

AMSTER/FACILITY



STATE OF MAINE
Department of Environmental Protection

Paul R. Lepage
GOVERNOR

Patricia W. Aho
COMMISSIONER

October 6, 2014

Mr. David Latullipe
Portland Property Holdings, Inc.
c/o CJ Developers Inc.
2 Main Street
Topsham, ME 04086
e-mail: ddlatulip@aol.com

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME5S00006
Maine Waste Discharge License (WDL) Application #W009120-5S-B-M
Final Permit Modification

Dear Mr. Latullipe:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL **modification** which was approved by the Department of Environmental Protection. Please read this permit/license modification and its attached conditions carefully. You must follow the conditions in the order to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State Law and is subject to enforcement action.

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.

Sincerely,

Gregg Wood
Division of Water Quality Management
Bureau of Land and Water Quality
Enc.

cc: Alison Moody, DEP/SMRO
Sandy Mojica, USEPA

Ben Viola, DEP/SMRO
Marelyn Vega, USEPA

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-3901 FAX: (207) 287-3435
RAY BLDG., HOSPITAL ST.

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

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

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

PORTLAND PROPERTY HOLDINGS, INC.) MAINE POLLUTANT DISCHARGE
PORTLAND, CUMBERLAND COUNTY, ME.) ELIMINATION SYSTEM PERMIT
NEW COMMERCIAL DEVELOPMENT) AND
ME5S0006) MAINE WASTE DISCHARGE LICENSE
W009120-5S-B-M) **APPROVAL**) **MODIFICATION**

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, *et. seq.* and Maine Law 38 M.R.S.A., Section 414-A *et seq.*, and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of the PORTLAND PROPERTY HOLDINGS, INC. (applicant/permittee hereinafter) with its supportive data, agency review comments, and other related material on file and **FINDS THE FOLLOWING FACTS:**

APPLICATION SUMMARY

The permittee has filed an application with the Department to modify Department Order ME5S0006 issued by the Department on October 15, 2013, for a five year term. More specifically, the applicant is proposing to downsize the number of parking spaces from 32 spaces to 27 spaces and the number of fueling pumps from 14 pumps down to 10 pumps. As a result of the changes to the facility, the permittee is proposing to modify its system to treat stormwater via one of two surface treatment systems rather than the sub-surface system as proposed in the October 15, 2013, Department order.

PROJECT DESCRIPTION

- A. Summary: The applicant owns an approximately 3.24-acre parcel located within the Long Creek Watershed, and proposes to develop a new 3,850-S.F. convenience store with 27 parking spaces and fuel station with 10 pumps and a canopy. The development will also include an ATM drive-thru and provisions for a future compressed natural gas fueling station. The proposed project will create a total of 2.14 acres of developed area, 1.19 acres of which will be new structure area within the 3.36-acre project boundary (3.24-acre parcel plus 0.12 acre Access Easement). The applicant proposes to construct a combination of open and closed drainage systems, consisting of catch basins that will collect most of the stormwater runoff flowing over the paved areas, which will be directed to an open detention basin before being filtered through a grassed under drained soil filter system. The detention basin is designed to manage the release of the 2-, 10- and 25-year 24-hour storm event to below predevelopment conditions. The grassed under

PROJECT DESCRIPTION (cont'd)

drained soil filter system is designed to provide water quality treatment for approximately 106% of the new impervious area and 81% of the new developed area. The project is indicated on a set of plans, the first of which is entitled "Portland Multi-Use Development", prepared by Fay, Spofford & Thorndike (formerly Deluca Hoffman Associates, Inc.) and dated October 2013 with a revised date of August 06, 2014.

Pursuant to Maine law, 38 M.R.S.A. Section 420-D(7), the proposed project is exempt from review under Section 420-D because the Department has determined that the City of Portland's site plan review ordinance contains provisions that meet or exceed the provisions of Section 420-D.

- B. Current Use of the Site: The project site is an undeveloped wooded lot that was partially clear cut within the last ten years.

INDIVIDUAL PERMIT REQUIREMENTS

The proposed project includes the development of approximately 2.14 acres of the 3.24-acre parcel. The project will result in 106% of the new impervious and 81% of the new developed areas will be treated. The project lies within the watershed of Long Creek, an urban impaired stream based on the Department's rules. The applicant submitted a stormwater management plan based on the basic and general standards contained in 06-096 CMR 500. The proposed stormwater management system consists of catch basins, stormwater detention basin and the grassed under drained soil filter system prior to discharging to a wetland within the Long Creek watershed.

A. BASIC STANDARDS:

- (1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan that is based on the performance standards contained in 06-096 CMR 500, Appendix A and the Best Management Practices (BMPs) outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and dated by revision August 7, 2014, to reflect the amended site plan.

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

A Department engineer reviewed the erosion and sedimentation control plan and the maintenance plan, and found that the proposed project meets the Basic Standards contained in 06-096 CMR 500(4)(A).

INDIVIDUAL PERMIT REQUIREMENTS (cont'd)

- (2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. This plan was reviewed by Department staff. The maintenance plan is based on the standards contained in 06-096 CMR 500, Appendix B. The applicant will be responsible for the maintenance of the stormwater management system. Prior to occupancy of the proposed facility, the applicant must submit a copy of an executed long-term maintenance contract (minimum of 5 years and renewable) for the on-going maintenance of the stormwater management system to the Department.
- (3) Housekeeping: The proposed project will comply with the performance standards outlined in 06-096 CMR 500 Appendix C.

B. GENERAL STANDARDS:

The proposed stormwater management system was reviewed by a Department engineer. The engineer stated that the system meets Department standards, and recommended that the applicant be required to retain the services of a professional engineer to inspect the installation of the stormwater detention basin, and the grassed under drained soil filter system. Inspections must consist of at least three visits to the site: one to inspect the preparation of the stormwater detention basin, two to inspect the grassed under drained soil filter system before it is backfilled, and third to inspect systems after installation is completed. Upon completion of the installation of the systems, the engineer will notify the Department in writing within 30 days that the systems have been installed. Accompanying the notification must be a log of the engineering inspections giving the date of each inspection and the items inspected on each date.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, the Department. The Department finds that the proposed stormwater management system is designed in accordance with requirements in 06-096 CMR 500 (4)(B) provided the installation of the system is overseen and documented as described above.

1. Annual Inspections: The applicant has made provisions for annual inspections of Best Management Practices and implementation of corrective actions if necessary. Maintenance plans include provisions for sweeping accessible paved areas quarterly with the first sweeping event occurring after snowmelt and the fourth sweeping event occurring during or after fall leaf drop.
2. On-going Monitoring Program: The applicant will make a financial contribution to the Long Creek Watershed Management District (LCWMD), at a rate consistent with assessments to other participants of the LCWMD for monitoring work. The LCWMD will invoice the applicant for annual monitoring fees.

STREAM RESTORATION:

The applicant will make a financial contribution to the Long Creek Watershed Management District. The financial contribution is based on the percentage of impervious area in the watershed that is located on the applicant's property. The LCWMD will invoice the applicant for annual stream restoration fees.

CONCLUSIONS

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. Section 413 and 06-096 CMR 521:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 M.R.S.A. Section 464(4)(F), will be met, in that:
 - a. Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - b. Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
 - c. Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
 - d. Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
 - e. Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.

CONCLUSIONS (cont'd)

4. The discharges will be subject to effluent limitations that require application of best practicable treatment.
5. The applicant has made adequate provision to ensure that the proposed project will meet the Basic Standards contained in 06-096 CMR 500(4)(A) for: (1) erosion and sediment control; (2) inspection and maintenance; (3) housekeeping; and (4) grading and construction activity provided that, prior to occupancy, the applicant submits a copy of an executed long-term maintenance contract (minimum of 5 years and renewable) for the on-going maintenance of the stormwater management system to the Department.
6. The applicant has made adequate provision to ensure that the proposed project will meet the General Standards in 06-096 CMR 500(4)(B).
7. The applicant has made adequate provision to ensure that the proposed project will meet the standards of 06-096 CMR 500 for: (1) easements and covenants; (2) management of stormwater discharges; (3) discharges of stormwater within the Long Creek Watershed provided the financial contributions are made as described above.

ACTION

THEREFORE, the Department APPROVES the above noted application of PORTLAND PROPERTY HOLDINGS, INC. to discharge post-construction treated stormwater runoff to Long Creek, Class SC, in South Portland, Maine, SUBJECT TO THE FOLLOWING SPECIAL CONDITIONS, and all applicable standards and regulations:

1. *“Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits,”* revised July 2, 2001, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit becomes effective upon the date of signature below and expires at midnight on October 15, 2018, concurrent with ME5S0006, issued by the Department on October 15, 2013. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of this permit and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act, 5 M.R.S.A. § 10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (effective April 1, 2003)*].

ACTION (cont'd)

DONE AND DATED AT AUGUSTA, MAINE, THIS 6th DAY OF October, 2014.

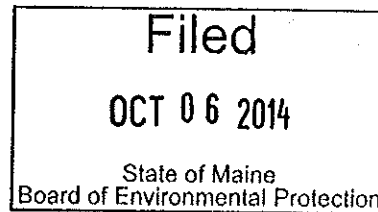
COMMISSIONER OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application August 14, 2014.

Date of application acceptance August 18, 2014.



Date filed with Board of Environmental Protection _____

This Order prepared by GREGG WOOD, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

A. GENERAL OPERATIONAL CONSTRIANTS

1. 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.
2. Payment for monitoring and stream restoration requirements shall be made within 30 days of invoice from LCWMD.
3. The components of the stormwater management system shall be adequately maintained to ensure that the system operates as designed, and as approved by the department.
4. The applicant shall retain the services of a professional engineer to inspect the installation of the stormwater detention basin and the grassed under drained soil filter system. Inspections shall consist of at least three visits to the site: one to inspect the preparation of the stormwater detention basin, , two to inspect the grassed under drained soil filter system layout before it is backfilled, and third to inspect systems after installation is completed
5. Upon completion of the installation of the systems the engineer shall notify the Department in writing within 30 days that the systems have been installed. Accompanying the notification will be a log of the engineering inspections giving the date of each inspection and the items inspected on each date.
6. The stormwater management system shall be put in place and operational prior to occupancy.
7. The applicant shall execute the maintenance plan based on 06-096 CMR 500, Appendix B, as approved by the department.
8. Prior to occupancy of the new facility, the applicant shall submit a copy of an executed long-term maintenance contract (minimum of 5 years and renewable) for the on-going maintenance of the stormwater management system to the Department.
9. 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.

SPECIAL CONDITIONS

A. GENERAL OPERATIONAL CONSTRIANTS

- 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.
10. 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.
 11. Unless otherwise provided in this approval, the applicant may not sell, ease, 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 the 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.

B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time which would impair the usages designated for the classification of the receiving waters.
2. The effluent shall not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated for the classification of the receiving waters.
3. The discharges shall not cause visible discoloration or turbidity in the receiving waters which would impair the usages designated for the classification of the receiving waters.
4. Notwithstanding specific conditions of this permit the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

SPECIAL CONDITIONS

C. REOPENING OF PERMIT FOR MODIFICATIONS

Upon evaluation of the tests results or monitoring requirements specified in Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at anytime and with notice to the permittee, modify this permit to; 1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded, (2) require additional monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

D. SEVERABILITY

In the event that any provision(s), or part thereof, of this permit is declared to be unlawful by a reviewing court, the remainder of the permit shall remain in full force and effect, and shall be construed and enforced in all aspects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.



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.
