

Commissioner's Licensing Decision under Appeal

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR



PATRICIA W. AHO
COMMISSIONER

June 16, 2015

Northern New England Passenger Rail Authority
75 West Commercial Street, Suite 104
Portland, ME 04101
ATTN: James Russell

RE: Stormwater Management Law Application, Brunswick,
Department Order #L-26119-NJ-C-N

Dear Mr. Russell:

Please find enclosed the Maine Department of Environmental Protection's license decision on Northern New England Passenger Rail Authority's Storm Water Management Law permit application. As you will find, the permit includes a description of the proposed project, findings of fact that relate to the approval criteria the Department used in evaluating the project, and conditions that are based on those findings and the particulars of the project. Please read the 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. Also enclosed are materials that describe the Department's appeal procedures.

If you have any questions about the permit, please contact me directly. I can be reached at (207) 615-3149 or at Bill.Bullard@maine.gov.

Sincerely,

Bill Bullard, Project Manager
Division of Land Resource Regulation
Bureau of Land and Water Quality

pc: File

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

DEPARTMENT ORDER

IN THE MATTER OF

NORTHERN NEW ENGLAND PASSENGER)	STORM WATER MANAGEMENT LAW
RAIL AUTHORITY)	
Brunswick, Cumberland County)	
LAYOVER FACILITY STORMWATER PLAN)	
L-26119-NJ-C-N (Approval))	FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. § 420-D, and Chapters 500 and 502 of the Department's Regulations, the Maine Department of Environmental Protection (Department) has considered the application of NORTHERN NEW ENGLAND PASSENGER RAIL AUTHORITY (NNEPRA) with its supportive data, the public hearing testimony, the agency review comments, the written comments submitted by the general public, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History:

On August 14, 2013, NNEPRA filed an application with the Department for a Storm Water Management Law permit for the construction of a stormwater management system to serve a proposed passenger rail layover facility to be constructed in Brunswick.¹ In Department Order #L-26119-NJ-A-N, dated November 13, 2013, the Department issued a permit for the proposed project, which would create 3.9 acres of impervious area and 6.2 acres of disturbed area upon completion.

BMR Brunswick, LLC, Charles F. Wallace, Jr., Daniel Sullivan, and Frederick Schwab (petitioners) appealed the Department's issuance of the permit to the Cumberland County Superior Court. The petitioners maintained that certain neighboring landowners, including the three individual petitioners, who owned property southerly of the project site were not properly notified by the applicant of the permit application and were therefore unable to participate in the review process. In *BMR Brunswick, LLC v. DEP*, the Court held that the petitioners include abutters as defined in the Department's *Rule Concerning the Processing of Applications and other Administrative Matters* (Chapter 2), 06-096 CMR 2(1)(A) (as amended Aug. 25, 2013), and were therefore entitled to notice of NNEPRA's stormwater permit application. In a decision dated July 2, 2014, the Court vacated the Department's approval (Department Order #L-26119-NJ-A-N).

¹ A permit under the Site Location of Development Act, 38 M.R.S.A. §§ 481 *et seq.*, is not required as a result of preemption by federal law, 49 U.S.C. § 24902(j).

A second application for a stormwater management system to serve the proposed passenger rail equipment layover facility was received by the Department on August 6, 2014. That application—DEP Project #L-26119-NJ-B-N—was found to be unacceptable for processing due to incomplete information regarding design and construction plan details of the proposed stormwater management system.

A revised application, with additional information, was received by the Department on September 12, 2014 and was found to be complete for processing on October 3, 2014. The materials in the record from the first permit application and its review were incorporated into the record of the revised application.

A public hearing on the application was held on March 25, 2015 at the Brunswick Golf Club in Brunswick. The Department granted intervenor status to J. Maurice L. Bisson, Robert N. Morrison, Charles F. Wallace, Jr. and the Brunswick West Neighborhood Coalition (collectively Coalition) and TrainRiders Northeast (TrainRiders), and they participated in the public hearing process. A portion of the hearing was devoted to receiving testimony from members of the general public. Written comments were received throughout the application processing period, until the close of the hearing on March 25, 2015.

B. Summary:

The proposed project is a modified version of the project approved in Department Order #L-26119-NJ-A-N and referenced above. The applicant proposes to construct a stormwater management system for a passenger rail equipment layover facility to be used for overnight storage, light maintenance and refueling of passenger trains. The proposed project includes a train enclosure building, rail spurs to access the building, vehicle travel lanes, parking areas, utilities to support the facility, and a stormwater management system and wet pond.

The proposed stormwater management system includes grassed swales, a roof drip edge collection system, and a catch basin collection system, all discharging to a wet pond for treatment and then to an unnamed tributary stream that drains to the Androskoggin River. The system is designed to capture and treat stormwater runoff from the proposed passenger rail equipment layover facility building, new rail tracks, paved and gravel access drives, and paved parking areas. The proposed project will result in a total of 4.3 acres of impervious area and 6.7 acres of disturbed area. The project site is located between Church Road and Stanwood Street in Brunswick.

The proposed project is depicted on a set of plans, the first of which is entitled “Brunswick Layover Facility – Cover Sheet – Northern New England Passenger Rail Authority,” prepared on behalf of the applicant by DeLuca Hoffman Associates, Inc., and dated June 2013, with a latest revision date on any of the sheets of October 30, 2014.² During the Department’s review, at the request of Department staff, the applicant also

² During the Department’s review of the applications submitted by NNEPRA, DeLuca Hoffman Associates, Inc. was acquired by Fay, Spofford & Thorndike, Inc.

submitted a plumbing plan and three drawings entitled “Stormwater Schematic,” “Utility Profiles,” and “Plumbing Sanitary Overall Plan,” with a latest revision date on any sheet of March 15, 2015. These drawings were developed from existing project plans and were intended to clarify the designs of drainage and utility piping systems for the benefit of the parties involved in the public hearing process.

C. Current Use of the Site:

The site of the proposed project is sparsely vegetated with shrubs and grasses. A fringe of woodland is located along the northerly property line of the site. There are no structures on the property other than a gravel access road for use by train personnel. As a result of the past usage of the site during the era of coal-fired locomotives, contaminants associated with coal ash were identified in the soils at the site during a Limited Phase II Environmental Site Assessment conducted by the applicant in 2011. Because of the history of the site, the applicant developed a voluntary remedial action plan and submitted an application to the Department’s Voluntary Response Action Program (VRAP). The action plan was approved as discussed further in Finding 3(C).

2. STORMWATER STANDARDS:

The proposed project includes approximately 6.7 acres of developed area. The applicant proposes to create approximately 3.6 acres of new impervious area and to redevelop approximately 0.7 acre of area that is currently impervious. Thus the total impervious area after completion of the project is approximately 4.3 acres as stated on the application form. The site lies within the watershed of an unnamed tributary that drains to the Androscoggin River. The project site is located adjacent to, but not within, an Urban Impaired Stream watershed of a different unnamed tributary to the Androscoggin River (near River Street). The applicant submitted a stormwater management system plan based on the Basic, General, and Flooding Standards contained in the Department’s rules concerning *Stormwater Management* (Chapter 500), 06-096 CMR 500 (as amended Dec. 27, 2011). The proposed stormwater management system consists of grassed swales, a roof drip edge collection system, and catch basin collection system discharging to a wet pond for treatment. Outflows from the wet pond will be discharged at a controlled rate to the unnamed stream which flows northerly approximately one-quarter mile until it reaches the Androscoggin River.

A. Basic Standards:

A project disturbing one acre or more must meet the Basic Standards for erosion and sedimentation control, inspection and maintenance, and housekeeping.

(1) Erosion and Sedimentation Control: A person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials must take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource. The applicant submitted an Erosion and Sedimentation Control Plan 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 Best Management Practices, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of, the Division of Land Resource Regulation (DLRR) of the Bureau of Land and Water Quality (BLWQ). Erosion control measures are shown on Sheets C-4.1, C-4.2, and C-4.3 of the plan set referenced above. Erosion control details and narratives are shown on sheets C-6.3, C-6.4A and C-6.4B of the same plan set and in Appendix G of the application. The erosion control plan includes provisions for final stabilization and vegetation of exposed soil at the site.

During the public hearing, one member of the public testifying expressed concern about the proposed fertilizer application rate for stabilizing the grassed areas upon project completion. The erosion and sedimentation control plan submitted by the applicant includes a seeding plan as set forth in Appendix G, Attachment A of the application, and subsequently incorporated by reference in the applicant's pre-filed testimony. In order to minimize the potential to discharge excess nutrients to the unnamed stream and the Androscoggin River, the applicant proposes to base the fertilizer application rates on the results of soil testing of the topsoil used for the project.

The Department finds that the Erosion and Sedimentation Control Plan submitted with the application meets the requirements of Chapter 500, Appendix A.

Given the size and nature of the project site, the applicant must retain the services of a third party inspector in accordance with the Special Condition for Third Party Inspection Program, which is attached to this Order.

To ensure that the Erosion and Sedimentation Control Plan is properly implemented, prior to the start of construction, the applicant must conduct a pre-construction meeting. This meeting must be attended by the applicant's representative, Department staff, the applicant's stormwater engineer, the contractor, a representative from the Town of Brunswick, and the third-party inspector.

(2) Inspection and Maintenance: The applicant submitted an inspection and maintenance plan that addresses both short and long-term maintenance requirements of the stormwater management system. The plan is set forth in Appendix H, Attachment E of the application, and is based on the standards contained in Appendix B of Chapter 500. This plan was reviewed by, and revised in response to the comments of, DLRR. The applicant will be responsible for the maintenance of the stormwater management system.

The Department finds that the Inspection and Maintenance plan submitted with the application meets the requirements of Chapter 500, Appendix B.

Storm sewer grit and sediment materials removed from stormwater control structures during maintenance activities must be disposed of in compliance with the Maine Solid Waste Management Rules.

- (3) Housekeeping: The applicant addressed the performance standards of the Housekeeping requirements outlined in Appendix C of Chapter 500 with the following submittals:
- a) Spill Prevention: An applicant must demonstrate that controls will be used to prevent pollutants from being discharged from materials on site, including storage practices to minimize exposure of the materials to stormwater, and appropriate spill prevention, containment, and response planning and implementation. The applicant submitted a plan to prevent and control the potential for the discharge of pollutants from materials on site. The plan was reviewed by staff from the BLWQ's Division of Environment Assessment (DEA). DEA stated that the spill containment plan provided with the application as Exhibit 9 in the applicant's pre-filed testimony is consistent with Department requirements for a Spill Prevention Plan under Chapter 500. Any spill prevention plans developed by site subcontractors must be consistent with, and no less stringent than, the spill prevention plan submitted by the applicant. Any petroleum spills must be reported to the Department within two hours of their discovery.
 - b) Groundwater Protection: Chapter 500, Appendix C(2) requires that, during construction, the applicant protect groundwater from contamination by spills of liquid petroleum products and other hazardous materials with the potential to contaminate groundwater. The applicant proposes to utilize a designated refueling area isolated from potential infiltration areas and stormwater structures and will require each contractor to have a spill kit available and to follow the applicant's Spill Prevention Plan.
 - c) Fugitive Sediment and Dust: Chapter 500, Appendix C(3) requires that the construction of a project will not result in noticeable erosion of soils or fugitive dust emissions. The applicant's proposal includes the use of stone-on-fabric construction entrances, water, calcium chloride and polymer bonding agents for dust control. All exposed soil will be stabilized with vegetation or hardscaping upon completion of construction.
 - d) Debris and other materials: The applicant's construction plan includes measures to prevent litter, construction and demolition debris and liquid wastes from becoming pollutant sources during construction. Contractors will be required to adhere to on-site recycling of construction debris and to use individual dumpsters for daily disposal of metal, cardboard, masonry and other construction materials.
 - e) Trench or Foundation Dewatering: The applicant is proposing to install shallow groundwater wells in order to lower the water table during the construction of the building foundation footings and the wet pond. The Coalition contends that contaminants in the soil may be disturbed and mobilized into the groundwater during this aspect of construction of the project. The Coalition also questioned whether the unnamed stream on the southerly and easterly sides of the project site would be affected by the dewatering activity during construction of the project.

The applicant's investigation of groundwater quality on the site showed that, with the exception of one exceedance for sodium levels in one monitoring well, analytical results found all constituents below the applicable Federal Primary Drinking Water Standard Maximum Contaminant Levels or State of Maine Maximum Exposure Guidelines. In its review comments, DEA stated that water quality data provided with the application do not indicate significant adverse impact on groundwater quality in the immediate area of the proposed project. However, given the long-term historical land use of the site and much of the surrounding area, as the Coalition argued, it is possible that some spills may not have been reported or that other sources of contamination may exist that have not been located. Members of the public also testified as to their concerns on this particular issue. As a precaution against unexpected sources of contamination, DEA recommended several precautionary measures as outlined in Finding 3(B) to be taken during dewatering activities.

In its comments on the draft Order, the Coalition argued that a revised dewatering plan as discussed in Finding 3(B) is a finding that NNEPRA failed to provide a sufficient plan as part of its application, and therefore the application should have been deemed incomplete. The Department finds that the dewatering plan submitted with the application meets the Housekeeping requirements for dewatering as set forth in Chapter 500, Appendix C(5). However, based on the prior uses of this site, as a precautionary measure, the dewatering plan must be revised to include water quality monitoring and provisions for disposal if any contaminants are encountered in the water extracted during dewatering operations.

- f) Non-stormwater discharges: The sanitary sewer plumbing drain lines in the passenger rail equipment layover facility building will discharge to the Town of Brunswick's municipal sewer system. Snowmelt from trains inside the building will be collected with an interior floor drain system and will discharge to the municipal sewer system. Snow melting from the trains outside of the layover building would not generally meet the definition of stormwater; however, any resulting runoff would be captured and treated if on new impervious surfaces. The applicant has received a permit from the Brunswick Sewer District for the floor drain discharge and the District also confirmed its capacity to handle sanitary plumbing flows. The Brunswick Sewer District stated that a permit will be required prior to connection of the sanitary discharge lines and, if needed, prior to discharge of excess water extracted during construction dewatering.
- g) Additional Requirements: The applicant's proposal includes adequate plans for handling and disposing of coal ash encountered and any minor spills of petroleum products that could occur. Although no other hazardous materials or evidence of petroleum contamination were identified by the applicant on the surface or in subsurface explorations at the site, the nature of the project site and adjacent properties is such that these materials may be encountered during construction of this project. The applicant developed contingency measures to follow should contractors encounter conditions or materials suggesting the presence of hazardous materials and/or petroleum during excavation. Contingency measures to be taken are described

in the Coal Ash/Impacted Soil Management and Health and Safety Plans, submitted by the applicant as Exhibit 31 in its pre-filed rebuttal testimony. Upon discovering any such potential contaminants, the operator must immediately stop work in that area (except as may be necessary for worker safety) and the Bureau of Remediation and Waste Management's (BRWM) Oil and Hazardous Materials Response Unit must be contacted.

DEA and DLRR staff analysis concluded that the proposals and provisions in the elements above address the applicable Department standards for housekeeping. Before construction is initiated, a revised dewatering plan as described in Finding 3(B), and all other housekeeping components must be consolidated by the applicant in a single location within the application plan set.

Based on DLRR's review of the erosion and sedimentation control plan, the inspection and maintenance plan and DEA's review of the proposed housekeeping measures, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500 § 4(A) provided that the applicant requires all its subcontractors to follow its spill prevention plan, revises the dewatering plan as described above and in Finding 3(B), and consolidates this and all other elements of the housekeeping plan into a single document to be incorporated into the application as a revision of the plan set referenced in Finding 1, and submits the information to the BLWQ prior to the start of construction.

B. General Standards:

To meet the General Standards, a project's stormwater management system must include general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. The applicant proposes to achieve this by using Best Management Practices to control runoff from no less than 95 percent of the new impervious area and no less than 80 percent of the new developed area. The applicant proposes to construct vegetated swales with a catch basin system and roof drip edge collection system discharging to a wet pond to provide treatment for developed areas on the site.

In its review of the draft Order, the Coalition asserted that the applicant's HydroCAD model relied on incorrect impervious acreage numbers in that the 4.3 acres shown on the application form was not consistent with the 3.6 acres used in the modeling calculations. As noted above, the 4.3 acres referenced on the application form included existing impervious areas that will be redeveloped as part of the project construction. The Department analyzed the model and the project plans and determined that the assumptions and inputs used in the model were appropriate.

The Coalition alleges that the applicant failed to provide project drainage plans containing all topographic features and land cover types in the application. The applicant submitted evidence depicting existing and post-construction site topography and land cover types on plan sheets C-2.1, C-2.2, C-2.3 "Existing Conditions and Demolition

Plan,” and sheets C-4.1, C-4.2 and C-4.3, “Grading Erosion Control Plan,” all of which are part of the plan set referenced in Finding 1. Photographs of the existing site submitted with the application and site visits by Department staff confirmed that the applicant adequately characterized site topography to the extent required for the design of the stormwater management system.

To characterize the drainage properties of the soils on the site, the applicant reviewed data from over twenty soil borings taken across the site during the Phase I and limited Phase II Environmental Site Assessments, and the geotechnical exploration for the design of the building foundation. The applicant assessed this information in conjunction with the soil maps to determine appropriate soil drainage class inputs for the stormwater program model used to size the stormwater management system. The Coalition also alleges that the soils data provided in the stormwater permit application is deficient and that the Soil Conservation Service soil maps used in the application do not take into account the disturbed nature of the soils and the history of the site. DLRR staff reviewed the applicant’s data and the supporting calculations used to develop the stormwater management system design and concluded that the applicant designed the system based on appropriate assumptions regarding the drainage characteristics of the soils at the site. The Coalition argued that the stormwater model output did not indicate which Antecedent Moisture Content (AMC) was used as a basis for the stormwater calculations. DLRR stated that the HydroCAD model default is a normal moisture content (AMC II) and the program only displays the soil moisture content when AMC I or AMC III are used in the model to indicate unusually dry or wet soil conditions.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, DLRR. In its final review, DLRR recommended that the applicant retain a stormwater engineer to oversee the construction of the grassed swales, wet pond and roof drip edge collection system to insure that they are constructed in accordance with the details and notes specified on the approved plans.

The Department finds that the proposed stormwater management system is designed in accordance with the General Standards contained in Chapter 500 § 4(B) provided the applicant retains a stormwater engineer to oversee and document the construction of the stormwater management structures as described above. Within thirty days of completion of the grassed swales, wet pond and roof drip edge collection system, the applicant must submit to the BLWQ a log of inspection reports detailing the items inspected, photographs taken, and the dates of each inspection.

C. Flooding Standard:

Because the proposed project will result in over three acres of impervious area, the Flooding Standard applies. The applicant must demonstrate that the project would detain, retain, or result in the infiltration of stormwater from 24-hour storms of the 2-year, 10-year, and 25-year frequencies such that the peak flows of stormwater from the site do not exceed the peak flows of stormwater prior to the construction of the project. 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 applicant submitted calculations that indicate that the post-development peak flow from the site and the peak flow of the receiving waters will not be increased as a result of stormwater runoff from the development site.

The Coalition raised concerns that the proposed project would exacerbate existing off-site flooding problems on nearby properties. Members of the public with properties located on the southerly side of the project site testified about the possibility of increased flooding as a result of construction of the project. One business owner with property on the north side of the site also testified about existing intermittent flooding on his property and expressed concerns that construction of the project would increase existing drainage problems.

The proposed wet pond was sized by the applicant in accordance with the Department's stormwater Best Management Practices manual to attenuate peak flows from the site to less than the pre-development flows. Stormwater runoff entering the site from off-site locations to the north will be captured by regrading and maintaining an existing swale on the north side of the site. Runoff will then be routed through the grassed swale and a catch basin collection system to the unnamed stream and to the Androscoggin River.

The Department finds that existing berms, ditches and adjacent railroad tracks preclude significant amounts of stormwater runoff from flowing toward abutting properties to the south such that they would adversely affect abutting properties. The applicant submitted credible information demonstrating that groundwater flows generally easterly through the site and toward the unnamed stream, and not to the north or to the south where the adjacent properties are located. For these reasons, the project is not anticipated to unreasonably impact off-site properties to the north or south.

DLRR staff's analysis concluded that the proposed stormwater management system has been designed with adequate capacity and stability to receive and treat the project's stormwater runoff, and includes provisions to adequately manage any runoff from off-site that flows through the project site. DLRR 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, the physical characteristics of the project site, and DLRR's analysis, 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.

3. ADDITIONAL CONTROLS FOR GROUNDWATER PROTECTION:

Chapter 500 § 5(D) provides for additional controls to be imposed if necessary for certain projects to avoid impacts to water bodies from pollutants. Due to the nature of the

development, the historic uses of the site and the characteristics of the soils on site, additional controls for protection of groundwater are required as described below:

A. Roof Drip Edge Collection System:

The project design includes a foundation underdrain system with subsurface collection pipes designed to drain excess groundwater from the building's foundation footings. This foundation underdrain system is not a part of the stormwater management system. Its purpose is to convey excess groundwater from the foundation footings of the completed layover building to a concrete drainage ring located easterly of the building, where it will be reinfiltrated back into the groundwater table. Results of a geotechnical investigation submitted by the applicant indicate that groundwater is at a lower elevation in this part of the site than it is within the building footprint so that infiltration can be accommodated. The applicant stated that it intends to register the system as a Class V injection well with the Department's Underground Injection Control program.

As designed, the foundation drainage system will be located vertically below the roof drip edge collection system that is intended to collect and convey stormwater from the roof of the building to the wet pond for treatment. The Coalition argues that, because the proposed project design includes a permeable fabric separating the roof drip edge and foundation drain collection systems, roof runoff could bypass the upper roof drip edge collection pipe. This runoff could be introduced to the groundwater by way of the underlying foundation drain system and the drainage ring, through which potential contaminants from roof runoff could be infiltrated to the groundwater without receiving adequate quality treatment. During the Department's review, the applicant stated that it would not object to a permit condition requiring the substitution of an impervious material for the permeable fabric separating the two systems to reduce the potential for direct infiltration of roof runoff into groundwater.

DEA staff reviewed the project design and stated that, due to its location and the apparent elevation of the water table, unless the roof drip edge collection system is lined with an impermeable liner, some fraction of the stormwater entering the roof drip edge collection system could potentially bypass that system, enter the foundation drain collection system, and eventually flow to the drainage ring, where it would enter the groundwater. Infiltration is defined in Chapter 500 §3(L) as a process specifically used to meet all or part of the stormwater standards by actively directing all or part of the stormwater into the soil; incidental wetting of soil in ditches, detention basins or the equivalent is excluded. However, because the unlined roof drip edge collection system could potentially include some element of infiltration, to ensure no discharge of contaminants to groundwater from the proposed systems, the Department conditions its findings with the requirement that the applicant must revise the roof drip edge collection system to include an impermeable liner.

The Department does not anticipate that the drainage ring will adversely impact groundwater quality provided that the drip-edge collection system is equipped with an impervious liner as described above.

DEA also commented that the drainage ring must be registered as a Class V injection well prior to operation and must meet all applicable requirements of the Department's *Rules to Control the Subsurface Discharge of Pollutants*(Chapter 543) 06-096 CMR 543 (as amended Oct. 3, 2006) and the Underground Injection Control Program. The applicant has represented that it intends to register this structure as described above.

The Department finds that the proposed stormwater management system will not discharge contaminants to groundwater; however, to provide an additional safeguard, the applicant must revise the project design to include an impermeable liner between the roof drip edge collection system and the foundation drain system. Prior to construction, the applicant must submit the revised roof drip edge collection system design to the Department for review and approval.

The Department further finds that the foundation drainage ring must be registered as a Class V injection well prior to operation of the drainage ring, and must meet all applicable requirements of Chapter 543, and the Underground Injection Control Program.

B. Dewatering:

As outlined in Finding 2(A)(3)(e), a dewatering plan for construction of certain project components was submitted with the application. The plan includes the use of a well point dewatering system which would be used to lower the water table approximately two feet below the proposed excavation level to support construction of the stormwater wet pond and for portions of the building's foundation. The water would be pumped from discrete well point locations around the wet pond or foundation and deposited into a temporary sump area on site from where it would be re-infiltrated to the groundwater. Pumping extraction rates will be adjusted if necessary to prevent overflows at the sump area. The plan includes alternatives for storage of extracted water in portable tanks from where it would be sent to the infiltration sump at a reduced rate if necessary. Another alternative in the plan would be to discharge water to the Brunswick Sewer system with prior approval from the sewer district.

Based on the Department's experience with similar systems at other projects, DEA's analysis agreed that the dewatering would not be extensive nor should it be necessary for it to continue for an extended period. However, the dewatering will be conducted within and adjacent to industrialized areas. Department records include the occurrence of several spills on properties adjacent to the site. The spill records indicate that those known spills have been cleaned up to the satisfaction of BRWM response staff, and water quality data provided with the application do not indicate significant adverse impact on groundwater quality in the immediate area of the proposed project. Monitoring wells, however, sample only a small area of the site. To detect and allow action to address the potential for the dewatering drawing contaminated water from the site from unknown spills which may have affected water quality, and in response to concerns expressed by the Coalition and members of the public, the Department is imposing certain additional requirements described below as conditions of this approval.

DEA recommended that the applicant monitor the groundwater extracted during dewatering through the use of a lined, temporary collection basin for visual inspection for the presence of a visible sheen or other evidence of petroleum contamination. DEA also recommended that, in addition to the visual inspection, a photometric ionization detector or equivalent analysis be performed at two-hour intervals on water samples from the basin. Although DEA's analysis is that the radius of influence of the dewatering would not reach the stream, DEA recommended as a precaution that the applicant be required to visually observe conditions in the stream at the easterly end of the site at two-hour intervals to ensure that stream flow conditions are not unreasonably impacted by the dewatering process.

During dewatering, the applicant must install a lined basin to receive discharge from the dewatering pumps, and this basin should be inspected at two-hour intervals for any evidence of sheens or other indications of petroleum contamination; time and results of these visual inspections should be recorded on log sheets to be provided to the Department. This lined basin should discharge to the designated dewatering infiltration basin. If a visible sheen or other evidence of petroleum contamination is observed, pumping should cease and BRWM response staff should be contacted immediately.

In addition to visual inspection for a sheen or petroleum residue on the liner or other parts of the forebay or stilling basin, the applicant must perform a headspace analysis on water samples from the basin. BRWM response staff follows a standard field procedure that includes collection of a sample in a sample bottle, closure of the bottle with foil or a similar cover, agitation of the sample bottle, and penetration of the cover with a photometric ionization detector probe or equivalent instrument to measure hydrocarbon concentration in the headspace. Based on a recommendation from BRWM response staff, this test must be performed at least every two hours during dewatering, and detection of 25 parts per million (ppm) or greater of hydrocarbons in the headspace requires cessation of pumping and immediate notification of BRWM response staff in order to determine the need for further action, if any.

The applicant must also visually observe the dewatering outfall for an extended period during the startup and early stages of pumping to guarantee that sufficient freeboard is maintained on both the lined basin and in the infiltration area; this should be confirmed during other visual observations of the lined basin during operations. Pumping rates and/or sizes of these basins must be adjusted as necessary to maintain basin functions. During dewatering, the applicant must also visually observe conditions in the unnamed stream at the east end of the project site at two-hour intervals to ensure that stream flow conditions are not unreasonably impacted by the dewatering process.

Prior to the start of construction, the applicant must submit a final dewatering plan to the BLWQ for review and approval, which incorporates the conditions of this approval. The plan must include a standard operating procedure or similar document, together with any necessary plan sheets and details, describing the procedures for dewatering during construction and the conduct of the water sample collection, monitoring and analysis, and stream flow monitoring provisions for the unnamed stream on the site. The plan must

also include provisions for maintaining a log inspections and provisions for recording of sampling results and other details as outlined above as well as alternatives for disposal, such as a holding tank or discharge to the public sewer system, should contamination become an issue during the dewatering process.

C. VRAP:

As noted in Finding 1(C), because of the industrialized history of the site, the applicant developed a voluntary remedial action plan and submitted an application to the Department's VRAP Program. The proposed remedial actions and other recommendations for management of contaminated soils were conditionally approved in a letter to the applicant dated September 12, 2011 from Jean Firth, Brownfields Coordinator in the BRWM. The applicant submitted Coal Ash/Ash Impacted Soil Management and Health and Safety Plans, dated October 2014, to the Department. These plans were designed to integrate the construction of the layover project with the requirements of the voluntary remedial action plan described above and was reviewed and found to be acceptable by BRWM staff. The proposed project is subject to the findings, conclusions and conditions of the September 12, 2011 letter of approval from BRWM and the October 2014 soil management plan. Copies of any soil test results or other materials submitted to the BRWM pursuant to the VRAP program must also be submitted to the BLWQ.

Based on the proposed project design and the Department's review, and with the additional requirements imposed in Finding 3 of this Department Order, the Department finds that the proposed project will not adversely affect groundwater quantity or quality provided that the applicant revises the roof drip edge collection system with an impermeable liner, revises the dewatering plan to include the inspection and sampling requirements set forth above, and the applicant submits copies of any soil test results or other materials submitted in connection with the VRAP program, all as described above.

4. CONDITION COMPLIANCE SUBMISSIONS:

The applicant has met the Basic, General and Flooding Standards for stormwater management. As described above, groundwater tests do not show contamination; however, to provide additional protection of groundwater quality, in light of previous uses of the site, the Department is requiring the measures set forth in Finding 3(A) and 3(B). In its comments on the draft Order, the Coalition raised concerns about public participation in the condition compliance process. The Department's regulations on hearings, Chapter 3 § 30(A), require any licensee receiving an approval following a hearing to provide notice to all parties to the licensing proceeding of the filing of any documents with the Department to comply with conditions that require review and approval. The two conditions that require submittals for review and approval are Special Condition 8 pertaining to the impermeable liner between the roof drip edge collection system and the foundation drain system, and Special Condition 10 requiring revisions to the dewatering plan to include monitoring and provisions for disposal if any contaminants

are encountered. No other conditions entail Department review and approval of submittals.

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. § 420-D, and Chapters 500 and 502 of the Department's Regulations:

- A. The applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500 Basic Standards for: (1) erosion and sediment control; (2) inspection and maintenance; (3) housekeeping; and (4) grading and construction activity provided that storm sewer grit and sediment materials removed from stormwater control structures is disposed of in compliance with the Maine Solid Waste Management Rules (06-096 CMR 400 et seq.); provided that the applicant submits a consolidated housekeeping plan and provided that a third-party inspector is retained and a pre-construction meeting is held, all as described in Finding 2A.
- B. The applicant has made adequate provisions to ensure that the proposed project will meet the Chapter 500 General Standards provided that the applicant retains the services of a stormwater engineer to oversee and document the construction of the stormwater management wet pond to insure that it is constructed in accordance with the details and notes specified on the approved plans as described in Finding 2B.
- C. 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.
- D. The applicant has made adequate provision to protect groundwater provided that the roof drip edge collection system is revised to include an impermeable liner, the drainage ring is registered with the Department's Underground Injection Control program, the dewatering plan is revised to include inspection and sampling requirements, and results of any soil samples taken related to the VRAP program are submitted to the BLWQ, all as described in Finding 3.

THEREFORE, the Department APPROVES the application of NORTHERN NEW ENGLAND PASSENGER RAIL AUTHORITY to construct a stormwater management system as described above in Brunswick, Maine, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations:

- 1. The Standard Conditions of Approval, which are attached to this Order.
- 2. In addition to any specific erosion control measures described in this Order, 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. Erosion control details shall be included on the final construction plans and the erosion control narrative shall be included in the project specifications to be provided to the construction contractor.
4. The applicant shall retain the services of a third-party inspector in accordance with the Special Condition for Third-Party Inspection Program, which is attached to this Order. The applicant shall comply with the conditions contained in the Special Condition for Third-Party Inspection Program.
5. Prior to the start of construction, the applicant shall conduct a pre-construction meeting. This meeting must be attended by the applicant's representative, Department staff, the applicant's stormwater engineer, the contractor, a representative from the Town of Brunswick, and the third-party inspector.
6. Prior to the start of construction, the applicant shall submit to the Department a revised housekeeping plan that consolidates the elements of the housekeeping plan including information pertaining to spill prevention, groundwater protection, fugitive sediment and dust and dewatering into a single document to be incorporated into the project plan set.
7. Any spill prevention plans developed by site subcontractors shall be consistent with and no less stringent than the spill prevention plan submitted by the applicant. Any petroleum spills shall be reported to the Department within two hours of their discovery.
8. Prior to the start of construction, the applicant shall submit to the Department, for review and approval, a revised plan to include an impermeable liner between the roof drip edge collection system and the foundation drain system.
9. The applicant shall register the drainage ring as a Class V injection well with the Department's Underground Injection Control program prior to operation of the drainage ring, and must meet all applicable requirements of Department Rules, Chapter 543 and the Underground Injection Control Program.
10. Prior to the start of construction, the applicant shall submit to the Department, for review and approval, a revised dewatering plan that includes provisions for monitoring for and disposal of contaminants and monitoring the unnamed stream for evidence of dewatering. The revised plan shall include measures to be taken if contaminated groundwater as determined by the criteria outlined in the applicant's monitoring plan is encountered during dewatering,
11. Storm sewer grit and sediment materials removed from stormwater control structures shall be disposed of in compliance with the Maine Solid Waste Management Rules (06-096 CMR 400 et seq.).
12. The applicant shall retain a design engineer to oversee the construction of the stormwater management system in accordance with the details and notes specified on the approved plans. Within thirty (30) days of completion of the entire stormwater management

system, the applicant shall submit to the Department a log of inspection reports detailing the items inspected, photographs taken, and the dates of each inspection.

13. The applicant shall submit to the Bureau of Land and Water Quality copies of all information submitted to the VRAP program related to soil disturbance associated with project construction at the site.
14. As required in Department Rules, Chapter 3 § 30(A), the applicant shall send to the Coalition and TrainRiders copies of all documents submitted to the Department to demonstrate compliance with Special Conditions 8 and 10.

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.

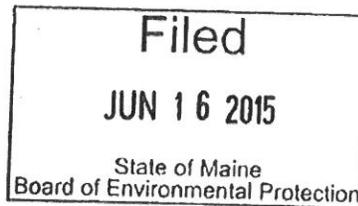
DONE AND DATED IN AUGUSTA, MAINE, THIS 16th DAY OF June, 2015.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

WB/L26119CN/ATS#78298



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)

Special Condition
for
Third Party Inspection Program

THIRD-PARTY INSPECTION PROGRAM

1.0 THE PURPOSE OF THE THIRD-PARTY INSPECTION

As a condition of this permit, the Maine Department of Environmental Protection (MDEP) requires the permit applicant to retain the services of a third-party inspector to monitor compliance with MDEP permit conditions during construction. The objectives of this condition are as follows:

- 1) to ensure that all construction and stabilization activities comply with the permit conditions and the MDEP-approved drawings and specifications,
- 2) to ensure that field decisions regarding erosion control implementation, stormwater system installation, and natural resource protection are based on sound engineering and environmental considerations, and
- 3) to ensure communication between the contractor and MDEP regarding any changes to the development's erosion control plan, stormwater management plan, or final stabilization plan.

This document establishes the inspection program and outlines the responsibilities of the permit applicant, the MDEP, and the inspector.

2.0 SELECTING THE INSPECTOR

At least 30 days prior to starting any construction activity on the site, the applicant will submit the names of at least two inspector candidates to the MDEP. Each candidate must meet the minimum qualifications listed under section 3.0. The candidates may not be employees, partners, or contracted consultants involved with the permitting of the project or otherwise employed by the same company or agency except that the MDEP may accept subcontractors who worked for the project's primary consultant on some aspect of the project such as, but not limited to, completing wetland delineations, identifying significant wildlife habitats, or conducting geotechnical investigations, but who were not directly employed by the applicant, as Third Party inspectors on a case by case basis. The MDEP will have 15 days from receiving the names to select one of the candidates as the inspector or to reject both candidates. If the MDEP rejects both candidates, then the MDEP shall state the particular reasons for the rejections. In this case, the applicant may either dispute the rejection to the Director of the Bureau of Land and Water Quality or start the selection process over by nominating two, new candidates.

3.0 THE INSPECTOR'S QUALIFICATIONS

Each inspector candidate nominated by the applicant shall have the following minimum qualifications:

- 1) a degree in an environmental science or civil engineering, or other demonstrated expertise,
- 2) a practical knowledge of erosion control practices and stormwater hydrology,
- 3) experience in management or supervision on large construction projects,
- 4) the ability to understand and articulate permit conditions to contractors concerning erosion control or stormwater management,
- 5) the ability to clearly document activities being inspected,
- 6) appropriate facilities and, if necessary, support staff to carry out the duties and responsibilities set forth in section 6.0 in a timely manner, and
- 7) no ownership or financial interest in the development other than that created by being retained as the third-party inspector.

4.0 INITIATING THE INSPECTOR'S SERVICES

The applicant will not formally and finally engage for service any inspector under this permit condition prior to MDEP approval or waiver by omission under section 2.0. No clearing, grubbing, grading, filling, stockpiling, or other construction activity will take place on the development site until the applicant retains the MDEP-approved inspector for service.

5.0 TERMINATING THE INSPECTOR'S SERVICES

The applicant will not terminate the services of the MDEP-approved inspector at any time between commencing construction and completing final site stabilization without first getting written approval to do so from the MDEP.

6.0 THE INSPECTOR'S DUTIES AND RESPONSIBILITIES

The inspector's work shall consist of the duties and responsibilities outlined below.

- 1) Prior to construction, the inspector will become thoroughly familiar with the terms and conditions of the state-issued site permit, natural resources protection permit, or both.
- 2) Prior to construction, the inspector will become thoroughly familiar with the proposed construction schedule, including the timing for installing and removing erosion controls, the timing for constructing and stabilizing any basins or ponds, and the deadlines for completing stabilization of disturbed soils.
- 3) Prior to construction, the inspector will become thoroughly familiar with the project plans and specifications, including those for building detention basins, those for installing the erosion control measures to be used on the site, and those for temporarily or permanently stabilizing disturbed soils in a timely manner.
- 4) During construction, the inspector will monitor the contractor's installation and maintenance of the erosion control measures called for in the state permit(s) and any additional measures the inspector believes are necessary to prevent sediment discharge to off-site properties or natural resources. This direction will be based on the approved erosion control plan, field conditions at the time of construction, and the natural resources potentially impacted by construction activities.
- 5) During construction, the inspector will monitor the contractor's construction of the stormwater system, including the construction and stabilization of ditches, culverts, detention basins, water quality treatment measures, and storm sewers.
- 6) During construction, the inspector will monitor the contractor's installation of any stream or wetland crossings.
- 7) During construction, the inspector will monitor the contractor's final stabilization of the project site.
- 8) During construction, the inspector will keep logs recording any rain storms at the site, the contractor's activities on the site, discussions with the contractor(s), and possible violations of the permit conditions.
- 9) During construction, the inspector will inspect the project site at least once a week and before and after any significant rain event. The inspector will photograph all protected natural resources both before and after construction and will photograph all areas under construction. All photographs will be identified with, at a minimum the date the photo was taken, the location and the name of the individual taking the photograph.
Note: the frequency of these inspections as contained in this condition may be varied to best address particular project needs.
- 10) During construction, the inspector will prepare and submit weekly inspection reports to the MDEP.

- 11) During construction, the inspector will notify the designated person at the MDEP immediately of any sediment-laden discharges to a protected natural resource or other significant issues such as the improper construction of a stormwater control structure or the use of construction plans not approved by the MDEP.

7.0 INSPECTION REPORTS

The inspector will submit weekly written reports, including photographs of areas that are under construction, on a form provided by the Department to the designated person at the MDEP. Each report will be due at the MDEP by the Friday following the inspection week (Monday through Sunday).

The weekly report will summarize construction activities and events on the site for the previous week as outlined below.

- 1) The report will state the name of the development, its permit number, and the start and end dates for the inspection week (Monday through Sunday).
- 2) The report will state the date(s) and time(s) when the inspector was on the site making inspections.
- 3) The report will state the date(s) and approximate duration(s) of any rainfall events on the site for the week.
- 4) The report will identify and describe any erosion problems that resulted in sediment leaving the property or sediment being discharged into a wetland, brook, stream, river, lake, or public storm sewer system. The report will describe the contractor's actions to repair any damage to other properties or natural resources, actions to eliminate the erosion source, and actions to prevent future sediment discharges from the area.
- 5) The report will list the buildings, roads, parking lots, detention basins, stream crossings or other features open to construction for the week, including those features or areas actively worked and those left unworked (dormant).
- 6) For each area open to construction, the report will list the date of initial soil disturbance for the area.
- 7) For each area open to construction, the report will note which areas were actively worked that week and which were left dormant for the week. For those areas actively worked, the report will briefly state the work performed in the area that week and the progress toward final stabilization of the area -- e.g. "grubbing in progress", "grubbing complete", "rough grading in progress", "rough grading complete", "finish grading in progress", "finish grading complete", "permanent seeding completed", "area fully stable and temporary erosion controls removed", etc.
- 8) For each area open to construction, the report will list the erosion and sedimentation control measures installed, maintained, or removed during the week.
- 9) For each erosion control measure in-place, the report will note the condition of the measure and any maintenance performed to bring it to standard.

Third Party Inspection Form

This report is prepared by a Third Party Inspector to meet the requirements of the Third Party Inspector Condition attached as a Special Condition to the Department Order that was issued for the project identified below. The information in this report/form is not intended to serve as a determination of whether the project is in compliance with the Department permit or other applicable Department laws and rules. Only Department staff may make that determination.

TO: <i>PM, Maine DEP (@maine.gov)</i>	FROM:
PROJECT NAME/ LOCATION:	DEP #:
DATE OF INSPECTION:	DATE OF REPORT:
WEATHER:	CONDITIONS:

SITE CHARACTERISTICS:

# ACRES OPEN:	# ACRES ACTIVE:	# ACRES INACTIVE:
LOCATION OF OPEN LAND:	LOCATION OF ACTIVE LAND:	LOCATION OF INACTIVE LAND:
OPEN SINCE:	OPEN SINCE:	OPEN SINCE:

PROGRESS OF WORK:

INSPECTION OF:	Satisfactory	Minor Deviation (corrective action required)	Unsatisfactory (include photos)
STORMWATER CONTROL (VEGETATIVE & STRUCTURAL BMP'S)			
EROSION & SEDIMENTATION CONTROL (TEMPORARY & PERMANENT BMP'S)			
OTHER: (PERMIT CONDITIONS, ENGINEERING DESIGN, ETC.)			

COMMENTS/CORRECTIVE ACTIONS TAKEN (attach additional sheets as necessary):

Photos (must be labeled with date, photographer and location):

Cc:		
<i>Original and all copies were sent by email only.</i>		



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.
