



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

September 2015

Bucksport Mill, LLC
ATTN: Jeff Mcglin
2 River Road
Bucksport, ME 04416

RE: Site Location of Development Act Application, Bucksport, DEP #L-07713-20-AF-A

Dear Mr. Mcglin:

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 (207) 446-9026 or at james.r.beyer@maine.gov

Sincerely,

James R. Beyer, Project Manager
Bureau of Land Resources

pc: File

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

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

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

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



DEPARTMENT ORDER

IN THE MATTER OF

BUCKSPORT MILL, LLC) SITE LOCATION OF DEVELOPMENT ACT
Bucksport, Hancock County)
MILL DEMOLITION) AMENDMENT
L-07713-20-AF-A (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. §§ 481 et seq., the Department of Environmental Protection has considered the application of BUCKSPORT MILL, LLC 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: In Department Order #L-1415-26-A-X dated February 12, 1975, the Department approved the expansion of the St. Regis Mill complex. Subsequent to the original Order, multiple modifications and amendments have been approved. The development is located on the River Road in the Town of Bucksport.

B. Summary: The applicant proposes to demolish portions of the former mill. The applicant is proposing to remove structures not associated with the “power island”. Other structures will be removed down to the lowest concrete slab elevation and foundation holes will be filled with crushed concrete to create a walkable surface. The buildings housing the former paper machines and the warehouse contain internal trench drains which convey stormwater from much of the developed area on the mill site to a single discharge point. The applicant proposes to fill these trench drains with a combination of crushed gravel and a bark mulch filter media. The bark mulch filters will be installed approximately every 100 feet along the length of the trench drains. The project is shown on a set of plans the first of which is entitled “Mill Removal Phasing Plan” prepared by CES, Inc. and dated July 1, 2015. The project site is located on the west side of River Road in the Town of Bucksport.

The applicant also filed a Permit by Rule Notification Form (PBR #60017) under the Natural Resources Protection Act for work adjacent to a protected natural resource, which was accepted by the Department on July 13, 2015.

C. Current Use of Site: The site is currently developed with a paper mill which is no longer in production.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$4,450,000. Bucksport Mill, LLC is a wholly owned subsidiary of AIM Development USA, LLC, which is a subsidiary of American Iron & Metal Company, Inc. The applicant submitted a letter from TD Bank, dated June 30, 2015, indicating that American Iron & Metal Company, Inc. has credit facilities in the mid-nine figures and that their current obligations are drawn at the low-nine figures. The applicant has committed the funds from this account for the project.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards.

3. TECHNICAL ABILITY:

The applicant provided resume information for key persons involved with the project and a list of projects successfully conducted by the applicant. The applicant also retained the services of CES, Inc., a professional engineering firm, to assist in the design and engineering of the project.

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

4. NOISE:

Chapter 375 Section 10, Control of Noise, of Department rules sets limits for the control of environmental noise that apply to this project. The proposed development is located in an area zoned as industrial by the Town of Bucksport. For protected locations in this area, the hourly sound level limit is 70 dBA between 7:00 a.m. and 7:00 p.m., and 60 dBA between 7:00 p.m. and 7:00 a.m. The hourly sound level limit at the property line of the development for this proposal is 75 dBA at any time of the day. The applicant is proposing to limit the hours of operation to between 7:00 a.m. and 7:00 p.m.

The applicant submitted information identifying the various pieces of equipment that will be used during the demolition project and the corresponding distance from the property line the equipment needs to be operated in order to meet the sound level limits at the property line and the closest protected location. According to the applicant's submission, the loudest piece of equipment that will be operated during the demolition will be the rock crusher. In order to meet the sound level limits it must be operated at least 213 feet from the property line and 378 feet from the nearest protected location. The second loudest piece of equipment is an excavator which requires a setback of 76 feet from a property line and 134 feet from a protected location in order to meet the sound level limits. The applicant is proposing to limit the areas where the rock crusher will be operated to at least 215 feet from a property line and 400 feet from the nearest protected location. The applicant is proposing to limit the use of the excavator and other equipment to at least 80 feet from the property line and 150 feet from the nearest protected location.

The Department finds that the applicant has made adequate provision for the control of excessive environmental noise from the proposed project.

5. HISTORIC SITES AND UNUSUAL NATURAL AREAS:

The Maine Historic Preservation Commission reviewed the proposed project and stated that it will have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

The Maine Natural Areas Program database does not contain any records documenting the existence of rare or unique botanical features on the project site.

The Department finds that the proposed development will not have an adverse effect on the preservation of any historic sites or unusual natural areas either on or near the development site.

6. SOILS:

The applicant submitted information on soils found at the project site. This report was prepared by a registered professional engineer and reviewed by staff from the Division of Environmental Assessment (DEA) of the Bureau of Water Quality (BWQ). The applicant is not proposing any blasting, however, DEA commented that if blasting is necessary the applicant should note that Department standards specified in 38 M.R.S.A. § 490-Z(14)(L), as required by 38 M.R.S.A. § 484, sub-§9, must be met for use of explosives on Site Location of Development projects. The applicant proposes to use a rock crusher on site. The applicant must insure that the crusher is licensed by the Department's Bureau of Air Quality and is being operated in accordance with that license.

The Department finds that, based on this report and DEA's review, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices provided the rock crusher is licensed by the Department's Bureau of Air Quality and operated in accordance with that license.

7. STORMWATER MANAGEMENT:

The applicant does not propose an increase in the developed area or the impervious area of the project. It lies within the watershed of Penobscot River. The applicant submitted a stormwater management plan based on the Basic, General, and Flooding standards contained in Department Rules, Chapter 500. The proposed stormwater management system consists of utilizing the existing trench drains which will be filled with porous material and bark mulch filter media. The bark mulch filter media will be placed in the trench drains approximately every one hundred feet.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by the Bureau of Land Resources (BLR).

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

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. This plan was reviewed by BLR. The applicant will be responsible for the maintenance of all common facilities including the stormwater management system

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

Based on BLR's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(A).

B. General Standards:

The applicant is not proposing a formal stormwater management plan for the demolition of structures. The applicant is not required to meet the Department's General Standards because there is no increase in impervious area or developed area. The applicant is proposing to install bark mulch filter media in the existing trench drains which will provide treatment of the stormwater runoff from the project.

The stormwater management system proposed by the applicant was reviewed by BLR. BLR commented that the proposed stormwater management system is designed in accordance with the General Standards contained in Chapter 500(4)(B). As-built plans must be submitted to the BLR for review within 30 days of the completion of the project.

Based on BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500 General Standards contained in Chapter 500(4)(B).

C. Flooding Standard:

The applicant is proposing to utilize a stormwater management system based on estimates of pre- and post-development stormwater runoff flows obtained by using Hydrocad, a stormwater modeling software that utilizes the methodologies outlined in Technical Releases #55 and #20, U.S.D.A., Soil Conservation Service and detains stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. The post-development peak flow from the site will not exceed the pre-development peak flow from the site and the peak flow of the receiving water will not be increased as a result of stormwater runoff from the development site.

BLR commented that the proposed system is designed in accordance with the Flooding Standard contained in Chapter 500(4)(E).

Based on the system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Flooding Standard contained in Chapter 500(4)(E) for peak flow from the project site, and channel limits and runoff areas.

8. GROUNDWATER:

The project site is not located over a mapped sand and gravel aquifer. The proposed project does not propose any withdrawal from, or discharge to, the groundwater. DEA reviewed the proposed project and commented that it should be explicitly stated that any spill or evidence of a spill (such as stained soils, free product, strong petroleum odors in soil or waste, etc.) should be reported to the Department within two hours of the time it occurs or is first observed. It is understood that little or no excavation will be occurring during the proposed demolition, and that the possibility of discovering a historic spill during the project proposed in this application is therefore relatively low. The applicant has agreed to this requirement.

The Department finds that the proposed project will not have an unreasonable adverse effect on ground water quality.

9. WATER SUPPLY:

The potable water for the mill has historically been supplied by the Town of Bucksport. As a result of the demolition of the mill, there will be a reduction in the amount of water used by facility.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

10. WASTEWATER DISPOSAL:

Process wastewater from the former mill was treated in an onsite wastewater treatment plant. The applicant proposes to demolish this treatment plant as part of this project. The remaining sources of wastewater include non-contact cooling water from the power island and leachate from the landfill. As a result of this project, an amended Waste Discharge License is required. The Division of Water Quality Management (DWQM) of the BWQ issued a Preliminary Draft Permit on August 7, 2015 for the changes to the discharge.

Based on DWQM's comments, the Department finds that the applicant has made adequate provision for wastewater disposal at a facility that has the capacity to ensure satisfactory treatment provided that prior to demolition, the applicant receives a final approved Waste Discharge License.

11. SOLID WASTE:

The proposed project will generate approximately 14,000 cubic yards of construction and demolition debris. All construction and demolition debris generated will be disposed of at either the Crossroads Landfill in Norridgewock or the Juniper Ridge Landfill in Old Town, both of which are currently in substantial compliance with the Maine Solid Waste Management Rules.

The proposed project will generate approximately 18,000 tons of metal which will be recycled either at the company's recycling facility in Montreal, Canada or shipped directly to other mills.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

12. AIR QUALITY:

The Bureau of Air Quality has stated that the applicant is in the process of applying for an air emissions license and it is likely to be obtained.

13. ALL OTHER:

All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-1415-26-A-X, and subsequent Orders as they pertain to the former paper mill.

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. §§ 481 et seq.:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil provided that the rock crusher is licensed by the Department's Bureau of Air Quality and operated in accordance with that license as described in Finding 6.
- D. The proposed development meets the standards for stormwater management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C provided that the applicant submits as-built plans in accordance with Finding 7 above.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services treatment provided the applicant receives a final approved Waste Discharge License as described in Finding 10.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of BUCKSPORT MILL, LLC to demolish portions of the Bucksport paper mill as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

- 4. As-built plans shall be submitted to the BLR for review within 30 days of the completion of the project.
- 5. Prior to demolition, the applicant shall receive a final approved Waste Discharge License.
- 6. Any rock crusher used shall be licensed by the Department's Bureau of Air Quality and operated in accordance with that license.
- 7. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-1415-26-A-X, and subsequent Orders as they pertain to the former paper mill, 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 2ND DAY OF SEPTEMBER, 2015.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: *Patricia W. Aho*
 For: Patricia W. Aho, Commissioner

<p>Filed</p> <p>SEP 03 2015</p> <p>State of Maine Board of Environmental Protection</p>

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

JB/L07713AFA/ATS#79450

Department of Environmental Protection
SITE LOCATION OF DEVELOPMENT (SITE)
STANDARD CONDITIONS

- A. Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.
- 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. Compliance with All Terms and Conditions of Approval.** The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all preconstruction terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- D. Advertising.** Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- E. Transfer of Development.** Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
- F. Time frame for approvals.** If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- G. Approval Included in Contract Bids.** A copy of this approval must be included in or attached to all contract bid specifications for the development.
- H. Approval Shown to Contractors.** Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.

(2/81)/Revised December 27, 2011

STORMWATER STANDARD CONDITIONS

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

Standard conditions of approval. Unless otherwise specifically stated in the approval, a department approval is subject to the following standard conditions pursuant to Chapter 500 Stormwater Management Law.

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

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

November 16, 2005 (revised December 27, 2011)



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.
