



STATE OF MAINE  
Department of Environmental Protection

Paul R. LePage  
GOVERNOR

Patricia W. Aho  
COMMISSIONER

March 12, 2012

Mr. Michael Harris  
Ellsworth Water Pollution Control Facility  
One City Hall Plaza  
Ellsworth, ME. 04605

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0100889  
Maine Waste Discharge License (WDL) Application #W002529-6C-F-M  
**Final Permit/License Minor Revision**

Dear Mr. Harris:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL **minor revision** which was approved by the Department of Environmental Protection. Please read the permit/license and its attached conditions carefully. You must follow the conditions in the permit/license to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State Law and is subject to enforcement action.

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.

Sincerely,

A handwritten signature in cursive script, appearing to read 'G. Wood'.

Gregg Wood  
Division of Water Quality Management  
Bureau of Land and Water Quality

Enc.

cc: Clarissa Trasko, DEP/EMRO  
Sandy Mojica, USEPA



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

## DEPARTMENT ORDER

### IN THE MATTER OF

CITY OF ELLSWORTH	)	MAINE POLLUTANT DISCHARGE
ELLSWORTH, HANCOCK COUNTY, MAINE	)	ELIMINATION SYSTEM PERMIT
PUBLICLY OWNED TREATMENT WORKS	)	AND
ME0100889	)	WASTE DISCHARGE LICENSE
W002529-6C-F-M	)	MINOR REVISION
		<b>APPROVAL</b>

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et. seq. and Maine Law 38 M.R.S.A., Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered a request by the CITY OF ELLSWORTH (City hereinafter), with its supportive data, agency review comments, and other related material on file and FINDS THE FOLLOWING FACTS:

### APPLICATION SUMMARY

The City has requested the Department modify Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0100889/WDL #W002529-6C-E-M, minor revision issued by the Department on March 26, 2011, that incorporated Special Conditions regarding compliance with the 2010 Clean Water State Revolving Fund (CWSRF) Requirements (Asset Management Principal Forgiveness). Compliance in the City of Ellsworth's case is based on;

- 1) The establishment of and implementation of an Asset Management Program.
- 2) The establishment of a repair and replacement reserve account equivalent to 2% of its total yearly wastewater operation and maintenance budget each year for five years.
- 3) Conduct a comprehensive process energy audit for its wastewater facilities and infrastructure.

### PERMIT SUMMARY

This minor revision modifies applicable dates in the Special Conditions in the March 26, 2011, minor revision that required the permittee to establish and implement an Asset Management Program and establish a repair and replacement reserve account and conduct a process energy audit.

## CONCLUSIONS

Subject to the Conditions listed below, the Department makes the following CONCLUSIONS.

For discharge of secondary treated waste waters from the waste water treatment facility:

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 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. The standards of classification of the receiving water body are met or, 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 discharges will be subject to effluent limitations that require application of best practicable treatment as defined in Maine law, 38 M.R.S.A., §414-A(1)(D).

**ACTION**

THEREFORE, the Department APPROVES the request by the CITY OF ELLSWORTH, to modify applicable dates in Special Conditions of the March 26, 2011, minor revision regarding compliance with the 2010 Clean Water State Revolving Fund (CWSRF) Requirements (Asset Management Principal Forgiveness). The discharges shall 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 #ME0100889/WDL #W002529-6C-D-R, issued by the Department on October 29, 2009.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit #ME0100889/WDL #W002529-6C-D-R, issued by the Department on October 29, 2009, not modified by this permitting action remain in effect and enforceable.
4. This minor revision becomes effective upon signature and expires on October 29, 2014, concurrent with #ME0100889/WDL #W002529-6C-D-R, issued by the Department on October 29, 2009.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 20<sup>th</sup> DAY OF March 2012.

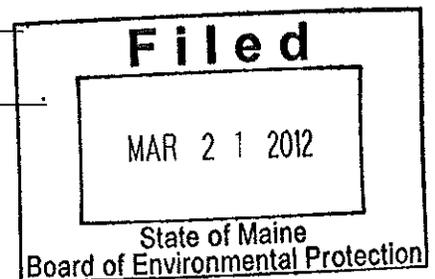
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Heather Pene FOR  
For Patricia W. Aho, Commissioner

Date of initial receipt of application February 27, 2012

Date of application acceptance February 27, 2012

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



This Order prepared by GREGG WOOD, BUREAU OF LAND & WATER QUALITY

## SPECIAL CONDITION

### P. ASSET MANAGEMENT PROGRAM (AMP)

The permittee shall prepare an AMP in accordance with Department guidance entitled, *Maine Department of Environmental Protection, Clean Water State Revolving Fund (CWSRF) Guidance for Minimum Requirements for an Asset Management Program and Reserve Account In Order to Qualify for CWSRF Principal Forgiveness*, DEPLW1190-2010. The AMP shall be reviewed and updated as necessary at least annually. The AMP shall be kept on-site at the permittee's office and made available to Department staff for review during normal business hours.

**On or before December 31, 2012, (PCS Code 59499)** the permittee shall submit a certification to the Department indicating a CWSRF AMP has been implemented in accordance with the Department guidance document DEPLW1190-2010. See **Attachment A** of this minor revision for a copy of the certification form.

### Q. REPAIR AND REPLACEMENT RESERVE ACCOUNT

**Beginning December 31, 2012**, and every year thereafter totaling five consecutive years, the permittee shall fund a Repair and Replacement Reserve Account in the amount recommended in the permittee's Asset Management Plan or at a minimum of 2% of the permittee's total yearly waste water operation and maintenance budget.

**On or before December 31, 2012**, and every year thereafter for five years (*PCS Code 59499*) the permittee shall submit a certification to the Department indicating a Repair and Replacement Reserve Account has been fully funded as required above. See **Attachment B** of this minor revision for a copy of the certification form. The permittee shall attach copies of yearly audit reports to the annual certification forms showing funds in the reserve account for each year for the five years and, if funds were expended, what the funds were used for.

### R. WASTE WATER FACILITY ENERGY AUDIT

The permittee shall conduct a comprehensive process energy audit for the waste water facilities and infrastructure. The audit shall contain the minimum scope of work as presented in a document entitled, *Maine Department of Environmental Protection, Model Energy Audit Request For Proposals*, DEPLW1189-2010.

**On or before December 31, 2012, (PCS Code 43699)** the permittee shall submit a final report to the Department that contains the findings of the energy audit.

**ATTACHMENT A**

**CLEAN WATER STATE REVOLVING FUND  
ASSET MANAGEMENT PROGRAM  
CERTIFICATION**

I \_\_\_\_\_ representing the \_\_\_\_\_  
*(print name of cognizant official)* *(print name of permittee)*

hereby certify that as of \_\_\_\_\_ a *Clean Water State Revolving*  
*(date)*

*Fund (CWSRF) Asset Management Program* has been prepared and implemented in accordance with Department Guidance entitled, *Maine Department of Environmental Protection, Clean Water State Revolving Fund (CWSRF) Guidance for Minimum Requirements for an Asset Management Program and Reserve Account In Order to Qualify for CWSRF Principal Forgiveness*, DEPLW1190-2010.

Signature \_\_\_\_\_

Date \_\_\_\_\_

**ATTACHMENT B**

**CLEAN WATER STATE REVOLVING FUND**

**REPAIR AND REPLACEMENT RESERVE ACCOUNT  
CERTIFICATION**

I \_\_\_\_\_ representing the \_\_\_\_\_  
(print name of cognizant official) (print name of permittee)

hereby certify to the Maine Department of Environmental Protection that as of \_\_\_\_\_  
(date)

a *Clean Water State Revolving Fund (CWSRF) Repair and Replacement Reserve Account* has been established and is fully funded in accordance with Department Guidance entitled, *Maine Department of Environmental Protection, Clean Water State Revolving Fund (CWSRF) Guidance for Minimum Requirements for an Asset Management Program and Reserve Account In Order to Qualify for CWSRF Principal Forgiveness, DEPLW1190-2010*; and

That our total yearly wastewater operation and maintenance budget for the previous year was \$ \_\_\_\_\_; and

That the amount recommended in our asset management plan, or as a minimum, 2% of our total yearly wastewater operation and maintenance budget was \$ \_\_\_\_\_; and

That \$ \_\_\_\_\_ was deposited to the Repair and Replacement Reserve Account last year; and

That \$ \_\_\_\_\_ was expended from this account last year in accordance with the Department Guidance; and

That the current balance of the Repair and Replacement Reserve Account is \$ \_\_\_\_\_.

Signature \_\_\_\_\_

Date \_\_\_\_\_



# 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.**

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