



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS  
GOVERNOR

MELANIE LOYZIM  
ACTING COMMISSIONER

November 4, 2020

Mr. Charles Kraske  
Waste Water Treatment Area Manager  
Pixelle Specialty Solutions  
Androscoggin Mill  
300 Riley Road  
Jay, ME 04239

***RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit ME0001937  
Maine Waste Discharge License (WDL) Application W0006230-5N-R-M  
Proposed Draft MEPDES Permit Modification***

Dear Mr. Kraske:

Attached is a **proposed draft** MEPDES Permit/ Maine WDL modification which the Department proposes to issue for your facility as a final document after opportunity for your review and comment. By transmittal of this letter, you are provided with an opportunity to comment on the proposed draft permit modification and its special and standard conditions. If it contains errors or does not accurately reflect present or proposed conditions, please respond to this Department so that changes can be considered.

By copy of this letter, the Department is requesting comments on the proposed draft permit modification from various state and federal agencies and from any other parties who have notified the Department of their interest in this matter.

The comment period begins on November 4, 2020 and ends on December 4, 2020. All comments on the proposed draft permit modification must be received in the Department of Environmental Protection office on or before the close of business Friday, December 4, 2020. Failure to submit comments in a timely fashion will result in the proposed draft/license permit modification document being issued as drafted.

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

Comments in writing should be submitted to my attention at the following address:

Maine Department of Environmental Protection  
Bureau of Water Quality  
Division of Water Quality Management  
17 State House Station  
Augusta, ME 04333-0017

If you have any questions regarding the matter, please feel free to contact me.

Sincerely,



Breanne Blaisdell  
Bureau of Water Quality  
[Breanne.Blaisdell@maine.gov](mailto:Breanne.Blaisdell@maine.gov)  
ph: 207-287-1298

Enc.

cc:

Cindy Dionne, DEP  
Jim Crowley, DEP  
Pam Parker, DEP  
Barry Mower, DEP  
Lori Mitchell, DEP  
Anna Harris, USFWS  
IFW Environmental Review  
Department of Marine Resources  
Dan Kusnierz, PTG  
Sean Mahoney, CLF  
Shelley Puleo, EPA  
Damien Houlihan, EPA  
Alex Rosenberg, EPA  
Ellen Weitzler, EPA  
Marelyn Vega, EPA  
Richard Carvalho, EPA



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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

PIXELLE ANDROSCOGGIN LLC	)	MAINE POLLUTANT DISCHARGE
JAY, FRANKLIN COUNTY, MAINE	)	ELIMINATION SYSTEM PERMIT
PULP & PAPER MANUFACTURING FACILITY	)	AND
ME0001937	)	WASTE DISCHARGE LICENSE
W000623-5N-R-M	)	<b>MODIFICATION</b>
<b>APPROVAL</b>	)	

In compliance with the applicable provisions of *Pollution Control*, 38 M.R.S. §§ 411 – 424-B, *Water Classification Program*, 38 M.R.S. §§ 464 - 470 and *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, and applicable rules of the Department of Environmental Protection (Department), the Department is initiating a modification of combination Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0001937/Maine Waste Discharge License (WDL) #W000623-5N-P-R (permit hereinafter) last issued by the Department to the VERSO CORPORATION on December 4, 2017, for a five-year term. On January 21, 2020, a minor revision was finalized with the Department to correct the legal corporate name on the permit to “Verso Androscoggin LLC.” With its supportive data, agency review comments, and other related materials on file, the Department FINDS THE FOLLOWING FACTS:

**MODIFICATION REQUESTED**

On April 15, 2020, the permittee experienced a catastrophic explosion of two onsite pulp digesters. Due to these unforeseen events, the permittee has requested several modifications to their 2017 permit.

1. The permittee has requested that the Department change the legal name of the owner of record to Pixelle Androscoggin LLC. The permittee has submitted supporting title, right and interest documentation “Statement of Change of Foreign Qualification” document dated February 28, 2020.
2. The permittee has requested modification of the seasonal sampling frequency for biochemical oxygen demand (BOD) from 5/Week, June 1-September 30, to 4/Week year-round, due to an extended elimination of pulp production.

In the December 20, 2012 permit, after statistical analysis, the monitoring frequency for BOD was reduced from 1/Day to 5/Week, June-September, and 1/Day to 4/Week, October-May. The equation used for statistical analysis was (Long Term Average)/(Effluent Limitation). An extended elimination of pulp production will result in a significant reduction of BOD loading in the effluent, therefore, the LTA/Effluent Limitation ratio value will be smaller and a reduction in monitoring frequency is justified based on the statistical analysis utilized in 2012.

**MODIFICATION REQUESTED (cont'd)**

In the 2017 permit, a request by the permittee for further reduction was denied based on Department guidance that monitoring reductions may only occur once for a facility and that the Department considered the monitoring frequency to be necessary and appropriate to determine compliance. Given the reduction of BOD loading in the effluent due to extended production changes, however, the Department has reconsidered the request from the permittee.

In light of the recent changes, BOD and TSS limitations were also reevaluated. Previous permitting action utilized values found in the Environmental Protection Agencies Effluent Limitation Guidelines, 40 CFR 430, Sub-part B-*BPT effluent limitations for bleached kraft facilities where pulp and fine papers are produced*. With the change to purchased pulp, limitations utilizing values found in Sub-part K-*BPT effluent limitations for non-integrated mills where lightweight papers are produced from purchased pulp*, were calculated.

3. The permittee has requested the replacement of the Heat Gain/Heat Loss (HGHL) model with the Predicted River Temperature Increase (PRTI) calculation. In the January 27, 2010 permit modification, the PRTI calculation was replaced by the HGHL model and the term CRTI, (calculated river temperature increase) because the Department's PRTI formula calculated the maximum potential change in temperature and it did not consider or take into account the fact that some or essentially all of the heat added by the facility could be lost to the atmosphere during the night. The night-time heat loss is significant during the latter half of the summer season when the air temperature at night is cooler than the river water temperature. The HGHL model developed by the permittee and approved by the Department factors in night-time heat loss and more accurately calculates the river temperature increase. The HGHL model, however, requires the utilization of probes in the river. The PRTI does not, which eliminates probe maintenance requirements.
4. The permittee has requested that the numeric limitations for COD be suspended and lbs./day reporting be maintained. This request is consistent with the requirements of the December 4, 2017 permit. Special Condition A, Footnote 9, Chemical Oxygen Demand (COD) states,

“All reported COD values are to be expressed as the soluble fraction of COD in the final effluent.

- (a) Numeric limitations are only applicable when unbleached kraft production is greater than or equal to ( $\geq$ ) 667 air dried tons/day.
- (b) The permittee shall report values associated with sampling conducted at times when the unbleached kraft pulp production is less than ( $<$ ) 667 air dried tons/day.”

As unbleached pulp production is currently  $<$  667 air dried tons/day at the facility, numeric limitations are not applicable. The sampling frequency prescribed by the 2017 permit and reporting values, are still required.

5. Lastly, the permittee has requested that the limitations for Adsorbable Organic Halogens (AOX), Color, and parameters associated with the Bleach Plants (Outfall 100A and Outfall 200A) be suspended. These parameters are all associated with the historic process of pulp production, which is not currently operational at the facility.

## **MODIFICATION GRANTED**

1. The Department grants the permittee's request to change the name on MEPDES permit #ME0001937/WDL #W000623-5N-P-R from Verso Androscoggin LLC to Pixelle Androscoggin LLC.
2. The Department grants the permittee's request for reduced BOD monitoring due to an extended significant reduction of loading due to the loss of pulping operations.
3. The Department has modified the TSS monthly average and daily maximum limitations to reflect the change from manufacturing pulp to utilizing purchased pulp as they are more stringent.
4. The Department grants the permittee's request for the use of PRTI methodology to report river temperature given the lower flow and temperature of current processes.
5. The Department grants the permittee's request for a suspension of COD kilogram limits as there are no bleach or pulping operations occurring on site.
6. The Department grants the permittee's request for a suspension of the limitations for AOX, color and the parameters associated with the two Bleach Plants (Outfall 100A and 200A) as there are no bleach or pulping operations occurring on site.

The Department is hereby modifying the 2017 MEPDES permit with the attached tables and special conditions for those limits associated with the facility while bleaching and pulping processes are not occurring. The Department is requiring that the permittee notify the Department compliance staff at least 60 days prior to any startup of bleaching or pulp production processes.

## **CONCLUSIONS**

Subject to the terms and conditions contained herein, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 M.R.S. Section 464(4)(F), will be met, in that:
  - a. Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - b. Where high quality waters of the State constitute an outstanding natural resource, that water quality will be maintained and protected;

**CONCLUSIONS (cont'd)**

- c. The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - d. Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
  - e. Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

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**ACTION**

THEREFORE, the Department APPROVES the above noted requests of Pixelle Androscoggin LLC to modify MEPDES permit #ME0001937/WDL #W000623-5N-P-R, issued by the Department on December 4, 2017, for a five-year term. The discharges are subject to the attached conditions and all applicable standards and regulations including:

1. “*Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*,” revised July 1, 2002, copy attached to MEPDES permit #ME0001937/WDL #W000623-5N-P-R, issued by the Department on December 4, 2017.
2. All terms and conditions of MEPDES permit, #ME0001937/WDL #W000623-5N-P-R, issued by the Department on December 4, 2017, not modified by this permitting action remain in effect and enforceable.
3. The attached Special Conditions, including effluent limitations and monitoring requirements.
4. This permit modification becomes effective upon the date of signature below and expires on December 4, 2022, concurrent with MEPDES permit #ME0001937/WDL #W000623-5N-P-R, issued by the Department on December 4, 2017. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of this permit and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act, 5 M.R.S. § 10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (amended June 9, 2018)*].

DONE AND DATED AT AUGUSTA, MAINE, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_

For Melanie Loyzim, Acting Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application 8/12/2020.

Date of application acceptance 8/26/2020.

Date filed with Board of Environmental Protection \_\_\_\_\_.

This Order prepared by Breanne Blaisdell, BUREAU OF WATER QUALITY.

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

**OUTFALL #001A & #001B<sup>(1)</sup>** – Secondary treated wastewaters (while bleaching and pulp production activities are suspended)

Effluent Characteristics	Discharge Limitations						Minimum Monitoring Requirements	
	Monthly Average	Weekly Average <sup>(2)</sup>	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]	Report MGD [03]	---	51 MGD [03]	---	---	---	Continuous [99/99]	Recorder [RC]
BOD <sub>5</sub> (June 1-September 30)	4,400 lbs./day	6,400 lbs./day	8,000 lbs./day	---	---	---	4/Week	Composite
(October 1-May 31) [00310]	7,400 lbs./day [26]	11,100 lbs./day [26]	13,875 lbs./day [26]	---	---	---	4/Week [04/07]	Composite [24]
TSS (June 1 - September 30)	8,480 lbs./day	---	17,280 lbs./day	---	---	---	4/Week [04/07]	Composite [24]
	10,000 lbs./day <sup>(3)</sup>	---	---	---	---	---	1/Day [01/01]	Calculate [CA]
(October 1- May 31)	25,000 lbs./day	---	44,600 lbs./day	---	---	---	4/Week [04/07]	Composite [24]
[00530]	14,738 lbs./day <sup>(4)</sup> [26]	---	---	---	---	---	1/Year [01/YR]	Calculate [CA]
Oxygen Injection [34048] (June 1 – September 30)	---	---	24,279 lbs./day <sup>(5a)</sup> 34,490 lbs./day <sup>(5b)</sup>	---	---	---	1/Day [01/01]	Record [RC]
Total Phosphorus [34048] (June 1 – September 30)	130 lbs./day [26]	---	Report lbs./day [26]	Report mg/L <sup>(6)</sup> [19]	---	Report mg/L <sup>(6)</sup> [19]	3/Week [03/07]	Composite [24]
Ortho-phosphorus [70507] (June 1 – September 30)	28 lbs./day [26]	---	Report lbs./day [26]	Report mg/L <sup>(6)</sup> [19]	---	Report mg/L <sup>(6)</sup> [19]	2/Week [02/07]	Composite [24]
Temperature [00011] (June 1 - September 30)	---	---	---	---	---	100°F [15]	1/Day[01/01]	Measure [MS]
(October 1- May 31)	---	---	---	---	---	Report °F [15]	1/Week[01/07]	Measure [MS]
River Temperature Increase [03772] (June 1 - September 30)	---	---	---	---	0.5°F <sup>(7a)</sup> [15]	---	1/Day [01/01]	Calculate [CA]
River Temperature Increase [03772] (June 1 - September 30)	---	---	---	---	---	0.5°F <sup>(7b)</sup> [15]	1/Day [01/01]	Calculate [CA]
Adsorbable Organic Halogen <sup>(8)</sup> (AOX) [03594]	---	---	---	---	---	---	Suspended	---

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

**OUTFALL #001A & #001B<sup>(1)</sup>** – Secondary treated wastewaters (while bleaching and pulp production activities are suspended)

Effluent Characteristics	Discharge Limitations						Minimum Monitoring Requirements	
	Monthly Average	Weekly Average <sup>(2)</sup>	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
Chemical Oxygen Demand (COD) <sup>(9a)</sup> [81017]	---	---	---	---	---	---	Suspended	---
Chemical Oxygen Demand (COD) <sup>(9b)</sup> [81017]	---	---	---	---	---	---	Suspended	---
pH (Std. Unit) <sup>(10)</sup> [00400]	---	---	---	---	5.0 – 9.0 SU [12]	---	1/Day [01/01]	Grab [2GR]
Color <sup>(11)</sup> [51201]	---	---	---	---	---	---	Suspended	---
Mercury (Total) <sup>(12)</sup> [71900]	---	---	---	15.8 ng/L [3M]	---	23.7 ng/L [3M]	1/Year [1/YR]	Grab [GR]

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**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

**FOOTNOTES**

**7. River Temperature Increase**

- (a) **Temperature Increase** (Increase of the ambient receiving water temperature) – This is a weekly rolling average limitation when the receiving water temperature is  $\geq 66^{\circ}\text{F}$  and  $< 73^{\circ}\text{F}$ . See Special Condition J, *River Temperature Increase*, of this permit for the equation to calculate the predicted river temperature increase (PRTI).
  
- (b) **Temperature Increase** (Increase of the ambient receiving water temperature) - This is a daily maximum limitation when the receiving water temperature is  $\geq 73^{\circ}\text{F}$ .

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## SPECIAL CONDITIONS

### J. RIVER TEMPERATURE INCREASE

When the ambient receiving water temperature is  $\geq 66^{\circ}\text{F}$  and  $< 73^{\circ}\text{F}$ , the permittee is limited to a thermal discharge that will not increase the ambient receiving water temperature by more than  $0.5^{\circ}\text{F}$  based on a weekly (7 days) rolling average calculation. When the ambient receiving water temperature is  $\geq 73^{\circ}\text{F}$ , the permittee is limited to a thermal discharge that will not increase the ambient receiving water temperature by more than  $0.5^{\circ}\text{F}$  based on a daily calculation. For each operating day during the applicable limitation period, the permittee must calculate the Predicted River Temperature Increase (PRTI) associated with the thermal discharge from Outfall #001 according to the following equation:

$$\text{PRTI } (^{\circ}\text{F}) = \frac{Q_e (T_e - T_r)}{Q_r}$$

where,

$Q_r$  = Ambient receiving water flow in gpd or MGD (must be like units as  $Q_e$ )

$Q_e$  = Effluent flow in gpd or MGD (must be like units as  $Q_r$ )

$T_e$  = Effluent temperature in  $^{\circ}\text{F}$

$T_r$  = Ambient receiving water (mill intake) temperature in  $^{\circ}\text{F}$

Receiving water flow measurements ( $Q_r$ ) shall be obtained from USGS Rumford Station #01054500 located in the Town of Rumford with an adjustment factor of 1.19 to account for the drainage area between Rumford and Jay. The permittee shall adhere to mathematical protocols for significant figures and rounding the calculated PRTI values. All PRTI values reported to the Department on the monthly Discharge Monitoring Reports (DMRs) for compliance must be rounded to the nearest  $0.1^{\circ}\text{F}$ .

The temperature and flow of the effluent used in the calculations must be measured at the effluent collection box (after secondary clarification). The temperature of the river must be measured immediately upstream of the effluent diffuser. Temperature measurements near the process water intake at Riley Dam may be used in lieu of data obtained immediately upstream of the diffuser recognizing that if river water temperature at Riley Dam are used in the calculations, the CRTI values may be higher than if the data from upstream of the diffuser is used in the calculations.

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**MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
AND  
MAINE WASTE DISCHARGE LICENSE**

**FACT SHEET**

**DATE:** NOVEMBER 4, 2020

**PERMIT NUMBER:** ME0001937  
**LICENSE NUMBER:** W000623-5N-R-M

**NAME AND ADDRESS OF APPLICANT:** **PIXELLE ANDROSCOGGIN LLC**  
**300 RILEY ROAD**  
**JAY, MAINE 04239**

**COUNTY:** FRANKLIN COUNTY

**NAME AND ADDRESS WHERE DISCHARGE(S) OCCURS(S):**

**ANDROSCOGGIN MILL**  
**300 RILEY ROAD**  
**JAY, MAINE 04239**

**RECEIVING WATER CLASSIFICATION:**  
**ANDROSCOGGIN RIVER/CLASS C**

**COGNIZANT OFFICIAL AND TELEPHONE NUMBER:**  
**CHARLES KRASKE**  
**300 RILEY ROAD**  
**JAY, MAINE 04239**

**1. MODIFICATIONS REQUESTED**

1. The permittee has requested that the Department change the legal name of the owner of record from Verso Androscoggin LLC to Pixelle Androscoggin LLC.
2. The permittee has requested modification of the seasonal sampling frequency for biochemical oxygen demand (BOD) from 5/Week, June 1-September 30, to 4/Week year-round, due to an extended elimination of pulp production.
3. The permittee has requested the replacement of the Heat Gain/Heat Loss (HGHL) model with the Predicted River Temperature Increase (PRTI) calculation.
4. The permittee has requested that the numeric limitations for COD be suspended and lbs./day reporting be maintained.

**1. MODIFICATIONS REQUESTED (cont'd)**

5. The permittee has requested that the limitations for Adsorbable Organic Halogens (AOX), Color, and parameters associated with the Bleach Plants (Outfall 100A and Outfall 200A) be suspended.

**2. MODIFICATIONS APPROVED**

1. The Department grants the permittee's request to change the name on MEPDES permit #ME0001937/WDL #W000623-5N-P-R from Verso Androscoggin LLC to Pixelle Androscoggin LLC.
2. The Department grants the permittee's request for reduced BOD monitoring due to an extended, significant reduction of loading due to the loss of pulping operations.
3. The Department has modified the seasonal (June 1-September 30) TSS monthly average and daily maximum limitations to reflect reduced production rates as well as the change from manufacturing pulp to utilizing purchased pulp.
4. The Department grants the permittee's request for the use of PRTI methodology to report river temperature given the lower flow and temperature of current processes.
5. The Department grants the permittee's request for a suspension of COD kilogram limits as there are no bleach or pulping operations occurring on site.
6. The Department grants the permittee's request for a suspension of the limitations for AOX, color and the parameters associated with the two Bleach Plants (Outfall 100A and 200A) as there are no bleach or pulping operations occurring on site.

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**3. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

Due to the change from manufacturing pulp to utilizing purchased pulp, as well as reduced production rates, BOD and TSS limitations for the facility were reevaluated. The following table contains the monthly average and daily maximum limitations as calculated utilizing EPA’s Effluent Limitation Guidelines (ELGs) found in 40 CFR 430, Sub-part K-BPT *Effluent limitations for non-integrated mills where lightweight papers are produced from purchased pulp*. For comparison, BOD and TSS limits from the December 4, 2017 permitting action are also listed.

Final Prod. (lbs./day)	40 CFR 430 Subpart	BOD Avg		BOD Max		TSS Avg		TSS Max	
		Lbs./1000 lbs. of product	lbs./day						
800	K	13.2	10,560	24.1	19,280	10.6	8,480	21.6	17,280
1400 (June 1- Sept. 30)	B	---	4,400	---	8,000	---	12,000	---	22,300
1400 (Oct. 1- May 31)	B	---	7,400	---	13,875	---	25,000	---	44,600

Example Calculation:

$$\begin{aligned} \text{BOD Monthly average} &= \text{daily production rate} \times \text{EGL, Average of daily values for 30 consecutive days} \\ &= (800 \text{ lbs. of product/day}) \times (13.2 \text{ lbs./1000 lbs. of product}) = 10,560 \text{ lbs./day} \end{aligned}$$

The BOD limitations derived from the EGLs, Subpart K are less stringent than those found in the December 4, 2017 permit (most recent). Therefore, pursuant to anti-backsliding provisions of Department rule Chapter 523 § 5 *Waste Discharge License Conditions*, the current limitations are being carried forward in this permitting action.

This permit modification is establishing revised monthly average and daily maximum TSS limitations as the limitations derived from the EGLs Subpart-K are more stringent than the current limitations found in the December 2017 permit.

The summertime (June 1 - September 30) TSS daily maximum limitation of 44,600 lbs./day, based on a May 1998 Section 401 water quality certification for the permittee’s hydro facilities and consistent with the Town of Jay’s (former) Permit #5, is being carried forward. The non-summertime (October 1- May 31) TSS monthly average limitation is also being carried forward. These limitations represent the Department’s best professional judgement of the TSS limits necessary to meet water quality standards based on the most current modeling of Gulf Island Pond.

The summertime TSS 60-day average limitation of 10,000 lbs./day is being carried forward. This limitation is a TMDL recommended limit for mitigating the adverse effects of settleable solids on the macro-invertebrate community in the Livermore Falls impoundment. The TSS final annual average

### **3. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

limitation of 14,738 lbs./day is also being carried forward . This limitation is a TMDL recommended limit which is in place to reduce the contribution of sediment oxygen demand to non-compliance in Gulf Island Pond.

### **4. DISCHARGE IMPACT ON RECEIVING WATER QUALITY**

As permitted, the Department has determined the existing and designated uses of the receiving water uses will be maintained and protected and the discharge will not cause or contribute to failure of the receiving water to meet the assigned Class C classification.

### **5. DEPARTMENT CONTACTS**

Additional information concerning this permitting action may be obtained from and written comments should be sent to:

Breanne Blaisdell  
Bureau of Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017  
E-mail: [Breanne.Blaisdell@maine.gov](mailto:Breanne.Blaisdell@maine.gov)

Telephone: (207) 287-1298

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# 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.

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

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