



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

JAMES P. BROOKS
ACTING COMMISSIONER

February 14, 2013

Project SHARE
c/o Dr. Mark Whiting
Maine Department of Environmental Protection
Bureau of Land and Water Quality
106 Hogan Road, Suite 6
Bangor, ME 04401
mark.c.whiting@maine.gov

*Sent via electronic mail
Delivery confirmation requested*

**RE: *Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0002704
Maine Waste Discharge License (WDL) Application #W009049-5Z-D-M
FINALIZED Permit / WDL Minor Revision***

Dear Mr. Whiting:

Enclosed, please find a copy of your **final** MEPDES permit and Maine WDL **Minor Revision**, which was approved by the Department of Environmental Protection. Please read the permit 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.*"

Sincerely,

Bill Hinkel
Division of Water Quality Management
Bureau of Land and Water Quality
bill.hinkel@maine.gov
ph: 207.485.2281

Enc.

cc: Matthew Young, Lori Mitchell, MeDEP Sandy Mojica, USEPA File #W9049

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

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PRESQUE ISLE
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PRESQUE ISLE, MAINE 04679-2094
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

PROJECT SHARE)	MAINE POLLUTANT DISCHARGE
WATER QUALITY IMPROVEMENT PROJECT)	ELIMINATION SYSTEM PERMIT
MACHIAS, EAST MACHIAS RIVER WATERSHEDS)		AND
WASHINGTON COUNTY, MAINE)	WASTE DISCHARGE LICENSE
#ME0002704)	EXPERIMENTAL PERMIT
#W009049-5Z-D-M APPROVAL)	MINOR REVISION

Pursuant to the provisions of the *Federal Water Pollution Control Act*, Title 33 USC § 1251, *Conditions of licenses*, 38 M.R.S.A. § 414-A, *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (effective April 1, 2003), and applicable regulations, the Department of Environmental Protection (Department) has considered a January 22, 2013 request submitted by Project SHARE (or permittee) to the Department for a minor permit revision to Waste Discharge License (WDL) #W009049-5Z-A-N / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0002704, which was issued by the Department on November 30, 2009 for a five-year term, and including conditions established in WDL Modification #W009049-Z-C-M issued on June 7, 2012. With its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

MINOR PERMIT REVISION SUMMARY

Project SHARE has requested that Special Condition A.5, Table 1 of the June 7, 2012 WDL Modification be revised to eliminate the upstream pH monitoring requirement using a data sonde. Project SHARE stated in its request that its project is expanding into more waterbodies and that the equipment costs associated with deploying data sondes at all sites is cost prohibitive. Project SHARE does not seek to modify downstream pH monitoring using data sondes and stated that upstream ambient pH data will continue to be collected, as required by the November 30, 2009 permit, using hand-held meters.

The Department is making a best professional judgment determination that ambient upstream pH monitoring using a data sonde is not critical to determining compliance with applicable water quality standards given the continuation of downstream monitoring and upstream monitoring using hand-held meters.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated February 14, 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 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 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 hereby APPROVES the above noted request of Project SHARE for the MINOR REVISION (eliminate the upstream pH monitoring requirement using a data sonde) to Waste Discharge License #W009049-5Z-A-N / Maine Pollutant Discharge Elimination System permit #ME0002704 issued on November 30, 2009, and WDL Modification #W009049-5Z-C-M issued on June 7, 2012, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

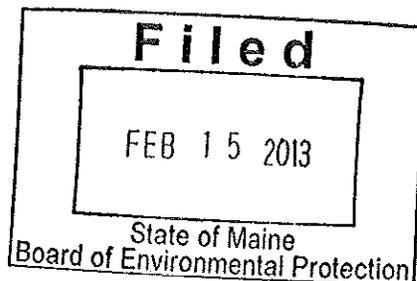
1. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached to the November 30, 2009 permit.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions in combination WDL #W009049-5Z-A-N / MEPDES permit #ME0002704 dated November 30, 2009, WDL Modification #W009049-5Z-B-M issued on May 16, 2011, and WDL Modification #W009049-5Z-C-M issued on June 7, 2012 that are not modified by this permitting action remain in effect and enforceable.
4. This minor revision expires on November 30, 2014, concurrent with the November 30, 2009 WDL/MEPDES permit. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of the November 30, 2009 permit, the terms and conditions of the November 30, 2009 permit 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)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 14th DAY OF February, 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Keenan
For PATRICIA W. AHO, Commissioner



Date of minor revision request: January 22, 2013
This Order prepared by Bill Hinkel, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

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

Special Condition A of WDL Modification #W009049-5Z-C-M issued on June 7, 2012 is revised as indicated is **BOLD** font below.

Table 1 – Monitoring Requirements

Measurements	Method	Analysis	When	Who
Water chemistry (pH)	Data sonde	Before/after Down stream	Hourly, May-Nov	USFWS/DEP
Water chemistry (alkalinity, Ca, Al)	Grab sample	Before/after Up/down stream	Quarterly	DEP
Water chemistry (field pH, Conductivity)	Field meter	Before/after Up/down stream	Monthly	DEP
Algae	Grab sample	Before/after	Yearly	DEP
Leaf packs *	Stroud Water Research Center, Leaf Pack Network Manual	Before/after Up/down stream	2012 and 2013 (1/year)	DEP
Macroinvertebrates *	DEP biomonitoring protocol	Before/after Up/down stream	2012 (1/year)	DEP
Fish abundance *	Electrofishing	Before/after Up/down stream	Yearly	USFWS

* Leaf pack, macroinvertebrate, and fish abundance studies / measurements will be conducted on sites based on recommendations from DEP and USFWS as necessary to provide data on new sites and/or to supplement data on current sites. Any future project modifications shall be addressed through the process described in Permit Special Condition F, Reopening of Permit for Modifications.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

AND

MAINE WASTE DISCHARGE LICENSE

FACT SHEET

DATE: FEBRUARY 14, 2013

PERMIT NUMBER: #ME0002704
LICENSE NUMBER: #W009049-5Z-D-M

NAME AND ADDRESS OF APPLICANT:

**PROJECT SHARE
C/O DR. MARK WHITING
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF LAND AND WATER QUALITY
106 HOGAN ROAD, SUITE 6
BANGOR, ME 04401**

COUNTY: WASHINGTON

**NAME AND ADDRESS WHERE DISCHARGE OCCURS:
TRIBUTARIES WITHIN THE WATERSHEDS OF THE MACHIAS RIVER AND EAST
MACHIAS RIVER IN WASHINGTON COUNTY, MAINE**

RECEIVING WATER CLASSIFICATION: CLASS A, CLASS AA

COGNIZANT OFFICIAL AND TELEPHONE NUMBER:

**PROJECT SHARE
C/O DR. MARK WHITING
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF LAND AND WATER QUALITY
106 HOGAN ROAD, SUITE 6
BANGOR, ME 04401
mark.c.whiting@maine.gov**

1. MINOR PERMIT REVISION

Project SHARE has requested that Special Condition A.5, Table 1 of the June 7, 2012 WDL Modification be revised to eliminate the upstream pH monitoring requirement using a data sonde. Project SHARE stated in its request that its project is expanding into more waterbodies and that the equipment costs associated with deploying data sondes at all sites is cost prohibitive. Project SHARE does not seek to modify downstream pH monitoring using data sondes and stated that upstream ambient pH data will continue to be collected, as required by the November 30, 2009 permit, using hand-held meters.

2. CONDITIONS OF PERMITS

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. In addition, 38 M.R.S.A., § 420 and 06-096 CMR 530 require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective October 9, 2005), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

3. RECEIVING WATER QUALITY STANDARDS

Classification of major river basins, 38 M.R.S.A. § 467(5)(B) classifies the waters proposed for treatments as Class A and Class AA waters. *Standards for classification of fresh surface waters*, 38 M.R.S.A. § 465(1) and (2) describe the standards for Class AA and A waters, respectively.

4. 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 waterbodies to meet the standards for Class AA and A classifications.

5. DEPARTMENT CONTACTS

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

Bill Hinkel
Division of Water Quality Management
Bureau of Land & Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
e-mail: bill.hinkel@maine.gov Telephone: (207) 485-2281



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.

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.
