



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
ACTING COMMISSIONER

VIA ELECTRONIC MAIL

June 21, 2011

Kathleen Hutchins, Town Clerk  
Town of Canton  
PO Box 669  
Canton, ME 04221-0669

RE: Rescission of Water Level Order for Anasagunticook Lake

Dear Kathleen:

Attached is a copy of the DEP Order rescinding the September 13, 1978 water level order for Anasagunticook Lake, effective on the date that the existing dam structures are removed as approved by Natural Resources Protection Act permit L-25258-L6-A-N, issued by the DEP on June 9, 2011.

Please note that any person aggrieved by the DEP's decision in this matter may appeal that decision to the Board of Environmental Protection or to Maine Superior Court following the procedures set forth in the applicable State law and DEP rules. These procedures are described in the DEP Information Sheet entitled "Appealing a Commissioner's Licensing Decision," which is enclosed with the Order.

Sincerely,

Dana Paul Murch  
Dams & Hydropower Supervisor

cc: Malcolm Ray, Dam Advisory Committee  
Judy Hamilton, Dam Advisory Committee  
Lianne Bedard, Town of Hartford  
Biff Atwater, Anasagunticook Lake Association  
Debi Hutchins, Canton Water District  
Robert Turnbull, Canton Mill Pond Association

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826  
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BANGOR  
106 HOGAN ROAD, SUITE 6  
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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, ME 04333

DEPARTMENT ORDER

**IN THE MATTER OF**

TOWN OF CANTON	)	REGULATION OF WATER LEVELS
Canton	)	AND MINIMUM FLOWS
Oxford County	)	
ANASAGUNTICOOK LAKE	)	
L-14996-36-B-M (Approval)	)	RESCISSION OF WATER LEVEL ORDER

Pursuant to the provisions of 38 MRSA Sections 817-843, the Department of Environmental Protection has considered the water levels established for Anasagunticook Lake by the Soil and Water Conservation Commission, and other related materials on file, and FINDS THE FOLLOWING FACTS:

1. WATER LEVEL ORDER

By Order dated September 13, 1978, issued pursuant to the provisions of 12 MRSA Section 304, the Soil and Water Conservation Commission established water levels for Anasagunticook Lake, located in the Towns of Canton and Hartford, Oxford County, Maine.

The September 13, 1978 order specified how the existing dam at the outlet of Anasagunticook Lake was to be operated to maintain seasonally-varied water levels in the lake.

2. TRANSFER OF ADMINISTRATIVE AUTHORITY

Public Law 1983, Chapter 417 (effective September 23, 1983) enacted the Maine Dam Inspection, Registration and Abandonment Act, 38 MRSA Sections 815-842, to be administered by the Department of Environmental Protection. Public Law 1983, Chapter 417 also repealed the existing statute dealing with neglected dams (12 MRSA Sections 301-308), under which the Soil and Water Conservation Commission or the Commissioner of Agriculture had authority to hold hearings and issue water level orders for certain dams.

The Maine Dam Inspection, Registration and Abandonment Act, at 38 MRSA Section 842, provided that all orders of the State Soil and Water Conservation Commission or the Commissioner of Agriculture, Food and Rural Resources issued under former Title 12 Section 304 were to continue in effect and be enforced by the DEP until they expire or were rescinded or amended.

The DEP subsequently assigned project number L-14996-36-A-N to the outstanding September 13, 1978 water level order for Anasagunticook Lake.

### 3. DAM SAFETY ORDERS

On December 4, 2006, acting pursuant to the provisions of 37-B MRSA Sections 1111-1130, the Commissioner of the Department of Defense, Veterans and Emergency Management (DVEM) issued a dam safety order finding that the integrity, structural stability, function and operation of the Anasagunticook Lake Dam constituted a threat to public safety and directing that the owner, lessee or person in control of the Anasagunticook Lake Dam undertake specified remedial actions to restore the integrity and structural stability of the dam and to assure that the dam functions and operates in a manner that will protect public safety.

On May 8, 2007, acting pursuant to the provisions of 37-B MRSA Sections 1111-1130, the Commissioner of the Department of DVEM issued an emergency supplemental dam safety order finding that, until and unless the remedial actions required in the December 4, 2006 dam safety order are undertaken to restore the structural integrity of the dam and provide for safe and effective operation of the spillway gates, the closing of the spillway gates and refilling of Anasagunticook Lake in accordance with the terms of the outstanding water level order may further compromise the structural integrity of the dam, significantly increasing the risk that the dam will breach and flood areas below with little or no advance warning. In his May 8, 2007 Order, the Commissioner of DVEM also found that the situation at the Anasagunticook Lake Dam presents a potential but real and impending danger to life, limb or property because of flooding or potential and imminent flooding pursuant to 37-B MRSA Section 1114(2).<sup>1</sup> On the basis of these findings, the Commissioner of SDVEM ordered that, until the remedial actions required in the December 4, 2006 dam safety order are undertaken, the owner, lessee or other person in control of the Anasagunticook Lake Dam shall leave the overflow sluice gates at the dam open and clear of the water.

### 4. PERMIT FOR REPLACEMENT DAM

By Order L-25258-L6-A-N issued June 9, 2011, the DEP approved the application of the Town of Canton<sup>2</sup> for a permit under the Natural Resources Protection Act to construct a new, permanent concrete gravity dam to control water levels in and from flows Anasagunticook Lake and to remove the steel superstructure, gates, and concrete gate piers from the existing dam, thus eliminating the ability of the existing dam to control water levels or flows. The approved work is scheduled to be undertaken this year.

### 5. DISCUSSION

The September 13, 1978 water level order is enforceable against the owner, lessee or person in control of the existing dam that controls the water levels of Anasagunticook Lake. With the

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<sup>1</sup> 37-B- MRSA Section 1114(2) provides that, when an emergency situation arises, the Commissioner of DVEM shall warn the public of the emergency and, notwithstanding any other provision of law, shall take all actions necessary to protect life and property, which may include, among other things, lowering the water level by releasing water from the reservoir.

<sup>2</sup> The Town of Canton took possession of the existing dam and related property by eminent domain in 2008.

removal of the impounding structures at the existing dam, this water level order will no longer be enforceable. Therefore, the 1978 water level order should be rescinded.<sup>3</sup>

THEREFORE, the Department hereby RESCINDS the September 13, 1978 order of the Soil and Water Conservation Commission establishing water levels for Anasagunticook Lake, located in the Towns of Canton and Hartford, Oxford County, Maine, effective on the date that the existing dam structures are removed as approved by DEP Order L-25258-L6-A-N.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

This Order prepared by Dana Murch, Bureau of Land and Water Quality.

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<sup>3</sup> Pursuant to 38 MRS Section 840, the DEP has the authority, upon its own motion or at the request of the dam owner, the Commissioner of Inland Fisheries and Wildlife or the Commissioner of Marine Resources, or upon petition from the lesser of at least 25% or 50 of the littoral or riparian proprietors or from a water utility having the right to withdraw water from Anasagunticook Lake, to conduct an adjudicatory hearing for the purpose of establishing a water level regime for the lake that would be enforceable against the owner of the new replacement dam.



# DEP INFORMATION SHEET

## Appealing a Commissioner's Licensing Decision

**Dated:** May 2004

**Contact:** (207) 287-2811

### SUMMARY

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

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### **LEGAL REFERENCES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **ADDITIONAL INFORMATION**

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

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**Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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