



STATE OF MAINE
Department of Environmental Protection

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
ACTING COMMISSIONER

September, 2011

DCP Midstream Partners, LP
Attn: Becky Malloy
370 17th St. Suite 2500
Denver, Co 80202

RE: Site Location and Natural Resources Protection Act Application, Searsport
#L-25359-26-A-N/L-25359-TG-B-N/L-25359-L6-C-N/L-25359-4E-D-N

Dear Ms. Malloy:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

Project modification, condition compliance, and transfer applications are available upon request at the regional Department offices listed below. I can be reached at 207- 446-1733 or at robin.clukey@maine.gov.

Sincerely,

A handwritten signature in black ink that reads "Robin Clukey".

Robin Clukey, M.S.
Project Manager
Division of Land Resource Regulation
Bureau of Land & Water Quality

pc: File

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST

BANGOR
106 HOGAN ROAD
BANGOR ME 04401
(207-941-4570 FAX 207-941-4584

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

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 764-3143



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

DEPARTMENT ORDER

IN THE MATTER OF

DCP MIDSTREAM PARTNERS, LP) SITE LOCATION OF DEVELOPMENT ACT
Searsport, Waldo County) NATURAL RESOURCES PROTECTION ACT
PROPANE TERMINAL) FRESHWATER WETLAND ALTERATION
L-25359-26-A-N (approval)) STREAM ALTERATION
L-25359-TG-B-N (approval)) COASTAL WETLAND ALTERATION
L-25359-L6-C-N (approval)) WATER QUALITY CERTIFICATION
L-25359-4E-D-N (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 MIDSTREAM PARTNERS, LP 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, DCP Midstream Partners, LP (DCP) is proposing the construction and operation of a liquid propane gas (LPG) terminal in Searsport, Maine. The property to be developed is adjacent to two existing petroleum storage and distribution facilities operated by Sprague Energy Corporation (Sprague) and Irving Oil Corporation (Irving), which is known as the Mack Point Intermodal Cargo Terminal (the Mack Point Terminal). The Mack Point Terminal has an existing Liquid Cargo Pier, an existing Dry Cargo Pier, numerous existing truck load out facilities for products other than LPG, and is serviced by a Montreal, Maine and Atlantic Railroad spur. DCP would receive LPG from ships docked at the existing Dry Cargo Pier (the pier) pumped through a new, approximately one-mile long, predominantly above-ground pipeline to a new bulk storage tank at the DCP Terminal. DCP would then load trucks and rail cars at the DCP Terminal for distribution of LPG throughout Maine and potentially to other locations in northern New England. The Department did not receive requests for Board Jurisdiction, a hearing or any written comments; however an abutting neighbor raised concerns regarding odor, visual impacts and noise.

Construction of the LPG terminal will entail the installation of one LPG bulk storage tank, ship unloading facilities on the existing pier, a truck loading station, and a rail car loading station. The facility will also include the installation of ancillary equipment such

as methyl-mercaptan storage tanks, an LPG fuel tank, three propane-fired heaters, an emergency propane flare, an emergency diesel-fueled generator, and an emergency diesel-fueled fire water pump and fire water storage tank. Administration, compressor and motor control center buildings, five electric compressors, an electric air fin cooler, and four electric loading pumps will also be constructed. The facility will operate 24 hours per day, typically seven days per week. The level of facility operation will be highest during the peak heating season.

The DCP Terminal will utilize the existing Dry Cargo Pier operated by Sprague Energy to receive shipments of liquid propane for offloading to its LPG storage tank. The maximum throughput of the DCP Terminal is based on receiving six ships per year, with each vessel carrying up to approximately 33,000 metric tons (MT) (approximately 410,000 barrels (bbl)) of liquid propane maintained at approximately -40 degrees Fahrenheit (°F). The actual number of ships per year could range from four to eight; however, the maximum amount of LPG received is not expected to exceed 200,000 MT (approximately 2,476,000 bbl) annually. A portable marine unloading arm manifold will be used to connect the LPG discharge piping on the ship with a new 16-inch, insulated unloading pipe located beneath or alongside the pier. The unloading pipe will extend approximately one mile, generally above ground, and transfer the LPG to the bulk storage tank at the new terminal. An insulated 10-inch vapor return line will transfer excess vapors displaced from the storage tank during the fill process back to the vessel for cooling and reintroduction into the liquid propane being offloaded. Each vessel will be at the dock for approximately 36 to 48 hours for offloading.

The outdoor LPG bulk storage tank will be a vertical, insulated, domed tank with diameter of approximately 202 feet and height above ground of approximately 138 feet, including the domed roof. The storage tank will have a capacity of 540,000 bbl (approximately 22.7 million gallons) and vertical walls approximately 102 feet high. The propane will be stored in a liquid state at essentially atmospheric pressure by maintaining the temperature between -44°F and -42° F. Boil-off vapors will be collected and returned to the tank using refrigeration units. The refrigeration units will consist of three first stage and two second stage electric-powered compressors to pressurize the vapor followed by an electric-powered air fin cooler to condense the boil off vapors into liquid for reintroduction back into the bulk storage tank. The compressors will be located inside a metal-sided, acoustically-treated building that will be approximately 60 feet long by 40 feet wide and 50 feet high at the peak of the roof. The storage tank will have an emergency control valve to route vapors to an emergency flare to protect against an over-pressurization situation of the storage tank. Other process safety valves (PSVs) will be located throughout the facility. These additional PSVs will not vent vapor to the atmosphere; instead, they will route vapors for re-liquefaction and re-collection in the bulk storage tank.

The proposed terminal will have truck and rail car loading capabilities. To prepare the LPG for loading into either trucks and/or rail cars, it will be heated to near ambient

temperature by three outdoor propane-fired heaters which also pressurize the propane. The warmed, pressurized LPG will be fed to the loading stations and into a truck or rail car. Methyl-mercaptan will be injected at the loading stations for odorization as a truck or rail car is filled. The truck loading station will have three loading racks. One future rail car loading rack is also planned, which will be able to load up to four rail cars at a time. Each loading rack will be fed by a 500 gallon per minute (gpm) electric loading pump located near the bulk storage tank. The LPG that remains in the couplings connecting the fill pipes to the trucks and rail car will be allowed to vaporize in a vapor return line and be routed for re-liquefaction and re-collection in the bulk storage tank.

The project is located on a 23.6-acre parcel and includes 3.3 acres of new impervious area and 12.8 acres of new developed area. The site is shown on a set of plans included with the application, the first of which is entitled "Figure 1-1, Site Location Map" prepared by TRC Environmental Corp, dated May 4, 2011. The project is located on Station Road near the intersection with Route 1. The site is referenced in town files as located at Map #7, Lot 56 and 60.

The applicant is also seeking approval under the Natural Resources Protection Act for the alteration of 2.04 acres of forested freshwater wetland, for the relocation of a portion of a stream, and for activities over a coastal wetland.

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

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$40,000,000. The applicant submitted a copy of the "Amended and Restated Credit Agreement" from SunTrust Bank, dated June 21, 2007 indicating that they have provided adequate credit to finance this project.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards.

3. TECHNICAL ABILITY:

The applicant provided resume information for key persons involved with the project and a list of projects successfully constructed by the applicant. The applicant also retained the services of TRC Environmental Corp, a professional engineering firm, to assist in the design and engineering of the project.

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

4. NOISE:

The project will be located at the Mack Point Terminal, adjacent to the existing Sprague Energy and Irving Oil terminal facilities, and is also adjacent to U.S. Route 1, the major north-south highway through the Searsport area. The land surrounding the Mack Point Terminal is zoned for commercial use. The proposed terminal will include noise emitting equipment such as pumps, propane fired heaters, electric compressors, and electric air fin coolers. A noise study for the project was conducted that included an ambient noise monitoring program to quantify the existing noise environment and computer modeling of the proposed equipment to determine projected noise levels at the nearest protected location during operation of the facility. The town of Searsport does not have quantifiable noise regulations.

At any property line of the development or contiguous property owned by the developer, whichever is farther from the proposed development's regulated sound sources, noise levels may not exceed 75 dBA. At protected areas where the existing zoning or, if unzoned, the existing use is predominantly commercial, transportation or industrial, project sound levels would be limited to 70 dBA during the day (7 a.m. to 7 p.m.) and 60 dBA at night (7 p.m. to 7 a.m.), measured at the property line of the protected location. For protected areas where the zoning or, if unzoned, the existing use is not predominantly commercial, transportation or industrial, project sound levels would be limited to 60 dBA during the day and 50 dBA at night. Further, if the existing all-encompassing ambient levels (interpreted as being the Leq level) are below 45 dBA during the day or below 35 dBA at night, then the allowable project levels would be limited to 55 dBA during the day and 45 dBA at night at all protected locations. This would be defined as a "Quiet Area."

The Town of Searsport has a zoning ordinance and all of the significant noise sources at the proposed facility would be located in an industrially-zoned area. Several residences, a restaurant and motel, and a gas station/convenience store are located adjacent to the site on commercially zoned parcels. The ambient noise monitoring program revealed that both the daytime and nighttime average noise levels at both monitoring locations were greater than 45 dBA during the daytime and greater than 35 dBA during the nighttime. The site is therefore not in a "Quiet Area" as defined by the MDEP noise regulation. Accordingly, the applicable MDEP noise standard for the project is 70 dBA during the day and 60 dBA at night at any protected location in a commercial zone. Since the facility will operate 24 hours a day, the nighttime noise limit of 60 dBA is the controlling standard. The noise study predicted that the sound level at the nearest protected location during routine development operation would be 59.6 dBA.

NOISE MONITORING REQUIREMENT

In consideration of the potential for sound to exceed the modeled level, and to ensure that the 60 dBA hourly sound level limit is met during all conditions, the applicant must

submit to the Bureau of Land and Water Quality (BLWQ) an operational compliance assessment methodology for review and approval prior to operation of the facility. The plan must be implemented upon commencement of operations, and must enable compliance measurements to be determined under the most favorable conditions for sound propagation and maximum amplitude modulation. Compliance measurements will be conducted at a minimum of two protected locations, and at all locations at which the Department receives a sound related complaint.

If the compliance data indicates that, under the most favorable conditions for sound propagation and maximum amplitude modulation, the proposed project is not in compliance with Department standards as described above, within 60 days of a determination of non-compliance by the Department, the applicant must submit, for review and approval, a revised operation protocol that demonstrates that the project will be in compliance at all the protected locations surrounding the development.

The applicant agrees to pay all reasonable and documented costs incurred by the Department in reviewing the compliance information associated with the implementation of the compliance assessment plan in accordance with the provisions of 38 M.R.S.A. § 344-A.

Based on the information provided by the applicant, the Department finds that the applicant has made adequate provisions to ensure that noise standards pursuant to the Site Location of Development Rules, Chapter 375 §10 are met provided that the applicant submits and implements a compliance assessment plan as described above.

5. SCENIC CHARACTER:

The existing visual quality of the area within the DCP Terminal viewshed has two major elements: (1) the ongoing industrial, commercial and recreational marine activities on Penobscot Bay, most notably the heavy shipping traffic utilizing the two existing piers at the Mack Point Terminal, and (2) the existing commercial development and related tourism traffic mixed with residential development along this portion of US Route 1. The truck traffic and land-based activities at the Sprague and Irving facilities, an Irving Oil gas station and convenience store, as well as restaurants, motels and other commercial establishments dominate the immediate area around the proposed site. These existing land uses and activities have been present in this area for many years.

A Viewshed Analysis encompassing a three-mile radius surrounding the project was performed and submitted with the application. This evaluation utilized a standard 10-meter resolution USGS digital elevation model (DEM) in order to establish baseline elevations within the Project area. The analysis assumed that the project would not be visible to a viewer who is standing among trees in a forested area. The final resulting output grid identified those areas from which viewers would potentially see all or some part of the project. A three-dimensional model was then developed by the applicant to

position the viewer at the selected vantage point. Because of the amount of existing, industrial development at Mack Point and other development in the area, the model demonstrates that the proposed development will produce a minor visual impact on the landscape.

Based on the project's location, viewshed analysis and design, the Department finds that the proposed project will not have an unreasonable adverse effect on the scenic character of the surrounding area.

6. WILDLIFE AND FISHERIES:

The Maine Department of Inland Fisheries & Wildlife (MDIFW) reviewed the proposed project. In its comments, MDIFW stated that it found no records of any Essential or Significant Wildlife Habitats, or other wildlife habitats of special concern associated with this site. No fisheries concerns were identified.

The Department finds that the applicant has made adequate provision for the protection of wildlife and fisheries.

7. HISTORIC SITES AND UNUSUAL NATURAL AREAS:

The Maine Historic Preservation Commission reviewed the proposed project and stated that it will have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

The Maine Natural Areas Program database does not contain any records documenting the existence of rare or unique botanical features on the project site and, as discussed in Finding 6, MDIFW did not identify any unusual wildlife habitats located on the project site. The applicant's consultant surveyed the proposed project site and confirmed that no unusual features exist on-site.

The Department finds that the proposed development will not have an adverse effect on the preservation of any historic sites or unusual natural areas either on or near the development site.

8. BUFFER STRIPS:

The applicant is not proposing to utilize any formal buffer strips for the proposed project

9. SOILS:

The applicant submitted a soil survey map and a geotechnical report based on the soils found at the project site. This report was prepared by a certified soil scientist and reviewed by staff from the Division of Environmental Assessment (DEA) of the BLWQ.

DEA also reviewed a Blasting Plan (last revised August 1, 2011) submitted by the applicant and outlining the proposed procedures for removing ledge. DEA commented that with a few small, insignificant changes, the application could be approved with conditions. The applicant addressed all of DEA's concerns in an email letter dated August 1, 2011. If a rock crusher is being utilized on site, the applicant must insure that the crusher is licensed by the Department's Bureau of Air Quality and is being operated in accordance with that license.

The Department finds that, based on this report, the revised Blasting Plan and DEA's review, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices.

10. STORMWATER MANAGEMENT:

The proposed project includes approximately 3.3 acres of impervious area and 12.4 acres of developed area and discharges to the Atlantic Ocean. The applicant submitted a stormwater management plan based on the basic, general and flooding standards contained in Department Rules, Chapter 500. The proposed stormwater management system consists of underdrained soil filters.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of, the Division of Watershed Management (DWM) of the BLWQ.

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. This plan was reviewed by, and revised in response to the comments of, the DWM. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. The applicant will be responsible for the maintenance of all common facilities including the stormwater management system.

(3) Housekeeping: The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

Based on DWM's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(A).

B. General Standards: The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation is being achieved by using Best Management Practices (BMPs) that will control runoff from no less than 95% of the impervious area and no less than 80% of the developed area.

The stormwater management system proposed by the applicant was reviewed by and revised in response to comments from the DWM. After a final review, DWM commented that the proposed stormwater management system is designed in accordance with the Chapter 500 General Standards provided that the design engineer oversees the construction of the underdrained soil filters. As-built plans must be submitted to the BLWQ within 30 days of the completion of the project.

Based on the stormwater system's design and DWM's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500, General Standards.

C. Flooding Standard:

The applicant is proposing to utilize a stormwater management system based on estimates of pre- and post-development stormwater runoff flows obtained by using Hydrocad, a stormwater modeling software that utilizes the methodologies outlined in Technical Releases #55 and #20, U.S.D.A., Soil Conservation Service and detains stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. The post-development peak flow from the site will be increased by an insignificant amount over the pre-development peak flow from the site and the peak flow of the receiving waters will not be increased as a result of stormwater runoff from the development site.

DWM commented that the proposed system is designed in accordance with the Chapter 500 Flooding Standard.

Based on the system's design and DWM's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500, Flooding Standard for peak flow from the project site, and channel limits and runoff areas.

The Department further finds that the proposed project will meet the Chapter 500 standards for: (1) easements and covenants; (2) management of stormwater discharges; and (3) discharge to freshwater or coastal wetlands.

11. GROUNDWATER:

The project site is not located over a mapped sand and gravel aquifer. The proposed project does not propose any withdrawal from, or discharge to, the groundwater.

The Department finds that the proposed project will not have an unreasonable adverse effect on ground water quality.

12. WATER SUPPLY:

When completed, the proposed project is anticipated to use 1,000 gallons of water per day. Water will be supplied by the Searsport Water District. The applicant submitted a letter from the District, dated April 7, 2011, indicating that it will be capable of servicing this project.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful potable water supply.

13. WASTEWATER DISPOSAL:

When completed, the proposed project is anticipated to discharge 1,000 gallons of wastewater per day to the Searsport Sewer District's wastewater treatment facility. This project was reviewed by the Division of Water Quality Management (DWQM) of the BLWQ, which commented that the Searsport Sewer District has the capacity to treat these flows and is operating in compliance with the water quality laws of the State of Maine.

Based on DWQM's comments, the Department finds that the applicant has made adequate provision for wastewater disposal at a facility that has the capacity to ensure satisfactory treatment.

14. SOLID WASTE:

When completed, the proposed project is anticipated to generate five cubic yards of general office solid waste per year. All general solid wastes from the proposed project will be disposed of at Pine Tree Waste Services, which is currently in substantial compliance with the Solid Waste Management Regulations of the State of Maine.

The proposed project will generate approximately 900 tons of stumps and grubbings. All stumps and grubbings generated will be disposed of on site, either chipped or burned,

with the remainder to be worked into the soil, in compliance with Solid Waste Management Regulations of the State of Maine.

The proposed project will generate approximately 100 tons of construction debris and demolition debris. All construction and demolition debris generated will be disposed of at Pine Tree Waste Services, which is currently in substantial compliance with the Solid Waste Management Regulations of the State of Maine.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

15. FLOODING:

The proposed project is not located within the 100-year floodway of any river or stream.

The Department finds that the proposed project is unlikely to cause or increase flooding or cause an unreasonable flood hazard to any structure.

16. WETLAND IMPACTS:

The applicant proposes to alter 2.04 acres of freshwater wetland to construct the project and construct a pipeline over and adjacent to a coastal wetland as discussed in Finding 1 of this Order. The applicant also proposes to install a culvert and relocate a portion of a small stream on site. Of the approximately 1,800 linear feet of stream channel located on the project site, the first approximately 210 feet from the headwall at US Route 1 will be unaffected other than minimal clearing of trees near the headwall to improve site distance to the north on Route 1. The next approximately 365 feet of channel will be rerouted into approximately 330 feet of culvert passing beneath the truck loading area. Emerging from the downstream headwall from this new culvert, approximately 670 feet of the stream channel will be relocated for a distance of approximately 650 feet into a new channel along the site perimeter in order to construct the containment dike, emergency flare, an internal access road and other essential project elements. Below this point, the remaining approximately 445 feet of channel on the project site will remain in its existing location.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require the applicant to 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 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 proposed project completed by TRC and dated May 20, 2011.

In addition to the no-build option, the applicant considered the possibility of constructing a similar facility at the existing ports of Portland, Searsport, Eastport, Brewer, Bucksport and Rockland.

From a waterway suitability perspective, the Mack Point Terminal is superior to other potential options because: with regard to navigation safety, Penobscot Bay is wide and deep and has plenty of room to maneuver or anchor in case of an emergency; the tides and currents are very manageable and ship movements are not significantly limited by tide or currents; the characteristics of the waterway are such that ship meeting and crossing situations can be avoided, and there are no blind turns; the ship transit route does not cross or pass any critical infrastructure such as bridges; there are multiple navigation routes into and out of the port; the port is uncongested and does not have the amount of commercial, deep draft traffic that occurs in Portland; the terminal is well protected from the elements; and the population densities along the route are small and ship transit does not come close to a large urban area.

No other existing cargo pier on the Maine coast satisfies these entire project siting objectives.

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.

Operation, safety and security requirements impose limitations on the flexibility of alternate site layouts that can be considered at the selected project site. Local zoning ordinances as well as Maine Department of Transportation requirements for access to/from US Route 1 are additional site development criteria that must be incorporated into an acceptable layout. The interplay between these elements of site layout therefore imposes considerable limitations on implementing alternate site layouts that would otherwise avoid or minimize impacts to wetland resources. In order to better address siting constraints and requirements and to minimize the impacts to protected natural resources, DCP purchased the parcel of land at the corner of Route 1 and Station Avenue (Map 7, Lot 60) along with the lot initially proposed to be purchased from Sprague Energy (Map 7, Lot 56). This accomplishes several things, namely: it allows for the avoidance of wetland/stream impacts other than some clearing of trees to the first approximately 210 feet of the wetland/stream system that starts by Route 1 near the proposed exit drive by moving the facility entrance driveway to Station Avenue; it keeps the exit drive on Route 1, reducing the impact that would occur to the wetland located on Lot 60 if both the facility entrance and exit were from Station Avenue, and it also provides some additional visual screening by retaining more of the trees located on Lot 60; and it provides improved internal traffic circulation. This layout minimizes the freshwater wetland and stream impact.

The isolated stream segment on site exists only on the downstream side of Route 1; there is no stream channel on the upstream side of Route 1. The stream bed is heavily

sedimented; most likely from runoff from Route 1. The stream is not hydrologically connected to the coastal wetland due to an existing hanging culvert.

C. Compensation. Compensation is required to achieve the goal of no net loss of wetland functions and values. The applicant is proposing a two part compensation package. The first is a culvert replacement project on Long Cove Brook as detailed in a letter submitted to the Department, dated August 17, 2011. The Department has accepted this project as part of the compensation package for the portions of the stream which are proposed to be culverted and relocated. The applicant must submit a report to the Department regarding the relocated portion of the stream, within one year of the start of operations. The report must indicate whether or not the relocated stream contains aquatic life. If aquatic life is not found, then the report shall include a plan to re-establish aquatic life.

For the second portion, after considering several compensation options, the applicant elected to make a contribution into the In-lieu-fee (ILF) program by making a payment of \$305,835.00 to the Maine Natural Resources Conservation Fund (MNRCF). The applicant must, prior to the start of construction, submit a payment made payable to the Treasurer, State of Maine in the amount of \$305,835.00 to the attention of the ILF program administrator at 17 State House Station, Augusta, Maine 04333.

The Department finds that the applicant has avoided and minimized freshwater 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, provided that the applicant replaces the culvert on Long Cove Brook and relocates the stream concurrent with project construction, and submits the ILF payment as outlined above.

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 prior to the start of construction, the applicant makes a contribution into the ILF program in the amount of \$305,835.00, and replaces the culvert and relocates the stream concurrent with project construction as described in Finding 16.

- 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 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 provided that the applicant submits and implements a noise compliance assessment plan as described in Finding 4 and any rock crusher utilized on site is licensed as described in Finding 9.
- 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 provided that the design engineer oversees the construction of the underdrained soil filters as described in Finding 10B.
- 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, solid waste disposal and roadways required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities and roadways 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 MIDSTREAM PARTNERS, LLC to construct a bulk propane terminal, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy 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 their activities or those of their 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. The applicant or other responsible party shall, within three months of the expiration of each five-year interval from the date of this Order, submit a report certifying that the items listed in Department Rules, Chapter 500, Appendix B(4) have been completed in accordance with the approved plans.
5. Prior to the start of construction, the applicant shall compensate for lost wetland functions and values by making a contribution to the MNRCF in the amount of \$305,835.00. Payment shall be submitted to the ILF program administrator at 17 State House Station, Augusta, Maine 04333.
6. The design engineer shall oversee the construction of the underdrained soil filters.
7. Within 30 days of the completion of construction, the applicant shall submit as-built drawings to the Bureau of Land and Water Quality for review.
8. The applicant shall implement and submit a noise compliance assessment plan as described in Finding 4 of this Order. The plan shall be implemented upon commencement of operations, and shall enable compliance measurements to be determined under the most favorable conditions for sound propagation and maximum amplitude modulation. Compliance measurements shall be conducted at a minimum of

two protected locations, and at all locations at which the Department receives a sound related complaint. If the compliance data indicates that, under the most favorable conditions for sound propagation and maximum amplitude modulation, the proposed project is not in compliance with Department standards as described above, within 60 days of a determination of non-compliance by the Department, the applicant shall submit, for review and approval, a revised operation protocol that demonstrates that the project will be in compliance at all the protected locations surrounding the development.

9. The Long Cove Brook culvert replacement and the on-site stream relocation shall be done concurrently with project construction. Within 30 days of completion of the culvert replacement and stream relocation, the applicant shall submit documentation demonstrating that the projects have been completed as outlined in Finding 16 of this Order.
10. If a rock crusher is being utilized on site, the applicant shall insure that the crusher is licensed by the Department's Bureau of Air Quality and is being operated in accordance with that license.
11. The applicant shall submit a report to the Department regarding the relocated portion of the stream after one full year from the start of operation of the facility. The report shall indicate whether or not the stream contains aquatic life and if no aquatic life is found, the report shall include a plan to re-establish aquatic life.

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.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

rc/73466/73467/125359

Department of Environmental Protection
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.

1. 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 the plans, proposals and supporting documents is subject to the review and approval of the Board prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited, without prior approval by the Board of Environmental Protection, and the applicant shall include deed restrictions to this effect.
2. 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.
3. The applicant shall submit all reports and information requested by the Board or Department demonstrating that the applicant has complied or will comply with all conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
4. 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.
5. 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.
6. If the construction or operation of the activity is not begun within two 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. Reapplications for approval shall state the reasons why the development was not begun within two years from the granting of the initial approval and the reasons why the applicant will be able to begin the activity within two years from the granting of a new approval, if granted. Reapplications for approval may include information submitted in the initial application by reference.
7. If the approved development is not completed within five years from the date of the granting of approval, the Board may reexamine its approval and impose additional terms or conditions or prescribe other necessary corrective action to respond to significant changes in circumstances which may have occurred during the five-year period.
8. A copy of this approval must be included in or attached to all contract bid specifications for the development.
9. 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.

(2/81)/Revised November 1, 1979



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.

STORMWATER MANAGEMENT LAW 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

Standard conditions of approval. Unless otherwise specifically stated in the approval, a department approval is subject to the following standard conditions pursuant to Chapter 500 Stormwater Management Law.

- (1) Approval of variations from plans. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents must be reviewed and approved by the department prior to implementation. Any variation undertaken without approval of the department is in violation of 38 M.R.S.A. § 420-D(8) and is subject to penalties under 38 M.R.S.A. § 349.
- (2) Compliance with all terms and conditions of approval. The applicant shall submit all reports and information requested by the department demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- (3) Advertising. Advertising relating to matters included in this application may not refer to this approval unless it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- (4) Transfer of project. Unless otherwise provided in this approval, the applicant may not sell, lease, assign, or otherwise transfer the project or any portion thereof without written approval by the department 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 may only be granted if the applicant or transferee demonstrates to the department that the transferee agrees to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant. Approval of a transfer of the permit must be applied for no later than two weeks after any transfer of property subject to the license.
- (5) Initiation of project within two years. If the construction or operation of the activity is not begun within two years, this approval shall lapse and the applicant shall reapply to the department for a new approval. The applicant may not begin construction or operation of the project until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference.
- (6) Reexamination after five years. If the project is not completed within five years from the date of the granting of approval, the department may reexamine its approval and impose additional terms or conditions or prescribe other necessary corrective action to respond to significant changes in circumstances or requirements which may have occurred during the five-year period.

- (7) Certification. Contracts must specify that "all work is to comply with the conditions of the Stormwater Permit." Work done by a contractor or subcontractor pursuant to this approval may not begin before the contractor and any subcontractors have been shown a copy of this approval with the conditions by the developer, and the owner and each contractor and subcontractor has certified, on a form provided by the department, that the approval and conditions have been received and read, and that the work will be carried out in accordance with the approval and conditions. Completed certification forms must be forwarded to the department.
- (8) Maintenance. The components of the stormwater management system must be adequately maintained to ensure that the system operates as designed, and as approved by the department.
- (9) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.
 - (a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
 - (b) All aspects of the stormwater control system have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the facilities.
 - (c) The erosion and stormwater maintenance plan for the site is being implemented as written, or modifications to the plan have been submitted to and approved by the department, and the maintenance log is being maintained.

November 16, 2005



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.
