



STATE OF MAINE
Department of Environmental Protection

Paul R. LePage
GOVERNOR

James Brooks
ACTING COMMISSIONER

May 4, 2011

Mr. Bradley A. Roland, P.E.
Portland Public Services
55 Portland Street
Portland, ME. 04101

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit ME0101435
Maine Waste Discharge License (WDL) Application W008010-5T-E-M
Minor Revision

Dear Mr. Roland:

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 order 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: Stuart Rose, DEP/SMRO
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 PORTLAND)	MAINE POLLUTANT DISCHARGE
PORTLAND, CUMBERLAND COUNTY, ME)	ELIMINATION SYSTEM PERMIT
COMBINED SEWER OVERFLOWS)	AND
ME0101435)	WASTE DISCHARGE LICENSE
W008010-5T-E-M)	MINOR REVISION
APPROVAL)	

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 all applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered a request by the CITY OF PORTLAND (City hereinafter), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

The City has requested the Department modify Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0101435/WDL #W008010-5T-D-R, issued by the Department on October 24, 2008, to incorporate Special Conditions regarding compliance with the 2010 Clean Water State Revolving Fund (CWSRF) Requirements (Asset Management Principal Forgiveness).

Compliance in the City'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 establishes Special Conditions to establish and implement an Asset Management Program, 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.

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.A., 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 national 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 discharge will be subject to effluent limitations that require application of best practicable treatment.

THEREFORE, the Department APPROVES the request by the CITY OF PORTLAND, to incorporate Special Conditions 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 #ME0101435/WDL #W008010-5T-D-R, issued by the Department on October 24, 2008.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit #ME0101435/WDL #W008010-5T-D-R, issued by the Department on October 24, 2008, not modified by this permitting action remain in effect and enforceable.
4. This minor revision becomes effective upon signature and expires on October 24, 2013, concurrent with #ME0101435/WDL #W008010-5T-D-R, issued by the Department on October 24, 2008.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application May 4, 2011.
Date of application acceptance May 4, 2011.

This Order prepared by GREGG WOOD, BUREAU OF LAND & WATER QUALITY
ME0101435 MR 2011 5/4/11

SPECIAL CONDITION

E. 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 May 2, 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.

F. REPAIR AND REPLACEMENT RESERVE ACCOUNT

Beginning May 2, 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 May 2, 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.

G. 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 May 2, 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 Commissioner's Licensing Decision

Dated: May 2004

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. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days 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 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 and the applicant a copy of the documents. All 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

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by 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 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 as part of an appeal only when 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 show 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, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information 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.* An applicant proceeding with a project pending the outcome of an appeal 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 initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final 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. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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.
