



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS  
GOVERNOR

MELANIE LOYZIM  
COMMISSIONER

June 7, 2022

Mr. Sean Donohue  
Permitting Coordinator  
Maine Turnpike Authority  
2360 Congress Street  
Portland, Maine 04102  
e-mail: [sdonohue@maineturnpike.com](mailto:sdonohue@maineturnpike.com)

**RE: Municipal Separate Storm Sewer System (MS4) General Permit #MER043000  
Final - MER043001**

Dear Mr. Donohue:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL which was approved by the Department of Environmental Protection. Please read this permit/license and its attached conditions carefully. Compliance with this permit/license will protect water quality.

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled “*Appealing a Commissioner’s Licensing Decision.*”

If you have any questions regarding the matter, please feel free to call me at 287-7693. Your Department compliance inspector copied below is also a resource that can assist you with compliance. Please do not hesitate to contact them with any questions.

Thank you for your efforts to protect and improve the waters of the great state of Maine!

Sincerely,

Gregg Wood  
Division of Water Quality Management  
Bureau of Water Quality

Enc.

cc: Holliday Keen, DEP/CMRO                      Alison Moody DEP/SMRO                      Lori Mitchell, DEP/CMRO  
      Damien Houlihan, USEPA                      Nathan Chien, USEPA                      Richard Carvalho, USEPA  
      Newton Tedder, USEPA

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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

MAINE TURNPIKE AUTHORITY	)	MUNICIPAL SEPARATE STORM
PORTLAND, CUMBERLAND COUNTY, MAINE	)	SEWER SYSTEM
MER043001	)	MER043000
	)	<b>GENERAL PERMIT COVERAGE</b>
<b>APPROVAL</b>	)	<b>RENEWAL</b>

The Department of Environmental Protection (Department/DEP) has considered the Notice of Intent submitted by the MAINE TURNPIKE AUTHORITY (MTA/permittee), with supportive data, agency review comments and other related materials on file for coverage under the Municipal Separate Storm Sewer System (MS4) General Permit (GP), #MER043000, issued by the Department on August 18, 2021, and FINDS THE FOLLOWING FACTS.

The permittee submitted a Notice of Intent (NOI) with an initial Stormwater Management Plan (SWMP) to the Department on September 30, 2021 that were made available for a 30-day public comment period on the Department's website at <https://www.maine.gov/dep/comment/comment.html?id=4463193>. No public comments were received on the NOI or the initial SWMP. The Department has reviewed the initial SWMP document and made the determination that the document is consistent with and fully articulates what is required to meet the MS4 GP standard. Pursuant to Part IV(B) of MS4 GP issued by the Department on August 18, 2021, the permittee must update the initial SWMP within 60 days of the effective date of this DEP permittee specific order or within 60 days of the final resolution to an appeal of this DEP permittee specific order. The final plan must be submitted to the Department and will be posted on the Department's website.

The permittee must fully implement the Best Management Practices in accordance with their associated schedules of compliance, as established in the Modified Stormwater Management Plan that is in effect at the time any schedule for compliance is due.

The permittee has agreed to comply with all terms and conditions of the MS4 General Permit, #MER043000, dated August 18, 2021. Operated in accordance with the Municipal Separate Storm Sewer System (MS4) General Permit, #MER043000, the discharges identified by the permittee will not have a significant adverse effect on water quality or cause or contribute to the violation of the water quality standards of the receiving water.

**Impaired Waters**

The MTA has point source discharges to Thatcher Brook, Goosefare Brook, Red Brook, Nasons Brook, Capisic Brook, Dole Brook and Hart Brook which are classified as Urban Impaired Streams in Maine DEP Rule Chapter 502. To address the impairments, the permittee must fully implement all actions, schedules and milestones established in Appendix G, *Urban Impaired Stream Watershed Best Management Practices*, in the April 22, 2022 revised initial SWMP and any revisions reflected in the Modified Stormwater Management Plan required by Part IV(B). Appendix G is attached to this Order.

THEREFORE, the Department GRANTS the MAINE TURNPIKE AUTHORITY, coverage under the Municipal Separate Storm Sewer System (MS4) General Permit, #MER043000, issued by the Department on August 18, 2021, subject to the terms and conditions therein.

This DEP permittee specific order becomes effective on July 1, 2022 and expires at midnight five (5) years after that date. If the GP is to be renewed, this DEP permittee specific order will remain in effect and enforceable until the Department takes final action on the renewal.

DONE AND DATED AT AUGUSTA, MAINE, THIS 7 DAY OF June, 2022.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
\_\_\_\_\_ *for* Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

The Notice of Intent was received by the Department on \_\_\_\_\_ September 30, 2021 \_\_\_\_\_.

The Notice of Intent was accepted by the Department on \_\_\_\_\_ October 14, 2021 \_\_\_\_\_.

**FILED**  
JUNE 7, 2022  
State of Maine  
Board of Environmental Protection

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

This Order prepared by GREGG WOOD, BUREAU OF WATER QUALITY

**RESPONSE TO COMMENTS**

During the period of May 3, 2022 through the effective date of this final agency action, the Department solicited comments on the draft MEPDES permit. The Department did not receive any comments that resulted in any substantive changes to the draft permit. Therefore, the final permit is being issued as drafted with a couple of minor revisions to address typographical errors cited by the permittee.



## URBAN IMPAIRED STREAM WATERSHED BEST MANAGEMENT PRACTICES

This narrative provides a summary of Maine Turnpike Authority's (MTA) proposed best management practices (BMPs) in seven urban impaired stream (UIS) watersheds where MTA maintains direct stormwater discharges to an UIS. The purpose of the BMPs described in this narrative are to meet the requirements of Part IV.E.3. of the *General Permit for the Discharge of Stormwater from Maine Department of Transportation and Maine Turnpike Authority Municipal Separate Storm Sewer Systems* (MER 043000) issued on August 18, 2021. The proposed BMPs are based on MTA's current work plan, which is a dynamic document subject to changes and schedule revisions, and is also subject to funding based on MTA's toll revenues and capacity to fund projects through bond solicitations. If changes to MTA's work plan occur that effect implementation of the BMPs proposed in this narrative, MTA will notify the Maine Department of Environmental Protection and make the necessary modifications to its Stormwater Management Plan.

### 1. Thatcher Brook Watershed, Biddeford

#### Thatcher Brook BMP #1 – Improve Awareness of Stormwater BMP Maintenance Requirements

In 2016 MTA constructed two underdrained soil filters at the Exit 32 interchange in the ditch line adjacent to the northbound on ramp to treat stormwater in the Thatcher Brook watershed. Across MTA's footprint, the number of operational stormwater treatment BMPs has grown rapidly. Prior to the start of the 2013-2022 MS4 permit cycle MTA had 11 stormwater BMPs. Currently, MTA has 32 stormwater treatment BMPs in operation, and that is anticipated increase to approximately 63 by the close of the 2022-2027 MS4 permit cycle. With the expansion of stormwater treatment infrastructure, improved awareness on behalf of highway operations staff of correct BMP management practices will help ensure optimum function and lifespan.

MTA will include in its annual environmental and stormwater training for highway operations staff correct stormwater BMP maintenance practices in the Thatcher Brook watershed. MTA will also install signage around the two soil filter BMPs to alert highway maintenance staff to use only light mowing equipment to prevent rutting, compaction, and damage to filter media and underdrain systems. Foreman and maintenance facilities will be provided with mapping identifying the location of MTA's new stormwater BMP infrastructure for reference and to improve staff awareness of the location of the new

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infrastructure. In its MS4 Permit Annual Compliance Report, MTA will report progress on each of these metrics.

Thatcher Brook BMP #2 –

Plant Shrubs in Wetland and Install Mowing Restriction Signs Around Riparian Zone of Relocated Segment of Unnamed Tributary to Thatcher Brook

In 2021, MTA relocated 490 linear feet of a direct unnamed tributary to Thatcher Brook to accommodate Exit 32 southbound off ramp improvements in Biddeford. The project design included moving the stream as far from the southbound lanes of the Turnpike as feasible with natural meanders, natural “stream bed special fill” with rounded gravel and cobble substrate, and in-stream log features, while remaining within MTA right-of-way. The end result was an overall increase in the distance between the channel and the southbound lanes, including a 121-foot segment of channel that had been previously straightened and routed into the road ditch.

The Thatcher Brook Watershed-Based Plan identifies this location as an area with poor buffering, which has been improved by relocating the channel further from the roadway and maintaining a riparian wetland fringe. One of the goals of the relocation was to improve the opportunity for sheet flow and infiltration of runoff from the outside lane of the Turnpike between the edge of the pavement and the stream to help improve water quality.

As a BMP, in PY 1 or PY2 MTA proposes to plant wetland shrubs in the wetland riparian zone between the relocated stream channel and the toe of the highway fill slope. Planting shrubs would be an augmentation to the riparian zone design that was not included as part of the original stream channel relocation plan or construction contract. The goal of the shrub planting will be to improve the riparian buffer by promoting establishment of shrub cover in the riparian zone, augmenting wetland water quality functions (attenuation or retention of nutrients, sediment, and toxicants), and over time providing some shading over the stream channel and a natural local source of small diameter woody debris for the stream channel. MTA will plant approximately 200 shrubs at a spacing of 10 feet on center throughout the planting zone. Species will include native shrubs with a wetland indicator status of facultative (FAC) or wetter, typically two to three feet in height, and that are commercially available and suited to the site. MTA will also install "No Mowing" signs at the edge of the riparian wetlands along the Exit 32 southbound off ramp stream relocation site to help ensure maintenance staff do not to mow the riparian wetland (adjacent 4:1 highway slopes may be mowed). Not mowing the wetland will help prevent rutting in the wetlands that can lead to channelized flow and erosion, and will

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allow dense herbaceous vegetation and shrub-cover to re-establish in the wetlands as intended.

Thatcher Brook BMP #3 –  
Implement MTA Chloride BMPs

As described under item number eight at the end of this UIS BMP narrative, MTA has prepared Chloride BMPs to help manage the application of chloride for snow and ice control and reduce its environmental impacts. As an UIS BMP, MTA will implement the MTA Chloride BMPs in the Thatcher Brook Watershed.

**2. Goosefare Brook Watershed, Saco**

Goosefare Brook BMP #1, #2, & #3 –  
Construct Three New Underdrained Soil Filters in Goosefare Brook Watershed

MTA is planning to add a new Exit 35 and make improvements to Exit 36 to improve traffic flow to and from the Turnpike beginning in 2022 or 2023. As part of this work three lined underdrained soil filters (USFs) within the Goosefare Brook watershed are proposed to treat runoff from existing and new impervious surface. The USFs are planned to be located to intercept runoff before it discharges directly into Goosefare Brook and an unnamed tributary to the brook at Exit 36, which will help 'disconnect' some of the existing and proposed impervious surface cover. MTA is proposing to collect and treat runoff from approximately 4.8 acres of impervious surface. The exact acreage will be determined as final design of the project is completed. The USFs will also be lined with an impermeable membrane beneath the underdrain system, which may help reduce infiltration of chlorides to the groundwater table, which is identified as a stressor in the watershed.

Goosefare Brook BMP #4 –  
Implement MTA Chloride BMPs

As described under item number eight at the end of this UIS BMP narrative, MTA has prepared Chloride BMPs to help manage the application of chloride for snow and ice control and reduce its environmental impacts. As an UIS BMP, MTA will implement the MTA Chloride BMPs in the Goosefare Brook Watershed.

**3. Red Brook Watershed, Scarborough & South Portland**

Red Brook BMP #1 & #2 –  
Construct Two New USFs

As part of constructing the Portland Area Widening and the Exit 45 Reconfiguration Project, MTA will complete construction of two new underdrained soil filters in the Red Brook watershed. Project construction is in progress and expected to be completed in 2023. Together, these BMPs will collect and treat runoff from approximately 2.0 acres of existing and new impervious surface. In addition, the two USFs will be located adjacent to Red Brook, to enhance their benefit by 'disconnecting' some of the impervious surface that is adjacent to and drains directly into Red Brook. The USFs will be lined with an impermeable membrane beneath the underdrain system, which may help reduce infiltration of chlorides to the groundwater table, which is identified as a stressor in the watershed.

Red Brook BMP #3 –  
Implement MTA Chloride BMPs

As described under item number eight at the end of this UIS BMP narrative, MTA has prepared Chloride BMPs to help manage the application of chloride for snow and ice control and reduce its environmental impacts. As an UIS BMP, MTA will implement the MTA Chloride BMPs in the Red Brook Watershed.

**4. Nasons Brook Watershed, Portland**

Nasons Brook BMP #1 –  
Construct Stormwater Meadow Buffer

As part of Phase II of the Portland Area Widening Project between MTA mile marker 46.4 and 49.3 in Portland, MTA will construct a stormwater meadow buffer in the Nasons Brook watershed. The meadow buffer will treat approximately 0.16 acres of impervious surface from the Turnpike mainline. The construction contract was awarded in November 2021, and project construction will be completed before the MS4 General Permit expires in July 2027.



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Nasons Brook BMP #2 –  
Improve Awareness of Stormwater BMP Maintenance Requirements

MTA will soon have three new stormwater treatment BMPs constructed in the Nason's Brook watershed, including the new meadow buffer described above and two new lined USFs recently completed in 2020. As described under the discussion of Thatcher Brook BMP #1, the number of MTA's operational stormwater treatment BMPs is increasing rapidly, and improved awareness on behalf of MTA highway operations staff of correct BMP management practices will help ensure optimum function and lifespan.

MTA will include in its annual environmental and stormwater training for highway operations staff correct stormwater BMP maintenance practices in the Nasons Brook watershed. MTA will also install signage around the new soil filter BMPs to alert highway maintenance staff to use only light mowing equipment to prevent rutting, compaction, and damage to filter media and underdrain systems. Foreman and maintenance facilities will be provided with mapping identifying the location of MTA's new stormwater BMP infrastructure for reference and to improve staff awareness of the location of the new infrastructure. In its MS4 Permit Annual Compliance Report, MTA will report progress on each of these metrics.

Nasons Brook BMP #3 –  
Implement MTA Chloride BMPs

As described under item number eight at the end of this UIS BMP narrative, MTA has prepared Chloride BMPs to help manage the application of chloride for snow and ice control and reduce its environmental impacts. As an UIS BMP, MTA will implement the MTA Chloride BMPs in the Nasons Brook Watershed.

**5. Capisic Brook Watershed, Portland**

Capisic Brook BMP #1 –  
Construct Stormwater Meadow Buffer

As part of Phase II of the Portland Area Widening Project between MTA mile marker 46.4 and 49.3 in Portland, MTA will construct a stormwater meadow buffer in the Capisic Brook watershed. The meadow buffer will treat approximately 0.66 acres of impervious surface from the Turnpike mainline. The construction contract was awarded in November 2021

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and project construction will be completed before the MS4 General Permit expires in July 2027.

Capisic Brook BMP #2 -

Improve Awareness of Stormwater BMP Maintenance Requirements

MTA will soon have two new stormwater treatment BMPs constructed in the Capisic Brook watershed, including the new meadow buffer described above and one new lined USF recently completed in 2021. As described under the discussion of Thatcher Brook BMP #1, the number of MTA's operational stormwater treatment BMPs is increasing rapidly, and improved awareness on behalf of MTA highway operations staff of correct BMP management practices will help ensure optimum function and lifespan.

MTA will include in its annual environmental and stormwater training for highway operations staff correct stormwater BMP maintenance practices in the Capisic Brook watershed. MTA will also install signage around the new underdrained soil filter to alert highway maintenance staff to use only light mowing equipment to prevent rutting, compaction, and damage to filter media and the underdrain system. Foreman and maintenance facilities will be provided with mapping identifying the location of MTA's new stormwater BMP infrastructure for reference and to improve staff awareness of the location of the new infrastructure. In its MS4 Permit Annual Compliance Report, MTA will report progress on each of these metrics.

Capisic Brook BMP #3 –

Implement MTA Chloride BMPs

As described under item number eight at the end of this UIS BMP narrative, MTA has prepared Chloride BMPs to help manage the application of chloride for snow and ice control and reduce its environmental impacts. As an UIS BMP, MTA will implement the MTA Chloride BMPs in the Capisic Brook Watershed.

**6. Dole Brook Watershed, Portland**

Dole Brook BMP #1 –

Construct New Stormwater Treatment BMP as Part of Forest Avenue Bridge Rehabilitation Project

Before July 2027 and as part of the Forest Avenue Bridge Rehabilitation Project in Portland, MTA will construct one new stormwater treatment BMP in the Dole Brook watershed, such as a meadow buffer, underdrained soil filter, gravel treatment wetland,

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proprietary tree box filter(s), or comparable BMP. MTA currently estimates that construction would begin in 2024. The specific type of BMP and impervious surface area that would be treated would be determined as part of the project design.

*Dole Brook BMP #2 –  
Construct New Stormwater Treatment BMP as Part of Riverside Drive Bridge  
Rehabilitation Project*

Before July 2027 and as part of the Riverside Drive Bridge Rehabilitation Project, MTA will construct one new stormwater treatment BMP in the Dole Brook watershed, such as a meadow buffer, underdrained soil filter, gravel treatment wetland, proprietary tree box filter(s), or comparable BMP. MTA currently estimates that construction would begin in 2025. The specific type of BMP and impervious surface area that would be treated would be determined as part of the project design.

*Dole Brook BMP #3 –  
Implement MTA Chloride BMPs*

As described under item number eight at the end of this UIS BMP narrative, MTA has prepared Chloride BMPs to help manage the application of chloride for snow and ice control and reduce its environmental impacts. As an UIS BMP, MTA will implement the MTA Chloride BMPs in the Dole Brook Watershed.

**7. Hart Brook Watershed, Lewiston**

*Hart Brook BMP #1 and #2 – New Structural BMPs or Riparian Planting Augmentation*

MTA will complete two of the following BMPs before the close of the MS4 permit cycle on June 30, 2027:

- Construct a new lined underdrained soil filter or other structural BMP at the southwest quadrant of the Exit 80 interchange (near the end of the northbound off ramp);
- Construct a new structural BMP at the southeast quadrant of the River Road Bridge crossing such as a tree box filter/ bioretention BMP;
- Augment the riparian wetland buffer of a stream that MTA day lighted and restored in 2015 as part of the Exit 80 interchange reconstruction project with additional tree sapling plantings to further advance shading and forest cover over the stream; or

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- MTA maintains a bridge over Goddard Road at approximate mile marker 79.6. Adjacent to the bridge on the northbound side of the Turnpike, a drainage ditch is located within the MTA right-of-way (ROW) with an unconsolidated bottom that drains directly into Hart Brook. The ditch conveys runoff from Goddard Road and the municipal closed drainage system. MTA will stabilize the approximately 200-foot long drainage ditch to Hart Brook (MTA MS4 discharge point 0029) using either geofabric and riprap, or vegetation and permanent stone check dams. While the ditch is located in MTA's ROW, these improvements would constitute actions above and beyond routine maintenance, because the ditch is not a component of MTA's highway infrastructure and serves as a stormwater conveyance and discharge point for the municipal road. The specific ditch stabilization measures and improvements will be determined based on input from MTA design engineers. Before implementing or designing improvements to the ditch, MTA will consult with Maine DEP licensing staff to obtain concurrence that the ditch stabilization work will not occur in a river, stream, or brook regulated under the Natural Resource Protection Act.

The two BMPs to be implemented will be dependent on additional engineering feasibility assessments and funding, although two of these BMPs would be implemented before the close of the MS4 permit cycle on June 30, 2027.

Hart Brook BMP #3 –  
Implement MTA Chloride BMPs

As described under item number eight at the end of this UIS BMP narrative, MTA has prepared Chloride BMPs to help manage the application of chloride for snow and ice control and reduce its environmental impacts. As an UIS BMP, MTA will implement the MTA Chloride BMPs in the Hart Brook Watershed.

**8. MTA Chloride Best Management Practices**

Chloride from winter maintenance of impervious surfaces has been identified by the Maine Department of Environmental Protection as a stressor of Urban Impaired Streams. Maine Turnpike Authority maintains point source discharges (i.e., outfalls) to seven UIS waterbodies within the Urbanized Area (UA) boundary that is subject to regulation under the Transportation MS4 General Permit. MTA has prepared this Chloride BMP to utilize winter road maintenance materials efficiently, help reduce stressors on the aquatic environment, and meet the requirement of the Transportation MS4 Permit to implement at least three structural or non-structural BMPs for each UIS watershed within the UA.

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MTA has already taken numerous actions in recent years to reduce the impact of roadway deicing on the environment, while meeting the essential requirement to maintain safe road conditions. These actions are based on best practice recommendations outlined in the [Maine Environmental Best Management Practices Manual for Snow and Ice Control \(2015\)](#), as implemented through the *Maine Turnpike Authority Snow and Ice Control Policies and Procedures*. Key elements of MTA's practices relevant to controlling the application of chlorides include:

- Pre-season preparation and equipment calibration;
- Equipment training for highway operations staff;
- Collection and use of weather data to inform application of snow and ice control materials;
- Establishment of level of service and priority snow and ice removal areas;
- Procedures for removal of snow and ice from the Turnpike; and,
- Snow and ice control material tracking, handling, and storage.

The snow and ice control materials available for use on the Maine Turnpike are dry sodium chloride (salt), sodium chloride brine, magnesium chloride liquid, and sand. Sand is rarely used. MTA's practice is to pre-wet solid ice control materials with sodium chloride brine to help prevent the loss of material from the pavement surface. The benefits of pre-wetting sodium chloride with brine are:

- Less bounce & scatter;
- Faster reaction time;
- More effective melting action;
- Lower effective temperature is achieved if pre-wetting with magnesium chloride; and,
- Less salt needed resulting in reduced costs and environmental impact.

Since magnesium chloride has the ability to melt ice at lower temperatures, when temperatures drop below approximately +15°F, MTA generally uses magnesium chloride liquid or sodium chloride brine blended with magnesium chloride liquid to pre-wet dry sodium chloride.

**Annual Reporting:**

The practices outlined above constitute MTA's chloride BMPs, which will be implemented across the MS4 urban impaired stream watersheds where MTA maintains its infrastructure. As described under the preceding discussion of proposed BMPs for each urban impaired stream watershed, MTA proposes these collective practices as a BMP credit in each of MTA's urban impaired stream watersheds. In addition, as part of MTA's

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MS4 Permit Annual Compliance Report, MTA will report on the following related to chloride reduction:

- At least one representative from MTA will attend an annual regional training or roundtable to learn about new chloride reduction techniques coordinated by the Interlocal Stormwater Working Group or another organization; and,
- Over the course of the MS4 permit cycle (July 1, 2022 – June 20, 2027, or as extended), MTA proposes a new chloride tracking pilot program to monitor the application of winter maintenance chemicals for individual plow routes operating from MTA's Crosby Yard maintenance facility in Portland. Plow routes from the Crosby Yard span from Exit 36 in Saco to Exit 53 at the Falmouth Spur. Portions of five of the seven urban impaired stream watersheds with MTA outfalls in the Urbanized Area that are regulated under the MS4 permit are included within the proposed pilot program area (Goosefare Brook, Red Brook, Nasons Brook, Capisic Brook, and Dole Brook). Maine DEP identifies chloride as a stressor in each of these streams. Long Creek, an urban impaired stream which is not regulated under the MS4 permit, is also located within the pilot program area and is impaired by high chloride levels.

MTA uses loader scale data and other tracking tools to monitor and calculate the tonnage of dry sodium chloride and gallons of sodium chloride brine and magnesium chloride liquid applied each winter season. As past practice, these material quantities have been tracked for each MTA maintenance facility that is located along the Turnpike. MTA has not historically tracked this information to the level of individual plow routes, although this is feasible for dry sodium chloride with MTA's tracking systems.

MTA assigns a specific plow route for each truck and driver for the winter season. Each MTA interchange facility has its own defined plow route. Sections of the Turnpike mainline are also divided into individual routes. Approximately 20 individual plow routes operate out of the Crosby Yard. Tracking the application of dry sodium chloride for each plow route will allow for calculation of a seasonal total along the route, and for a relative comparison between plow routes (i.e. the amount of material applied along an interchange plow route over the season could be compared to a mainline plow route). This information could help identify whether there are locations within the watershed where chloride application may tend to be higher or lower.

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Throughout the MS4 permit cycle, MTA will provide the following deliverables to Maine DEP with its MS4 annual report for the Crosby Yard chloride tracking pilot program:

1. Maps or geospatial data (i.e., shapefile or kmz file) of the individual plow routes;
2. For each plow route, a tabular summary of:
  - a. The seasonal application total of dry sodium chloride;
  - b. The total number of Turnpike lane miles associated the plow route; and,
  - c. The seasonal total of dry sodium chloride applied per lane mile for each plow route.
3. The seasonal application total of sodium chloride brine and magnesium chloride liquid used by the Crosby Yard facility.



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: August 2021**

**Contact: (207) 314-1458**

### SUMMARY

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner.

Except as provided below, there are two methods available to an aggrieved person seeking to appeal a licensing decision made by the DEP Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) 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. § 3451\(4\)](#)) or a general permit for an offshore wind energy demonstration project ([38 M.R.S. § 480-HH\(1\)](#)) or a general permit for a tidal energy demonstration project ([38 M.R.S. § 636-A](#)) must be taken to the Supreme Judicial Court sitting as the Law Court.

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

A person filing an appeal with the Board should review Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); the Maine Administrative Procedure Act, 5 M.R.S. § [11001](#); and the DEP's [Rule Concerning the Processing of Applications and Other Administrative Matters \(Chapter 2\)](#), 06-096 C.M.R. ch. 2.

#### **DEADLINE TO SUBMIT AN APPEAL TO THE BOARD**

Not more than 30 days following the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The filing of an appeal with the Board, in care of the Board Clerk, is complete when the Board receives the submission by the close of business on the due date (5:00 p.m. on the 30<sup>th</sup> calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30<sup>th</sup> calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

An appeal to the Board may be submitted via postal mail or electronic mail and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection  
c/o Board Clerk  
17 State House Station  
Augusta, ME 04333-0017  
[ruth.a.burke@maine.gov](mailto:ruth.a.burke@maine.gov)



The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee; and if a hearing was held on the application, (3) any intervenors in that hearing proceeding. **Please contact the DEP at 207-287-7688 with questions or for contact information regarding a specific licensing decision.**

### **REQUIRED APPEAL CONTENTS**

A complete appeal must contain the following information at the time the appeal is submitted.

1. *Aggrieved status.* The appeal must explain how the appellant has standing to bring the appeal. This requires an explanation of how the appellant 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.* The appeal must identify the specific findings of fact, conclusions of law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing criteria that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license to changes in specific license conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for hearing must be filed as part of the notice of appeal, and it must include an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any witnesses would testify. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed supplemental evidence must be submitted with the appeal. The Board may allow new or additional evidence to be considered in an appeal only under limited circumstances. The proposed supplemental evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Requirements for supplemental evidence are set forth in [Chapter 2 § 24](#).

### **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, and is made accessible by the DEP. Upon request, the DEP will make application materials available to review and photocopy during normal working hours. There may be 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 the appeal.* DEP staff will provide this information upon request and answer general questions regarding the appeal process.
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. Unless a stay of the decision is requested and granted, a licensee may proceed with a project pending the outcome of an appeal, but the licensee 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 acknowledge receipt of an appeal, and it will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials admitted by the Board as supplementary evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the application, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant, the licensee, and parties of record are notified in advance of the date set for the Board's consideration of an appeal or request for a hearing. The appellant and the licensee will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding the merits of the appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the licensee, and parties of record of its decision on appeal.

## **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. § 346\(1\)](#); 06-096 C.M.R. ch. 2; [5 M.R.S. § 11001](#); and 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. 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. § 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 Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov), or for judicial appeals contact the court clerk's office in which the appeal will be filed.

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**Note: This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. The DEP provides this information sheet for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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