



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

May 2016

Municipal Review Committee, Inc.
395 State Street
Ellsworth, ME 04605

Fiberight, LLC
1450 Rolling Road
Baltimore, MD 21227

RE: Stormwater Management Law and Natural Resources Protection Act Applications, Hampden
DEP #L-26497-NJ-A-N/L-26497-TG-B-N

Dear Applicants:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit, please contact me directly. I can be reached at (207) 215-7346 or at tiffany.laclair@maine.gov.

Sincerely,

Tiffany LaClair, Project Manager
Bureau of Land Resources

pc: File

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

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

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143



DEPARTMENT ORDER

DRAFT

IN THE MATTER OF

MUNICIPAL REVIEW COMMITTEE, INC.) STORMWATER MANAGEMENT LAW
AND FIBERIGHT, LLC) NATURAL RESOURCES PROTECTION ACT
Hampden, Penobscot County) FRESHWATER WETLAND ALTERATION
ACCESS ROAD AND SOLID) WATER QUALITY CERTIFICATION
WASTE FACILITY)
L-26497-NJ-A-N (approval))
L-26497-TG-B-N (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Section 480-A *et seq.* and Section 420-D, Section 401 of the Federal Water Pollution Control Act, and Chapters 500, 501, and 502 of the Department's Regulations, the Department of Environmental Protection has considered the application of MUNICIPAL REVIEW COMMITTEE, INC. AND FIBERIGHT, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicants propose to construct a stormwater management system for a 30-foot wide by 4,460-linear foot long road and utility corridor to access a proposed solid waste and recycling facility (see Department Order #S-022458-WK-A-N) and other potential development in the future on an approximately 90-acre parcel of land. The proposed access road utilizes a field area and an existing gravel road which will result in 2.40 acres of new impervious area and 1.91 acres of new developed area for the proposed project. The project is as shown on a set of plans the first of which is entitled "MRC ACCESS ROAD," prepared by CES, Inc. and dated February 20, 2015. The project site is located off Coldbrook Road in the Town of Hampden.

The applicants are also seeking approval to impact approximately 105,000 square feet of forested wetlands under the Natural Resources Protection Act (NRPA).

The applicants also submitted a NRPA Permit by Rule Notification Form (PBR #59982) pursuant to Chapter 305 Section 10 Stream Crossing for the access road stream crossing and a NRPA Permit by Rule Notification Form (PBR #59983) pursuant to Chapter 305 Section 19 Activities In, On, or Over Significant Vernal Pool Habitat for the alteration of a significant vernal pool (SVP) habitat to construct the road. Both PBR Notification Forms were accepted by the Department on July 7, 2015.

B. Current Use of the Site: The site of the proposed project is a mix of sports fields, agricultural fields, and forestland with an existing gravel road. There are no structures on

the property. The parcel is identified as Lots 35, 36, 37, 38, 39 on Map 9 and Lot 07 on Map 14 of the Town of Hampden's tax maps.

2. STORMWATER STANDARDS:

For the proposed solid waste facility, the stormwater runoff must meet the standards contained in Chapter 400 Solid Waste Management Rules: General Provisions (see #S-022458-WK-A-N). For the proposed road, the project includes approximately 1.91 acres of new developed area and 2.40 acres of impervious area. It lies within the watersheds of Shaw Brook and Souadabscook Stream. The applicants submitted a stormwater management plan for the proposed road based on the Basic and General Standards contained in Department Rules, Chapter 500. The proposed stormwater management system consists of six tree box filters.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicants submitted an Erosion and Sedimentation Control Plan that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of, the Bureau of Land Resources (BLR).

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor

(2) Inspection and Maintenance: The applicants submitted a maintenance plan that addresses both short and long-term maintenance requirements. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. This plan was reviewed by, and revised in response to the comments of, BLR. The applicants will be responsible for the maintenance of all common facilities including the stormwater management system. The applicants will provide an executed 5-year inspection and maintenance contract for the tree box filters to the BLR prior to construction for review.

(3) Housekeeping: The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

Based on BLR's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(A) provided an inspection and maintenance contract is submitted as described above.

B. General Standards:

The applicants' stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. The proposed access road meets the definition of "a linear portion of a project" in Chapter 500 and the applicants are proposing to reduce runoff volume control to no less than 78.5% of the volume from the impervious area and no less than 98% of the developed area.

The stormwater management system proposed by the applicants was reviewed by, and revised in response to comments from, BLR. After a final review, BLR commented that the proposed stormwater management system is designed in accordance with the Chapter 500 General Standards, and recommended that the applicants' design engineer or other qualified professional oversee the construction of the tree box filters to insure that they are installed in accordance with the details and notes specified on the approved plans. Within 30 days from completion of the filters, the applicants must submit a log of inspection reports to the BLR that contains a list of the items inspected, photographs taken, and other relevant information. As-built plans must be submitted within 30 days of the completion of the project.

BLR stated that the proposed stormwater management system complies with the General Standards contained in Chapter 500(4)(B) provided construction of the filters is overseen and documented as described above.

Based on the stormwater system's design and BLR's review, the Department finds that the applicants have made adequate provision to ensure that the proposed project will meet the Basic and General Standards contained in Chapter 500.

3. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicants submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicants also submitted several photographs of the proposed project. Department staff visited the project site on April 6, 2016.

The proposed project is located within a freshwater wetland which is not a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities.

The Department did not identify any issues involving existing recreational and navigational uses.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

4. SOIL EROSION:

The applicants submitted an erosion control plan for the project that will provide temporary and permanent stabilization of the project site in accordance with the Maine Erosion and Sediment Control Best Management Practices manual. The applicants have proposed to only disturb areas necessary to build the road, utilities, and provide necessary drainage. All disturbed areas, with the exception of the paved roadway will be stabilized with vegetation or riprap. Silt fence or additional control devices if necessary during construction will be installed in all downgradient areas. The applicants proposed the use of permanent mulch with erosion control mix to stabilize disturbed soil. The applicants stated that all open stormwater channels associated with the project have been designed to handle anticipated flows and stone check dams will be utilized as necessary until permanently stabilized.

The Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

5. HABITAT CONSIDERATIONS:

According to the Department's Geographic Information System (GIS) database there are no mapped Essential or Significant Wildlife Habitats located at the site, with the exception of one SVP (Pool #2632). The impacts to the Critical Terrestrial Habitat of the SVP were authorized using the Permit by Rule Notification Form as discussed in Finding 1.

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

6. WATER QUALITY CONSIDERATIONS:

As discussed in Finding 4, the applicants propose to use erosion and sediment control during construction to minimize impacts to water quality from siltation.

The Department does not anticipate that the proposed project will violate any state water quality law, including those governing the classification of the State's waters.

7. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicants propose to directly impact 105,000 square feet of forested wetland to construct the proposed solid waste facility, access road, and utility corridor. The proposed project includes 75,500 square feet of wetland impact associated with the solid waste facility and utility corridor and 29,500 square feet of freshwater wetland impact is associated with the road.

The Wetlands and Waterbodies Protection Rules, 06-096 CMR 310 (effective January 26, 2009), interpret and elaborate on the NRPA criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit that involves a freshwater wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. The applicants submitted an alternative analysis for the proposed project completed by CES, Inc. and dated June 24, 2015. The purpose of the project is to construct a solid waste and recycling facility to handle municipal solid waste from 187 towns and cities. The applicants determined that the no action alternative is not feasible as it does not achieve the stated project purpose. The applicants reviewed options to utilize a number of industrial sites in other towns such as the former Verso Paper Mill in Bucksport, former HoltraChem facility located in Orrington, along with other sites. These alternative locations for the proposed solid waste facility were deemed by the applicants to not be economically viable or would result in increased trucking of the solid waste from the 187 communities which will utilize the facility. Based on this search, the applicants determined that Hampden was the most centrally located town for the proposed solid waste facility and the proposed facility site was the most economically viable.

The applicants determined that in order to meet the waste handling needs of the communities, the facility needs to be approximately 45,713 square feet in size. The applicants looked at several alternative layouts for the facility and chose the one that best met their functional needs while avoiding the wetlands on the parcel to the greatest practical extent. In addition, they situated the facility to maximize the use of the upland areas on this parcel. The proposed location of the road was selected by the applicants because it utilized portions of an existing road on the property, minimized the length of the road, and avoided further wetland impacts. In order to meet the stated project purpose, some impacts to the freshwater wetland are unavoidable.

B. Minimal Alteration. The amount freshwater wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The proposed site location was chosen by the applicants for the solid waste facility and utility corridor to utilize an already-altered parcel with an existing access road. The applicants stated the utility corridor was initially planned to extend to the Coldbrook Road but was

determined to be not feasible because the utility infrastructure along the Coldbrook Road was not adequate to supply the facility with ample water and sewer. The applicants stated that to construct the processing facility, the proposed site location would cause the least amount of impact to freshwater wetlands and significant wildlife habitat versus other proposed locations on the parcel. The applicants have proposed utilizing the existing gravel road to gain access to the proposed facility versus constructing a new road which minimizes the amount of additional wetland impacts. The applicants determined that the proposed project minimizes impacts to the freshwater wetland to the greatest practicable extent while still meeting the project purpose.

C. Compensation. In accordance with Chapter 310 Section 5(C) compensation is required to achieve the goal of no net loss of freshwater wetland functions and values. The primary functions of the wetland areas are wildlife habitat, including deer wintering habitat, and floodflow alteration. To compensate for the loss of these functions, the applicants proposed a compensation plan of preserving an 80-acre parcel with a deed restriction. The preservation area contains SVPs as well as softwood shelter which functions as deer wintering habitat. The Department finds this is acceptable as the functions and values of the preservation area are similar to or greater than the impacted area.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and stated the proposed 80-acre on-site preservation area is appropriate. In order for the preservation area to continue to function as wildlife habitat and deer wintering habitat, MDIFW recommended that the applicants submit a forest management plan, prepared by a licensed professional forester, to the Department for review and approval prior to any forest management activity in the preservation area. The forest management plan must contain provisions which will maintain the wildlife habitat functions and values.

The preservation area will be protected from alteration through the execution of a deed restriction. The applicants submitted a draft deed restriction that meets Department standards. The applicants must execute and record the deed restriction prior to construction or within 60 days of the date of this Order, whichever comes first. The applicants must submit a copy of the recorded deed restriction to the BLR within 60 days of its recording.

Because the compensation proposal exceeds the Department's ratio for preservation, the Department finds that the excess area may be used as a credit for future wetland impacts on-site, at the Department's discretion, and subject to Department standards in effect at the time.

The Department finds that the applicants have avoided and minimized freshwater wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project provided that the applicants record the deed restriction and submit a copy of the recorded

deed restriction to BLR and provided that the applicants submit a forest management plan for the preservation area for review and approval as described above.

8. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Section 420-D, and Chapters 500, 501 and 502 of the Department's Regulations:

- A. The applicants have made adequate provision to ensure that the proposed project will meet the Chapter 500 Basic Standards for: (1) erosion and sediment control; (2) inspection and maintenance; (3) housekeeping; and (4) grading and construction activity provided that an inspection and maintenance contract is submitted as described in Finding 2A.
- B. The applicants have made adequate provision to ensure that the proposed project will meet the Chapter 500 General Standards provided construction of the filters is overseen and documented as described in Finding 2B.

BASED on the above Findings of Fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A *et seq.* and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life provided the deed restriction is recorded and a copy is submitted and a forest management plan is submitted for review and approval as described in Finding 7.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

- F. The proposed activity will not violate any state water quality law including those governing the classification of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity will not unreasonably interfere with the natural supply of movement of sand within or to the sand dune system, or unreasonably increase the erosion hazard to the sand dune system.
- I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of MUNICIPAL REVIEW COMMITTEE, INC. AND FIBERIGHT, LLC to construct a stormwater management system and alter freshwater wetlands for an access road, utility corridor, and solid waste facility as described in Finding 1, in Hampden, Maine, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicants shall take all necessary actions to ensure that their activities or those of their agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. The applicants shall provide an executed 5-year inspection and maintenance contract for the tree box filters to the BLR prior to construction for review.
5. The applicants shall ensure that the design engineer or other qualified professional oversees the construction of the tree box filters to insure that they are installed in accordance with the details and notes specified on the approved plans. Within 30 days from completion of the filters, the applicants shall submit a log of inspection reports that contains a list of the items inspected, photographs taken, and other relevant information to the BLR for review.
6. As-built plans shall be submitted within 30 days of the completion of the project.
7. The applicants shall submit a forest management plan, prepared by a licensed professional forester, to the Department for review and approval prior to any forest

management activity in the preservation area. The plan shall contain provisions which will maintain the wildlife habitat functions and values.

8. Prior to construction or within 60 days of the date of this Order, whichever comes first, the applicants shall record the deed restriction for the preservation parcel. The applicants shall submit a copy of the recorded deed restriction to the BLR within 60 days of its recording.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS _____ DAY OF _____, 2016.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: _____
For: Paul Mercer, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

TL/L26497ANBN/ATS#79409, 79410

STORMWATER STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL

- (1) Approval of variations from plans. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents must be reviewed and approved by the department prior to implementation. Any variation undertaken without approval of the department is in violation of 38 M.R.S.A. §420-D(8) and is subject to penalties under 38 M.R.S.A. §349.
- (2) Compliance with all terms and conditions of approval. The applicant shall submit all reports and information requested by the department demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- (3) Advertising. Advertising relating to matters included in this application may not refer to this approval unless it notes that the approval has been granted **WITH CONDITIONS**, and indicates where copies of those conditions may be obtained.
- (4) Transfer of project. Unless otherwise provided in this approval, the applicant may not sell, lease, assign, or otherwise transfer the project or any portion thereof without written approval by the department where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval may only be granted if the applicant or transferee demonstrates to the department that the transferee agrees to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant. Approval of a transfer of the permit must be applied for no later than two weeks after any transfer of property subject to the license.
- (5) Time frame for approvals. If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the department for a new approval. The applicant may not begin construction or operation of the project until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- (6) Certification. Contracts must specify that "all work is to comply with the conditions of the Stormwater Permit." Work done by a contractor or subcontractor pursuant to this approval may not begin before the contractor and any subcontractors have been shown a copy of this approval with the conditions by the developer, and the owner and each contractor and subcontractor has certified, on a form provided by the department, that the approval and conditions have been received and read, and that the work will be carried out in accordance with the approval and conditions. Completed certification forms must be forwarded to the department.

- (7) Maintenance. The components of the stormwater management system must be adequately maintained to ensure that the system operates as designed, and as approved by the department.
- (8) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.
 - (a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
 - (b) All aspects of the stormwater control system have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the facilities.
 - (c) The erosion and stormwater maintenance plan for the site is being implemented as written, or modifications to the plan have been submitted to and approved by the department, and the maintenance log is being maintained.
- (9) Severability. The invalidity or unenforceability of any provision, or part thereof, of this permit shall not affect the remainder of the provision or any other provisions. This permit shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

November 16, 2005 (revised December 27, 2011)



Natural Resources Protection Act (NRPA) Standard Conditions

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCES PROTECTION ACT, 38 M.R.S.A. § 480-A ET SEQ., UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.



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.
