



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

November 5, 2013

Mr. John Vancelette  
Westbrook Middle School  
117 Stroudwater Street  
Westbrook, ME. 04092  
[vancelettej@westbrookschoools.org](mailto:vancelettej@westbrookschoools.org)

*Transmitted via electronic mail  
Delivery confirmation requested*

RE: Permit Compliance System Tracking Number #MEU508247  
Maine Waste Discharge License (WDL) Application #W008247-5S-C-R  
Final License – Westbrook Middle School

Dear Mr. Vancelette:

Enclosed please find a copy of your final Maine WDL renewal which was approved by the Department of Environmental Protection. Please read this license renewal 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 215-1579.

Sincerely,

Yvette M. Meunier  
Division of Water Quality Management  
Bureau of Land and Water Quality

Enc.

cc: Stuart Rose, DEP/SMRO  
Sandy Mojica, USEPA

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-3901 FAX: (207) 287-3435  
RAY BLDG., HOSPITAL ST.

BANGOR  
106 HOGAN ROAD  
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 04769-2094  
(207) 764-6477 FAX: (207) 764-1507



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

CITY OF WESTBROOK	)	PROTECTION AND IMPROVEMENT
WESTBROOK, CUMBERLAND COUNTY, ME	)	OF WATERS
SURFACE WASTEWATER DISPOSAL SYSTEM	)	
#MEU508247	)	WASTE DISCHARGE LICENSE
#W008247-5S-C-R	)	RENEWAL
APPROVAL	)	

Pursuant to the provisions of the *Conditions of licenses*, 38 M.R.S.A. § 414-A, and applicable regulations, the Department of Environmental Protection (Department) has considered the application of the CITY OF WESTBROOK (Westbrook) with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

The applicant has submitted a complete application to the Department for renewal of Waste Discharge License (WDL) #W008247-5S-B-R, which was issued by the Department on March 31, 2008 and modified on November 29, 2010 to dispose of up to 54,300 gallons/acre/week of untreated ground water and "bleed water" onto three athletic fields at the Westbrook Middle School totaling approximately 5.0 acres or up to 16,000 gallons per day of treated geothermal "bleed water" into a dedicated sub-surface wastewater disposal system to ground water, Class GW-A, in Westbrook, Maine. It should be noted that the 2008 permit and the 2010 permit modification had typos in the WDL and tracking number and was incorrectly documented as license number W008247 and tracking number MEU509016.

**LICENSE SUMMARY**

This license carries forward all terms and conditions of the previous licensing actions except:

1. The weekly maximum application rate of geothermal system bleed water discharged to the Spray Irrigation Field (SI #1-3) will no longer be reported to the Department in gallons per acre per week. Rather a maximum weekly volume of 276,930 gallons is being established to allow for flexibility in better management of the spray irrigation fields; and
2. Requiring an Operations and Maintenance (O&M) Plan be submitted to the Department by December 31, 2013.

## CONCLUSIONS

Based on the findings summarized in the attached Fact Sheet dated November 5, 2013, 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, *Classification of Maine waters*, 38 M.R.S.A. § 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 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 discharges will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S.A. § 414-A(1)(D).

**ACTION**

THEREFORE, the Department APPROVES the above noted application of the CITY OF WESTBROOK to operate a subsurface wastewater disposal system to dispose of 16,000 gallons per day of treated geothermal "bleed water" into a dedicated sub-surface wastewater disposal system to ground water and a spray irrigation system during the period of April 15<sup>th</sup> – November 30<sup>th</sup> of each year, to dispose of 276, 930 gallons per week of geothermal well water SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations including:

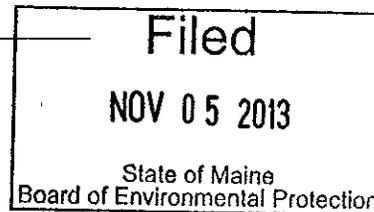
1. *Standard Conditions of Approval for POTW Waste Discharge Licenses* revised July 16, 1996, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This license and the authorization to discharge become effective upon the date of signature below and expire at midnight five (5) years from the effective date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this license, the authorization to discharge and the terms and conditions of this license 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.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (effective August 25, 2013)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 4<sup>th</sup> DAY OF November 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhn  
for PATRICIA W. AHO, Commissioner



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

Date of initial receipt of application: August 7, 2013

Date of application acceptance: August 9, 2013

This Order prepared by Yvette Meunier, BUREAU OF LAND & WATER QUALITY

**SPECIAL CONDITIONS**

**A. LIMITATIONS AND MONITORING REQUIREMENTS**

1. Beginning the effective date of this license, the licensee is authorized to utilize a sub-surface wastewater system to dispose of treated geothermal "bleed water." The **EFFLUENT** from the **ARSENIC TREATMENT SYSTEM (OUTFALL #001)** <sup>(1)</sup> must be limited and monitored as specified below.

Effluent Characteristic	Discharge Limitations	Minimum Monitoring Requirements	
		Measurement Frequency <sup>(2)</sup>	Sample Type
Flow [50050]	16,000 (gpd) [07]	1/Week [01/07]	Calculate [CA]
Arsenic (Total) [01002]	10 ug/L <sup>(3)</sup> [28]	1/Month [01/30]	Grab [GR]
pH [00400]	6.0 – 9.0 S.U [19]	1/Month [01/30]	Grab [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 Page 7 of this license for applicable footnotes.

**SPECIAL CONDITIONS**

**A. LIMITATIONS AND MONITORING REQUIREMENTS**

- Beginning the effective date of this license, the licensee is authorized to utilize a surface wastewater system (spray irrigation) to spray irrigate untreated geothermal well water and "bleed water" onto three athletic fields on Middle School grounds. The water being sprayed (OUTFALL #002) <sup>(1)</sup> must be limited and monitored as specified below.

**April 15<sup>th</sup> – November 30<sup>th</sup> of each year**

Effluent Characteristic	Discharge Limitations	Minimum Monitoring Requirements	
		Measurement Frequency <sup>(2)</sup>	Sample Type
Arsenic (Total) [01002]	Daily Maximum Report ug/L <sup>(3)</sup> [28]	1/Month [01/30]	Grab [GR]
pH [00400]	6.0 – 9.0 S.U. <sup>(4)</sup> [19]	1/Month [01/30]	Grab [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 Page 7 of this license for applicable footnotes.

**SPECIAL CONDITIONS**

**A. LIMITATIONS AND MONITORING REQUIREMENTS**

- Beginning the effective date of this license modification, the application of up to 276,930 gallons of wastewater to the land via a spray irrigation system to the following **SPRAY IRRIGATION AREAS** must each be limited and monitored as specified below.

- SI #1 – Southwest of the school building, ~1.7 acres
- SI #2 – South of the school building, ~1.3 acres
- SI #3 – Northeast of the school building, ~2.1 acres

April 15<sup>th</sup> – November 30<sup>th</sup> of each year

Effluent Characteristic	Discharge Limitations		Minimum Monitoring Requirements	
	Monthly Total	Weekly Maximum	Measurement Frequency	Sample Type
Application Rate <sup>(5)</sup>				
SI #1	---	92,310 gal/week <sup>(6)</sup>	1/Week <sup>(5)</sup>	Calculate
SI #2	---	70,590 gal/week <sup>(6)</sup>	1/Week <sup>(5)</sup>	Calculate
SI #3	---	114,030 gal/week <sup>(6)</sup>	1/Week <sup>(5)</sup>	Calculate
[51128]		[57]	[01/07]	[CA]
Flow - Total Gallons <sup>(4)</sup>				
SI #1	Report (Gallons)	---	1/Month	Calculate
SI #2	Report (Gallons)	---	1/Month	Calculate
SI #3	Report (Gallons)	---	1/Month	Calculate
[51500]	[57]		[01/30]	[CA]

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 Page 7 of this license for applicable footnotes.

## SPECIAL CONDITIONS

### A. LIMITATIONS AND MONITORING REQUIREMENTS (Cont'd)

#### Footnotes – [Special Condition A(1), A(2) & A(3)]

Sampling and analysis must be conducted in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services. Samples that are sent to a POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 or laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000).

1. **Sampling locations**– Sampling for **Outfall 001** must be conducted after the last treatment process such that all samples are representative of the geothermal system bleed water being conveyed to the sub-surface system. Sampling for **Outfall 002** must be conducted such that all samples are representative of the geothermal system bleed water being conveyed to the surface wastewater disposal system.
2. **Reporting** – For months when water is not sprayed on the athletic fields via the surface waste water disposal system, the licensee must check the “NODI-9” (standing for - *No discharge, monitoring not required this monitoring period*) box on the monthly Discharge Monitoring Report (DMR) form.
3. **Arsenic (Total)** - All detectable analytical test results must be reported to the Department including results which are detected below the respective reporting limits (RLs) specified by the Department or as specified by other approved test methods. The Department's most current RL for total arsenic is 5 ug/L but may be subject to revision during the term of this permit. If a non-detect analytical test result is below the respective RL, the concentration result must be reported as <X where X is the detection limit achieved by the laboratory for each respective parameter. Reporting a value of <X that is greater than an established RL is not acceptable and will be rejected by the Department.
4. **pH** - The pH of the water being utilized for spray irrigation must not be more than 0.5 standard units outside the source water “ground water” pH.
5. **Application rate** - The licensee must estimate the flow of wastewater to the irrigation area based upon the number of hours that the pump is operated per day (e.g., timer settings) and the maximum flow rate of the pump as determined by the manufacturer's pump curve or based upon other alternate methods as approved by the Department. Weekly is defined as Sunday through Saturday.
6. **Application Rate Reporting** - For Discharge Monitoring Report (DMR) reporting purposes, the licensee must report the highest daily and weekly application rate for the month in the applicable box on the form. Compliance with weekly reporting requirements must be reported for the month in which the calendar week ends.

## **SPECIAL CONDITIONS**

### **B. TREATMENT PLANT OPERATOR**

This treatment facility must be operated by a person holding a minimum of a Maine Physical/Chemical Grade I certificate or a Maine Professional Engineer [P.E.] pursuant to 32 M.R.S.A. § 4171 and CMR 531. All proposed contracts for facility operation by any person must be approved by the Department prior to the licensee engaging the services of the contract operator.

### **C. NARRATIVE EFFLUENT LIMITATIONS**

1. The effluent must not contain materials in concentrations or combinations which would impair the usages designated by the classification of the ground water.
2. Notwithstanding specific conditions of this license the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

### **D. AUTHORIZED DISCHARGES**

The licensee is authorized to discharge in accordance with: 1) the licensee's General Application for Waste Discharge Permit, accepted for processing on August 9, 2013; 2) the terms and conditions of this license; and 3) only to the dedicated sub-surface wastewater disposal system and spray irrigation fields (SI#1, 2 & 3) and from those sources as indicated in the August 9, 2013 Waste Discharge License Application. Discharge of wastewater from any other location or from sources other than those indicated on said application requires formal modification of this license.

### **E. NOTIFICATION REQUIREMENT**

In accordance with Standard Condition 6, the permittee must notify the Department of the following:

1. Any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system by a source introducing pollutants into the system at the time of permit issuance. For the purposes of this section, notice regarding substantial change must include information on:
  - (a) the quality and quantity of wastewater introduced to the wastewater collection and treatment system; and
  - (b) any anticipated impact caused by the change in the quantity or quality of the wastewater to be discharged from the treatment system.

## SPECIAL CONDITIONS

### F. GENERAL OPERATIONAL CONSTRAINTS

1. The spray irrigation facilities must be effectively maintained and operated at all times so that there is no discharge to surface waters, nor any contamination of ground waters which will render them unsatisfactory for usage as a public drinking water supply.
2. The surface wastewater disposal system must not cause lowering of the quality of the ground water, below the State Primary and Secondary Drinking Water Standards pursuant to 22 M.R.S.A. § 2611.

In the event ground water indicates adverse effects, the licensee may be required to take immediate remedial action(s), which may include but are not limited to, adjustment of the irrigation schedule or application rates, a reduction of the pollutant loading, or ceasing operation of the system until the ground water attains applicable standards.

3. The Department must be notified as soon as the licensee becomes aware of any threat to public health, unlicensed discharge of wastewater, or any malfunction that threatens the proper operation of the system, and action taken to repair/correct, and prevent recurrence. Notification must be made in accordance with Standard Condition #5 attached to the 3/31/08 license.

### G. SPRAY IRRIGATION OPERATIONAL CONSTRAINTS

1. Suitable vegetative cover must be maintained. Geothermal system bleed water may not be applied to areas without sufficient vegetation or ground cover to prevent erosion or surface water runoff outside the designated boundaries of the spray field.
2. There must be no runoff outside the designated spray field boundaries as a result of operation of the spray system.
3. No geothermal system bleed water must be applied to the site following a rainfall accumulation exceeding 1.0 inches within the previous 24-hour period. A rain gauge must be located on site to monitor daily precipitation. The licensee must also manage application rates by taking into consideration the forecast for rain events in the 48-hour period to follow a scheduled application.
4. No geothermal system bleed water shall be applied where there is snow present on the surface of the ground.
5. No geothermal system bleed water shall be applied when there is frost within the upper 10 inches of the soil profile.
6. In order to reduce the risk of runoff associated with soil compaction, no traffic or equipment is allowed in the spray-irrigation field except where installation of equipment occurs or where normal operations and maintenance is performed.

## SPECIAL CONDITIONS

### H. SPRAY IRRIGATION OPERATIONAL PROCEDURES, LOGS AND REPORTS

1. **Each day prior to irrigating**, the licensee must visually inspect the spray irrigation site to determine if the soil-moisture conditions are appropriate for spraying and all the operational constraints listed in Special Condition G of this license are met. **The licensee shall maintain a daily log of all spray irrigation operations.** The log shall be in accordance with the format or similar format of the "Monthly Operations Log" provided as **Attachment A** of this license.
2. The licensee must at all times maintain in good working order and operate at maximum efficiency all components of the geothermal system bleed water disposal system. The licensee shall periodically check the system for leakage in the piping system and determine if individual spray heads and pump(s) are functioning as designed, and verify that application rates are appropriate for the existing site conditions.

Should significant malfunctions or leaks be detected, the licensee must shut down the malfunctioning portion of the spray system and make necessary repairs before resuming operation of the system. The licensee must cease irrigation if runoff is observed outside the designated boundaries of the spray field(s).

3. **Weekly spray application rates** must be reported in accordance with the format or similar format of the "Spray Application Report by Week" provided as **Attachment B** of this license. The daily operational logs and weekly spray application reports for each month must be submitted to the Department as an attachment to the monthly Discharge Monitoring Reports (DMR's). Copies will also be maintained on site for Department review and for license operation maintenance purposes.

**The daily operational logs and weekly spray application reports for each month shall be submitted to the Department as an attachment to the monthly Discharge Monitoring Reports (DMR's). Copies will also be maintained on site for Department review and for license operation maintenance purposes.**

### I. OPERATIONS AND MAINTENANCE (O & M) PLAN AND SITE PLAN

This facility must maintain a current written comprehensive Operation & Maintenance (O&M) Plan. The plan must provide a systematic approach by which the licensee must at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the licensee to achieve compliance with the conditions of this license.

**By December 31, 2013, the permittee must submit to the Department an updated O&M Plan including site plan(s) and schematic(s) for the wastewater treatment facility [09699].**

**SPECIAL CONDITIONS**

**I. OPERATIONS AND MAINTENANCE (O & M) PLAN AND SITE PLAN (cont'd)**

**By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades, the permittee must evaluate and modify the O&M Plan including site plan(s) and schematic(s) for the wastewater treatment facility to ensure that it is up-to-date. The O&M Plan must be kept on-site at all times and made available to Department and USEPA personnel upon request.**

**I. OPERATIONS AND MAINTENANCE (O & M) PLAN AND SITE PLAN (cont'd)**

**Within 90 days of completion of new and or substantial upgrades of the geothermal system bleed water treatment facility, the licensee must submit the updated O&M Plan to their Department inspector for review and comment.**

**J. VEGETATION MANAGEMENT**

1. The licensee must remove vegetation in the spray-irrigation areas as necessary as not to impair the operation of the spray-irrigation system and to ensure uniform distribution of geothermal system bleed water over the desired application area.
2. The vegetated buffer zones along the perimeter of the site must be maintained to maximize vegetation and forest canopy density in order to minimize off-site drift of spray.

**K. MONITORING AND REPORTING**

Monitoring results (**April through November**) must be summarized for each month and reported on separate Discharge Monitoring Report (DMR) forms provided by the Department and postmarked on or before the thirteenth (13<sup>th</sup>) day of the month or hand-delivered to the Department's Regional Office such that the DMR's are received by the Department on or before the fifteenth (15<sup>th</sup>) day of the month following the completed reporting period. A signed copy of the DMR and all other reports required herein must be submitted to the following address:

Department of Environmental Protection  
Bureau of Land and Water Quality  
Division of Water Quality Management  
312 Canco Road  
Portland, Maine 04103

**SPECIAL CONDITIONS**

**K. MONITORING AND REPORTING (cont'd)**

Alternatively, if the permittee submits an electronic DMR (eDMR), the completed eDMR must be electronically submitted to the Department by a facility authorized DMR Signatory not later than close of business on the **15<sup>th</sup> day of the month** following the completed reporting period. Hard copy documentation submitted in support of the eDMR must be postmarked on or before the **thirteenth (13<sup>th</sup>) day of the month or hand-delivered** to the Department's Regional Office such that it is received by the Department on or before the **fifteenth (15<sup>th</sup>) day of the month** following the completed reporting period. Electronic documentation in support of the eDMR must be submitted not later than close of business on the **15<sup>th</sup> day of the month** following the completed reporting period.

**L. REOPENING OF THE LICENSE FOR MODIFICATIONS**

Upon evaluation of the tests results in the Special Conditions of this licensing action, new site specific information, or any other pertinent test results or information obtained during the term of this license, the Department may, at any time and with notice to the permittee, modify this license to: (1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded; (2) require additional monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

**M. SEVERABILITY**

In the event that any provision(s), or part thereof, of this license is declared to be unlawful by a reviewing court, the remainder of the license must remain in full force and effect, and must be construed and enforced in all aspects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.

# ATTACHMENT A

# Attachment A

## Monthly Operations Log

Westbrook Middle School (WDL #W008247) (Month/Year) \_\_\_\_\_

Spray Field # \_\_\_\_\_

Weekly Application Rate: \_\_\_\_\_ gallons/week

A	B	C	D	E	F	G
Date	Precipitation Previous 24 hours (inches)	Air Temp (°F)	Weather	Wind- Direction Speed (mph)	Depth To GW in Observation well (inches)	Total Gallons Pumped (gallons)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
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21						
22						
23						
24						
25						
26						
27						
28						
29						
30						
31						

Signature of Responsible Official: \_\_\_\_\_ Date \_\_\_\_\_

# ATTACHMENT B

## Attachment B

### Spray Application Report by Week

Westbrook Middle School (WDL #W008247)

(Month/Year) \_\_\_\_\_

Spray Field #	Weekly Limit (Gallons/Week)	Spray Application Rates (Gallons/Week)					Monthly Total
		Week 1	Week 2	Week 3	Week 4	Week 5	

Signature of Responsible Official: \_\_\_\_\_ Date \_\_\_\_\_

**MAINE WASTE DISCHARGE LICENSE**

**FACT SHEET**

DATE: NOVEMBER 5, 2013

PERMIT COMPLIANCE TRACKING SYSTEM NUMBER: #MEU508247

LICENSE NUMBER: #W008247-5S-C-R

NAME AND MAILING ADDRESS OF APPLICANT:

**ATTN: MS. MARY BOWERS  
67 AMES ROAD  
ALNA, ME 04535**

COUNTY: CUMBERLAND

NAME AND ADDRESS OF FACILITY:

**WESTBROOK MIDDLE SCHOOL  
471 STROUDWATER STREET  
WESTBROOK, MAINE**

RECEIVING WATER/ CLASSIFICATION: GROUND WATER /CLASS GW-A

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: JOHN VANCELETTE  
207-318-7125  
vancelettej@westbrookschoools.org

**1. APPLICATION SUMMARY**

Application: The Westbrook Middle School has submitted a complete application to the Department of Environmental Protection (Department) for renewal of Waste Discharge License (WDL) #W008247-5S-A-R, which was issued by the Department on March 31, 2008, modified on November 29, 2010 and expired on March 31, 2013. The 3/31/2008 license and 11/29/10 modification authorized Westbrook to dispose of up to 54,300 gallons/acre/week of untreated ground water and "bleed water" onto three athletic fields at the Westbrook Middle School totaling approximately 5.0 acres or up to 16,000 gallons per day of treated geothermal "bleed water" into a dedicated subsurface wastewater disposal system to ground water, Class GW-A, in Westbrook, Maine. See Attachment A of this Fact Sheet for a location map of the facility.

## 2. LICENSE SUMMARY

- a. Terms and Conditions: This license is carrying forward all the terms and conditions of the previous licensing actions except that:
1. The weekly maximum application rate of geothermal system bleed water discharged to the Spray Irrigation Fields (SI #1-3) will no longer be reported to the Department in gallons per acre per week. Rather a maximum weekly volume of 276,930 gallons is being established to allow for flexibility in better management of the spray irrigation fields; and
  2. Requiring an Operations and Maintenance (O&M) Plan be submitted to the Department by December 31, 2013.
- b. History: Recent Department licensing actions include the following:

March 31, 2008 – The Department Wastewater Discharge License (WDL) #W008247-5S-A-N to Westbrook for a five-year term.

November 29, 2010 – The Department modified #W008247-5S-A-N to allow for the use of a surface wastewater disposal system (spray irrigation) to spray 54,300 gallons/acre/week of untreated geothermal system bleed water onto three athletic fields at the Westbrook Middle School totaling 5.1 acres from April 15<sup>th</sup> – November 30<sup>th</sup>.

August 7, 2013 – Westbrook submitted a complete application to the Department for renewal of the 3/31/08 license. The application was accepted for processing on August 9, 2013, and was assigned WDL #W008247-5S-C-R / MEPDES #MEU508247.

- c. Source Description: The facility's wastewater is generated from Westbrook's geothermal and ground water heat pump well system for a heating and cooling system at the school. In the heating system, a fluid or refrigerant in the loop collects heat from the ground water and uses electricity driven compressors and heat exchangers to concentrate the heat and release it at a higher temperature into the building. In the cooling system, the process is reversed and removes heat from the building which is transferred back to the wells. "Bleed water" is generated when conditions are such that in order to maintain a stable thermal exchange in the well system, well water must be discharged from the system during peak heating (December – February) and cooling times (July – September), and supplemented with water from an external source.

As an exhibit in the application submitted to the Department on November 6, 2007, Westbrook included a report by S.W. COLE ENGINEERING, INC. (SW Cole hereinafter) entitled, Final Report, Geothermal Assessment, Westbrook Middle School, Westbrook, Maine. The City of Westbrook retained SW Cole to provide hydro-geological information to assist in the design of a geothermal well field for the heating and cooling systems for a proposed middle school. The investigation found that the water that will be extracted from the wells and bled exceeds the primary drinking water standard for arsenic (10 ug/L) by a factor of 4.5. To protect the ground water resources bleed water must be

## 2. LICENSE SUMMARY (cont'd)

treated before being discharged to the subsurface wastewater disposal system. The 11/02/07 application indicates that only six of the eleven wells will discharge bleed water at any given time.

- d. Wastewater Treatment: From November 16<sup>th</sup> through April 14<sup>th</sup> bleed water is conveyed to a 5,400 ft<sup>2</sup> subsurface wastewater disposal system. Due to the elevated arsenic levels observed in the geothermal test well, Westbrook is required to pre-treat the bleed water via the process of sedimentation and a resin anion-exchange system prior to discharging to the subsurface system in order to protect the ground water resources. The anion exchange system will be periodically backwashed and conveyed to the City of Westbrook's municipally owned wastewater treatment facility. It is noted the discharge from the municipal wastewater treatment facility is permitted by this Department via Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0100846 lasted issued by the Department on March 6, 2012 for a five-year term.

From April 15<sup>th</sup> through November 15<sup>th</sup> Westbrook uses their bleed water to spray irrigate three athletic fields totaling approximately 5.0 acres. During this time bleed water will not be conveyed through the arsenic treatment system as the wastewater will receive adequate treatment as it percolates down through the soils. See Attachment B of this Fact Sheet for a map depicting the school location and a general layout of the subsurface wastewater disposal system and spray irrigation fields.

- e. Site Conditions: The subsurface system and spray irrigation areas are located on well drained soils. Surveys performed on the site indicate the soil is a Croghan Series, characterized as sandy loam textured soils formed by glacial outwash, Class B. The spray irrigation area and the subsurface system are grassy fields which are mowed to remove woody vegetation.

## 3. CONDITIONS OF THE LICENSE

Maine law, 38 M.R.S.A. Section 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water and Groundwater Classification Systems.

## 4. RECEIVING WATER QUALITY STANDARDS

*Classification of ground water*, 38 M.R.S.A § 470 indicates the ground water at the point of discharge is classified as Class GW-A receiving waters. 38 M.R.S.A. §465-C (1) describes the standards for Class GW-A waters as the highest classification of ground water that shall be of such quality that it can be used for public water supplies. These waters shall be free of radioactive matter or any matter that imparts color, turbidity, taste, or odor which would impair the usage of these waters, other than occurring from natural phenomena.

**5. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

- a. Flow: This licensing action carries forward the previously established flow limitation on subsurface wastewater disposal of 16,000 gpd from November 16<sup>th</sup> through April 14<sup>th</sup> based on the hydraulic capacity of the on-site soils and the area of the proposed disposal field. This permitting action establishes a maximum weekly volume limitation on spray irrigation of 276,930 gallons per week from November 15<sup>th</sup> through April 14<sup>th</sup> based on the permeability of the soils and the total area of the spray fields. The soils have been classified as Croghan fine sandy loam, Class B, with a permeability of 0.2 inches/hour. With a maximum bleed water flow rate of 667 gallons/hour for 24 hours, the discharge in any one day will not exceed the permeability of the soils.
- b. Arsenic Treatment System: This licensing action carries forward the previously established monthly monitoring requirement and daily maximum concentration limit of 10 ug/L for total arsenic and a pH range limitation of 6.0 – 9.0 standard units prior to discharge to the subsurface wastewater disposal system. To date the geothermal heating system has not produced bleed water which would be conveyed to arsenic treatment system. This reason that no bleed water is generated during the non-summer months is that the return water does not have been cool enough for the geothermal system to purge this bleed water to maintain the necessary source water temperature to run the heating system. Therefore, a review of pH, arsenic and flow data was not conducted.
- c. Spray Irrigation Areas: The previous licensing action established a seasonal (April 15<sup>th</sup> to November 15<sup>th</sup>) weekly maximum application rate of 54,300 gallons per acre per week (2.0 inches/week) for spray areas SI #1-3 based on the characteristics of the in-situ soils. With an area of approximately 5.0 acres, the licensee is limited to 276,930 gallons/week. To allow for flexibility and better management of the spray irrigation fields, this licensing action is eliminating the weekly application rate of 54,300 gallons per acre limit, and is establishing a maximum weekly volume of 276,930 gallons.

A review of the DMR monitoring for the period July 2011 through September 2012 indicates spray application rates have been as follows:

**Weekly application rates**

Field	n	Limit (gal/acre/week)	Range (gal/acre/week)	Average (gal/acre/week)
SI #1	7	54,300	11,436 – 19,440	16,612
SI #2	6	54,300	2,620 – 18,424	9,841
SI #3	6	54,300	2,620 – 18,424	10,891

This licensing action is carrying forward, a seasonal (April 15<sup>th</sup> to November 30<sup>th</sup>) monthly reporting requirement for the total quantity of wastewater applied to the spray field on a monthly basis. With a weekly maximum application of 54,300 gallons per week per acre over the 5.1-acre site, the licensee is theoretically limited to 1,107,720 gallons per acre per month. A review of the DMR data for the period July 2011 – October 2012 indicates total flows have been reported as follows:

**5. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

**Monthly totals**

Field	n	Theoretical Limit (gallons/month/field)	Maximum (monthly total)
SI #1 (1.7 acres)	7	369,240	90,720
SI #2 (1.3 acres)	6	282,360	29,700
SI #3 (2.1 acres)	6	456,120	47,520

The previous licensing action established and this permitting action is carrying forward a seasonal (April 15<sup>th</sup> to November 30<sup>th</sup>) monthly reporting requirement for total arsenic and a pH range limitation of 6.0 – 9.0 standard units prior to discharge for spray areas at Outfall 002. A review of the DMR data for the period July 2011 – October 2012 indicates total flows have been reported as follows:

**pH**

n	Limit (SU)	Minimum (SU)	Maximum (SU)
7	6.0 – 9.0	6.00	7.30

**Arsenic**

n	Limit (mg/L)	Minimum (mg/L)	Maximum (mg/L)
7	Report	12.00	17.00

**6. DISCHARGE IMPACT ON RECEIVING WATER QUALITY**

As licensed, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the water body to meet standards for Class GW-A classification.

**7. PUBLIC COMMENTS**

Public notice of this application was made in the American Journal newspaper on or about June 25, 2013. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft licenses shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

## 8. DEPARTMENT CONTACTS

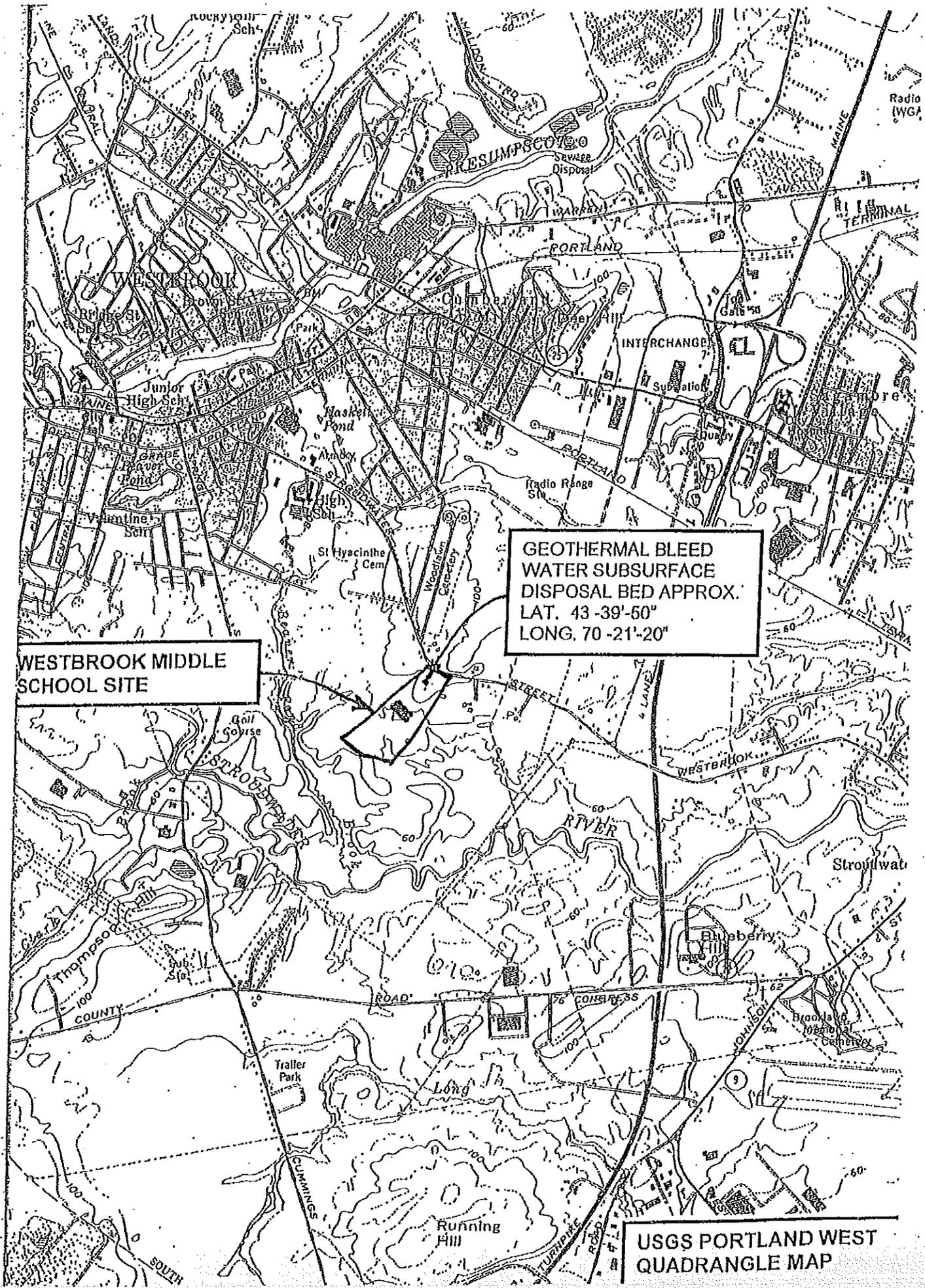
Additional information concerning this licensing action may be obtained from and written comments should be sent to:

Yvette Meunier  
Division of Water Quality Management  
Bureau of Land & Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 215-1579 Fax: (207) 287-3435  
e-mail: [yvette.meunier@maine.gov](mailto:yvette.meunier@maine.gov)

## 9. RESPONSE TO COMMENTS

During the period of September 30, 2013 through the issuance of this permit, the Department solicited comments on the proposed draft Maine Pollutant Discharge Elimination System Permit to be issued to the Westbrook Middle School for the proposed discharge. The Department did not receive significant comments on the draft permit; therefore, a response to comments was not prepared.

# ATTACHMENT A



GEOTHERMAL BLEED  
WATER SUBSURFACE  
DISPOSAL BED APPROX.  
LAT. 43-39'-50"  
LONG. 70-21'-20"

WESTBROOK MIDDLE  
SCHOOL SITE

USGS PORTLAND WEST  
QUADRANGLE MAP

# ATTACHMENT B

City of Westbrook  
Tax Map

MAP #9  
LOT #3A

MAP #9  
LOT #3

GEOHERMAL BLEED  
WATER SUBSURFACE  
DISPOSAL BED APPROX.  
LAT. 43 -39'-50"  
LONG. 70 -21'-20"

MAP #9  
LOT #1

MAP #9  
LOT #2

SI #3

NEW SCHOOL

SI #2

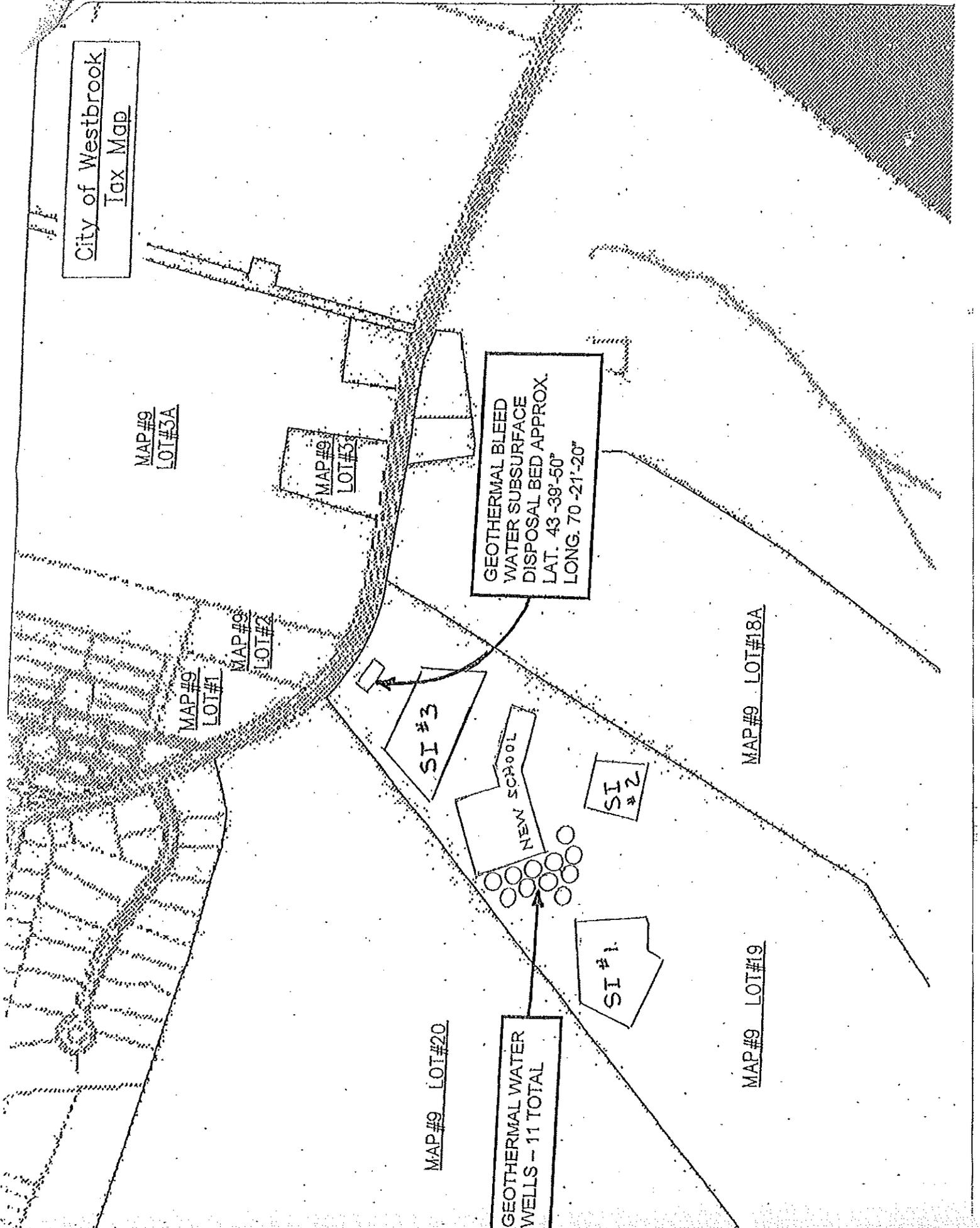
MAP #9 LOT #18A

MAP #9 LOT #20

GEOHERMAL WATER  
WELLS - 11 TOTAL

SI #1

MAP #9 LOT #19



STANDARD CONDITIONS OF PUBLICLY OWNED TREATMENT WORKS (POTW) WASTE  
DISCHARGE LICENSES

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STANDARD CONDITIONS OF PUBLICLY OWNED TREATMENT WORKS (POTW) WASTE

DISCHARGE LICENSES

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1. GENERAL CONDITIONS

- A. All discharges shall be consistent with the terms and conditions of this license; any changes in production capacity or process modifications which result in changes in the quantity or the characteristics of the discharge must be authorized by an additional license or by modifications of this license; it shall be a violation of the terms and conditions of this license to discharge any pollutant not identified and authorized herein or to discharge in excess of the rates or quantities authorized herein or to violate any other conditions of this license.
- B. the licensee shall permit the Department of Environmental Protection Staff upon the presentation of proper credentials:
- (1) To enter upon licensee's premises where an effluent source is located or in which any records are required to be kept under the terms and conditions of this license;
  - (2) To have access to and copy any records required to be kept under the terms and conditions of this license;
  - (3) To inspect any monitoring equipment or monitoring method required in this license; or,
  - (4) To measure and/or sample at any intake, process or cooling effluent stream, waste water treatment facility and/or outfall.
- C. This license shall be subject to such monitoring requirements as may be reasonably required by the Department of Environmental Protection including the installation, use and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). The licensee shall provide the Department of Environmental Protection with periodic reports on the proper Department of Environmental Protection reporting form of monitoring results obtained pursuant to the monitoring requirements contained herein.
- D. This license does not preclude obtaining other required Federal, State, or Municipal permits and does not authorize or approve the construction of any on-shore physical structures or facilities or the undertaking of any work in any navigable waters.
- E. The issuance of this license does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to public or private property or any invasion of personal rights nor any infringement of Federal, State or local laws or regulations.
- F. Nothing in this license shall be construed to relieve the licensee from civil or criminal penalties for non-compliance, whether or not such non-compliance is due to factors beyond the licensee's control, such as an accident, equipment breakdown, labor disputes or natural disaster.

STANDARD CONDITIONS OF PUBLICLY OWNED TREATMENT WORKS (POTW) WASTE  
DISCHARGE LICENSES

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2. PRETREATMENT REQUIREMENTS

- A. The licensee shall comply with all Federal Statutes, regulations, and conditions of permits applicable to its discharge of waste waters, including, but not limited to, those requiring the installation of pretreatment facilities or establishment of pretreatment programs.
- B. Municipal or quasi-municipal licenses shall maintain user contracts, permits or ordinances to regulate industrial entities which discharge process waste water to the licensee's treatment facilities in quantities greater than 10% of the facility's design capacity. Such contracts, permits or ordinances shall be submitted to the Department for approval within three months of the effective date of this license or prior to acceptance of new or increased volumes of industrial waste water. All such contracts, permits or ordinances shall be an enforceable part of this license whether or not approved by the Department.

3. WASTE WATER TREATMENT AND SAMPLING FACILITIES

- A. The licensee shall collect all waste flows designated by the Department of Environmental Protection as requiring treatment and discharge them into an approved waste treatment facility in such a manner as to maximize removal of pollutants unless authorization to the contrary is obtained from the Department.
- B. The licensee shall at all times maintain in good working order and operate at maximum efficiency all waste water collection, treatment and/or control facilities.
- C. All necessary waste treatment facilities will be installed and operational prior to the discharge of any waste waters.
- D. Final plans and specifications must be submitted to the Department of Environmental Protection and approved prior to the construction or modification of any treatment facilities.
- E. The licensee shall install flow measuring facilities of a design approved by the Department of Environmental Protection.
- F. The licensee must provide an outfall of a design approved by the Department of Environmental Protection which is placed in the receiving waters in such a manner that maximize mixing and dispersion of the waste waters will be achieved as rapidly as possible.

4. NON-COMPLIANCE NOTIFICATION

- A. In the event the licensee bypasses collection or treatment facilities or is unable to comply with any of the conditions of this license due, among other reasons, to:
  - (1) breakdown of waste treatment equipment;
  - (2) accidents caused by error or negligence;
  - (3) high strength, high volume or incompatible wastes; or
  - (4) other causes such as acts of nature,

STANDARD CONDITIONS OF PUBLICLY OWNED TREATMENT WORKS (POTW) WASTE

DISCHARGE LICENSES

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the licensee shall notify the Department of Environmental Protection verbally as soon as its agents have knowledge of the incident.

- B. Within five (5) days of becoming aware of such condition the licensee shall provide the Department of Environmental Protection in writing, the following information:
  - (1) A description of the discharge and cause of non-compliance; and
  - (2) The period of non-compliance, including exact dates and times; or, if not corrected, the anticipated time the non-compliance is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the non-complying discharge.
- C. If the licensee knows in advance of changes in licensed facilities or activities which may result in non-compliance or of the need to bypass, it shall submit prior notice at least ten days in advance of such occurrence.
- D. In the event of a bypass is due to inflow or infiltration of uncontaminated water into a sewer system, reporting requirements may be adjusted by the Department to a monthly basis.

5. MONITORING AND REPORTING

A. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. If effluent limitations are based wholly or partially on quantities of a product processed, the licensee shall ensure samples are representative of times when production is taking place. Where discharge monitoring is required when production is less than 50%, the resulting data shall be reported as a daily measurement but not included in computation of averages, unless specifically authorized by the Department.

B. Test Methods

The sampling, preservation, handling, and analytical methods used must conform with Standard Methods for the Examination of Water and Waste Waters, American Public Health Association, 1015 18<sup>th</sup> Street, N.W., Washington, D.C. 20036, latest approved edition, or methods referenced in 40 CFR Part 136, Guidelines Establishing Test Procedures for Analysis of Pollutants. However, different but equivalent methods are allowable if they receive the prior written approval from the Department of Environmental Protection.

- (1) All reports shall be submitted to the Department not later than the fifteenth of the month following the end of the monitoring period.
- (2) Any reports or records of monitoring activities and results shall include for all samples: (a) the date, exact place, and time of sampling; (b) the dates and times of analyses; (c) the analytical techniques/methods used, including sampling, handling, and preservation techniques; and (d) the results of all required analyses.

STANDARD CONDITIONS OF PUBLICLY OWNED TREATMENT WORKS (POTW) WASTE

DISCHARGE LICENSES

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C. All reports shall be signed by:

- (1) In the case of corporations, a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the reporting form originates.
- (2) In the case of a partnership, a general partner or duly authorized representative.
- (3) In the case of a sole proprietorship, the proprietor or duly authorized representative.
- (4) In the case of a municipal, State, or other public facility, either a principal executive officer, ranking elected official, or duly authorized employee.

6. CHANGE OF DISCHARGE

The licensee shall notify the Department in writing as soon as it has knowledge of any significant changes or proposed changes in its discharge, including but not limited to:

- A. the temporary or permanent termination of the discharge;
- B. changes in the waste collection, treatment or disposal facilities;
- C. changes in the volume or character of waste water flows;
- D. permanent changes in industrial production rates;
- E. the proposed addition, directly or indirectly, of toxic pollutants not authorized by the license or reflected in the application filed with the Department;
- F. the addition to a municipal or quasi-municipal treatment system of industrial wastes which are categorically regulated by the U.S. EPA pursuant to the agency's pretreatment program.

7. TRANSFER OF OWNERSHIP

In the event that any person possessing a license issued by the Department shall transfer the ownership of the property, facility or structure which is the source of a licensed discharge, without transfer of the license being approved by the Department, the license granted by the Department shall continue to authorize a discharge within the limits and subject to the terms and conditions stated in the license, provided that the parties to the transfer shall be jointly and severally liable for any violation thereof until such times as the Department approves transfer or issuance of a waste discharge license to the new owner. The Department may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

8. RECORDS RETENTION

All records and information resulting from the monitoring activities required by this license including all records of analyses performed and calibrations and maintenance of instrumentation shall be retained for a minimum of three (3) years.

STANDARD CONDITIONS OF PUBLICLY OWNED TREATMENT WORKS (POTW) WASTE

DISCHARGE LICENSES

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9. OTHER MATERIALS

Other materials ordinarily produced or used in the operation of this facility, which have been specifically identified in the application, may be discharged at the maximum frequency and maximum level identified in the application, provided:

A. They are not

- (1) designated as toxic or hazardous under the provisions of Sections 307 and 311 respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law, or
- (2) known to be hazardous or toxic by the licensee.

B. The discharge of such materials will not violate applicable water quality standards.

10. REMOVED SUBSTANCES

Solids, sludges trash rack cleanings, filter backwash, or other pollutants removed from or resulting from the treatment or control of waste waters shall be disposed of in a manner approved by the Department of Environmental Protection.

11. BYPASS OF WASTE TREATMENT FACILITIES

The diversion or bypass of any discharge from facilities utilized by the licensee to maintain compliance with the terms and conditions of this license is prohibited, except (1) where unavoidable to prevent loss of life or severe property damage, or (2) where excessive storm drainage or runoff would damage any facilities necessary for compliance with the terms and conditions of this license. The licensee shall notify the Department of Environmental Protection of each such diversion or bypass in accordance with the procedure specified in paragraph 6 above for reporting non-compliance. It is the duty of the licensee to take all feasible steps to prevent, minimize and mitigate bypasses. If infiltration or inflow of stormwater or ground water contribute to bypasses, the licensee shall submit to the Department for approval, a wet weather flow management plan. The plan shall describe measures implemented to maximize the volume of flow through the treatment facilities and the efficiency of the treatment process. Submission of this plan shall not remove any responsibilities of the licensee pursuant to paragraph 6.

12. EMERGENCY ACTION-ELECTRIC POWER FAILURE

Within thirty days after the effective date of this license, the licensee shall notify the Department of Environmental Protection of facilities and plans to be used in the event the primary source of power to its waste water pumping and treatment facilities fails. During power failure, all waste waters which are normally treated shall receive a minimum of primary treatment and disinfection. Unless otherwise approved, alternate power supplies shall be provided for pumping stations and treatment facilities. Alternate power supplies shall be on-site generating units or an outside power source which is separate and independent from sources used for normal operation of the waste water facilities.

STANDARD CONDITIONS OF PUBLICLY OWNED TREATMENT WORKS (POTW) WASTE  
DISCHARGE LICENSES

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DEFINITIONS

FOR THE PURPOSE OF THIS LICENSE THE FOLLOWING SHALL APPLY

- A. Grab Sample: An individual sample collected in a period of less than 15 minutes.
- B. Composite Sample: A sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (or a lesser period if specified in the section on Monitoring and Sampling) and combined proportional to flow or a sample continuously collected proportionally to flow over the same time period.
- C. Daily Maximum For Concentration: The maximum value not to be exceeded at any time.
- D. Daily Maximum For Quantity: The maximum value not to be exceeded during any day.
- E. Weekly or Monthly Average: The sum of all daily samples measurement or test results made during a week or month divided by the number of tests or measurement made during the respective time period. Exception: bacteriological tests shall be calculated as a geometric mean.
- F. Bypass: The diversion of waste water, either by act or by design, from any portion of a treatment facility or conveyance system.



# 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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