



STATE OF MAINE
Department of Environmental Protection

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

January 2012

Herb Scribner
ORPC Maine, LLC
120 Exchange Street, Suite 508
Portland, ME 04101

RE: Maine Waterway Development and Conservation Act General Permit Application and
Water Quality Certification, Eastport, #L-25468-35-A-N

Dear Mr. Scribner:

The Department of Environmental Protection has completed its review of the above referenced project pursuant to the Maine Waterway Development and Conservation Act and Water Quality Certification for a Tidal Power Demonstration Project. A copy of the application and complete plans for the project are found in Department file #L-25468-35-A-N.

The project involves the construction of five turbine generator units (TGU), submerged cables for generated power and data collection to a shore station located on North Lubec Road in the town of Lubec. Phase 1 of the project will deploy a single TGU and Phase 2 will deploy the remaining four units. The TGUs are approximately 98 feet long by 17 feet wide and 17 feet high, and are mounted approximately 15 feet off the sea floor with steel piles driven into the bottom. Each TGU has a rated capacity of 60 kilowatt hours. The power and data cables will be buried below the seafloor using a shear plow in the sub-tidal areas and an excavator in the inter-tidal areas. The shore station will consist of a 16-foot wide by 20-foot long modular building on a 30-foot wide by 30-foot long gravel pad that will house monitoring equipment and inverters that will convert the electricity generated by the project such that it can be connect to the electrical grid.

The project is not a "wave energy test project" as defined in 38 MRSA § 480-HH because it includes more than two wave energy converters.

During its review of the project, the Department determined that ORPC Maine, LLC has plans to monitor the environmental effects of the project and safeguard the public and environmental resources and to remove the project upon expiration of the permit. Further, the applicant has consulted with the appropriate local, state and federal resource agencies, and has documented that it has adequate financial and technical ability to construct and operate the project as proposed and is adequately insured. Finally, the applicant has acknowledged that the Department may require the applicant to take remedial action,

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at the applicant's expense, including but not limited to removal of the generating facilities and submerged utility line and termination of the project.

The Federal Energy Regulatory Commission (FERC) has made a finding of "no significant environmental impact" in relation to the project.

This general permit is valid for the term of the pilot project license, including any related annual license, issued by FERC for this project, and is deemed to have been surrendered and terminated on the date of approval by FERC of the surrender and termination of the pilot project license or any related annual license for this tidal energy demonstration project.

You will find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit or thoughts on how the Department processed this application, please get in touch with Jim Beyer of the Department's Eastern Maine Regional Office. Jim can be reached at (207) 446-9026 or at Jim.R.Beyer@maine.gov.

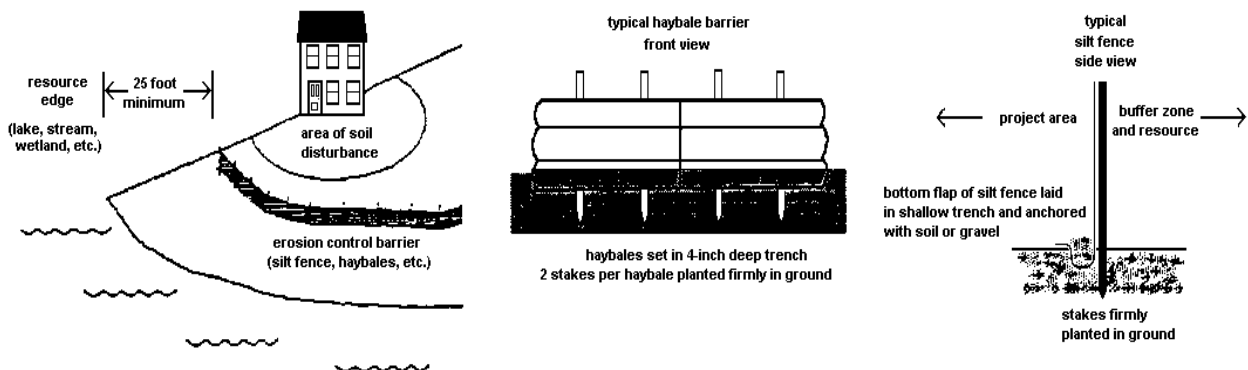
pc: File
Todd Burrowes, Maine Coastal Program
Brian Swan, Department of Marine Resources
Steve Walker, Department of Inland Fisheries and Wildlife

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Erosion Control for Homeowners

Before Construction

1. If you have hired a contractor, make sure you discuss your permit-by-rule with them. Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is, and where it is located. Most people can identify the edge of a lake or river. However, the edges of wetlands are often not so obvious. Your contractor may be the person actually pushing dirt around, but you are both responsible for complying with the permit-by-rule.
2. Call around to find where erosion control materials are available. Chances are your contractor has these materials already on hand. You probably will need silt fence, hay bales, wooden stakes, grass seed (or conservation mix), and perhaps filter fabric. Places to check for these items include farm & feed supply stores, garden & lawn suppliers, and landscaping companies. It is not always easy to find hay or straw during late winter and early spring. It also may be more expensive during those times of year. Plan ahead -- buy a supply early and keep it under a tarp.
3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the soil-disturbance activity.
4. If a contractor is installing the erosion control barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level or elevation across the land slope, whenever possible. This keeps stormwater from flowing to the lowest point along the barrier where it can build up and overflow or destroy the barrier.



During Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops hitting the bare ground that makes the soil begin to move downslope with the runoff water, and cause erosion. More than 90% of erosion is prevented by keeping the soil covered.
2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. You or your contractor then need to figure out what can be done to prevent more soil from getting past the barrier.
3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

STANDARD CONDITIONS OF APPROVAL TO BE ATTACHED TO HYDROPOWER PERMITS

1. Limits of Approval. This approval is limited to and includes the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. All variances from the plans and proposals contained in said documents are subject to the review and approval of the Board or Commission prior to implementation.
2. Noncompliance. Should the project be found, at any time, not to be in compliance with any of the conditions of this approval, or should the permittee construct or operate this project in any way other than specified in the application or supporting documents, as modified by the conditions of this approval, then the terms of this approval shall be considered to have been violated.
3. Compliance with all Applicable Laws. The permittee shall secure and appropriately comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation.
4. Inspection and Compliance. Authorized representatives of the Board, Commission or the Attorney General shall be granted access to the premises of the permittee at any reasonable time for the purpose of inspecting the construction or operation of the project and assuring compliance by the permittee with the conditions of this approval.
5. Initiation and Completion of Construction. If construction is not commenced within 3 years and completed within 7 years from the date of issuance of this permit, this approval shall lapse, unless a request for an extension of these deadlines has been approved by the Board or Commission.
6. Construction Schedule. Prior to construction, the permittee shall submit a final construction schedule for the project to the Commissioner or Director.
7. Approval Included in Contract Bids. A copy of this approval must be included in or attached to contract bid specifications for the project.
8. Approval Shown to Contractor. Work done by a contractor pursuant to this approval shall not begin before a copy of this approval has been shown to the contractor by the permittee.
9. Notification of Project Operation. The permittee shall notify the Commissioner or Director of the commencement of commercial operation of the project within 10 days prior to such commencement.
10. Assignment or Transfer of Approval. This approval shall expire upon the assignment or transfer of the property covered by this approval unless written consent to transfer this approval is obtained from the Board or Commission. To obtain approval of transfer, the permittee shall notify the Board or Commission 30 days prior to assignment or transfer of property which is subject to this approval. Pending Board or Commission determination on the application for a transfer or assignment of ownership of this approval, the person(s) to whom such property is assigned or transferred shall abide by all of the terms and conditions of this approval. To obtain the Board's or Commission's approval of transfer, the proposed assignee or transferee must demonstrate the financial capability and technical ability to (1) comply with all terms and conditions of this approval and (2) satisfy all other applicable statutory criteria.

A "transfer" is defined as the sale or lease of property which is the subject of this approval or the sale of 50 percent or more of the stock of or interest in a corporation or a change in a general partner of a partnership which owns the property subject to this approval.



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

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 the Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's General Laws, 38 M.R.S.A. § 341-D(4), and its Rules Concerning the Processing of Applications and Other Administrative Matters (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days 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 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 and the applicant a copy of the documents. All 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

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by 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 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 as part of an appeal only when 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 show 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, Section 24(B)(5)

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information 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.* An applicant proceeding with a project pending the outcome of an appeal 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 initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final 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. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION: If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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.
