



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

June 2014

S.D. Warren
89 Cumberland Street
P.O. Box 5000
Westbrook, Maine 04098

RE: Water Quality Certification Application, Westbrook, #L-19717-33-G-M

Dear Mr. Stemm:

Please find enclosed a signed copy of your Department of Environmental Protection amended Water Quality Certification. 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 by telephone at (207) 446-2642 or by email at Kathy.Howatt@maine.gov.

Yours sincerely,

Kathy Davis Howatt, Hydropower Coordinator
Division of Land Resource Regulation
Bureau of Land & Water Quality

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



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

S.D. WARREN COMPANY) MAINE WATER QUALITY PROGRAM
Westbrook, Cumberland County) FEDERAL CLEAN WATER ACT
SACCARAPPA PROJECT) WATER QUALITY CERTIFICATION
L-19717-33-G-M (approval)) MINOR REVISION

Pursuant to the provisions of the *Water Classification Program*, 38 M.R.S.A. §§ 464–470, and Section 401 of the Federal Water Pollution Control Act (a.k.a. Clean Water Act), the Department of Environmental Protection has considered the application of S.D. WARREN COMPANY with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. HISTORY

A. Description

In Department Order #L-19717-33-E-N, dated April 30, 2003, the Department approved the continuation of operations, with conditions, at the Saccarappa Project as part of the Presumpscot River Hydro Projects. The projects that comprise the Presumpscot River Hydro Projects were originally licensed by the Federal Energy Regulatory Commission (FERC) in separate actions between October 31, 1979 and September 1, 1981; the Saccarappa Project was originally licensed by FERC on October 31, 1979. The Saccarappa Project was subsequently relicensed by FERC on October 2, 2003 as part of the Presumpscot River Hydro Projects. Conditions placed on operation of the Saccarappa Project in Department Order #L-19717-33-E-N include, in pertinent part: operation in run-of river mode with minimum bypass flows; maintenance drawdown avoidance in spring; upstream eel passage installation and operation; specific anadromous fish passage, both upstream and downstream, contingent on anadromous fish passage at Cumberland Falls Dam; and recreational facility enhancement plan development and implementation. The development is located on Dana Street in the Town of Westbrook.

B. Summary

Special Condition #5A. of Department Order #L-19717-33-E-N pertinent to the Saccarappa Project reads as follows:

“UPSTREAM AND DOWNSTREAM ANADROMOUS FISH PASSAGE

SACCARAPPA PROJECT

A. The applicant shall install and operate the following upstream fish passage facilities at the project:

Phase I. A denil “fish ladder,” or other passage facilities of comparable efficiency in passing the target species, designed to pass at least 18,000 American shad, 109,000 blueback herring,

and 273 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after passage is available at the downstream Cumberland Mills Dam.

Phase II. Convert or replace the Phase I passage facilities with a fish lift, or other passage facilities of comparable efficiency in passing the target species, designed to pass up to 58,000 American shad, 353,000 blueback herring, and 426 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after (1) notification from the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and the Atlantic Salmon Commission of initiation of Phase II restoration above Gambo Dam and (2) the capacity of the installed Phase I passage facilities has been reached for any of the target species.”

The applicant proposes to modify Condition #5A. for the Saccarappa Project as follows:

“UPSTREAM AND DOWNSTREAM ANADROMOUS FISH PASSAGE

SACCARAPPA PROJECT

A. The applicant shall install and operate the following upstream fish passage facilities at the project:

Phase I. A denil “fish ladder,” or other passage facilities of comparable efficiency in passing the target species, designed to pass at least 18,000 American shad, 109,000 blueback herring, and 273 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 4 years after passage is available at the downstream Cumberland Mills Dam.

Phase II. Convert or replace the Phase I passage facilities with a fish lift, or other passage facilities of comparable efficiency in passing the target species, designed to pass up to 58,000 American shad, 353,000 blueback herring, and 426 Atlantic salmon annually. These facilities, which shall include a counting, trapping and sorting facility, must be operational no later than 2 years after (1) notification from the Department of Marine Resources and the Department of Inland Fisheries and Wildlife of initiation of Phase II restoration above Gambo Dam and (2) the capacity of the installed Phase I passage facilities has been reached for any of the target species.”

The applicant does not propose to modify Condition #5. for Mallison Falls Project, Little Falls Project, Gambo Project, or Dundee Project, all of which comprise the Presumpscot River Hydro Projects and are addressed in a common water quality certification. The applicant does not propose to modify Condition# 5B., 5C., 5D., 5E., 5F., or 5G. for Saccarappa Project, Mallison Falls Project, Little Falls Project, Gambo Project, or Dundee Project.

2. FINDINGS:

- A. The proposed change is a minor change and will not significantly affect any issues identified during previous Department reviews of the project site. The minor revision request to extend the deadline for upstream fish passage at Saccarappa Dam is supported by the *Agreement to Request Extension of Fish Passage Deadline and Stay of License Surrender Application*, dated March 14, 2014, among S.D. Warren Company, the U.S. Department of the Interior and the U.S. Fish and Wildlife Service, the Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, the City of Westbrook, Friends of the Presumpscot River, and Conservation Law Foundation.

- B. The proposed change will not impact water quality or water classification at the project.

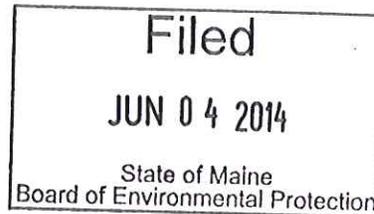
Based on its review of the application, the Department finds the requested minor revision to be in accordance with all relevant Departmental standards. All other findings of fact, conclusions and conditions remain as approved in Department Order #L-19717-33-E-N, and subsequent orders.

THEREFORE, the Department APPROVES the application of S.D. WARREN to modify Condition #5A. of Department Order #L-19717-33-E-N for the Saccarappa Hydro Project.

DONE AND DATED IN AUGUSTA, MAINE, THIS 3RD DAY OF June, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhn
For: Patricia W. Aho, Commissioner



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

KH/L19717GM/ATS#77564

STANDARD CONDITIONS OF APPROVAL TO BE ATTACHED TO HYDROPOWER PERMITS

1. Limits of Approval. This approval is limited to and includes the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. All variances from the plans and proposals contained in said documents are subject to the review and approval of the Board or Commissioner prior to implementation.
2. Noncompliance. Should the project be found, at any time, not to be in compliance with any of the conditions of this approval, or should the permittee construct or operate this project in any way other than 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.
3. Compliance with all Applicable Laws. The permittee shall secure and appropriately comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation.
4. Inspection and Compliance. Authorized representatives of the Board, Commission or the Attorney General shall be granted access to the premises of the permittee at any reasonable time for the purpose of inspecting the construction or operation of the project and assuring compliance by the permittee with the conditions of this approval.
5. Initiation and Completion of Construction. If construction is not commenced within 3 years and completed within 7 years from the date of issuance of this permit, this approval shall lapse, unless a request for an extension of these deadlines has been approved by the Board or Commission.
6. Construction Schedule. Prior to construction, the permittee shall submit a final construction schedule for the project to the Commissioner or Director.
7. Approval Included in Contract Bids. A copy of this approval must be included in or attached to contract bid specifications for the project.
8. Approval Shown to Contractor. Work done by a contractor pursuant to this approval shall not begin before a copy of this approval has been shown to the contractor by the permittee.
9. Notification of Project Operation. The permittee shall notify the Commissioner or director of the commencement of commercial operation of the project within 10 days prior to such commencement.
10. Assignment or Transfer of Approval. This approval shall expire upon the assignment or transfer of the property covered by this approval unless written consent to transfer this approval is obtained from the board or Commission. To obtain approval of transfer, the permittee shall notify the Board or Commission 30 days prior to assignment or transfer of

property which is subject to this approval Pending Board or Commission determination on the application for a transfer or assignment of ownership of this approval, the person(s) to whom such property is assigned or transferred shall abide by all of the terms and conditions of this approval. To obtain the Board's or Commission's approval of transfer, the proposed assignee or transferee must demonstrate the financial capability and technical ability to (1) comply with all terms and conditions of this approval and (2) satisfy all other applicable statutory criteria. A "transfer" is defined as the sale or lease of property which is the subject of this approval or the sale of 50 percent or more of the stock of or interest in a corporation or a change in a general partner of a partnership which owns the property subject to this approval.



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.
