

City Copy



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

DEPARTMENT ORDER  
IN THE MATTER OF

ECOMAINE	)	SOLID WASTE ORDER
PORTLAND, CUMBERLAND COUNTY, MAINE	)	
INCINERATION FACILITY -	)	
ADD PARKING SPACES	)	
S-010993-WG-S-M	)	MINOR REVISION
(APPROVAL WITH CONDITIONS)	)	

Pursuant to the provisions of the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S.A. §§1301 to 1319-Y, the *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (last amended April 1, 2003), the *Solid Waste Management Rules: General Provisions*, 06-096 CMR 400 (last amended July 20, 2010), and the *Solid Waste Management Rules: Incineration Facilities*, 06-096 CMR 403 (last amended November 2, 1998), the Department of Environmental Protection (Department) has considered the application of ECOMAINE, (ecomaine or applicant), with all its supportive data, agency review comments, and other related materials on file, and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

- A. Application: The applicant has applied for a minor revision of Department Order #L-010993-05-B-N, dated January 22, 1986, which approved the operation of a solid waste incineration facility located at 64 Blueberry Road in Portland, Maine. This application is to add 12 new parking spaces at the facility.
- B. History: The applicant received Department approval on January 22, 1986, for the construction and operation of a 550 ton per day mass burn waste-to-energy (WTE) municipal solid waste (MSW) incineration facility. The applicant's WTE facility is located on a 7-acre portion of a 20.6-acre parcel of land at 64 Blueberry Road in Portland, Maine. The facility received a solid waste renewal Department Order #S-010993-WG-O-R on May 12, 2012.
- C. Summary of Proposal: The applicant has proposed to add 12 additional paved parking spaces adjacent to the facility's main building. In support of this application ecomaine has submitted the following materials:
  - A site plan indicating the location of the proposed additional parking areas,
  - Design specifications of the parking areas,
  - Stormwater management calculations for the facility including the additional parking locations,



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- Design specifications and testing of materials for the designed stormwater underdrain soil filter to treat stormwater prior to discharge , and
- Changes to the facility operations manual related to maintenance of the stormwater structures.

2. DEPARTMENT REVIEW

The Department’s review of the submitted stormwater calculations indicates that the underdrain soil filter is adequately sized to treat stormwater from the additional parking areas. Proposed changes to the facility operations manual to address required maintenance of the underdrain filter are acceptable as proposed. The Department finds that the new parking areas have been designed and will be maintained in accordance with the applicable regulations, provided the applicant maintains the stormwater treatment structure as described in the facility operations manual.

BASED on the above Finding of Facts, and subject to the Conditions listed below, the Department makes the following CONCLUSION:

The minor revision to Department Order #S-010993-WG-B-N and as renewed in #S-010993-WG-O-R, as proposed by ECOMAINE, will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance, provided the stormwater treatment structure is properly maintained.

THEREFORE, the Department APPROVES WITH THE ATTACHED CONDITIONS the application of ECOMAINE subject to the following conditions:

1. The Standard Conditions of Approval, a copy attached as Appendix A.
2. The maintenance of the stormwater treatment structure for the additional parking areas shall be performed as described in the facility operations manual.



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3. All other Findings of Fact, Conclusions, and Conditions remain as approved in Department Orders #S-010993-WG-B-N and #S-010993-WG-O-R, and subsequent revisions to these licenses, are incorporated herein.

DONE AND DATED AT AUGUSTA, MAINE, THIS 19<sup>th</sup> DAY  
OF July, 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

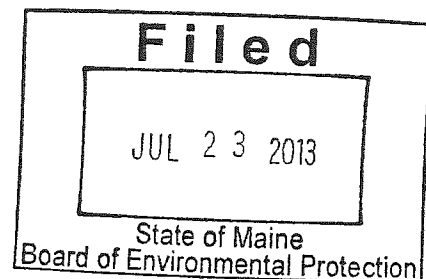
BY: Melanie L. L...  
Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURE

Date of initial receipt of application: December 3, 2012

Date of application acceptance: December 24, 2012

Date filed with the Board of Environmental Protection:



XRM75567/dlp



## Appendix A

### STANDARD CONDITIONS TO ALL SOLID WASTE FACILITY LICENSES

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

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

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

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





# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

### SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

#### HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

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

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

#### WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:



1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

#### OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.



## II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

### ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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

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