



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PAUL MERCER  
COMMISSIONER

February 2, 2016

Mr. Benjiman Ward  
Mill Manager  
Expera Old Town LLC  
24 Portland Street  
Old Town, ME 04468  
e-mail: [ben.ward@experaspeciality.com](mailto:ben.ward@experaspeciality.com)

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0002020  
Maine Waste Discharge License (WDL) #W002226-5N-M-M  
**Final Permit Modification**

Dear Mr. Ward:

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 renewal 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 Water Quality

Enc.

cc: Tanya Hovell, DEP/EMRO      Lori Mitchell, DEP/CMRO  
Sandy Mojica, USEPA      Olga Vergara, USEPA      Marellyn Vega, USEPA

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
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106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

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

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143



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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

EXPERA OLD TOWN LLC	) MAINE POLLUTANT DISCHARGE
PULP MANUFACTURER	) ELIMINATION SYSTEM PERMIT
OLD TOWN, PENOBSCOT COUNTY, MAINE	) AND
ME0002020	) WASTE DISCHARGE LICENSE
W002226-5N-M-M APPROVAL	) MODIFICATION

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, *et. seq.* and *Conditions of Licenses*, 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 EXPERA OLD TOWN LLC (Expera/permittee hereinafter) to modify combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0002020/Maine Waste Discharge License (WDL) #W002226-5N-H-R (permit hereinafter) issued by the Department to the former owner of the mill, Red Shield Acquisition LLC, on May 19, 2011, for a five-year term. The above referenced permit was transferred from Red Shield Acquisition LLC to Expera Old Town LLC via a global transfer order issued by the Department on December 4, 2014. With its supportive data, agency review comments, and other related material on file, the Department FINDS THE FOLLOWING FACTS:

**MODIFICATIONS REQUESTED**

On October 2, 2015, Expera terminated all pulp and or papermaking operations at the Old Town mill due to poor economic conditions. The waste water treatment facility continues to operate but the waste water characteristics are no longer representative of a kraft pulp mill operation as sources are primarily wash waters from milling cleaning, storm water, landfill leachate from the Juniper Ridge Landfill and waste water from the commercial LaBree's Bakery. Expera is proposing to change its mode of discharge from the treatment plant from a continuous discharge to periodic batch discharges (1-2 events) occurring three or four times a year.

As a result of the mill shutdown, Expera has requested a reduction in the monitoring frequencies as follows:

1. Flow, biochemical oxygen demand (BOD), total suspended solids (TSS), temperature (June – September 30) and pH from 1/Day to 1/Discharge Day for Outfall #001.
2. Color, adsorbable organic halides (AOX,) whole effluent toxicity (WET) testing and analytical chemistry testing be suspended indefinitely for Outfall #001.

**MODIFICATIONS GRANTED/DENIED**

1. The modification request to reduce the monitoring frequencies for BOD, TSS, temperature and pH from 1/Day to 1/Discharge Day is acceptable to the Department.
2. The limitations and monitoring requirements for adsorbable organic halides (AOX) and color are being removed from Outfall #001 of the permit as these parameters are associated with the operation of a kraft pulping operation which has already been eliminated at the mill.
3. The monitoring and reporting requirements for total phosphorus are being removed from Outfall #001 of the permit as these parameters are no longer necessary based on the most current five years of ambient water quality monitoring on the Penobscot River that indicate the river is meeting the standards of its classification.
4. The modification request to suspend the monitoring requirements for screening level whole effluent toxicity (WET) testing (2/Year) and analytical chemistry testing (1/Quarter) cannot be suspended but are being reduced to 1/Year pursuant to 40 CFR §122.44(h)(2) which states in no case can the monitoring frequency be established less than once per year. Pursuant to 06-096 CMR Chapter 530, surveillance level testing shall remain at 1/2 Years.

**CONCLUSIONS**

BASED on the findings above, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

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;

**CONCLUSIONS (cont'd)**

- (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.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

**ACTION**

THEREFORE, the Department APPROVES the above noted request by EXPERA OLD TOWN LLC, to modify MEPDES permit #ME0002020/WDL #W002226-5N-H-R, issued by the Department on May 19, 2011, and any subsequent modifications/minor revisions thereto, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits," revised July 1, 2002, copy attached to MEPDES permit #ME0002020/WDL #W002226-5N-H-R, issued by the Department on May 19, 2011.
2. The attached Special Conditions, including effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit, MEPDES permit #ME0002020/WDL #W002226-5N-H-R, issued by the Department on May 19, 2011, and any subsequent modifications not modified by this permitting action remain in effect and enforceable.
4. This modification becomes effective upon the date of signature below and expires at midnight on May 19, 2016. 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 modification 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**

DONE AND DATED AT AUGUSTA, MAINE, THIS 2<sup>ND</sup> DAY OF February, 2016.

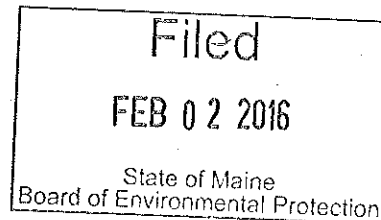
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns  
For Paul Mercer, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application November 18, 2015.

Date of application acceptance November 18, 2015.



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

This Order prepared by Gregg Wood, Bureau of Water Quality

**SPECIAL CONDITION**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

- The permittee is authorized to discharge secondary treated process waste waters from **Outfall #001**, bleach plant effluent (internal waste stream) from **Outfall #100**, non-contact cooling waters from **Outfall #002** and filter backwash from **Outfall #003** to the Penobscot River. Such discharges shall be limited and monitored by the permittee as specified below. The italicized numeric values in brackets in the table below and the tables that follow are not limitations but are code numbers used by Department personnel to code Discharge Monitoring Reports (DMR's).

**OUTFALL #001 – Secondary treated waste waters**

Effluent Characteristic	Discharge Limitations				Monitoring Requirements		
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type	
Flow (MGD) [50050]	24.4 MGD [03]	Report MGD [03]	---	---	Continuous [99/99]	Recorder [RC]	
BOD <sub>5</sub> [00310]	7,500 #/day	18,000 #/day	---	---	1/Discharge Day [01/DD]	Composite	
November 1 – May 31	8,850 #/day [26]	18,000 #/day [26]	---	---	1/Discharge Day [01/DD]	Composite [24]	
TSS [00530]	20,000 #/day	35,000 #/day	---	---	1/Discharge Day [01/DD]	Composite	
June 1 – October 31	22,475 #/day [26]	42,000 #/day [26]	---	---	1/Discharge Day [01/DD]	Composite [24]	
November 1 – May 31	---	---	---	---	1/Discharge Day [01/DD]	Grab [GR]	
Temperature [00011]	---	---	---	105°F [15]	1/Discharge Day [01/DD]	Grab [GR]	
June 1 – September 30	---	---	---	105°F [15]	1/Discharge Day [01/DD]	Grab [GR]	
October 1 – May 31	---	---	---	---	1/Discharge Day [01/DD]	Grab [GR]	
pH (Std. Unit) [00400]	---	---	---	5.0 – 9.0 SU [12]	1/Discharge Day [01/DD]	Grab [GR]	

Footnotes: See MEPDES permit #ME0002020/WDL #W002226-5N-H-R, issued by the Department on May 19, 2011.

**SPECIAL CONDITIONS**

**A. OUTFALL #001 – Secondary treated waste waters (cont'd)**

Effluent Characteristic	Discharge Limitations			Monitoring Requirements		
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Aluminum (Total) [01105]	198 lbs/Day [26]	—	1,946 ug/L [28]	—	1 Year [01/YR]	Composite [24]
Copper (Total) [01042]	9.9 lbs/Day [26]	8.0 lbs/Day [26]	98 ug/L [28]	79 ug/L [28]	1 Year [01/YR]	Composite [24]
Lead (Total) [01051]	0.53 lbs/Day [26]	—	5 ug/L [28]	—	1 Year [01/YR]	Composite [24]

**Footnotes:** See MEPDES permit #ME0002020/WDL #W002226-5N-H-R, issued by the Department on May 19, 2011.

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

**SURVEILLANCE LEVEL TESTING** – Beginning May 20, 2016, and lasting through May 19, 2019, discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations			Minimum Monitoring Requirements		
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
<b>Whole Effluent Toxicity (WET)</b> <sup>(4)</sup>						
<b>A-NOEL</b> <i>Ceriodaphnia dubia</i> [TDA3B] (Water Flea)	---	---	---	Report % [23]	1/2 Years [01/2Y]	Composite [24]
<i>Salvelinus fontinalis</i> [TDA6F] (Brook trout)	---	---	---	Report % [23]	1/2 Years [01/2Y]	Composite [24]
<b>C-NOEL</b> <i>Ceriodaphnia dubia</i> [TBP3B] (Water Flea)	---	---	---	Report % [23]	1/2 Years [01/2Y]	Composite [24]
<i>Salvelinus fontinalis</i> [TBQ6F] (Brook trout)	---	---	---	Report % [23]	1/2 Years [01/2Y]	Composite [24]
Analytical Chemistry <sup>(5,6)</sup> [51477]	---	---	---	Report ug/L [28]	1/2 Years [01/2Y]	Composite/ Grab [24/GR]

Footnotes: See MEPDES permit #ME0002020/WDL #W002226-5N-H-R, issued by the Department on May 19, 2011.



**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

**SCREENING LEVEL TESTING** -- Beginning upon issuance of this permit modification, the permittee shall complete the screening level testing requirements of #ME0002020/WDL #W002226-5N-H-R, issued by the Department on May 19, 2011. Beginning May 20, 2019, and lasting through May 19, 2020, discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations			Minimum Monitoring Requirements		
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
<u>Whole Effluent Toxicity (WET)</u> <sup>(4)</sup>						
<u>A-NOEL</u> <i>Ceriodaphnia dubia</i> [TDA3B] (Water Flea)	---	---	---	Report % [23]	1/Year [01/YR]	Composite [24]
<i>Salvelinus fontinalis</i> [TDA6F] (Brook trout)	---	---	---	Report % [23]	1/Year [01/YR]	Composite [24]
<u>C-NOEL</u> <i>Ceriodaphnia dubia</i> [TBP3B] (Water Flea)	---	---	---	Report % [23]	1/Year [01/YR]	Composite [24]
<i>Salvelinus fontinalis</i> [TBQ6F] (Brook trout)	---	---	---	Report % [23]	1/Year [01/YR]	Composite [24]
Priority Pollutants <sup>(6)</sup> [50008]	---	---	---	Report ug/L [28]	1/Year [01/YR]	Composite/Grab [24/GR]
Analytical Chemistry <sup>(5,6)</sup> [51477]	---	---	---	Report ug/L [28]	1/Year [01/YR]	Composite/Grab [24/GR]

**Footnotes:** See MEPDES permit #ME0002020/WDL #W002226-5N-H-R, issued by the Department on May 19, 2011.



# 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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