



STATE OF MAINE
Department of Environmental Protection

PAUL R. LEPAGE
GOVERNOR

JAMES P. BROOKS
ACTING COMMISSIONER

June, 2011

Town of Canton
PO Box 669
Canton, ME 04221

RE: Natural Resources Protection Act Application, Canton, #L-25258-L6-A-N

Dear Town of Canton:

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 or thoughts on how the Department processed this application please get in touch with me directly. I can be reached at 446-1619 or at jared.woolston@maine.gov.

Yours sincerely,

A handwritten signature in cursive script that reads "Jared Woolston".

Jared Woolston, Project Manager
Division of Land Resource Regulation
Bureau of Land & Water Quality

pc: File

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

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BANGOR ME 04401
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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) NATURAL RESOURCES PROTECTION
Canton, Oxford County) STREAM ALTERATION
ANASAGUNTICOOK DAM) WATER QUALITY CERTIFICATION
L-25258-L6-A-N (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A *et seq.* and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of the TOWN OF CANTON with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: The outlet of Lake Anasagunticook, Whitney Brook, is developed with an existing dam structure, the Tannery Dam. The Tannery Dam was originally constructed with an intake structure for use by a previously existing mill. The Tannery Dam has been modified over the years. In addition to the Tannery Dam, there are other existing permanent structures, including cement bridge piers, located in the stream bed 150 feet upstream from this section of Whitney Brook. The bridge over the cement piers no longer exists at this location; however, a wooden snowmobile bridge exists downstream from the existing Tannery Dam structure. There are various permanent structures located adjacent to Whitney Brook including a building and a concrete slab.

The Maine Emergency Management Agency (MEMA) issued a Dam Safety Order on December 4, 2006 ordering the former owner of the existing Tannery Dam to open the dam's flood gates. A second MEMA Dam Safety Order was issued on May 8, 2007 after the owner had not complied with the previous order. The second MEMA order instructed the former owner to open the Tannery Dam flood gates until an acceptable remediation plan could be developed. The flood gates have been open since that time, subsequently lowering the water level in the lake. The applicant took ownership of the property by eminent domain in 2008. In an effort to retain water in Lake Anasagunticook, the applicant constructed an unlicensed dam, consisting of rock fill material and wood, utilizing the existing cement bridge piers 150 feet upstream from the existing Tannery Dam. The unlicensed dam was constructed in 2009 and remains in place today. The applicant did not first obtain the necessary permits for the dam from the Department. Subsequently, the Department issued a Notice of Violation (NOV) #15865 dated July 24, 2009, for the unlicensed placement of fill into a protected natural resource as defined by the Natural Resources Protection Act (NRPA) 38 M.R.S.A. § 480-B (8). The Department currently has an open enforcement case and pending consent agreement for the above actions (CTS #15865).

B. Summary: The applicant proposes to construct a new, permanent concrete gravity dam, called the Anasagunticook Dam, within Whitney Brook. The proposed Anasagunticook Dam structure will be

located 120 feet upstream from the existing Tannery Dam structure and approximately 30 feet downstream from existing bridge abutments and unlicensed dam located in the stream channel. The applicant proposes to place new riprap material along 30 linear feet of both embankments of Whitney Brook (total of 60 linear feet) between the proposed reinforced concrete dam abutments and the existing cement bridge abutments. The proposed Anasagunticook Dam structure will span Whitney Brook from the west to the east embankment, at a dimension of approximately 11 feet wide by 67 feet long. The applicant proposes to armor the channel of Whitney Brook, downstream of the proposed dam, to protect the stream channel from scour. The proposed rock armor will be 10 feet wide by 68 feet long, and will consist of heavy rock riprap.

The applicant proposes to construct the new cement gravity dam structure in two phases. The first phase includes areas on the east embankment of Whitney Brook and will extend into two thirds of the stream channel. Phase two includes areas on the west embankment of Whitney Brook and extending one third into the stream channel. The proposed Anasagunticook Dam structure includes two 20-foot long sheet pile cutoff walls located in upland areas adjacent to two new 15-foot wide by 20-foot long reinforced concrete abutments on opposite sides of Whitney Brook. Within Whitney Brook, the applicant proposes to construct 41 feet of hinged flashboards separated by three new hand operated gates (one of which will be reused from the existing Tannery Dam structure), two 15-foot long by three-foot to nine-foot wide grated walkways with handrails that will span the width of the stream and will land on both the east and west abutments. A third, 37-foot long, three-foot to nine-foot wide walkway will extend from the east abutment to access the proposed hand operated gates. Each walkway will be constructed over the footprint of the proposed dam structure.

The applicant also proposes to remove the entire steel superstructure, concrete piers and the opening of the original turbine pit associated with the existing Tannery dam. The existing concrete sill and abutments located on either side of Tannery Dam will be repaired in place to ensure stability of the adjacent embankments. The applicant proposes to construct a new 37-foot long training wall, extending from the existing Tannery Dam along the eastern embankment, into Whitney Brook. A section of the existing Tannery Dam located to the east of the new training wall will be removed to below grade and stabilized with clean fill and riprap.

Additionally, the applicant proposes to remove an existing building located on the west side of Whitney Brook, an existing concrete slab located on the east side of Whitney Brook, and an existing cement pier located approximately 40 feet upstream from the Tannery Dam in the center of the channel. Disturbed areas associated with the removed structures adjacent to Whitney Brook will be permanently stabilized by adding gravel, loam and seed and will match the surrounding grade. The applicant proposes to remove the unlicensed fill material and any accumulated sediments directly upstream from the unlicensed dam, not including the previously existing cement bridge piers. The applicant will randomly place clean cobble stones within the disturbed areas of the stream channel and allow the area to naturalize.

The proposed activities are shown on a set of revised plans, the first entitled, "Existing Site Plan" prepared by Kleinschmidt and dated March 11, 2011. The project site is located on Main Street in the Town of Canton.

- C. Current Use of the Site: The project site contains a temporary dam structure and associated unlicensed rock fill material, the Tannery Dam and various cement structures within Whitney Brook. The adjacent upland area of the project site is developed with a parking lot, a building and a concrete slab. The site is

referenced in the Town of Canton's tax maps as Lot #37 and #41 on Map #U2. The deed for the proposed project site can be seen at the Oxford County Registry in Book #2418 on Page #111.

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

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant 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 applicant also submitted several photographs of the proposed project site. Department staff visited the project site on numerous occasions, the most recent being on April 15, 2011.

The proposed project is located in and adjacent to Whitney Brook, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. In the area of the proposed project, the west embankment of Whitney Brook is stabilized with existing riprap. Areas within the riprap are vegetated with both wetland and herbaceous plants. The east embankment does not have riprap and is vegetated with both wetland and herbaceous plants. Areas within and adjacent to the resource are developed with various cement piers and a combination of steel and cement dam structure.

The proposed project was evaluated using the Department's Visual Impact Assessment Matrix and was found to have an acceptable potential visual impact rating. Based on the information submitted in the application, the visual impact rating and the site visit, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

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.

3. SOIL EROSION:

The applicant submitted an acceptable erosion and sedimentation control plan which implements the basic stabilization standards of Maine's Erosion and Sedimentation Control Law, 38 M.R.S.A. Section 420-C.

The applicant proposes to construct the proposed dam during dry conditions. The applicant submitted a dewatering plan, which includes provisions for pumping water into an adjacent pit or basin. The dewatering plan will be executed to control any seepage and leakage of water in the construction area. Further, a turbidity curtain will be placed downstream during construction of the proposed dam and it will remain in place during the removal of the temporary dam. Any stockpiled material will be staged in the upland area and will be temporarily stabilized with a perimeter siltation barrier.

The applicant further stated that during construction of the proposed cement gravity dam structure, all work will be performed from the existing riprap located downstream of the unlicensed dam. Additionally, work to construct the abutments will be performed from the shore.

Any sediment that has settled on the upstream side of the unlicensed dam structure will be removed and stored outside of the resource. Some of that material may be reused as backfill during construction. Remaining material will be permanently stabilized in the upland.

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.

4. HABITAT CONSIDERATIONS:

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and stated that there are no Essential or Significant Wildlife Habitats at the project site. Additionally, a fisheries biologist from MDIFW visited the project site and commented that there are no fisheries of concern in the project area.

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.

5. WATER QUALITY CONSIDERATIONS:

The applicant will utilize the unlicensed dam structure for the initial phases of construction to control flows from Lake Anasagunticook and Whitney Brook. During construction, the applicant will pump silty water out of Whitney Brook into a sediment basin and utilize a silt curtain to control siltation. The Division of Environmental Assessment (DEA) and the Department's Dams and Hydropower Unit both reviewed the proposed project and recommended the following flow provisions.

A minimum water release equal to inflow must be maintained from the dam at all times except:

- 1) Following drawdown of the lake for flood control purposes, re-fill in April-May must provide for minimum water release of 20 cubic feet per second (cfs);
- 2) During unusual situations such as refill after emergency dam repair, flashboard failure and replacement, or similar situations, outflow may be reduced as needed but no less than 3 cfs;
- 3) Whenever the lake level has fallen to 2 feet below the normal full pond level, outflow may be reduced to no less than 1 cfs.

These minimum release standards may be modified or replaced if the Department establishes water levels for Anasagunticook Lake pursuant to 38 M.R.S.A. §840.

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 provided that the applicant maintains the minimum water flows as described above.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The east abutment will extend approximately 6-8 feet below the normal high water line. Two new sections of riprap will be constructed between the new dam abutment and the old bridge abutment, extending approximately 2-6 feet below the normal high water line on the west side of Whitney Brook and approximately two feet below the normal high water line on the east side of Whitney Brook.

In order to construct the proposed project, the applicant will directly impact 1,750 square feet of Whitney Brook. The removal of existing structures associated with the Tannery Dam will restore 100 square feet of stream bottom. Additionally, the removal of the unlicensed dam structure and associated rock fill material will restore approximately 1,600 square feet of Whitney Brook. The applicant states that some excavated material will be reused as beneficial fill during construction. Additionally, some clean demolition debris such as concrete and rock will be stored on site, outside of the resource.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require that the applicant meet the following standards:

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application for an Individual, Natural Resources Protection Act permit must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. The applicant submitted an alternative analysis for the proposed project completed by Kleinschmidt. The alternatives analysis considered several design alternatives. The applicant stated that the no-action alternative would not allow corrective action for the pending NOV nor the Dam Safety Order from MEMA. Therefore, the no-action alternative will not meet the project goal of replacing Tannery Dam. The applicant also considered maintaining the existing Tannery Dam. However, the repairs to Tannery Dam that would be required to bring that structure into compliance with the MEMA Emergency Dam Safety Order would require significant excavation in and adjacent to the resource and significant, expensive modifications to the dam. Therefore, it is not the applicant's preferred option.

In an effort to avoid impacts to Whitney Brook, the applicant proposes to install a new dam upstream of the existing Tannery Dam and remove the unlicensed fill material associated with the temporary dam. The proposed project will alleviate ongoing stresses on Tannery Dam associated with water retention and will restore areas of Whitney Brook by naturalizing the area where portions of the existing gravity dam structure will be removed.

B. Minimal Alteration. The amount of waterbody and freshwater wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant minimized impacts by redesigning the project to remove previously proposed riprap material on the entire west embankment. Instead of installing riprap along the entire west embankment, the applicant will preserve existing wetland and herbaceous vegetation and allow natural vegetation to thrive. The applicant stated that any wood debris and other solid waste will be transported off site and disposed of at a licensed solid waste facility.

C. Compensation. In accordance with Chapter 310 Section 5(C)(7), the Department may waive the requirement for a functional assessment and compensation if it already possess information necessary to determine the functions and values of the affected resource and it determines that the proposed impact will be insignificant to the resource. Department staff visited the project site on numerous occasions. The Department of Inland Fisheries and Wildlife (MDIFW) stated that the removal of previously existing structures including cement piers and portions of the Tannery Dam within the stream channel will allow the area to naturalize and will not have an adverse impact on fisheries. For these reasons, the Department waives the requirement for a functions and values assessment and compensation

The Department finds that the applicant has avoided and minimized impacts to Whitney Brook to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

7. 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. 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
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters provided that minimum flows from the dam are regulated as described in Finding 5.
- F. The proposed activity will not violate any state water quality law including those governing the classifications 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 is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of the Town of Canton to construct a replacement dam and remove existing rock and structures currently located within and adjacent to Whitney Brook as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

- 1. Standard Conditions of Approval, a copy attached.
- 2. The applicant shall take all necessary measures to ensure that their activities or those of their agents do not result in measurable erosion of soil on the site during the construction 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. A minimum water release equal to inflow shall be maintained from the dam at all times except: (1) Following drawdown of the lake for flood control purposes, re-fill in April-May must provide for minimum water release of 20 cfs; (2) During unusual situations such as refill after emergency dam repair, flashboard failure and replacement, or similar situations, outflow may be reduced as needed but no less than 3 cfs; (3) Whenever the lake level has fallen to 2 feet below the normal full pond level, outflow may be reduced to no less than 1 cfs. These minimum release standards may be modified or replaced if the Department establishes water levels for Anasagunticook Lake pursuant to 38 M.R.S.A. §840.

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.

DEPARTMENT OF ENVIRONMENTAL PROTECTION



This permit is digitally signed by Teco Brown on behalf of Acting Commissioner James P. Brooks. It is digitally signed pursuant to 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date.
2011.06.09 12:47:13 -04'00'

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

jw/12525816an/ats73102



Natural Resource Protection Act (NRPA) Standard Conditions

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

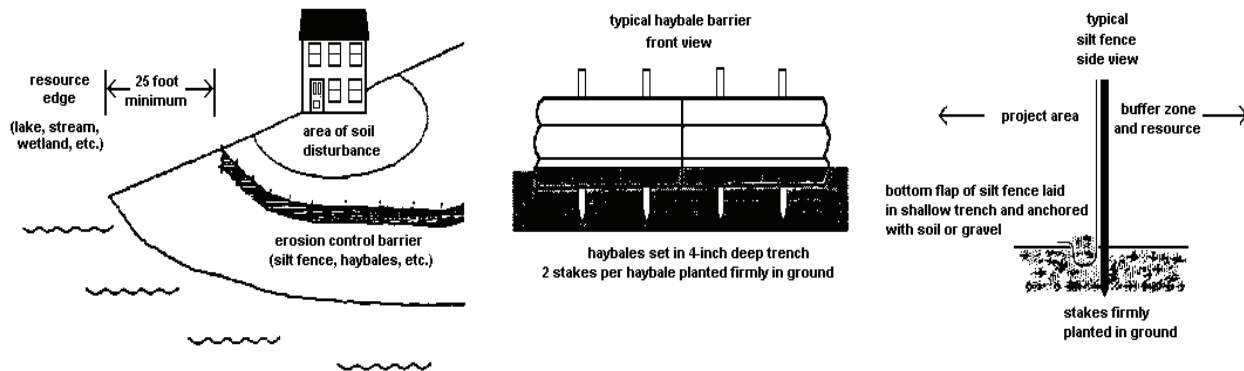
- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject 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. Initiation of Activity Within Two Years. If construction or operation of the activity is not begun within two 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 shall state the reasons why the applicant will be able to begin the activity within two years form the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.
- F. Reexamination After Five Years. If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.
- G. 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.
- H. 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.
- D. 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.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Erosion Control for Homeowners

Before Construction

1. If you have hired a contractor, make sure you discuss your permit-by-rule with them. Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is, and where it is located. Most people can identify the edge of a lake or river. However, the edges of wetlands are often not so obvious. Your contractor may be the person actually pushing dirt around, but you are both responsible for complying with the permit-by-rule.
2. Call around to find where erosion control materials are available. Chances are your contractor has these materials already on hand. You probably will need silt fence, hay bales, wooden stakes, grass seed (or conservation mix), and perhaps filter fabric. Places to check for these items include farm & feed supply stores, garden & lawn suppliers, and landscaping companies. It is not always easy to find hay or straw during late winter and early spring. It also may be more expensive during those times of year. Plan ahead -- buy a supply early and keep it under a tarp.
3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the soil-disturbance activity.
4. If a contractor is installing the erosion control barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level or elevation across the land slope, whenever possible. This keeps stormwater from flowing to the lowest point along the barrier where it can build up and overflow or destroy the barrier.



D

uring Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops hitting the bare ground that makes the soil begin to move downslope with the runoff water, and cause erosion. More than 90% of erosion is prevented by keeping the soil covered.
2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. You or your contractor then need to figure out what can be done to prevent more soil from getting past the barrier.
3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.



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.

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.
