STATE OF MAINE

Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patrica W. Aho
COMMISSIONER

September 6, 2013

Allan Moir, Superintendent
Sewer Department
Town of Kennebunkport
P.O. Box 1038
Kennebunkport, ME. 04046

RE: Maine Pollutant Discharge Elimination System Permit (MEPDES) ME0101184
Maine Waste Discharge License (WDL) Application W002626-6C-H-M
Final Modification

Dear Mr. Moir:

Enclosed, please find a copy of your **final** MEPDES permit and Maine WDL **modification** which was approved by the Department of Environmental Protection. Please read the permit/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 287-7693.

Sincerely,

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

Enc.
cc: Matt Hight, DEP/SMRO
Sandy Mojica, USEPA

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

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-6477 FAX: (207) 764-1507

web site: www.maine.gov/dep

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

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF KENNEBUNKPORT	) MAINE POLLUTANT DISCHARGE
PUBLICLY OWNED TREATMENT WORKS	) ELIMINATION SYSTEM PERMIT
KENNEBUNKPORT, YORK COUNTY	) AND
ME0101184	) WASTE DISCHARGE LICENSE
W002626-6C-H-M **APPROVAL**	) **MODIFICATION**

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) is initiating a modification of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0101184Maine Waste Discharge License (WDL) #W002626-6C-E-R (permit hereinafter) last issued by the Department on May 5, 2010. for a five-year term. With its supportive data, agency review comments, and other related materials on file the Department FINDS THE FOLLOWING FACTS:

MODIFICATION SUMMARY

Special Condition A, *Effluent Limitations and Monitoring Requirements*, of the permit established a monthly average water quality based mass and concentration limitations for inorganic arsenic along with a monitoring and reporting requirement for total arsenic. The limits and monitoring requirements were established as a statistical evaluation of the test results on file at the Department at that time indicated the discharge from the waste water treatment facility either exceeded or had a reasonable potential to exceed the human health ambient water quality criteria (AWQC) established in 06-096 CMR, Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants,* for inorganic arsenic. Chapter 584, adopted on October 12, 2005, established human health AWQC for inorganic arsenic as follows:

	Human Health for Consumption of:	
	Water & Organisms	Organisms only
Inorganic Arsenic	0.012 ug/L	0.028 ug/L

MODIFICATION SUMMARY (cont'd)

In a letter dated May 16, 2013, to the Commissioner of the Maine Department of Environmental Protection, the Acting Director of the Office of Ecosystem Protection in Region I of the U.S. Environmental Protection Agency (EPA) stated "Pursuant to Section 303(c)(2) of the Clean Water Act and 40 C.F.R. Part 131, I hereby approve the following water quality standards revisions to 38 MRSA, §420, sub-§2 as set forth in P.L. 2011 Ch. 194 (LD 515) "An Act To Review Water Quality Standards" and CMR 584, *Surface Water Quality Criteria for Toxic Pollutants*.

1. Revision of the cancer risk level used to calculate the human health criteria for arsenic from one in 1,000,000 to one in 10,000 and;

2. Revision of the arsenic criteria to protect human health from 0.012 to 1.3 ug/L for the consumption of water and organisms and from 0.028 to 3.7 ug/L for the consumption of organisms only."

On July 19, 2013, the Department conducted a statistical evaluation (evaluation) on arsenic data submitted by the permittee consistent with the methodology found in Section 3.3.2 and Table 3-2 of USEPA's "*Technical Support Document for Water Quality-Based Toxics Control" (USEPA Publication 505/2-90-001, March, 1991, EPA, Office of Water, Washington, D.C.)* to determine whether the discharge from the permittee's facility exceeds or has a reasonable potential to exceed the revised human health criteria for arsenic approved by the EPA on May 16, 2013. The evaluation indicates the most current 60 months of arsenic data on file at the Department does not exceed or have a reasonable potential to exceed the revised AWQC. Therefore, pursuant to Special Condition O, *Reopening of Permit For Modifications*, of the permit, the monthly average water quality based mass and concentration limit and monitoring requirement for inorganic arsenic and the monitoring and reporting requirement for total arsenic are being removed from the permit. In addition, this modification is removing Special Condition L, *Schedule of Compliance - Inorganic Arsenic,* of the permit as it is no longer necessary.

CONCLUSIONS

BASED on the findings above, 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.

CONCLUSIONS (cont'd)

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 discharge will be subject to effluent limitations that require application of best practicable treatment.

ACTION

THEREFORE, the Department APPROVES the modification of MEPDES permit #ME0101184/ WDL #W002626-6C-E-R, issued by the Department on May 5, 201, to remove the monthly average limitations, monitoring requirements, reporting requirements and schedule of compliance for inorganic arsenic and total arsenic from said permit. 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 #ME0101184/ WDL #W002626-6C-E-R, issued by the Department on May 5, 2010.

2. All terms and conditions of MEPDES permit, #ME0101184/WDL #W002626-6C-E-R, issued by the Department on May 5, 2010, not modified by this permitting action remain in effect and enforceable.

ACTION (cont'd)

3. This permit modification becomes effective upon signature and expires on May 5, 2015, concurrent with ##ME0101184/WDL #W002626-6C-E-R, issued by the Department on May 5, 2010. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of this permit and all subsequent 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 10th DAY OF September, 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
For Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application June 13, 2013.

Date of application acceptance June 13, 2013.

Filed
SEP 10 2013
State of Maine
Board of Environmental Protection

Date filed with Board of Environmental Protection _____.

This Order prepared by GREGG WOOD, BUREAU OF LAND & WATER QUALITY

ME0101184 MR 2013 9/6/13/13

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.