



STATE OF MAINE  
Department of Environmental Protection

JOHN ELIAS BALDACCI  
GOVERNOR

David P. Littell  
COMMISSIONER

March 5, 2010

Mr. Shawn Brown  
Town of Norway  
19 Danforth Street  
Norway, ME. 04268

RE: Maine Pollutant Discharge Elimination System Permit #ME0100455  
Maine Waste Discharge License Application #W002647-6C-F-M  
**Final Permit/License**

Dear Mr. Brown:

Enclosed please find a copy of your **final** MEPDES permit/WDL **modification** which was approved by the Department of Environmental Protection. You must follow the conditions in the permit to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State Law and is subject to enforcement action.

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

If you have any questions regarding the matter, please feel free to call me at 287-7693.

Sincerely,

A handwritten signature in dark ink, appearing to read "G. Wood", written over a light blue rectangular stamp.

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

Enc.

cc: Fred Gallant, DEP/SMRO  
Sandy Mojica, USEPA



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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

TOWN OF NORWAY	)	MAINE POLLUTANT DISCHARGE
NORWAY, OXFORD COUNTY, MAINE	)	ELIMINATION SYSTEM PERMIT
PUBLICLY OWNED TREATMENT WORKS)		AND
ME0100455	)	WASTE DISCHARGE LICENSE
W002647-6C-F-M	<b>APPROVAL</b> )	<b>MODIFICATION</b>

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et seq. and Maine Law 38 M.R.S.A., Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of the TOWN OF NORWAY (permittee hereinafter), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

Norway has submitted an application to the Department to modify Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0100455/Waste Discharge License (WDL #W002647-5L-E-R (permit hereinafter) that was issued by the Department on June 2, 2008 and is due to expire on June 2, 2013. More specifically, Norway has requested the Department replace limitations and monitoring requirements associated with biochemical oxygen demand (BOD) with carbonaceous biochemical oxygen demand (CBOD).

**MODIFICATIONS GRANTED**

The Department is granting the permittee's request to replace BOD limitations with CBOD limitations.

## CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated January 25, 2010 and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 MRSA Section 464(4)(F), will be met, in that:
  - a. Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - b. Where high quality waters of the State constitute an outstanding 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 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 (BPT).

**ACTION**

THEREFORE, the Department APPROVES the request by the TOWN OF NORWAY to replace BOD limitations with CBOD limitations. The discharges shall be subject to the attached conditions and all applicable standards and regulations including:

1. *“Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits,”* revised July 1, 2002, copy attached to MEPDES permit #ME0100455/Waste WDL#W002647-5L-E-R issued by the Department on June 2, 2008.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions in MEPDES permit #ME0100455/WDL#W002647-5L-E-R issued by the Department on June 2, 2008 not modified by this permit modification remain in effect and enforceable.
4. This permit modification expires on June 2, 2013 concurrent with to MEPDES permit #ME0100455/WDL#W002647-5L-E-R.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application January 5, 2010.  
Date of application acceptance January 5, 2010.

This Order prepared by GREGG WOOD, BUREAU OF LAND & WATER QUALITY  
ME0100455 MR 2010 3/2/10

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS – OUTFALL #001A**

- Beginning upon issuance of this modification, the permittee is authorized to discharge secondary treated waste water from **Outfall #001A** to the Little Androscoggin River. Such discharges shall be limited and monitored by the permittee as specified below. **No discharge is authorized when the flow in the Little Androscoggin River at the point of discharge is less than 31 cfs<sup>(1)</sup>.**

*June 1 - June 15 of each year.*

Effluent Characteristic	Discharge Limitations			Minimum Monitoring Requirements				
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]	0.755 MGD [03]	---	---	---	---	---	Continuous [99/99]	Recorder [RC]
Carbonaceous Biochemical Oxygen Demand [80082]	157 lbs/day [26]	252 lbs/day [26]	283 lbs/day [26]	25 mg/L [19]	40 mg/L [19]	45 mg/L [19]	2/Week [02/07]	24 Hour Composite [24]
CBOD % Removal <sup>(2)</sup> [81383]	---	---	---	---	---	85% [23]	1/Month [01/30]	Calculate [CA]
Total Suspended Solids [00530]	189 lbs/day [26]	283 lbs/day [26]	315 lbs/day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	2/Week [02/07]	24 Hour Composite [24]
TSS % Removal <sup>(2)</sup> [81011]	---	---	---	---	---	85% [23]	1/Month [01/30]	Calculate [CA]
Settleable Solids [00545]	---	---	---	---	---	0.3 ml/L [25]	3/Week [03/07]	Grab [GR]
<i>E. Coli</i> Bacteria [31633] (May 15 – September 30) <sup>(3)</sup>	---	---	---	126/100 ml <sup>(4)</sup> [13]	---	949/100 ml [13]	1/Week [01/07]	Grab [GR]
Total Residual Chlorine <sup>(5)</sup> [50060]	---	---	---	0.1 mg/L [19]	---	0.3 mg/L [19]	1/Day [01/01]	Grab [GR]
pH (Std. Unit) [00400]	---	---	---	---	---	6.0 – 9.0 [12]	1/Day [01/01]	Grab [GR]
Copper (Total) [01042]	0.32 #/day [26]	---	---	58 ug/L [28]	---	---	2/Year [02/YR]	24 Hour Composite [24]
Lead (Total) [01051]	0.054 #/day [26]	---	---	10 ug/L [28]	---	---	2/Year [02/YR]	24 Hour Composite [24]

**SPECIAL CONDITIONS**

**A. FLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd) – OUTFALL #001B**

2. Beginning upon issuance of this modification, the permittee is authorized to discharge secondary treated waste water from **Outfall #001B** to the Little Androscoggin River. Such discharges shall be limited and monitored by the permittee as specified below. **No discharge is authorized when the river flow in the Little Androscoggin River at the point of discharge is less than 31 cfs<sup>(1)</sup>.**

*January 1 – May 31 and September 1 - December 31 of each year.*

Effluent Characteristic	Discharge Limitations			Minimum Monitoring Requirements				
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]	0.975 MGD [03]	---	---	---	---	---	Continuous [99/99]	Recorder [RC]
Carbonaceous Biochemical Oxygen Demand [80082]	203 lbs/day [26]	325 lbs/day [26]	366 lbs/day [26]	25 mg/L [19]	40 mg/L [19]	45 mg/L [19]	2/Week [02/07]	24 Hour Composite [24]
CBOD % Removal <sup>(2)</sup> [81383]	---	---	---	---	---	85% [23]	1/Month [01/30]	Calculate [CA]
Total Suspended Solids [00530]	244 lbs/day [26]	366 lbs/day [26]	407 lbs/day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	2/Week [02/07]	24 Hour Composite [24]
TSS % Removal <sup>(2)</sup> [81011]	---	---	---	---	---	85% [23]	1/Month [01/30]	Calculate [CA]
Settleable Solids [00545]	---	---	---	---	---	0.3 ml/L [25]	3/Week [03/07]	Grab [GR]
<i>E. Coli</i> Bacteria [31633] (May 15 – September 30) <sup>(3)</sup>	---	---	---	126/100 ml <sup>(4)</sup> [13]	---	949/100 ml [13]	1/Week [01/07]	Grab [GR]
Total Residual Chlorine <sup>(5)</sup> [50060]	---	---	---	0.1 mg/L [19]	---	0.3 mg/L [19]	1/Day [01/01]	Grab [GR]
pH (Std. Unit) [00400]	---	---	---	---	---	6.0 – 9.0 [12]	1/Day [01/01]	Grab [GR]
Copper (Total) [01042]	0.32 #/day [26]	---	---	58 ug/L [28]	---	---	2/Year [02/YR]	24 Hour Composite [24]
Lead (Total) [01051]	0.054 #/day [26]	---	---	10 ug/L [28]	---	---	2/Year [02/YR]	24 Hour Composite [24]

## SPECIAL CONDITIONS

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

#### Footnotes:

**Sampling** –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 shall be analyzed by a laboratory certified by the State of Maine's Department of Human Services. Samples that are sent to another 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).

All detectable 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 detection limit achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL is not acceptable and will be rejected by the Department. For mass, if the analytical result is reported as <Y or if a detectable result is less than a RL, report a <X lbs/day, where X is the parameter specific limitation established in the permit.

1. **Discharge dates** - During the period June 16 – August 31, the Department may authorize a discharge on a day-by-day basis in order to protect the integrity of the treatment lagoons during those periods when the river flow is below 31 cfs at the point of discharge. **The permittee must obtain authorization in writing from the Department prior to discharging under these circumstances.**
2. **Percent removal** – The facility shall maintain a minimum of 85 percent removal of both CBOD and TSS. Compliance with the limitation is based on a twelve-month rolling average. Calendar monthly average percent removal values shall be calculated based on influent and effluent concentrations. The percent removal is not applicable when the monthly average influent concentration is less than 200 mg/L and shall not be included in the rolling average calculations. For the purposes of this permitting action, the twelve-month rolling average calculation is based on the most recent twelve-month period. The permittee is required to report the percent removal values on the monthly discharge monitoring report (DMR) and on the DEP "49" form.

**MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
AND  
MAINE WASTE DISCHARGE LICENSE**

**FACT SHEET**

Date: **January 25, 2010**

PERMIT NUMBER: **ME0100455**  
LICENSE NUMBER: **W002647-6C-F-M**

NAME AND ADDRESS OF APPLICANT:

**TOWN OF NORWAY  
19 Danforth Street  
Norway, ME. 04268**

COUNTY: **Oxford County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**43 Brown Street  
Norway, Maine**

RECEIVING WATER CLASSIFICATION: **Little Androscoggin River/Class C**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Shawn Brown, Supt.  
(207) 743-5304**  
email: [sbrown@megalink.net](mailto:sbrown@megalink.net)

**1. APPLICATION SUMMARY**

The Town of Norway has submitted an application to the Department to modify Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0100455/Waste Discharge License (WDL#W002647-5L-E-R (permit hereinafter) that was issued by the Department on June 2, 2008 and is due to expire on June 2, 2013. More specifically, Norway has requested the Department replace limitations and monitoring requirements associated with biochemical oxygen demand (BOD) with carbonaceous biochemical oxygen demand (CBOD).

**2. MODIFICATIONS GRANTED**

The Department is granting the permittee's request to replace BOD limitations with CBOD limitations.



### 3. CONDITIONS OF PERMITS

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 Classification System. In addition, 38 M.R.S.A., Section 420 and Department rule 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, require the regulation of toxic substances not to exceed levels set forth in Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

### 4. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- c. Biochemical Oxygen Demand (BOD) vs Carbonaceous Biochemical Oxygen Demand (CBOD) - The 6/2/08 permit established monthly and weekly average biochemical oxygen demand (BOD5) concentration limits of 30 mg/L and 45 mg/L respectively, based on secondary treatment requirements found in Department rule, 06-096 CMR Chapter 525(3)(III). The maximum daily BOD5 concentration limit of 50 mg/L was based on a Department best professional judgment of best practicable treatment (BPT). All BOD5 mass limitations were calculated based on the monthly average flow of 0.755 MGD and 0.975 MGD and the corresponding monthly average, weekly average and daily maximum concentration limits.

BOD5 mass loading calculations at 0.755 MGD:

Monthly average = (30 mg/L) (0.755 MGD) (8.34) = 189 lbs./Day

Weekly average = (45 mg/L) (0.755 MGD) (8.34) = 283 lbs./Day

Daily maximum = (50 mg/L) (0.755 MGD) (8.34) = 315 lbs./Day

BOD5 mass loading calculations at 0.975 MGD:

Monthly average = (30 mg/L) (0.975 MGD) (8.34) = 244 lbs./Day

Weekly average = (45 mg/L) (0.975 MGD) (8.34) = 366 lbs./Day

Daily maximum = (50 mg/L) (0.975 MGD) (8.34) = 407 lbs./Day

In August of 1997, the Department published a User's Manual entitled Design, Operation & Regulation of Aerated Facultative Lagoons in Maine prepared by the Maine Lagoon Task Force. In the Executive Summary section of the document, the Task Force states that most of the lagoons and ponds (stabilization) are meeting secondary treatment permit requirements for BOD5 and TSS. The report also states that some ponds do not meet secondary treatment but do meet "equivalent to secondary treatment" (45 mg/L as a monthly average) for BOD5 and TSS due largely to varying climatic and seasonal conditions. The report also makes the recommendation that BOD5 and TSS permit limits may be adjusted on a case-by-case basis for facilities with

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

problems due to cold weather and algae. The Task Force recommended that a facility would not be allowed to obtain limits less stringent than the range of 30-45 mg/L as a 30-day average. The report states that adjusting limits for a facility would be considered when a) the facility demonstrates that it cannot consistently achieve secondary treatment defined as a 30-day average of 30 mg/L 95% of the time based on at least three years of monthly average data, b) the facility provided information and data to demonstrate the problem is uncontrollable while using a properly designed and operated lagoon or pond as the principal biological treatment process, c) there are no extenuating circumstances such as overloading or industrial wastes.

The request for CBOD limits is based on the fact that an oxygen demand due to partial nitrification taking place in the laboratory BOD test bottle is skewing (inflating) the BOD test results.

CBOD vs BOD – Federal regulation 40 CFR, Part 133.102, *Secondary Treatment*, §a(1 & 2) establishes a 30-day (monthly) average concentration limit not to exceed 30 mg/L and the 7-day (weekly) average concentration limit shall not exceed 45 mg/L for BOD5.

Federal regulation 40 CFR, Part 133.102, *Secondary Treatment*, §a(4) states that the permitting authority, in lieu of the effluent quality specified in Part 133.102, §a(1 & 2) for the parameter BOD5, the parameter CBOD5 may be substituted with a 30-day average concentration limit not to exceed 25 mg/L and the 7-day average shall not exceed 40 mg/L.

The limitations for BOD5/CBOD5 in federal regulations may be summarized as follows:

	<u>BOD5</u>	<u>CBOD5</u>
<u>Secondary Treatment</u>		
30-day average	30 mg/L	25 mg/L
7-day average	45 mg/L	40 mg/L

The monthly average (25 mg/L) and weekly average (40 mg/L) limits are technology based limits and consistent with the secondary BPT limits in federal regulation 40 CFR, Part 133.102, *Secondary Treatment*, §a(4). The daily maximum limit is also a technology based limit and was mathematically derived using the same ratio established for secondary BOD BPT limitations (ie 30/45/50 mg/L). The corresponding seasonal mass limits were calculated based on the applicable concentration limits and the applicable seasonal flow limits of 0.755 MGD (June 1 – June 15) and 0.975 MGD (January 1 – May 31 and September 1 – December 31). It is noted, the period June 16 – August 31, the Department may authorize a discharge on a day-by-day basis in order to protect the integrity of the treatment lagoons during those periods when the river flow is below 31 cfs at the point of discharge.

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

In an internal Department e-mail dated January 12, 2010, the Department made the determination that the Norway facility has fulfilled the considerations in the Task Force Report for alternate limits and is recommending CBOD5 as the most appropriate and relevant parameter for measuring secondary treatment performance and effluent quality at the Norway facility. Therefore, this permitting action is establishing the following CBOD limits:

##### Year Round

	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
CBOD5	25 mg/l	40 mg/L	45 mg/L

Seasonal mass limitations for CBOD were calculated as follows:

##### June 1 – June 15

Monthly average:  $(0.755 \text{ MGD})(8.34)(25 \text{ mg/L}) = 157 \text{ lbs/day}$

Weekly average:  $(0.755 \text{ MGD})(8.34)(40 \text{ mg/L}) = 252 \text{ lbs/day}$

Daily Maximum:  $(0.755 \text{ MGD})(8.34) (45 \text{ mg/L}) = 283 \text{ lbs/day}$

##### January 1 – May 31 and September 1 – December 31

Monthly average:  $(0.975 \text{ MGD})(8.34)(25 \text{ mg/L}) = 203 \text{ lbs/day}$

Weekly average:  $(0.975 \text{ MGD})(8.34)(40 \text{ mg/L}) = 325 \text{ lbs/day}$

Daily Maximum:  $(0.975 \text{ MGD})(8.34) (45 \text{ mg/L}) = 366 \text{ lbs/day}$

#### 5. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, 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 waterbody to meet standards for Class C classification.

#### 6. PUBLIC COMMENTS

Public notice of this application was made in the Advertiser Democrat newspaper on or about January 5, 2010. 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 permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

## **7. DEPARTMENT CONTACTS**

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

Gregg Wood  
Division of Water Quality Management  
Bureau of Land and Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017  
E-mail: [gregg.wood@maine.gov](mailto:gregg.wood@maine.gov)  
Telephone (207) 287-3901

## **8. RESPONSE TO COMMENTS**

During the period of January 25, 2010, through the issuance date of this permit/license modification, the Department solicited comments on the proposed draft modification to be issued for the discharge(s) from the permittee's facility. The Department did not receive comments from the permittee, state or federal agencies or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.





# DEP INFORMATION SHEET

## Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

### SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### **LEGAL REFERENCES**

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

#### **HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD**

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

#### **WHAT YOUR APPEAL PAPERWORK MUST CONTAIN**

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

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

#### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

#### **WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD**

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

## **II. APPEALS TO MAINE SUPERIOR COURT**

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

#### **ADDITIONAL INFORMATION**

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

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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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