WDL) #W000562-6C-F-R issued by the Department on January 7, 2016, for a five-year term. With its supportive data, agency review comments, and other related materials on file and other related materials on file, the Department FINDS THE FOLLOWING FACTS:

REVISION REQUESTED

The permittee has requested that the January 7, 2016, permit be revised to include the most current monitoring and reporting requirement for Screening Level Testing to be consistent with other permits.

REVISION GRANTED/DENIED

The Department acknowledges that the language included in the permit was not the most recent and as such, the permittee's request is acceptable to the Department. Table A.2. *Effluent Limitations and Monitoring Requirements* for Outfall #001 is being revised as attached in this Minor Revision.

CONCLUSIONS

BASED on the findings on page 1 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 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 water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
 - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S. § 414-A(1)(D).

ACTION

THEREFORE, the Department APPROVES the previously noted request by WINTER HARBOR UTILITIES DISTRICT to revise combination MEPDES permit #ME0100731/WDL #W000562-6C-F-R last issued by the Department on January 7, 2016, for a five-year term to amend language on Table A.2. Effluent Limitations and Monitoring Requirements so as to be consistent with other permits, 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 ME0100731/WDL #W000562-6C-F-R last issued by the Department on January 7, 2016, 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 ME0100731/WDL #W000562-6C-F-R last issued by the Department on January 7, 2016, for a five-year term, not modified by this minor revision remain in effect and enforceable.
4. This minor revision and the authorization to discharge become effective upon the date of signature below and expire at midnight on January 7, 2021. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this minor revision, the authorization to discharge and the terms and conditions of this minor revision 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.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DONE AND DATED AT AUGUSTA, MAINE, THIS 25th DAY OF October 2017.

BY: Michael Keenan
Paul Mercier, Commissioner

| |
|---|
| Filed |
| OCT 25 2017 |
| State of Maine Board of Environmental Protection |

Date filed with Board of Environmental Protection

Date of initial receipt of application: October 17, 2017
Date of application acceptance: October 17, 2017

This Order prepared by Aaron Dumont, BUREAU OF WATER QUALITY

SPECIAL CONDITIONS

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

2. **SCREENING LEVEL TESTING:** Beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (Year 4 of the term of the permit) and every five years thereafter if a timely request for renewal has been made and the permit continues in force, or is replaced by a permit renewal containing this requirement.

| Effluent Characteristic | Discharge Limitations | | | | Minimum Monitoring Requirements | |
|---|-----------------------|---------------|-----------------|------------------|---------------------------------|--------------------------|
| | Monthly Average | Daily Maximum | Monthly Average | Daily Maximum | Measurement Frequency | Sample Type |
| Whole Effluent Toxicity ⁽⁷⁾ Acute – NOEL <i>Americamysis bahia</i> (Mysid shrimp) [TDM3E] | --- | --- | --- | Report % [23] | 1/Year [01/YR] | Composite [24] |
| Chronic – NOEL <i>Arbacia punctulata</i> (Sea urchin) [TBH3A] | --- | --- | --- | Report % [23] | 1/Year [01/YR] | Composite [24] |
| Analytical Chemistry ^(8,10) [51477] | --- | --- | --- | Report ug/L [28] | 1/Quarter [01/90] | Composite / Grab [24/GR] |
| Priority Pollutant ^(9,10) [50008] | --- | --- | --- | Report ug/L [28] | 1/Year [01/YR] | Composite / Grab [24/GR] |

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

FOOTNOTES: See Pages 6– 9 of MEPDES permit ME0100731/WDL #W000562-6C-F-R issued by the Department on January 7, 2016, for applicable footnotes.



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.
