

LICENSE REVIEW ROUTING SHEET

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PROJECT MANAGER: Megan Bishop

ORDER TYPE:

			X	DRAFT
	ORIGINAL ORDER (N)		CONDITION COMPLIANCE (C)	3PI
	MINOR REVISION (M)	X	TRANSFER (T)	SEND TO REGISTRY
	AMENDMENT (A)		AFTER-THE-FACT	CORRECTED ORDER

APPLICANT NAME:	Miller Hydro Group		
APPLICANT ADDRESS:	31 Canal Street, Lisbon Falls, ME 04252	FAX#:	
E-MAIL ADDRESS: (License will be e-mailed to this address when decision is made)			
PROJECT LOCATION:	Lisbon and Durham	PROJECT #	L-10930-34-R-T
APPLICATION TYPE:(Use Site/NRPA or NRPA/SW)	MWDCA	ATS#:	78839
ISSUES/COMMENTS:			
ACCEPTANCE DATE:	February 6, 2015		
AGENT NAME:	Katherine Joyce		
AGENT ADDRESS:	Bernstein Shur Counselors at Law 100 Middle Street PO Box 9729 Portland, Maine 04104-5029	FAX#	
E-MAIL ADDRESS: (License will be e-mailed to this address when decision is made)	kjoyce@bernsteinshur.com		

Final copies of Site orders go automatically to the **Registry, Town & IFW**. List others to receive a copy here:

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ABSTRACT (follow sample format below, then delete sample)

- Miller Hydro Group (Lisbon and Durham) (approval):* In Department Order #L-10930-34-R-T, the Department approved the transfer of license L-010930-35-A-N and all subsequent Orders for the Worumbo Hydroelectric Project to Miller Hydro Group. The project is located on the Androscoggin River, in the Towns of Lisbon and Durham.

REVIEWED BY:

ENFORCEMENT STAFF (if enforcement involved):	Signature	OK Date:
REGIONAL SUPER:	Signature	OK Date:
Ret'd to PROJ. MGR:	Ret'd Date:	OK Date:
LIC / COMPLIANCE Coordinator:	Signature	OK Date:
DIVISION DIRECTOR SIGNOFF:	Signature	OK Date:



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

March, 2015

Miller Hydro Group
31 Canal Street
Lisbon Falls, Maine 04252
ATTN: Mr. Scott Hall

RE: Maine Waterway Development and Conservation Act Transfer Application, Lisbon and Durham, DEP #L-10930-34-R-T

Dear Mr. Hall:

Please find enclosed a signed copy of your Department of Environmental Protection Maine Waterway Development and Conservation Act and Water Quality Certification 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 feel free to contact me by calling (207) 215-4525 or by email at: megan.bishop@maine.gov.

Sincerely,

Megan Bishop, Project Manager
DEP, 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



DEPARTMENT ORDER

IN THE MATTER OF

MILLER HYDRO GROUP) MAINE WATERWAY DEVELOPMENT AND
Lisbon and Durham, Androscoggin County) CONSERVATION ACT AND
WORUMBO HYDRO PROJECT) WATER QUALITY CERTIFICATION
L-10930-34-R-T (approval)) TRANSFER

Pursuant to the provisions of Maine's *Water Classification Program*, 38 M.R.S.A §§ 464–470, the *Maine Waterway Development and Conservation Act*, 38 M.R.S.A §§ 630–637, the Department's *Administrative Regulations For Hydropower Projects*, 06-096 CMR 450 (effective September 1, 1987) and *Rule Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (effective August 25, 2013), and Section 401 of the Federal Water Pollution Control Act, the Maine Department of Environmental Protection ("Department") has considered the application of MILLER HYDRO GROUP ("applicant") with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. In Department Order #L-10930-35-A-N, dated June 12, 1985, the Department approved the applicant's *Maine Waterway Development and Conservation Act* ("MWDCA") license and Water Quality Certification application for the redevelopment and expanded operation of the Worumbo Hydroelectric Project ("Worumbo Project") (FERC No. 3428). The Department approved several modifications to the Worumbo Project subsequent to issuance of the original license and Water Quality Certification. The Worumbo Project is located on the Androscoggin River, in the Towns of Lisbon and Durham, Maine.
2. Pursuant to 06-096 CMR 450(9)(C)(10), licenses issued under the MWDCA and associated Water Quality Certifications expire upon the assignment or transfer of the property covered by the approval unless written consent is obtained. 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.
3. The applicant, a Maine corporation, submitted an application to the Department for the transfer of Department licenses, as defined in 06-096 CMR 2(1)(L), any modifications, condition compliance orders, all other approvals, and all applications pending in the name of Miller Hydro Group relating to the Worumbo Project due to a sale of all issued and outstanding shares of stock in Miller Hydro Group. The Department accepted the license transfer application as complete for processing on February 6, 2015.
4. The applicant submitted the following information in support of this transfer request:
 - A. Transfer Application: A license transfer application, dated February 4, 2015, and signed by Mark L. Isaacson, former Vice President of Miller Hydro Group, and Scott Hall, current Vice President of Miller Hydro Group, was submitted to the Department for the transfer of the MWDCA licenses and associated Water Quality Certification.

- B. Title, Right, or Interest: The applicant submitted a copy of a Stock Purchase Agreement, dated January 21, 2015. The Stock Purchase Agreement evidences a contract for the sale of all issued and outstanding shares in Miller Hydro Group from The Regular QTIP Trust, a Division of the Worumbo Trust created October 10, 2008, The Regular EGST EE Trust, a Division of the Worumbo Trust created October 10, 2008, The Miller Hydro Group Trust FBO Ilona I. Bell and Family, and The Miller Hydro Group Trust FBO John M. Isaacson and Family (“Sellers”) to Brown Bear II, LLC (“Buyer”).
- C. Financial Capacity: The applicant provided an Income Statement for the eleven months ending November 29, 2014 which reflects that year-to-date total revenues exceeded year-to-date operating expenses indicating sufficient funds to operate and maintain the Worumbo Project in compliance with Department permits, certifications, licenses, and regulations.
- D. Technical Ability: The applicant has owned the Worumbo Project for nearly 29 years, and successfully operated it for 26 years. Scott Hall, current Vice President of the Worumbo Project, has greater than 28 years of experience working in the energy and hydroelectric industry. Mr. Hall will be responsible for the management of the Worumbo Project at the conclusion of the transaction.
- E. Certificate of Good Standing: A certificate of good standing was issued on February 2, 2015 by the Maine Secretary of State for Miller Hydro Group.

BASED on the above findings of fact, the Department CONCLUDES that MILLER HYDRO GROUP has provided adequate evidence of title, right, or interest, financial capacity, and technical ability to comply with all conditions of Department Order #L-10930-35-A-N, and any modifications, condition compliance orders, and all other approvals in the name of MILLER HYDRO GROUP relating to the Worumbo Project, and to satisfy all other applicable statutory and regulatory criteria.

THEREFORE, the Department APPROVES the above-noted application of MILLER HYDRO GROUP to transfer all Department licenses, any modifications, condition compliance orders, all other approvals, and all applications pending in the name of MILLER HYDRO GROUP concerning the Worumbo Project to MILLER HYDRO GROUP, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards:

1. The Standard Conditions of Approval, a copy attached.
2. The transfer of the MWDCA Permit and Water Quality Certification for the Worumbo Project shall become effective as of the date of the closing of the sale of the stock purchase in Miller Hydro Group provided that Miller Hydro Group provides the Department with documentation evidencing the transfer of all issued and outstanding shares in Miller Hydro Group from Seller to Buyer. Miller Hydro Group shall provide documentary evidence of the closing within 10 days following the closing.

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. All other Findings of Fact, Conclusions and Conditions remain as approved in Department licensing Order #L-10930-35-A-N, and subsequent licensing Orders, and are incorporated herein.

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 _____, 2015.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: _____
For: Patricia W. Aho, Commissioner

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

MB/L10930RT/ATS#78839

Maine Waterways Development and Conservation Act
Standard Conditions of Approval

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 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 Commissioner 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 Commissioner.
6. **Construction Schedule.** Prior to construction, the permittee shall submit a final construction schedule for the project to the Commissioner.
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 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 Commissioner. To obtain approval of transfer, the permittee shall notify the Commissioner 30 days prior to assignment or transfer of

property which is subject to this approval. Pending Commissioner 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 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.

DRAFT



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.
