



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

August 2, 2013

Mr. Jeffrey P. Musich, P.E.  
Wright-Pierce  
99 Main St.  
Topsham, ME 04086

RE: Permit Compliance System Tracking Number #MEU508261  
Maine Waste Discharge License (WDL) Application #W008261-5S-A-N  
**Final Permit**

Dear Mr. Musich:

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

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled "*Appealing a Commissioner's Licensing Decision.*"

If you have any questions regarding the matter, please feel free to call me at 592-7161.

Sincerely,

Cindy L. Dionne  
Division of Water Quality Management  
Bureau of Land and Water Quality

Enc.

cc: Matthew Hight, DEP/SMRO  
Craig Douglas, BTWD  
Sandy Mojica, USEPA

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 04679  
(207) 764-0477 FAX: (207) 760-3143



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

DEPARTMENT ORDER

IN THE MATTER OF

BRUNSWICK-TOPSHAM WATER DISTRICT	)	PROTECTION AND IMPROVEMENT
TOPSHAM, SAGadahoc COUNTY, MAINE	)	OF WATERS
INFILTRATION LAGOON SYSTEM	)	
#MEU508261	)	WASTE DISCHARGE LICENSE
#W008261-5S-A-N <b>APPROVAL</b>	)	<b>NEW</b>

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

**APPLICATION SUMMARY**

The BTWD has applied to the Department for a new Waste Discharge License (WDL) to dispose of an unspecified amount of filter backwash wastewater from an iron and manganese removal facility to two lagoons which release to ground water, Class GW-A in Topsham, Maine. Lagoon #1 and Lagoon #2 will have an estimated storage volume of approximately 340,000 gallons and 515,000 gallons, respectively, with a maximum design flow of 80,000 gallons per day. Construction at the Jackson Station facility of the two lagoons will effectively replace an existing lagoon that has been at the site for more than 40 years. The property is owned and operated by the BTWD.

**LICENSE SUMMARY**

This licensing action establishes, but is not limited to:

1. A condition to report flow to Lagoon No. 1 based on the backwash sequence;
2. A pH range limitation of 6.0 – 9.0 standard units prior to discharge to disposal in the lagoons; and
3. A requirement to monitor freeboard in both lagoons.

**CONCLUSIONS**

BASED on the findings in the attached Fact Sheet dated August 2, 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.

**CONCLUSIONS (cont'd)**

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 water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
  - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing 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.

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**ACTION**

THEREFORE, the Department APPROVES the above noted application of the BRUNSWICK-TOPSHAM WATER DISTRICT to discharge an unspecified amount of filter backwash from an iron and manganese removal facility to two lagoons to groundwater, Class GW-A, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. Standard Conditions of Approval for Publicly Owned Treatment Works (POTW) Waste Discharge Licenses dated July 16, 1996, copy attached.
2. The attached Special Conditions, including effluent limitations and monitoring requirements.
3. This license expires five (5) years from the date of the signature below. 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 April 1, 2003)]

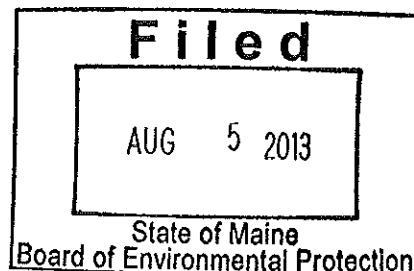
DONE AND DATED AT AUGUSTA, MAINE, THIS 5<sup>th</sup> DAY OF August, 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhn  
for PATRICIA W. AHO, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: April 12, 2013  
Date of application acceptance: April 22, 2013



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

This Order prepared by Cindy L. Dionne, BUREAU OF LAND & WATER QUALITY

## SPECIAL CONDITIONS

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The licensee is authorized to discharge filter backwash wastewater from two lagoons to ground water, Class GW-A in Topsham, Maine (OUTFALL #001). Such discharges shall be limited and monitored by the licensee as specified below<sup>(1)</sup>:

Effluent Characteristic	Daily Minimum	Daily Maximum	Measurement Frequency	Sample Type
Flow <sup>[50050]</sup>	---	Report (gpd) <sup>[07]</sup>	1/Week <sup>[01/07]</sup>	Estimate <sup>[ES]</sup>
Freeboard <sup>(2)</sup> <sup>[82564]</sup> (April 1 – Oct. 31)	Report <sup>[27]</sup>	---	1/Week <sup>[01/07]</sup>	Measure <sup>[MS]</sup>
pH <sup>(3)</sup> <sup>[00400]</sup>	---	6.0 – 9.0 S.U. <sup>[19]</sup>	1/Week <sup>[01/07]</sup>	Grab <sup>[GR]</sup>

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 (DMRs).

**FOOTNOTES:** See Page 5 of this license for the applicable footnotes.

## SPECIAL CONDITIONS

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

#### FOOTNOTES:

1. **Sampling** – The licensee shall conduct sampling and analysis 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 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). If the licensee monitors any pollutant more frequently than required by the license using test procedures approved under 40 CFR part 136 or as specified in this license, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report.

All analytical test results shall 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. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the RL achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL or reporting an estimated value ("J" flagged) is not acceptable and will be rejected by the Department. Reporting analytical data and its use in calculations must follow established Department guidelines specified in this license or in available Department guidance documents.

2. **Freeboard** – Freeboard is defined as being the difference in elevation between the surface of the water in the lagoon and lowest point of the lagoon berm. Measurements must be conducted between April 1 – October 31 (inclusive) and measurements must be made to the nearest one tenth (1/10<sup>th</sup>) of a foot. If site conditions prevent safe or accurate measurements, the licensee shall estimate this value and indicate this to the Department.
3. **pH monitoring.** Monitoring for pH shall be conducted through a grab sample collected prior to discharge to the infiltration lagoons.

### B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain materials in concentrations or combinations which would impair the usages designated for the classification of the groundwater.

## **SPECIAL CONDITIONS**

### **B. NARRATIVE EFFLUENT LIMITATIONS (cont'd)**

2. 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.

### **C. AUTHORIZED DISCHARGES**

The licensee is authorized to discharge only in accordance with: 1) the licensee's General Application for Waste Discharge License, accepted for processing on April 22, 2013; 2) the terms and conditions of this license; and 3) only from the one (1) subsurface wastewater disposal system identified as the Jackson Station Infiltration Lagoons in this licensing action. Discharges of wastewater from any other point source are not authorized under this license, and shall be reported in accordance with Standard Condition 11, *Bypass of Waste Treatment Facilities*, of this license.

### **D. NOTIFICATION REQUIREMENT**

In accordance with Standard Condition #6 of this license, the licensee shall notify the Department of the following:

Any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system. For the purposes of this section, notice regarding substantial change shall 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.

### **E. MONITORING AND REPORTING**

Monitoring results obtained during the previous month shall 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 DMRs 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 shall be submitted to the Department assigned inspector (unless otherwise specified by the Department) at the following address:

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

## **SPECIAL CONDITIONS**

### **E. MONITORING AND REPORTING (cont'd)**

Alternatively, if the licensee is submitting 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 fifteenth (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 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.

### **F. LAGOON MAINTENANCE**

1. The banks of the lagoon shall be inspected weekly during the operating season and properly maintained. There shall be no overflow through or over the banks. Any signs of leaks, destructive animal activity or soil erosion of the berms shall be repaired immediately. The Department shall be notified in writing within five (5) days of such incidents documenting the corrective action(s) that were taken to eliminate the overflow.
2. Maintenance of the banks of the lagoon shall be conducted to keep them free of woody vegetation and other vegetation that may be detrimental to the integrity of the berm.
3. The waters within the lagoon shall be kept free of all vegetation (i.e. grasses, reeds, cattails, etc) that hinders the operation of the lagoon.
4. The lagoons shall be dredged as necessary to maintain the proper filtration of the wastewater. All material removed from the lagoon(s) shall be properly disposed of in accordance with all applicable State and Federal rules and regulations.
5. The licensee shall maintain the lagoon freeboard at design levels or at least two (2) feet whichever is greater.

### **G. OPERATION & MAINTENANCE (O&M) PLAN**

**On or before commencement of the operation of the treatment system**, the licensee shall have a current written comprehensive Operation & Maintenance (O&M) Plan for this facility. The plan must provide a systematic approach by which the licensee shall, at all times, properly operate and maintain all facilities and the 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 of each year, or within 90 days of any process changes or minor equipment upgrades**, the licensee shall 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 shall be kept on-site at all times and made available to the Department personnel upon request.



## **SPECIAL CONDITIONS**

### **G. OPERATION & MAINTENANCE (O&M) PLAN**

**Within 90 days of completion of new and substantial upgrades of the wastewater treatment facility**, the licensee shall submit the updated O&M Plan to their Department inspector for review and comment. The O&M Plan must be kept on-site at all times and made available to Department personnel upon request.

### **H. REOPENING OF LICENSE FOR MODIFICATION**

In accordance with 38 M.R.S.A. § 414-A(5) and upon evaluation of any required test results, results of inspections and/or reporting required by the Special Conditions of this licensing action, additional site-specific data or any other pertinent information or test results obtained during the term of this license, the Department may, at any time and with notice to the licensee, modify this license to require additional monitoring, inspections and/or reporting based on the new information.

### **I. SEVERABILITY**

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

# MAINE WASTE DISCHARGE LICENSE

## FACT SHEET

DATE: AUGUST 2, 2013

LICENSE COMPLIANCE TRACKING NUMBER: #MEU508261  
WASTE DISCHARGE LICENSE NUMBER: #W008261-5S-A-N

NAME AND ADDRESS OF APPLICANT:

**BRUNSWICK-TOPSHAM WATER DISTRICT  
266 RIVER ROAD  
TOSHAM, MAINE 04086**

COUNTY: **SAGADAHOC**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**BRUNSWICK-TOPSHAM WATER DISTRICT JACKSON STATION WATER TREATMENT  
FACILITY  
266 RIVER ROAD  
TOPSHAM, MAINE 04086**

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

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **MR. CRAIG DOUGLAS, P.E.,  
District Engineer  
(207) 729-9956  
[cwdouglas@btwater.org](mailto:cwdouglas@btwater.org)**

### **1. APPLICATION SUMMARY**

- a. Application: The Brunswick-Topsham Water District (BTWD) has applied to the Department for a new Waste Discharge License (WDL) to dispose of a an unspecified amount of filter backwash wastewater from an iron and manganese removal facility to two lagoons which release to ground water, Class GW-A in Topsham, Maine. Lagoon #1 and Lagoon #2 will have an estimated storage volume of approximately 340,000 gallons and 515,000 gallons, respectively and a maximum design flow of 80,000 gallons per day. Construction at the Jackson Station facility of the two lagoons will effectively replace an existing lagoon that has been at the site for more than 40 years. The property is owned and operated by the BTWD. See **Attachment A** of this Fact Sheet for a location map of the facility.

## 1. APPLICATION SUMMARY (cont'd)

- b. Source Description: The Brunswick-Topsham Water District has been using the Jackson Station lagoon facility for disposal of backwash filtration water since the early 1970's. The following source description was copied from the licensee's application materials: "The Jackson Treatment Facility has a design capacity of approximately 3.6 MGD, but generally produces an average-day production volume of about 2.0 MGD. The well source water has approximately 0.5 to 0.8 mg/L iron and 0.25 mg/L manganese, which are removed using greensand (glauconite) filtration housed in pressure filters. The pressure filters are periodically backwashed to restore performance of the filters. Filtered water is pumped directly to the water distribution system and consumed by the District's customers. The backwash sequence includes a reverse flush process, a drain down process and periodic flushing with an oxidant (potassium permanganate). Filter backwash wastes are discharged through an air gap into a sump pit in the Jackson Station floor. Wastes flow from the sump by gravity to the existing lagoon through a 12-inch diameter discharge pipe." Filtration units are generally backwashed once per week each and may be backwashed twice per week during warmer months. The daily maximum flow to the lagoons is expected to be equal to or less than 80,000 gallons per day with an average of approximately 40,000 gallons per day. See **Attachment B** of this Fact Sheet for the proposed Site Layout Plan.
- c. Wastewater Treatment: The filter backwash waste is not treated in any manner before being discharged to the Solids Handling Lagoon (Lagoon #1) where solids will settle out and clarified liquids will flow over a weir to the Infiltration Lagoon (Lagoon #2). Infiltration to ground water will take place in Lagoon #2.

## 2. LICENSE SUMMARY

This licensing action establishes, but is not limited to:

1. A condition to report flow to Lagoon No. 1 based on the backwash sequence;
2. A pH range limitation of 6.0 – 9.0 standard units prior to discharge to disposal in the lagoons; and
3. A requirement to monitor freeboard in both lagoons.

## 3. CONDITIONS OF LICENSE

*Conditions of licenses* 38 M.R.S.A. § 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 Classification System.

## 4. RECEIVING WATER QUALITY STANDARDS

*Classification of ground water*, 38 M.R.S.A. § 470 states "All ground water shall be classified as not less than Class GW-A, except as otherwise provided in this section." *Standards of*

#### 4. RECEIVING WATER QUALITY STANDARDS (cont'd)

*classification of ground water*, 38 M.R.S.A. § 465-C(1) contains the standards for the classification of ground waters. "Class GW-A shall be the highest classification and shall be of such quality that it can be used for public drinking water supplies. These waters shall be free of radioactive matter or any matter that imparts color, turbidity, taste or odor which would impair usages of these waters, other than that occurring from natural phenomena."

#### 5. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Flow: This licensing action establishes a reporting condition with a 1/Week monitoring requirement to estimate flow to Lagoon No. 1. Information received from the licensee's consultant and application indicates that the backwash sequence generates on average, approximately 31,000 gallons per day. They have also indicated that the backwash sequence is pre-programmed and does not change day to day. However in the summer months, additional filter backwashing may be necessary (approximately 62,000 gallons per day). Therefore, flow rates to Lagoon No. 1 will be estimated based on the backwash sequence process.
- b. Freeboard: As indicated by the consultant's engineer, the design capacity in the lagoons is such that as long as proper freeboard is maintained, equalization to ground water can occur. In this license, monitoring frequency for freeboard is established to observe fluctuations in the elevation in the lagoons as a result of backwash sequence changes. Freeboard will be monitored 1/week so as to observe those fluctuations and ensure the integrity of the lagoons.
- c. pH: The pH range limitation of 6.0 – 9.0 standard units is a Department best practicable treatment (BPT) limitation common to all licenses issued by the Department. A monitoring frequency of 1/Week is being established at this time.

#### 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 *Times Record* newspaper on or about March 29, 2013. The Department receives public comments on an application until the date a final agency action is taken on the 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**

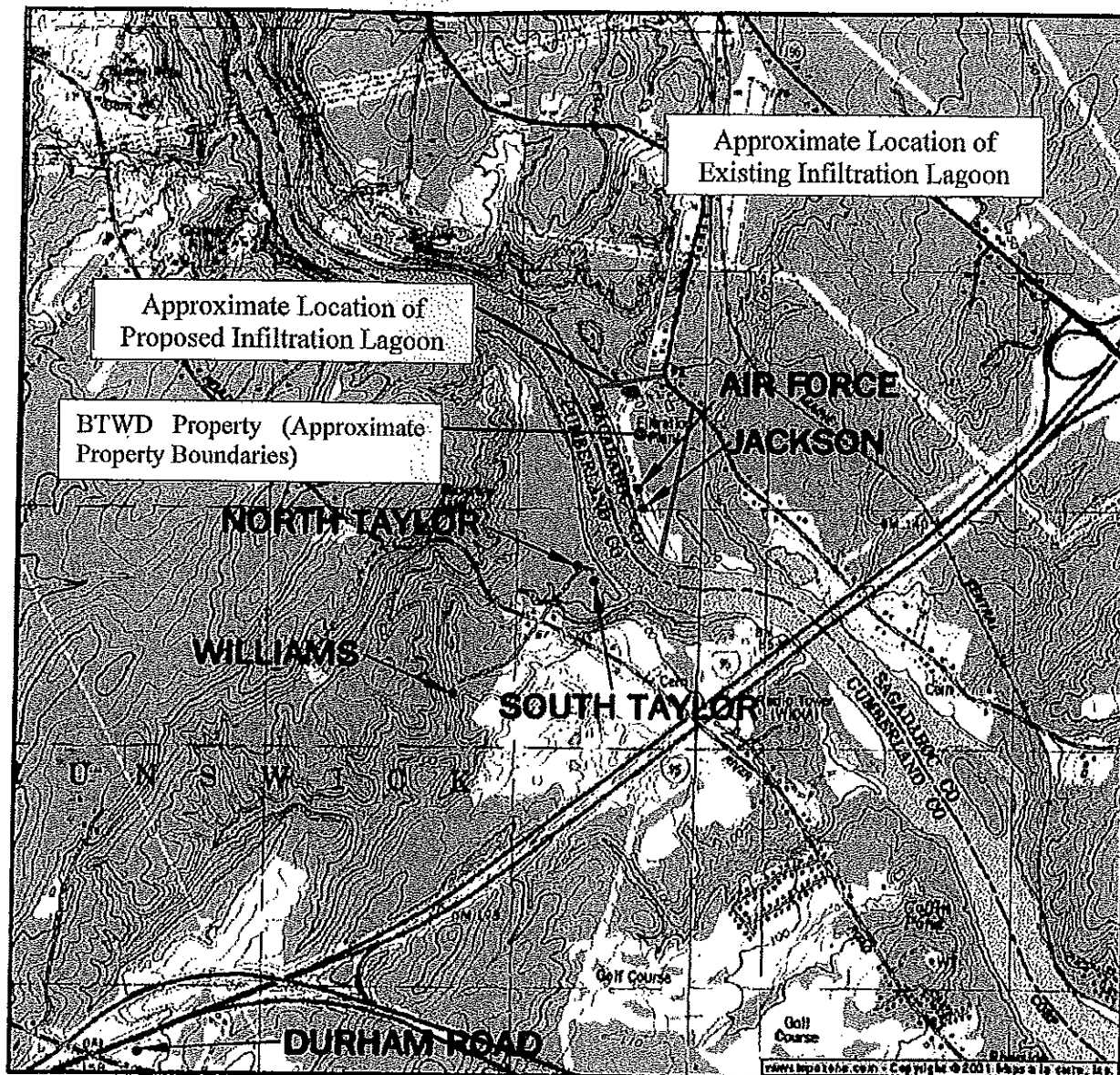
Additional information concerning this licensing action may be obtained from, and written comments sent to:

Cindy L. Dionne  
Division of Water Quality Management  
Bureau of Land & Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 592-7161 Fax: (207) 287-3435  
e-mail: [cindy.l.dionne@maine.gov](mailto:cindy.l.dionne@maine.gov)

## **9. RESPONSE TO COMMENTS**

During the period of June 14, 2013, through the issuance date of the license, the Department solicited comments on the proposed draft license to be issued for the discharge(s) from the BTWD Jackson Station Infiltration Lagoon Project. The Department did not receive comments that resulted in substantive change(s) in the terms and conditions of the license. Therefore, the Department has not prepared a Response to Comments.

# ATTACHMENT A



MAP SOURCE: TOPOZONE.COM  
 LISBON FALLS SOUTH, ME  
 1975



### Legend

- - BRUNSWICK TOPSHAM WATER DISTRICT SUPPLY WELLS



2000 0 2000  
 Scale in feet

## Jacques Whitford Company, Inc.



JACQUES WHITFORD LOCATION:  
 PORTSMOUTH, NEW HAMPSHIRE

DATE PREPARED: 10-27-03	DESIGNED BY: DFM	DRAWN BY: ITS	CHECKED BY: BSB	REVIEWED BY: DFM
PROJECT NAME: BRUNSWICK-TOPO/SHAM	PROJECT NUMBER/DATE: WHPO2632/03	SCALE: 1:24000	APPROVED FOR: BRUNSWICK-TOPO/SHAM WATER DISTRICT	

DRAWING TITLE:

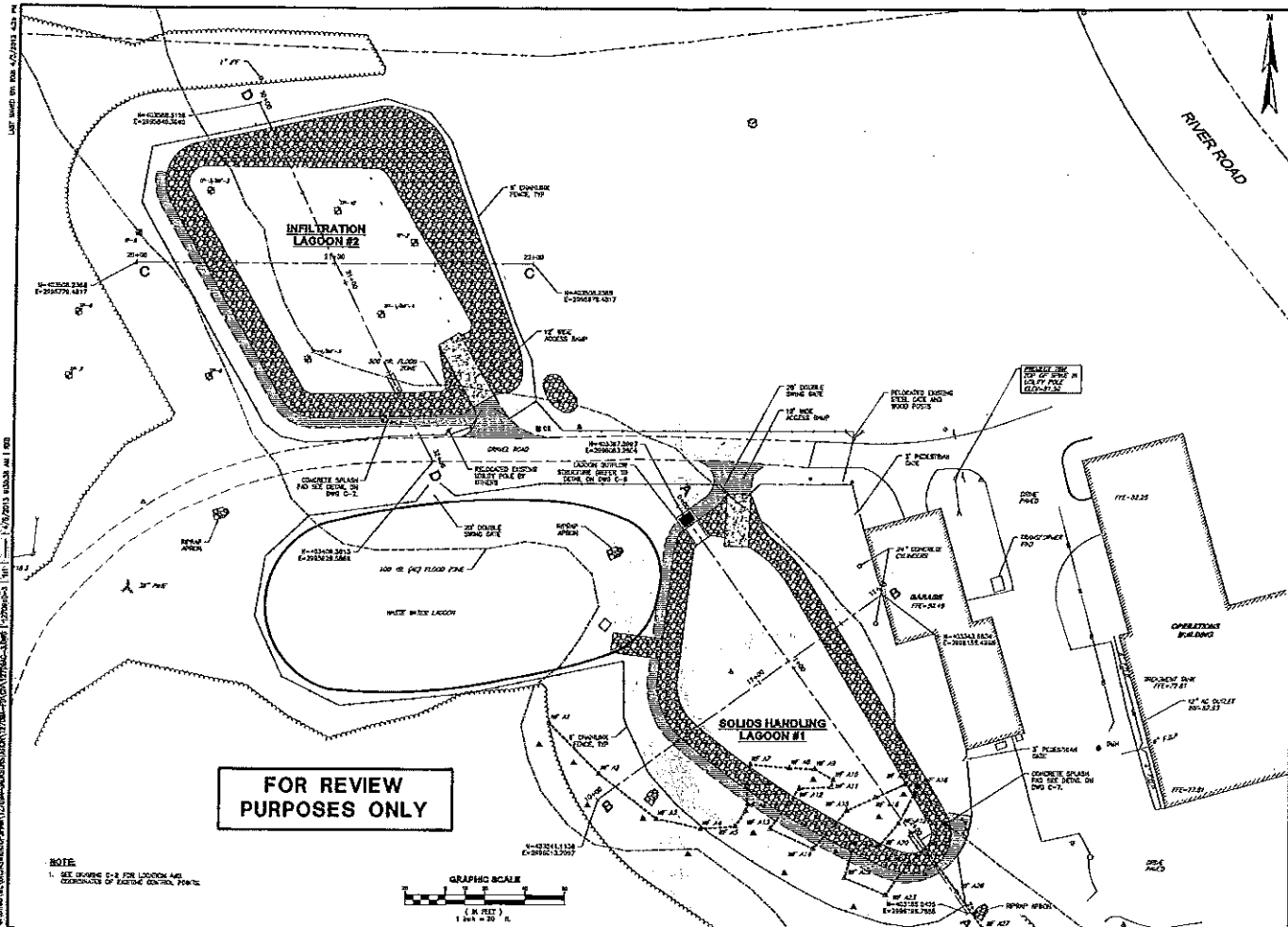
### LOCUS MAP

JACKSON-TAYLOR-WILLIAMS-AQUIFER  
 BRUNSWICK & TOPSHAM, MAINE

1

## **ATTACHMENT B**





<b>WRIGHT-PIERCE</b> Engineering & Construction 288-621-3116   www.wright-pierce.com	
BRUNSWICK-TOPSFIELD WATER DISTRICT JACKSON STATION LAGOON AND RESIDUALS HANDLING PROJECT TOPSFIELD, MAINE SITE LAYOUT PLAN	
DRAWING C-3	

STANDARD CONDITIONS OF POTW WASTE DISCHARGE LICENSES  
REVISED 7/16/96

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 accident, equipment breakdown, labor disputes or natural disaster..

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,

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 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 18th 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.

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 time 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 calibration and maintenance of instrumentation shall be retained for a minimum of three (3) years.

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.

### 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.

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# 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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