



STATE OF MAINE  
Department of Environmental Protection

JOHN ELIAS BALDACCI  
GOVERNOR

David P. Littell  
COMMISSIONER

Mr. Scott Firmin  
Plant/Systems Manager-Wastewater  
Portland Water District  
225 Douglas Street, P.O. Box 3553  
Portland, ME 04104

January 8, 2010

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0102121  
Maine Waste Discharge License (WDL) Application #W006751-6C-F-M  
**Final Permit Minor Revision**  
**Cape Elizabeth WWTF**

Dear Mr. Firmin

Enclosed please find a copy of your **final** combination MEPDES permit/Maine WDL **minor revision** which was approved by the Department of Environmental Protection. Please read the minor revision 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 this matter, please feel free to call me at 287-7693.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Wood".

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

Enc.

cc: Fred Gallant, DEP/SMRO  
John True, DEP/CMRO  
Lori Mitchell, DEP/CMRO  
Sandy Mojica, USEPA



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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

PORTLAND WATER DISTRICT	)	MAINE POLLUTANT DISCHARGE
CAPE ELIZABETH, CUMBERLAND	)	ELIMINATION SYSTEM PERMIT
COUNTY, MAINE	)	
PUBLICLY OWNED TREATMENT WORKS	)	AND
ME0102121	)	WASTE DISCHARGE LICENSE
W006751-6C-F-M	)	<b>MINOR REVISION</b>
<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 the request by the PORTLAND WATER DISTRICT (PWD hereinafter), to modify the permit modification issued by the Department on October 10, 2008. The Department has considered supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**REQUESTED MODIFICATIONS**

The PWD has requested the Department modify Special Condition O, *Schedule of Compliance*, in permit modification Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102121/ Maine Waste Discharge License (WDL) modification #W006751-5L-E-M, issued by the Department on October 10, 2008. More specifically, the PWD has requested the Department eliminate references to past due schedule items and modify the date by which to commence construction of the Phase I upgrade of the Cape Elizabeth waste water treatment facility from April 30, 2010 to September 30, 2010.

**MODIFICATION GRANTED**

This permitting action hereby grants the above requests by the PWD.

## CONCLUSIONS

BASED on the findings in this permitting action, 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.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. 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 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 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 the 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 request of the PORTLAND WATER DISTRICT, to modify Special Condition O, *Schedule of Compliance*, in permit modification Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102121/ Maine Waste Discharge License (WDL) modification #W006751-5L-E-M, issued by the Department on October 10, 2008, 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 combination MEPDES permit #ME0102121/WDL #W006751-5L-D-R, issued on July 5, 2006.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All other terms and conditions of combination MEPDES permit #ME0102121/WDL #W006751-5L-D-R, and MEPDES permit modification #ME0102121/ WDL #W006751-5L-E-M not modified by this minor revision remain in effect and enforceable.
4. This permit modification and MEPDES permit #ME0102121/WDL #W006751-5L-D-R, **expire concurrently on September 30, 2011.**

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: December 17, 2009.  
Date of application acceptance: December 31, 2009.



## **SPECIAL CONDITIONS**

### **O. SCHEDULE OF COMPLIANCE**

The permittee shall adhere to the following schedule of compliance to eliminate/minimize discharges from the Spurwink Pump Station's emergency bypass structure:

**On or before September 30, 2010**, the permittee shall commence construction of the Phase I upgrade of the Cape Elizabeth waste water treatment facility.

**On or before April 30, 2011**, the permittee shall submit a report to the Department documenting the progress on the construction of the Phase I upgrade and outlining a scope of work and schedule to complete construction of the Phase I upgrade.

**On or before September 30, 2011**, the permittee shall complete the Phase I upgrade of the Cape Elizabeth waste water treatment facility.





# 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.**

---