

**Juniper Ridge Landfill
Department Order #S-020700-WD-W-M**

Order Under Appeal



Free copy

DEPARTMENT ORDER

IN THE MATTER OF

STATE OF MAINE, ACTING THROUGH THE)	SOLID WASTE ORDER
STATE PLANNING OFFICE)	
OLD TOWN, PENOBSCOT COUNTY, MAINE)	
JUNIPER RIDGE LANDFILL)	
CHANGE IN MSW BYPASS LIMIT)	
#S-020700-WD-W-M)	
(APPROVAL WITH CONDITIONS))	MINOR REVISION

Pursuant to the provisions of the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S.A. §§1301 to 1319-Y; and the *Solid Waste Management Rules: General Provisions*, 06-096 CMR 400 (last amended July 20, 2010) and *Landfill Siting, Design and Operation*, 06-096 CMR 401 (last amended July 20, 2010), the Department of Environmental Protection ("Department") has considered the application of THE STATE OF MAINE, ACTING THROUGH THE STATE PLANNING OFFICE ("SPO") with its supportive data, staff review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

- A. Application: SPO has applied for a minor revision to Department license #S-020700-WD-N-A, dated April 9, 2004 and affirmed by the Board of Environmental Protection ("BEP") on October 21, 2004, which approved a vertical increase in the licensed footprint of the West Old Town Landfill, now known as the Juniper Ridge Landfill, and the disposal of additional waste streams in the landfill.

- B. History: James River Paper Company, Inc. received approval (Department license #S-020700-7A-A-N) from the BEP on July 28, 1993 to construct and operate a new secure landfill, called the West Old Town Landfill ("WOTL" or "the landfill"), for the pulp and papermaking residuals generated at its Old Town mill. James River Paper Company, Inc. became Fort James Operating Company ("Fort James") in 1997; in November 2000, Fort James was acquired by Georgia-Pacific Corporation ("GPC"). On October 21, 2003, the Department issued conditional approval for the transfer of licenses for the WOTL from Fort James to the SPO (Department licenses #S-020700-WR-M-T and #L-019015-TH-C-T); the transfer became effective when the sale of the landfill to SPO occurred on February 5, 2004. On February 5, 2004, SPO also finalized an Operating Services Agreement with NEWSME Landfill Operations, LLC ("NEWSME"), a subsidiary of Casella Waste Systems, Inc. ("CWS"), for

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the operation of the WOTL. On April 9, 2004, the Department approved the amendment application (Department license #S-020700-WD-N-A) for a vertical increase in the final elevation of the landfill and the disposal of additional waste streams (“the amendment license”). This license was appealed to the BEP by 2 parties: We the People and Paul C. Schroeder. We the People’s appeal included a request for an adjudicatory public hearing. On July 15, 2004, the BEP voted to deny We the People’s request for a public hearing. On October 21, 2004, the BEP voted to dismiss the 2 appeals of the amendment license, and to affirm the amendment license. The 2 appellants appealed the BEP’s affirmation of the amendment license to the Penobscot County Superior Court; on March 1, 2006, Justice Andrew Mead signed an order denying the appeals and Mr. Schroeder’s request to supplement the record.

The WOTL is now known as the Juniper Ridge Landfill (“Juniper Ridge”). The Operating Services Agreement states, in part, that NEWSME is responsible for all costs associated with operating the landfill, and for obtaining any permits needed. As explained in Finding of Fact #3 of the amendment license, references to the applicant in licenses for construction or operation of JRL refers to both SPO, and CWS or NEWSME (or a subsequent operator). Solid waste is currently disposed in cell 5 of the landfill, and construction of cell 6 will be completed during the 2010 construction season.

- C. Summary of Proposal: The applicant now requests to modify condition #16.C of the amendment license, which placed an annual total limit of 310,000 tons on the amount of unprocessed municipal solid waste (“MSW”) accepted by the Maine Energy Recovery Company (“Maine Energy”) incinerator in Biddeford, Maine plus the unprocessed MSW bypassed by Maine Energy to Pine Tree Landfill in Hampden, Maine and Juniper Ridge. The request is described in an application prepared by NEWSME; the application is dated October 3, 2006 with a significant modification to the proposal submitted on December 10, 2009.

2. REQUEST TO INCREASE LICENSE LIMIT

- A. Background information: Condition #16 of the amendment license addresses the sources and amount of MSW allowed to be disposed in

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Juniper Ridge; Condition #16.C of the amendment license contains the quantity restriction. Condition #16 reads as follows:

- “16. With regards to the acceptance of MSW for disposal, consistent with its proposal, the applicant:
- A. shall not dispose of unprocessed MSW from any source other than bypass from the following sources: PERC incinerator in Orrington and the Maine Energy incinerator in Biddeford; waste delivered under an interruptible contract with PERC; or waste delivered in excess of processing capacity at other MSW incinerators in Maine;
 - B. shall not accept waste from an incinerator without verifiable authorization from either the owner/operator of an incinerator or from a regulatory entity with jurisdiction over the incinerator that a bypass has been called or, for holders of interruptible contracts, the contracts have been interrupted in accordance with the contractual provisions;
 - C. shall limit the total amount of (a) unprocessed MSW incinerated at Maine Energy and (b) MSW bypassed from Maine Energy for disposal at the WOTL and at Pine Tree Landfill’s Secure III Landfill Expansion to no more than 310,000 tons in any calendar year, unless changes in conditions or circumstances occur that cause the Department to revise this cap; and
 - D. shall notify the Department if waste deliveries in excess of processing capacity at MSW incinerators continue from a particular incinerator for a period exceeding 1 week, and provide such information as the Department may request to demonstrate that the deliveries are due to either planned outages or unplanned production problems.”

The quantity limit was originally proposed by CWS to address concerns about the possibility that Maine Energy, a subsidiary of CWS, would accept, and subsequently bypass, waste considerably in excess of its

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capacity. The 310,000 tons per year was based on Maine Energy's estimate in its early talks with its user municipalities that 310,000 tons per year was the maximum amount of MSW Maine Energy could process and incinerate in a year. The 310,000 tons per year limit is shared between Maine Energy, Pine Tree Landfill and Juniper Ridge; no more than 310,000 tons of unprocessed MSW may be divided between the 3 facilities in any year. On December 31, 2009, Pine Tree Landfill, also a CWS subsidiary, ceased the acceptance of waste for disposal; the closure of Pine Tree Landfill is expected to be complete by the end of 2010. Thus, the 310,000 tons annual limit now applies only to Juniper Ridge and Maine Energy.

- B. Initial Request to Increase License Limit: CWS stated that since the issuance of the amendment license, Maine Energy has progressively improved its waste handling capacity through several equipment upgrades, resulting in Maine Energy being able to process and incinerate more of the MSW delivered to the incinerator and needing to bypass less MSW to a landfill. CWS noted that curtailment of incoming waste volume to ensure the 310,000 tons per year limit was not exceeded could potentially adversely affect power production by Maine Energy. The applicant requested that the limit be increased to 325,000 tons per year, primarily to address the improvements in boiler efficiency and availability at Maine Energy that allow Maine Energy to process and combust more MSW while bypassing fewer tons of MSW to Juniper Ridge.
- C. Modified Request to Increase License Limit: On December 10, 2009, the applicant modified its request for an increase to the 310,000 tons limit on MSW incinerated at Maine Energy and/or bypassed for disposal at Juniper Ridge. The modification was made at the request of Department staff ("staff"), as described fully in Finding of Fact #3, below. Instead of increasing the 310,000 tons per year limit set in Condition #16.C of the amendment license to 325,000 tons per each year, the applicant proposes to accept, only in those years when a new cell is constructed at Juniper Ridge, sufficient waste above the 310,000 tons annual limit to provide MSW for use as the protective "soft layer" required by 06-096 CMR 401.2.D(4)(a)(vii). The amount of MSW needed to provide the 4 to 5 feet deep soft layer will be included in the construction package required to be submitted for the Department's review and approval by Condition #15 of

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the amendment license. Maine Energy will work with Juniper Ridge to schedule, to the extent possible, maintenance and/or outages at Maine Energy to take place in conjunction with the soft layer placement timelines at Juniper Ridge. The remaining provisions of Condition #16 of the amendment license will not be modified. Thus, the total amount of MSW that may be handled between Maine Energy and Juniper Ridge will be limited to the existing 310,000 tons per year plus the quantity calculated, and approved by the Department, to be necessary for the protective soft layer in a new landfill cell.

3. DEPARTMENT REVIEW OF THE APPLICATION

Staff comment that Maine Energy has successfully managed its MSW acceptance rates to stay below the 310,000 tons per year limit. Staff also comment that, as shown in the below table, the total MSW bypass amounts accepted both at PTL and Juniper Ridge have remained relatively constant since the amendment license was issued in 2004, and Maine Energy completed its equipment upgrades.

YEAR	total MSW bypass received at PTL (tons) ¹	total MSW bypass received at Juniper Ridge (tons) ²	total MSW bypass (tons)
2004	28,475	0	28,475
2005	18,224	2,035	20,259
2006	10,362	11,155	21,517
2007	15,271	7,620	22,891
2008	0 ³	21,426	21,426
2009	0	21,559	21,559

Staff have requested that the applicant use MSW bypass as much as possible for the soft layer in each new cell because it is the waste stream licensed for disposal at JRL that best meets the purpose of the soft layer. The purpose of the soft layer is to protect the primary liner and the leachate collection system from climatic effects, erosion, and physical damage to the liner and leachate collection layers.

¹ A provision of the Schedule of Compliance dated October 26, 2006 between PTL, the Department and the Town of Hampden required PTL to cease accepting putrescible waste by June 1, 2007.

² Juniper Ridge is allowed to accept only MSW bypass originating in Maine.

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The applicant has used other licensed wastes including front-end process residue from the incinerators, ash, contaminated soils, and bark for the soft layer. Staff note that it is possible these wastes will cause problems with the leachate collection system because the wastes are either (1) too coarse and will allow finer material from the wastes disposed after the soft layer placement to sift down and "blind" the soft layer by filling all the voids, which will hinder leachate movement into the leachate collection system, or (2) the wastes themselves contain a large amount of fine material that they may inhibit leachate from getting into the leachate collection system. Staff recommend that MSW bypass be the primary waste used in the soft layer at Juniper Ridge because at other secure landfills in Maine MSW has been found by staff to be the best material for the soft layer. The only MSW Juniper Ridge is licensed to accept is MSW bypass from the 4 Maine incinerators. However, landfill cells are constructed during the summer construction season, which is also the period when the Maine incinerators receive the most MSW. Therefore, the incinerators typically do not plan maintenance shutdowns during the summer or fall months. The incinerators are prohibited by their contracts with municipalities and other customers from calling a bypass event except during planned maintenance activities or unanticipated issues at the incinerator requiring a bypass. Staff recommends that CWS schedule the delivery of the cubic yardage of MSW from its Maine transfer stations to Juniper Ridge calculated to be necessary for the 4 to 5 feet of soft layer material needed in each new cell. A calculation of the cubic yardage needed should be included in the design package for each cell required by Condition #15 of the amendment license, and that amount would be licensed as part of the approval for construction of the cell. The amount of MSW for each cell's soft layer would be separate and excluded from the 310,000 ton per year limit specified in Condition #16.C of the amendment license.

The Department finds that the intent of the 310,000 tons per year limit was, in part, to address the possibility that providing Juniper Ridge with approval to accept bypassed MSW might result in Maine Energy accepting more MSW than it could process and incinerate, resulting in an automatic, ongoing bypass of MSW to Juniper Ridge, and has proven to be workable. However, the Department also finds that MSW has proven to be the best waste for use in the protective soft layer required by 06-096 CMR 401.2.D(4)(a)(vii), and that MSW bypass should be used as the soft layer at Juniper Ridge. The Department therefore finds that the applicant will include a calculation of the cubic yardage of MSW bypass needed to cover each newly constructed cell with 4 to 5 feet of waste in the design

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package application for each cell submitted to demonstrate compliance with Condition #15 of the amendment license. All Department approvals for construction of new cells will include approval for the placement of the specific cubic yardage of MSW needed for an adequate soft layer; this cubic yardage will be separate and excluded from the 310,000 tons per year limit on MSW placed on Maine Energy and Juniper Ridge by Condition #16.C of the amendment license. The Department further finds that the amount of MSW bypass used for the soft layer in each cell constructed will be documented separately in the annual report, and will not be included in the 310,000 tons per year limit, although the Department expects CWS, to the extent possible, to schedule maintenance and/or outages at Maine Energy to take place in conjunction with the soft layer placement timelines at Juniper Ridge.

4. CELL 6 SOFT LAYER

Staff comment that the applicant has just completed construction of cell 6 of Juniper Ridge. At the request of staff, CWS has provided a calculation of the cubic yardage of MSW bypass needed for the soft layer in cell 6; the cell is approximately 4 acres in size, and thus 31,400 cubic yards of MSW bypass would be needed for a 5 foot thick soft layer.

The Department finds that the applicant may use not more than 31,440 cubic yards of Maine-generated MSW bypass for the soft layer in cell 6; this amount of MSW bypass will not be included in the 310,000 ton limit for 2010.

5. PUBLIC COMMENT ON THE APPLICATION

The Department received no requests for a public hearing or that the BEP assume jurisdiction over this project. The Department did receive requests for additional information and comments on the application from members of the Juniper Ridge Landfill Advisory Committee and from the City of Old Town. The questions and comments concerned the source(s) of the soft layer material, and the potential for an increase in the fill rate at Juniper Ridge. Staff have discussed the application at Juniper Ridge Landfill Advisory Committee meetings, including the purpose of the soft layer, why MSW is a good waste to use as the soft layer, and how the amount of bypass MSW approved for the soft layer can be accounted for separately from the 310,000 tons of MSW per year limit placed on Maine Energy and Juniper Ridge.

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6. OTHER FACTS AND FINDINGS

The Department finds that all other findings made in the amendment license for the vertical increase of Juniper Ridge, and subsequent revisions to the license, remain unchanged.

BASED on the above findings of fact, the Department CONCLUDES the following:

The use of MSW bypass as the protective soft layer in newly constructed cells of the Juniper Ridge Landfill as proposed by the applicant will not pollute any water of the state, contaminate the ambient air, constitute a hazard to the health or welfare, or create a nuisance.

THEREFORE, the Department APPROVES the above noted application of THE STATE OF MAINE, ACTING THROUGH THE STATE PLANNING OFFICE SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached as Appendix A.
2. 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.
3. The applicant shall include a calculation of the cubic yardage of MSW bypass needed to cover each newly constructed cell with 4 to 5 feet of waste in the design package application for each cell submitted to demonstrate compliance with Condition #15 of the amendment license.
4. The amount of MSW bypass used for the soft layer in each cell constructed, including cell 6, will be documented separately in the annual report, and will not be included in the 310,000 tons per year limit.

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5. All other Findings of Fact, Conclusions and Conditions remain as approved in DEP license # S-020700-WD-N-A, and subsequent revisions to the license, and are incorporated herein.

DONE AND DATED AT AUGUSTA, MAINE THIS 10TH DAY
OF SEPTEMBER, 2010.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
Beth Nagusky, Acting Commissioner

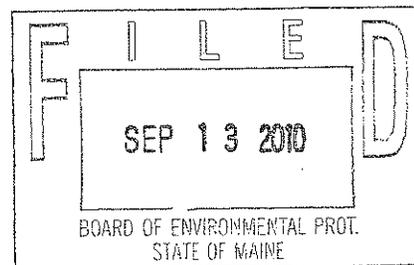
PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

Date of initial receipt of application: October 4, 2006 -

Date application accepted for processing: October 25, 2006

Date filed with Board of Environmental Protection:

XCD60921/dlb



Appendix A

STANDARD CONDITIONS TO ALL SOLID WASTE FACILITY LICENSES

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL. VIOLATIONS OF THE CONDITIONS UNDER WHICH A LICENSE IS ISSUED SHALL CONSTITUTE A VIOLATION OF THAT LICENSE AGAINST WHICH ENFORCEMENT ACTION MAY BE TAKEN, INCLUDING REVOCATION.

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 by the licensee. Any consequential variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
2. **Compliance with All Applicable Laws.** The licensee 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.
3. **Compliance with All Terms and Conditions of Approval.** The licensee shall submit all reports and information requested by the Department demonstrating that the licensee has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
4. **Transfer of License.** The licensee may not transfer the solid waste facility license or any portion thereof without approval of the Department.
5. **Initiation of Construction or Development Within Two Years.** If the construction or operation of the solid waste facility is not begun within two years of issuance or within 2 years after any administrative and judicial appeals have been resolved, the license lapses and the licensee must reapply to the Department for a new license unless otherwise approved by the Department.
6. **Approval Included in Contract Bids.** A copy of the approval must be included in or attached to all contract bid specifications for the solid waste facility.
7. **Approval Shown to Contractors.** Contractors must be shown the license by the licensee before commencing work on the solid waste facility.
8. **Background of key individuals.** A licensee may not knowingly hire as an officer, director or key solid waste facility employee, or knowingly acquire an equity interest or debt interest in, any person convicted of a felony or found to have violated a State or federal environmental law or rule without first obtaining the approval of the Department.
9. **Fees.** The licensee must comply with annual license and annual reporting fee requirements of the Department's rules.
10. **Recycling and Source Reduction Determination for Solid Waste Disposal Facilities.** This condition does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

The solid waste disposal facility shall only accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by 38 MRSA Chapter 13.

11. Deed Requirements for Solid Waste Disposal Facilities. Whenever any lot of land on which an active, inactive, or closed solid waste disposal facility is located is being transferred by deed, the following must be expressly stated in the deed:
 - A. The type of facility located on the lot and the dates of its establishment and closure.
 - B. A description of the location and the composition, extent, and depth of the waste deposited.
 - C. The disposal location coordinates of asbestos wastes must be identified.



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096-CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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