



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR

GERALD D. REID
COMMISSIONER

June 9, 2020

Mr. Edward. Montague
Town of Mt. Desert
P.O. Box 248
Northeast Harbor ME 04459-0260
suptwntp@mtdesert.org

*Sent via electronic mail
Delivery confirmation requested*

**RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0102555
Maine Waste Discharge License (WDL) Application #W002657-6C-G-M
Finalized License**

Dear Mr. Montague:

Enclosed please find a copy of your **final** revised MEPDES permit/Maine WDL which was approved by the Department of Environmental Protection. Please read this permit and its attached conditions carefully. Compliance with this 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 287-1939.

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
ph: 207-287-1939

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

Mr. Edward. Montague
Town of Mt. Desert Seal Harbor Minor Revision
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Enc.

cc: Garry Brooks, MEDEP
Pamela Parker, MEDEP
Lori Mitchell, MEDEP
Ellen Weitzler, USEPA
Olga Vergara, USEPA
Sandy Mojica, USEPA
Marelyn Vega, USEPA
Richard Carvalho, USEPA



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: November 2018

Contact: (207) 287-2452

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) an administrative process before the Board of Environmental Protection (Board); or (2) 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. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S. § 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. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 C.M.R. ch. 2.

DEADLINE 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 more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

INFORMATION APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time the appeal is submitted:

1. *Aggrieved Status.* The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant 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.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing requirements that the appellant believes were not properly considered or fully addressed.
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 matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

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, and is made easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an 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 general questions regarding the appeal process.
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. Unless a stay of the decision is requested and granted, 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, and will provide 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, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. 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, the 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. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and 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. 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. § 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.



DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF MT. DESERT (SEAL HARBOR))	MAINE POLLUTANT DISCHARGE
MOUNT DESERT, HANCOCK COUNTY, MAINE))	ELIMINATION SYSTEM PERMIT
PUBLICLY OWNED TREATMENT WORKS)	AND
ME0102555)	WASTE DISCHARGE LICENSE
W002657-6C-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) is revising combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102555/Maine Waste Discharge License (WDL) #W002657-6C-G-R issued by the Department on April 13, 2020 and granted to the Town of MOUNT DESERT (permittee), 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

It has been brought to the Department’s attention that the 4/13/20 permit contains two typographical errors. The first of which is the coding for *Americamysis bahia* (*Mysid shrimp*) on Table A.4. page 7 of the permit. The second error is in Special Condition K. of the Schedule of Compliance. The schedule gives a benchmark date of March 15, 2020, which is not legally enforceable due to the Permit’s signature date of April 13, 2020. These typographical errors were identified during the monthly report coding process. The Department gave prior notice to the permittee that it would be revising the permit to accommodate these revisions.

The Department acknowledges this error and as such and is revising the coding for *Americamysis bahia* (*Mysid shrimp*) on Table A.4. page 7 of the permit. The Department is also revising March 15, 2020 date in Special Condition K. of the Schedule of Compliance to July 15, 2020. Table A.4 and Special Condition K. Schedule of Compliance are 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 waterbody 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 waterbody 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 revision to combination MEPDES permit #ME0102555/WDL #W002657-6C-G-R which was issued by the Department on April 13, 2020, for a five-year term, to change the coding for *Americamysis bahia* (Mysid shrimp) on Table A.4. page 7 of the permit and revises the March 15, 2020 date in Special Condition K. of the Schedule of Compliance to July 15, 2020, 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 ME0102555/WDL #W002657-6C-G-R issued by the Department on April 13, 2020, 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 ME0102555/WDL #W002657-6C-G-R issued by the Department on April 13, 2020, 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 April 13, 2025. 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 June 9, 2018)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

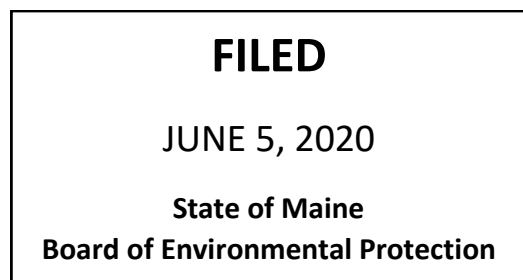
DONE AND DATED AT AUGUSTA, MAINE, THIS 5 DAY OF June 2020.

BY: 

for GERALD D. REID, Commissioner

Date of initial receipt of application: April 14, 2020

Date of application acceptance: April 14, 2020



Date filed with Board of Environmental Protection

SPECIAL CONDITIONS

A.4. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS – OUTFALL #001 (cont’d)

SURVEILLANCE LEVEL TESTING

Beginning upon permit issuance and lasting through 24 months prior to permit expiration (Years 1, 2 & 3 of the term of the permit) and commencing again 12 months prior to permit expiration (Year 5 of the term of the permit).

Effluent Characteristic	Discharge Limitations		Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
<u>Whole Effluent Toxicity⁽⁸⁾</u>				
<u>Acute No Observed Effect Level (A-NOEL)</u> <i>Americamysis bahia</i> (Mysid shrimp) [TDM3E]	---	Report% [23]	1/2 Year [01/2YR]	Composite [24]
<u>Chronic No Observed Effect Level (C-NOEL)</u> <u>Chronic – NOEL</u> <i>Arbacia punctulata</i> (Sea urchin) [TBH3A]	---	Report% [23]	1/2 Year [01/2YR]	Composite [24]
Analytical chemistry ^(9,11) [51477]	---	Report ug/L [28]	1/2 Year [01/2YR]	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 8 – 11 of this permit for applicable footnotes

K. SCHEDULE OF COMPLIANCE – YEAR-ROUND FEACAL COLIFORM LIMITATIONS

This permit is establishing a schedule of compliance for the permittee to come into compliance with the National Shellfish Sanitations Program (NSSP), *Guide for the Control of Molluscan Shellfish 2017 Revision*, year-round monthly average and daily maximum Fecal Coliform bacteria limitations of 14 cfu/100 ml and 31 cfu/100 ml respectively.

On or before July 15th, 2020 [ICIS Code CS010] the permittee must submit a progress report to the Department for review that outlines the progress made to date to come into compliance with year-round monthly average and daily maximum Fecal Coliform bacteria limitations of 14 cfu/100 ml and 31 cfu/100 ml respectively.

On or before December 31st, 2020, the permit must be in compliance with year-round monthly average and daily maximum Fecal Coliform bacteria limitations of 14 cfu/100 ml and 31 cfu/100 ml respectively.