



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

DEPARTMENT ORDER
IN THE MATTER OF

| | |
|---------------------------|------------------------------------|
| DCP SEARSPORT, LLC |) SITE LOCATION OF DEVELOPMENT ACT |
| Searsport, Waldo County |) NATURAL RESOURCES PROTECTION ACT |
| PROPANE TERMINAL |) WATER QUALITY CERTIFICATION |
| L-25359-26-E-T (approval) |) TRANSFER |
| L-25359-TG-F-T (approval) |) MINOR REVISION |
| L-25359-L6-G-T (approval) |) |
| L-25359-4E-H-T (approval) |) |
| L-25359-26-I-M (approval) |) |
| L-25359-TG-J-M (approval) |) FINDINGS OF FACT AND ORDER |

Pursuant to the provisions of 38 M.R.S.A. Sections 481 *et seq.* and 480-A *et seq.*, and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of DCP SEARSPORT, LLC with the supportive data, public comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History: In Department Order #L-25359-26-A-N/L-25359-TG-B-N/L-25359-L6-C-N/L-25359-4E-D-N, dated October 24, 2011, the Department approved the development of a propane terminal, associated infrastructure, and a pipeline from the existing Sprague Energy Corporation to the propane terminal. The proposed project consists of 3.3 acres of new impervious area and 12.8 acres of new developed area and includes 2.04 acres of forested wetland alteration. The proposed project would be located on the Station Road in the Town of Searsport.

B. Summary: The applicant requests the transfer of the permit from DCP Midstream Partners, LP to DCP Searsport, LLC. In the minor revision application, the applicant proposes to add a lot which would be designated as undeveloped and relocate the pipeline to a more inland route, reducing the wetland impacts by 0.07 acres. The changes to the project are shown on a set of plans included with the application, the first of which is entitled "Post Development Site Plan" prepared by TRC Environmental Corp, dated June 2, 2012. The proposed relocation of the pipeline is to bring the project into compliance with the U.S. Army Corps of Engineers permit.

C. Current Use of Site: The site of the proposed project is currently undeveloped fields and woodland. There are no structures on the property.

2. MINOR REVISION DISCUSSION AND FINDING:

Chapter 2 §1(L) of the Department's Rules sets forth the types of proposed modifications to a development that qualify to be considered as an application for a minor revision to a permit. An application to modify a previously existing permit may be filed as a minor revision if the modification significantly decreases or eliminates an impact, does not change the nature of the project or does not modify any Department findings with respect to any licensing criteria.

There are two proposed modifications to the previously approved project. First, the pipeline connecting the Sprague Energy Corporation pier to the propane terminal is proposed to be moved from an area parallel with the shore to a location adjacent to existing roads. The proposed new location of the pipeline would result in the wetland impacts being reduced by 0.07 acres and would not increase impacts to any other protected natural resources. Second is the addition of a lot adjacent to the project that is not proposed for development. The Department finds that the proposed modification of the pipeline location qualifies to be considered as a minor revision because it reduces wetland impacts, and it does not change the nature of the project. The Department finds that the addition of the adjacent lot qualifies to be considered as a minor revision because it does not change the nature of the project.

On the merits of the application for a minor modification, the proposed change in location of the pipeline, moving it the west, adjacent to existing roads, and the addition of the adjacent lot would not result in any increase in environmental impacts. The comments received from the public argue that the change in location of the pipeline would cause safety concerns. It would not increase noise generated by the proposed project, stormwater runoff, scenic impacts, or any other impacts evaluated under the Natural Resources Protection Act, 38 M.R.S.A. §480-D, and the Site Law, 38 M.R.S.A. § 484. The Department does not have jurisdiction to review safety issues and it is not one of the criteria used in its permitting decision.

Based on its review of the application, the Department finds the requested minor revisions to be in accordance with all relevant Departmental standards. All other findings of fact, conclusions and conditions remain as approved in Department Order #L-25359-26-A-N/L-25359-TG-B-N/L-25359-L6-C-N/L-25359-4E-D-N and subsequent orders.

3. PERMIT TRANSFER DISCUSSION AND FINDING:

The applicant is applying to transfer Department Order #L-25359-26-A-N, L-25359-TG-B-N, L-25359-L6-C-N and L-25359-4E-D-N currently held by DCP Midstream Partners, LP. The applicant submitted the following information in support of this transfer request:

- A. Transfer application dated October 18, 2012 and signed by Michael S. Richards on behalf of DCP Midstream Partners, LP and on behalf of DCP Searsport, LLC.

- B. Financial Capacity: DCP Midstream Partners submitted a letter dated October 18, 2012 stating that DCP Searsport, LLC is a wholly owned subsidiary of DCP Midstream Partners, LP, which has committed to support the development and operation of the project. DCP Midstream Partners, LP currently has a \$1 billion credit agreement and submitted a letter committing to support DCP Searsport, LLC.
- C. Technical Ability: The application states that DCP Searsport, LLC will be staffed by the same group of employees and consultants as identified in the original application. The personnel operating the facility will be provided with the same safety, security, and environmental training as originally proposed.
- D. A Certificate of Good Standing issued by the Maine Secretary of State for DCP Searsport, LLC, dated June 21, 2012.

Based on its review of the application, the Department finds the requested transfer to be in accordance with all relevant Departmental standards.

BASED on the above findings of fact, the Department CONCLUDES that DCP Searsport, LLC has provided adequate evidence of financial capacity and technical ability to comply with all conditions of Department Order #L-25359-26-A-N, L-25359-TG-B-N, L-25359-L6-C-N and L-25359-4E-D-N, and to satisfy all applicable statutory and regulatory criteria.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions with regard to the transfer application and the application for a minor modification 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.
- 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.
- 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 38 M.R.S.A. Section 480-P.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions with regard to the transfer application and the application for a minor modification pursuant to 38 M.R.S.A. Sections 481 et seq.:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.
- D. The proposed development meets the standards for storm water management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of DCP Searsport, LLC to transfer the Department Order #L-25359-26-A-N/L-25359-TG-B-N/L-25359-L6-C-N/L-25359-4E-D-N, revise the location of the pipeline, and add another lot to the parcel SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, copies attached.
2. In addition to any specific erosion control measures described in this or previous orders, 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.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-25359-26-A-N/L-25359-TG-B-N/L-25359-L6-C-N/L-25359-4E-D-N, and subsequent orders, and are incorporated herein.

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 IN AUGUSTA, MAINE, THIS _____ DAY OF _____, 2012.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: _____
Patricia W. Aho, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

JB/L#25359ETFTGHTIMJM/ATS#75423, 75522, 75526, 75527, 75424, 75515

**DEP SITE LOCATION OF DEVELOPMENT (SITE) STANDARD CONDITIONS
STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS
APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR
APPROVAL.**

- A. 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 to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.
- 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. Compliance with All Terms and Conditions of Approval.** The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all preconstruction terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- D. Advertising.** Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- E. Transfer of Development.** Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
- F. Time frame for approvals.** If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- G. Approval Included in Contract Bids.** A copy of this approval must be included in or attached to all contract bid specifications for the development.
- H. Approval Shown to Contractors.** Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.



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. Time frame for approvals. If construction or operation of the activity is not begun within four 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 may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- F. 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.
- G. 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.
- H. 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.



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.
