



STATE OF MAINE
Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patricia W. Aho
COMMISSIONER

July 7, 2014

Mr. Michael Harris
Ellsworth Water Pollution Control Facility
One City Hall Plaza
Ellsworth, ME. 04605

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0102865
Maine Waste Discharge License (WDL) Application #W009082-6D-C-M
Minor Revision

Dear Mr. Harris:

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/license and its attached conditions carefully. You must follow the conditions in the permit/license 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: Clarissa Trasko, DEP/EMRO
Sandy Mojica, USEPA

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

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

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

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



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

DEPARTMENT ORDER

IN THE MATTER OF

CITY OF ELLSWORTH)	MAINE POLLUTANT DISCHARGE
ELLSWORTH, HANCOCK COUNTY, MAINE)	ELIMINATION SYSTEM PERMIT
PUBLICLY OWNED TREATMENT WORKS)	AND
ME0102865)	WASTE DISCHARGE LICENSE
W009082-6D-C-M)	MINOR REVISION
APPROVAL)	

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, *et. seq.* and *Conditions of Licenses*, 38 M.R.S.A., Section 414-A *et seq.*, and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered a request by the CITY OF ELLSWORTH (City/permittee hereinafter) to modify Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102865/Maine Waste Discharge License #W009082-6D-A-N issued by the Department on November 7, 2012, for a five-year term. With its supportive data, agency review comments, and other related material the Department FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

The City has informed the Department it has completed the screening level whole effluent toxicity (WET) testing, analytical chemistry and priority pollutant testing pursuant to Special Condition A, *Effluent Limitations and Monitoring Requirement*, of the November 7, 2012, permit. Page 5 of the permit contains the following statement:

SURVEILLANCE LEVEL TESTING – Pursuant To Special Condition O, Reopening of Permit For Modifications, of this permit, surveillance level testing and or water quality based effluent limits (if applicable) will be established after the permittee has completed the screening level testing requirements of this permit and the Department has conducted a statistical evaluation in accordance with the statistical approach outlined in the 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.).

MODIFICATION SUMMARY

The Department has conducted a statistical evaluation on the screening level test results and determined there are no WET or chemical specific test results that exceed or have a reasonable potential to exceed applicable ambient water quality thresholds or criteria. As a result, the City qualifies for a reduced surveillance level of testing provided by 06-096 CMR Chapter 530. This minor revision establishes reduced WET and analytical chemistry testing to once every other year. Chapter 530 does require any surveillance level priority pollutant testing.

CONCLUSIONS

BASED on the findings above 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 M.R.S.A., 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, 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. The discharge will be subject to effluent limitations that require application of best practicable treatment.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

ACTION

THEREFORE, the Department APPROVES the above noted request by the CITY OF ELLSWORTH to modify MEPDES permit #ME0102865/WDL #W009082-6D-A-N, dated November 7, 2012, to establish surveillance level WET and analytical chemistry testing 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 #ME0102865/WDL #W009082-6D-A-N, dated November 7, 2012
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit #ME0102865/WDL #W009082-6D-A-N, dated November 7, 2012, not modified by this permitting action remain in effect and enforceable.
4. This minor revision becomes effective upon the date of signature below and expires at midnight five (5) years thereafter. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this minor revision, the terms and conditions of this minor revision 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)]

PLEASE NOTE ATTACHED FACT SHEET FOR GUIDANCE ON APPEAL PROCEDURES

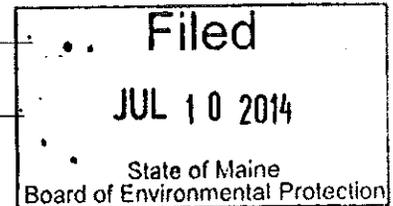
DONE AND DATED AT AUGUSTA, MAINE, THIS 10th DAY OF July, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Keshu
For Patricia W. Aho, Commissioner

Date of initial receipt of application: June 20, 2014

Date of application acceptance: June 20, 2014



Date filed with Board of Environmental Protection _____

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. Beginning the effective date of the permit, the permittee is authorized to discharge secondary treated waste waters from **Outfall #001**, to the Union River. Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations						Minimum	
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow, MGD <i>[50050]</i>	1.65 MGD <i>[03]</i>	---	Report MGD <i>[03]</i>	---	---	---	Continuous <i>[9909]</i>	Recorder <i>[RC]</i>
Biochemical oxygen demand (BOD) ₅ <i>[00310]</i>	413 #/Day <i>[26]</i>	619 #/Day <i>[26]</i>	688 #/Day <i>[26]</i>	30 mg/L <i>[19]</i>	45 mg/L <i>[19]</i>	50 mg/L <i>[19]</i>	3/Week <i>[0307]</i>	Composite <i>[24]</i>
BOD ₅ % Removal ⁽¹⁾ <i>[81010]</i>	---	---	---	85 % <i>[23]</i>	---	---	1/Month <i>[0130]</i>	Calculate <i>[CA]</i>
Total suspended solids (TSS) <i>[00530]</i>	413 #/Day <i>[26]</i>	619 #/Day <i>[26]</i>	688 #/Day <i>[26]</i>	30 mg/L <i>[19]</i>	45 mg/L <i>[19]</i>	50 mg/L <i>[19]</i>	3/Week <i>[0307]</i>	Composite <i>[24]</i>
TSS % Removal ⁽¹⁾ <i>[81011]</i>	---	---	---	85 % <i>[23]</i>	---	---	1/Month <i>[0130]</i>	Calculate <i>[CA]</i>
Settleable Solids <i>[00545]</i>	---	---	---	---	---	0.3 ml/L <i>[25]</i>	1/Day <i>[0101]</i>	Grab <i>[GR]</i>
Fecal Coliform ⁽²⁾ <i>[319616]</i> (May 15 - September 30)	---	---	---	15/100 ml ⁽³⁾ <i>[13]</i>	---	50/100 ml <i>[13]</i>	3/Week <i>[0307]</i>	Grab <i>[GR]</i>
Total Residual Chlorine ⁽⁴⁾ <i>[50060]</i>	---	---	---	0.1 mg/L	---	0.3 mg/L <i>[19]</i>	1/Day <i>[0101]</i>	Grab <i>[GR]</i>
Mercury (Total) ⁽⁵⁾	---	---	---	32.9 ng/L <i>[3M]</i>	---	49.3 ng/L <i>[3M]</i>	1/Year <i>[01YR]</i>	Grab <i>[GR]</i>
pH (Standard Units) <i>[00400]</i>	---	---	---	---	---	6.0-9.0 <i>[12]</i>	1/Day <i>[0101]</i>	Grab <i>[GR]</i>

The italicized numeric values in brackets in the tables above and the tables that follow are not limitations but codes used by Department personnel to code monthly Discharge Monitoring Reports (DMR's).

SPECIAL CONDITIONS**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

SURVEILLANCE LEVEL TESTING – Beginning upon issuance of this minor revision and lasting through 24 months prior to permit expiration (Years 2 & 3 of the term of the permit) and commencing again 12 months prior to permit expiration (Year 5 of the term of the permit), the permittee shall conduct surveillance level testing as follows:

Effluent Characteristic	Discharge Limitations			Monitoring Requirements		
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Whole Effluent Toxicity ^(6a) Acute – NOEL <i>Mysidopsis bahia</i> [TDM&E] (Mysid Shrimp)	---	---	---	Report % [23]	1/2 Years [01/2Y]	Composite [24]
Chronic – NOEL <i>Arbacia punctulata</i> [TBS&A] (Sea urchin)	---	---	---	Report % [23]	1/2 Years [01/2Y]	Composite [24]
Analytical chemistry ^(8a,9) [SI-477]	---	---	---	Report ug/L [28]	1/2 Years [01/2Y]	Composite/Grab [24]

SPECIAL CONDITIONS**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

SCREENING LEVEL TESTING - During the period beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (Year 4 of the term of the permit) and every five years thereafter if a timely request for renewal has been made and the permit continues in force, or is replaced by a permit renewal containing this requirement, the permittee shall be limited and monitored by the permittee as specified below

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Whole Effluent Toxicity ^(6b) Acute – NOEL <i>Mysidopsis bahia</i> [TDM3E] (Mysid Shrimp)	---	---	---	Report % [23]	2/Year [02/YR]	Composite [24]
Chronic – NOEL <i>Arbacia punctulata</i> [TBH5A] (Sea urchin)	---	---	---	Report % [23]	2/Year [02/YR]	Composite [24]
Priority pollutant ^(7,9) [50008]	---	---	---	Report ug/L [28]	1/Year [01/YR]	Composite/Grab [24]
Analytical chemistry ^(8b,9) [51471]	---	---	---	Report ug/L [28]	1/Quarter [01/QR]	Composite/Grab [24]

SPECIAL CONDITIONS

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

Footnotes:

Sampling Location: All effluent monitoring shall be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. Any change in sampling location must be approved by the Department in writing.

Sampling - Sampling and analysis must be conducted in accordance with; a) methods approved in 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 or laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000).

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. See **Attachment A** of this permit for a list of the Department's RLs. 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 permit or in available Department guidance documents.

1. **Percent Removal** – The treatment facility shall maintain a minimum of 85 percent removal of both biochemical oxygen demand and total suspended solids for all flows receiving secondary treatment. The percent removal shall be calculated based on influent and effluent concentration values. The percent removal shall be waived when the monthly average influent concentration is less than 200 mg/L. For instances when this occurs, the facility shall report "NODI-9" for this parameter on the monthly Discharge Monitoring Report (DMR).

SPECIAL CONDITIONS

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

Footnotes:

2. **Fecal coliform bacteria** - Limits are seasonal and apply between May 15th and September 30th inclusively of each year. The Department reserves the right to require year-round disinfection to protect the health, safety and welfare of the public.
3. **Fecal coliform bacteria** – The monthly average limitation is a geometric mean limitation and values shall be calculated and reported as such.
4. **Total Residual Chlorine** – Limitations and monitoring requirements are applicable whenever elemental chlorine or chlorine based compounds are being used to disinfect the discharge. For instances when a facility has not disinfected with chlorine based compounds for an entire reporting period, the facility shall report “NODI-9” for this parameter on the monthly DMR. The permittee shall utilize approved test methods that are capable of bracketing the limitations in this permit.
5. All mercury sampling (1/Year) required by this permit or required to determine compliance with interim limitations established pursuant to Department rule Chapter 519, shall be conducted in accordance with EPA’s “clean sampling techniques” found in EPA Method 1669, Sampling Ambient Water For Trace Metals At EPA Water Quality Criteria Levels. All mercury analysis shall be conducted in accordance with EPA Method 1631E, Determination of Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Fluorescence Spectrometry. See **Attachment B, Effluent Mercury Test Report**, of this permit for the Department’s form for reporting mercury test results.

The limitation in the monthly average column in the table in Special Condition A (1) of this permit is an arithmetic mean of all the mercury tests ever conducted for the facility utilizing sampling Method 1669 and analysis Method 1631E.

6. **Whole Effluent Toxicity (WET) Testing** – Definitive WET testing is a multi-concentration testing event (a minimum of five dilutions bracketing the critical acute and chronic water quality thresholds of 2.5% and 2.0%, respectively), which provides a point estimate of toxicity in terms of No Observed Effect Level, commonly referred to as NOEL or NOEC. A-NOEL is defined as the acute no observed effect level with survival as the end point. C-NOEL is defined as the chronic no observed effect level with survival, reproduction and growth as the end points.
 - a. **Surveillance level testing** - Beginning upon issuance of this minor revision and lasting through 24 months prior to permit expiration (Years 2 & 3 of the term of the permit) and commencing again 12 months prior to permit expiration (Year 5 of the term of the permit) the permittee shall conduct surveillance WET testing frequency of once every other year (1/2 Years). Acute tests shall be conducted on the mysid shrimp (Mysidopsis bahia) and chronic tests shall be conducted on the sea urchin (Arbacia punctulata).

SPECIAL CONDITIONS

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

Footnotes:

- b. **Screening level testing** - During the period beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (Year 4 of the term of the permit) and every five years thereafter if a timely request for renewal has been made and the permit continues in force, or is replaced by a permit renewal containing this requirement. Acute tests shall be conducted on the mysid shrimp (Mysidopsis bahia) and chronic tests shall be conducted on the sea urchin (Arbacia punctulata).

WET test results must be submitted to the Department no later than the next Discharge Monitoring Report (DMR) required by the permit, provided, however, that the permittee may review the toxicity reports for up to 10 business days after their availability before submitting them. The permittee shall evaluate test results being submitted and identify to the Department possible exceedences of the critical acute and chronic water quality thresholds specified above.

Toxicity tests must be conducted by an experienced laboratory approved by the Department. The laboratory must follow procedures as described in the following U.S.E.P.A. methods manuals:

- a. Short Term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Water to Marine and Estuarine Organisms, Third Edition, October 2002, EPA-821-R-02-014.
- b. Methods for Measuring the Acute Toxicity of Effluent and Receiving Waters to Freshwater and Marine Organisms, Fifth Edition, October 2002, EPA-821-R-02-012.

See **Attachment C** of this permit for the Department's WET report form. The permittee is also required to analyze the effluent for the parameters specified in the WET chemistry section, and the parameters specified in the analytical chemistry section of the form in **Attachment A** of this permit each time a WET test is performed.

7. **Priority pollutant testing** – Priority pollutants are those parameters listed in **Attachment A** of this permit.
 - a. **Surveillance level testing** - Department rule Chapter 530, *Surface Water Toxics Control Program*, does not establish routine surveillance level testing priority pollutant testing.

SPECIAL CONDITIONS

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

Footnotes:

- b. **Screening level testing** – Beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (Year 4 of the term of the permit) and every five years thereafter if a timely request for renewal has been made and the permit continues in force, or is replaced by a permit renewal containing this requirement, the permittee shall conduct screening level testing at a frequency of 1/Year.
8. **Analytical chemistry** – Refers to a suite of chemical tests in **Attachment A** of the permit.
 - a. **Surveillance level testing** – Beginning upon issuance of this minor revision and lasting through 24 months prior to permit expiration (Years 2 & 3 of the term of the permit) and commencing again 12 months prior to permit expiration (Year 5 of the term of the permit), the permittee shall conduct surveillance level testing at a frequency of once every other year (1/2 Years).
 - b. **Screening level testing** - Beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (Year 4 of the term of the permit) and every five years thereafter if a timely request for renewal has been made and the permit continues in force, or is replaced by a permit renewal containing this requirement, the permittee shall conduct screening level testing at a frequency of 1/Quarter.
9. **Analytical chemistry and priority pollutant testing** - Shall be conducted on samples collected at the same time as those collected for whole effluent toxicity tests when applicable. Priority pollutant and analytical chemistry testing shall be conducted using methods that permit detection of a pollutant at existing levels in the effluent or that achieve minimum reporting levels of detection as specified by the Department. See **Attachment A** of this permit for a list of the Department's reporting levels (RLs) of detection.

Priority pollutant and analytical chemistry test results must be submitted to the Department no later than the next DMR required by the permit provided, however, that the permittee may review the toxicity reports for up to 10 business days after receiving the test results from the laboratory before submitting them. The permittee shall evaluate test results being submitted and identify to the Department, possible exceedences of the acute, chronic or human health AWQC as established in Department rule Chapter 584. For the purposes of Discharge Monitoring Report (DMR) reporting, enter a "1" for yes, testing done this monitoring period or "NODI-9" monitoring not required this period.



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.
