

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

DEPARTMENT ORDER

IN THE MATTER OF

CITY OF GARDINER
Gardiner, Kennebec County
SHOREFRONT REVITALIZATION AND
STABILIZATION
L-22309-4D-A-N (approval)

) NATURAL RESOURCES PROTECTION ACT
) COASTAL WETLAND ALTERATION
)
) WATER QUALITY CERTIFICATION
) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of the CITY OF GARDINER with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to redevelop a parcel of town-owned land along a tidal portion of the Kennebec River as recreational open space. The applicant proposes to stabilize approximately 525 linear feet of shoreline by removing and replacing deteriorated timber crib supports. A pedestrian boardwalk will be constructed on top of the cribwork to facilitate bank fishing and improve riverfront access. Piles will be installed in front of the new timber crib to facilitate vessel tie-ups. The applicant proposes to construct a hand carry boat launch at the southern end of the proposed stabilization, which will result in 480 square feet of coastal wetland fill. Landscaping, parking and other upland improvements are proposed within 75 feet of the coastal wetland. The project is shown on a set of plans the first of which is entitled, "Gardiner Shoreline Stabilization," prepared by Kleinschmidt Energy & Water Resource Consultants and dated January 24, 2005. The project site is located off of River Street in the City of Gardiner, immediately south of an existing boat launch and parking area owned by the City of Gardiner.

The proposed hand carry boat launch will be constructed on land owned by the Maine Department of Transportation (DOT) and leased by the City of Gardiner. The applicant submitted correspondence from DOT stating that the proposed activities on DOT-owned land can be completed within the terms of the current lease.

B. Current Use of the Site: The project site has been used historically as a commercial and industrial depot, and it was most recently used as an above ground tank farm for petroleum products. The tank farm was razed in the 1990s and all tanks were removed. The site has since remained undeveloped and unused, and the timber crib has fallen into disrepair. The upland on the site is currently occupied by an old foundation

and two buildings to be removed as part of the proposed project. Existing gravel areas will be converted to parking.

2. WATER QUALITY CONSIDERATIONS:

The applicant submitted an erosion control plan and construction plans that describe the sequence of construction and measures to protect water quality. All earthwork will occur from the shoreline using existing gravel access ways across the property.

The existing crib will be removed to approximately 6 feet below mean high water. Existing backfill will be excavated approximately 20 feet back from the shore side of the crib for construction access. New cribwork will be anchored to a concrete leveling slab, poured directly onto the existing structure. The new crib will consist of 8-foot by 8-foot pressure treated timbers and rock fill and will extend upwards 9.5 feet, approximately 3 feet higher than the existing structure. The new structure will be backfilled with gravel and large granular fill and topped with a timber deck and railing. A series of timber piles will be driven into the river along the cribwork to facilitate vessel tie-up. Pressure-treated lumber treated with chromated copper arsenate must be cured on dry land for at least 21 days prior to construction.

The new timber crib will be constructed and backfilled as the existing timber crib is removed to limit disturbed area during construction. A floating turbidity curtain will be installed seaward of the work area during removal and replacement of the crib structure. The excavated bank will be sloped at an angle and stabilized by staked geotextile or other material to prevent sloughing of material as water levels fluctuate with the tide. Timber piles will be driven from the shore or a barge. No wheeled or tracked equipment will be operated in the water.

Excavation and concrete work below mean high water must be conducted in the dry during low tides to the extent practicable and secured prior to incoming tides. However, some concrete work may require installation from within the river by divers. If dewatering of concrete formwork is required, water must be pumped into sediment basins or dirt bags at least 75 feet away from the river and discharged to a well vegetated area in accordance with Section G-3 of the Maine Erosion and Sedimentation Control BMP Manual, dated March 2003.

The upland on the site will be graded to handle stormwater with a shallow vegetated swale for flow attenuation. The proposed green space will be landscaped with native species. Excavated areas and stockpiled material must be secured at all times with erosion control best management practices. A winter stabilization plan was submitted and additional erosion control measures will be installed as necessary in accordance with Section A-3 of the Maine Erosion and Sedimentation Control BMP manual entitled "Overwinter Construction and Stabilization."

The Department does not anticipate that the proposed project will violate any state water quality law, including those governing the classification of the State's waters, provided that the project is constructed and stabilized in accordance with the submitted plans and as described above.

3. HABITAT CONSIDERATIONS:

The Maine Department of Inland Fisheries and Wildlife reviewed the proposed project and stated that there are no Essential or Significant Wildlife Habitats at the project site.

The majority of the shoreline in the project area is man made and the supratidal/upper intertidal consists of a deteriorated timber and stone crib bulkhead. Water depth seaward of the existing crib is approximately 10 feet. The proposed hand carry boat launch area consists of a vegetated bank with some riprap that is experiencing moderate erosion. The upper intertidal consists of gravel beach. Debris such as broken concrete, metal and fence posts has accumulated in the cove.

The Department of Marine Resources (DMR) reviewed the proposed project and commented that this section of the Kennebec River is utilized by all of Maine's diadromous fish during portions of their life cycle, including the federally listed endangered shortnose sturgeon. DMR commented that in-stream work must be completed between August 1 and November 30 to minimize impacts to diadromous fish.

Based on IF&W and DMR comments, the proposed project should not cause any significant adverse impact to marine resources, navigation or recreation provided that is in-stream work, including pile driving, is completed between August 1 and November 30.

4. WETLANDS AND WATERBODIES PROTECTION RULES:

The bank stabilization portion of the project will disturb approximately 10,000 square feet of previously altered coastal wetland along 525 linear feet of shoreline. The hand carry boat launch will fill 480 square feet of coastal wetland. The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require that the applicant meet the following standards:

A. Avoidance: No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application for a coastal wetland alteration permit must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. The applicant submitted an alternatives analysis for the stabilization and the hand carry boat launch completed by Kleinschmidt Energy and Water Resources Consultants.

The purposes of the project are to repair the deteriorated timber crib structure; to enhance and restore a formerly industrial area; and to provide safe shorefront access for hand-launched watercraft, fishing, and passive recreation.

The applicant considered alternative methods for stabilization of the shoreline. Sheetpile was considered cost prohibitive. Riprap stabilization would have required fill in the resource up to 20 feet beyond the footprint of the existing crib. In addition, riprap would have precluded boat tie-ups and limited access to the resource for fishing, etc. The stabilization as proposed will meet the project purposes and will result in less impact to the resource than the alternatives presented.

The applicant considered several alternatives for the hand carry boat launch. Currently, hand carry launchers must compete with vehicles and large vessels for loading/unloading space and maneuvering space while getting underway. Continued use of the existing launch was not practicable. The applicant considered adding a hand carry boat launch adjacent to the existing trailered launch. Due to the applicant's need to separate motorized and non-motorized boat traffic, and the lack of space for additional loading and unloading areas near the existing launch, this alternative was not practicable. Other locations along the previously improved shoreline north of the project area were considered unfavorable because they were unprotected would require non-motorized craft to launch directly into the river currents.

The applicant considered integrating the hand carry boat launch into the crib reconstruction. This would have required removing a portion of the existing crib structure, and would have presented structural issues with the proposed shorefront stabilization.

The proposed hand carry launch location is a sheltered area that is well separated from vehicular traffic and motorized boats. Boaters will be able to launch and prepare to make way away from the river currents, motorized vessels and associated wakes. Because the location is sheltered, the ramp will not need to extend below mean high water or disturb the natural gravel beach to access the river, avoiding additional coastal wetland impacts.

B. Minimal Alteration: The amount of wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project.

Disturbance associated with the timber reconstruction will be minimized by replacing only those areas of the cribwork that are experiencing deterioration. Based on dive inspection, the existing timber crib will be removed to approximately 6 feet below mean high water. The remainder of the crib will not be disturbed. The new crib will not extend further into the resource than the existing crib.

The hand carry launch as proposed represents a significant reduction in coastal wetland impacts from the original design. The initial proposal included a ramp approximately 15-20 feet wide and 35-40 feet long, with additional fill for rip rap stabilization. The ramp would have extended beyond mean low water and would have included a single lane access road. In response to pre-application discussions with the Department, the applicant reduced the size of the ramp to 6 feet wide by 30 feet long, incorporated

vegetative stabilization as well as riprap into the design, eliminated vehicular access on the ramp, and reduced the roadway to a footpath from the drop-off lane.

The Department finds that the applicant has avoided and minimized wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

C. Compensation: Compensation was not required for this project based on Chapter 310, Section 5(C), which states that neither a functional assessment nor compensation is required for a project that does not fill more than 500 square feet of intertidal or subtidal area, and has no adverse effect on marine resources or wildlife habitat.

5. OTHER CONSIDERATIONS:

Debris from the hand carry launch area and from demolition of on-site buildings must be removed and disposed of in accordance with the Maine Solid Waste Management Rules and any other applicable regulations.

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

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. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life provided that in-stream work is completed between August 1 and November 30.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters provided that the project is constructed and stabilized as described in Finding 2.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of the CITY OF GARDINER to stabilize the shoreline, construct a hand carry boat launch, and complete improvements to adjacent upland as described above, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. Standard Conditions of Approval, a copy attached.
2. The applicant shall take all necessary measures to ensure that its activities or those of its agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Pressure-treated lumber treated with chromated copper arsenate shall be cured on dry land for at least 21 days prior to construction.
4. No wheeled or tracked equipment shall be operated in the water.
5. Excavation and concrete work below mean high water shall be conducted in the dry during low tides to the extent practicable and shall be secured prior to incoming tides.
6. If dewatering of concrete formwork is required, water shall be pumped into sediment basins or dirt bags at least 75 feet away from the river and discharged to a well vegetated area in accordance with Section G-3 of the Maine Erosion and Sedimentation Control BMP Manual, dated March 2003.
7. Excavated areas and stockpiled material shall be secured at all times with erosion control best management practices.
8. All in-stream work, including pile driving, shall be completed between August 1 and November 30.

- 9. Debris from the hand carry launch area and from demolition of on-site buildings shall be removed and disposed of in accordance with the Maine Solid Waste Management Rules and any other applicable regulations.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED AT AUGUSTA, MAINE, THIS 5TH DAY OF AUGUST, 2005.

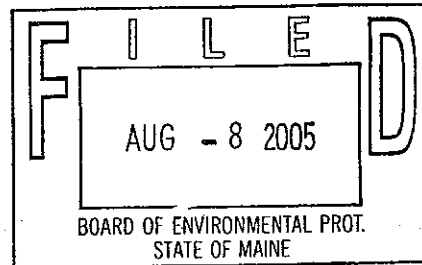
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 
 DAWN R. GALLAGHER, COMMISSIONER

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application April 4, 2005
 Date of application acceptance April 22, 2005

Date filed with Board of Environmental Protection
 KH/ATS54557/L22309AN





NATURAL RESOURCE PROTECTION ACT (NRPA) STANDARD CONDITIONS

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

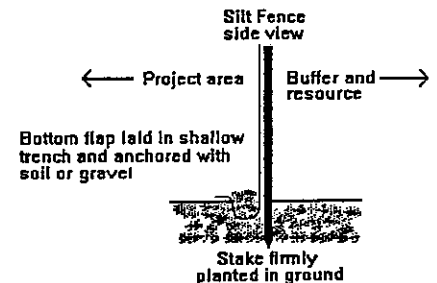
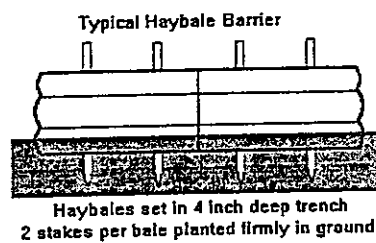
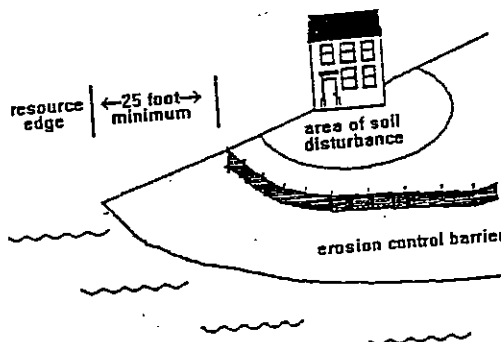
- A. **Approval of Variations From Plans.** The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. **Compliance With All Applicable Laws.** The applicant 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.
- C. **Erosion Control.** The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. **Compliance With Conditions.** Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the 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.
- E. **Initiation of Activity Within Two Years.** If construction or operation of the activity is not begun within two years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits shall state the reasons why the applicant will be able to begin the activity within two years form the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.
- F. **Reexamination After Five Years.** If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.
- G. **No Construction Equipment Below High Water.** No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- H. **Permit Included In Contract Bids.** A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- I. **Permit Shown To Contractor.** Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.



Erosion Control

Before Construction

1. If you have hired a contractor, make sure you have discussed your permit 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 could identify the edge of a lake or a river. The edges of wetlands, however, are often not obvious. Your contractor may be the person actually pushing dirt around but you are both responsible for complying with the permit.
2. Call around and find sources for your erosion controls. You will probably need silt fence, hay bales and grass seed or conservation mix. Some good places to check are feed stores, hardware stores, landscapers and contractor supply houses. It is not always easy to find hay or straw during late winter and early spring. It may also be more expensive during those times of year. Plan ahead. Purchase 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 activity.
4. If a contractor is installing the barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level along the land slope, whenever possible. This keeps stormwater from flowing to the lowest point of the barrier where it builds up and overflows or destroys it.



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 striking the soil that causes a lot of 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. In that situation, stop work and figure out what can be done to prevent more soil from getting past the barrier.

After Construction

1. After the project is complete, replant the area. All ground covers are not equal. For instance, a mix of creeping red fescue and Kentucky bluegrass is a good choice for lawns and other high maintenance areas. The same mix would not be a good choice for stabilizing a road shoulder or a cut bank that you don't intend to mow.
2. If you finish your project after September 15, then do not spread grass seed. There is a very good chance that the seed will germinate and be killed by a frost before it has a chance to become established. Instead, mulch the site with a thick layer of hay or straw. In the spring, rake off the mulch and seed the area. Don't forget to mulch again to hold in moisture and prevent the seed from washing away.
3. Keep your erosion control barrier up and maintained until the area is permanently stabilized.



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 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.
