



DEPARTMENT ORDER

IN THE MATTER OF

NORTH POND ASSOCIATION, INC.)	REGULATION OF WATER LEVELS
Kennebec and Somerset Counties)	AND MINIMUM FLOWS
NORTH POND)	
L-30629-36-A-N)	FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 840-843, the Maine Department of Environmental Protection (Department) has considered the water level petition of Timothy Downing, *et al.*, with the supportive data, agency review comments, pre-filed testimony, public comments, public hearing transcript, closing arguments, and other related materials on file and FINDS THE FOLLOWING FACTS:

I. PETITION:

On December 7, 2023, the Department received a water level petition from Timothy Downing and more than 50 littoral property owners (hereinafter, “petitioners”) requesting that the Department establish a water level and minimum flow regime for North Pond, a great pond located in the towns of Smithfield, Mercer, and Rome. Petitioners requested that the pond be restored to and sustained at what they contend are historic levels (approximately 12-18 inches lower than current levels), that use of a second removable beam at the North Pond Dam be discontinued, and that minimum flow from the dam be maintained at 14.5 cubic feet per second (cfs) through the use of a hole in the bottom embedded beam or, if no such hole exists, the use of a 2” shim between the embedded beam and the removable beam. The petition was accepted as complete for processing by the Department on February 6, 2024. Pursuant to 38 M.R.S. § 840(1), the Department determined that the petitioners submitted the required number of signatures from littoral or riparian proprietors (51 property owners on the shore of the pond signed the petition) to conduct an adjudicatory hearing for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for North Pond.

The water levels of North Pond are controlled by the North Pond Dam, which is owned and operated by the North Pond Association, Inc. (hereinafter referred to as “North Pond Association” or “owner of the dam”). The North Pond Association has owned the dam since it was constructed in 1985. The dam was constructed prior to the enactment of the Natural Resources Protection Act and was not subject to permitting at the time. Subsequent permits issued by the Department include Water Quality Certification (WQC) Order #L-14807-02-A-N issued in 1987 for repairs of the dam. The Department also recently approved the North Pond (9-Element) Watershed-Based Protection Plan (WBPP) (2024-2033) for North Pond to improve water quality and reduce the probability of nuisance algal blooms.

II. LEGAL AUTHORITY:

This Water Level Order (Order) is being issued upon completion of the proceedings required under 38 M.R.S. § 840. Section 840 requires that the Department conduct an adjudicatory hearing and issue an order establishing a water level regime upon the filing of a petition to establish water levels for a body of water impounded by a dam, provided certain criteria are met. The Department is not required to hold an adjudicatory proceeding and establish water levels when the dam is operating under an existing permit or license that sets water levels. *See* 38 M.R.S. § 840(1).

The Department finds that North Pond Dam is not operating with an existing permit or license that sets water levels and is therefore subject to regulation under 38 M.R.S. § 840.

III. PROCEEDINGS:

On July 31, 2024, the Commissioner of the Department of Environmental Protection (Commissioner) designated a Presiding Officer to preside over the adjudicatory hearing for the North Pond water level petition, consistent with the Maine Administrative Procedure Act, 5 M.R.S. §§ 8001-11008, and the Department's *Rules Governing the Conduct of Licensing Hearings*, 06-096 C.M.R. ch. 3. The Presiding Officer issued a Notice to interested persons that they could submit Petitions for Leave to Intervene by August 30, 2024.

Prior to the adjudicatory hearing, the Presiding Officer issued five procedural orders on September 25, 2024, November 4, 2024, December 2, 2024, March 10, 2025, and April 9, 2025, providing a timeline and process for those interested in intervening in the proceeding, deciding intervenor status, establishing the roles and responsibilities of parties, and setting various deadlines and procedures related to pre-filed testimony, objections, and the adjudicatory hearing.

On April 14, 2025, the Department conducted an adjudicatory hearing pursuant to 38 M.R.S. § 840 and in accordance with the Maine Administrative Procedure Act and the Department's *Rules Governing the Conduct of Licensing Hearings*. Per the Second and Third Procedural Orders, the parties provided pre-filed direct and rebuttal testimony, exhibits, and objections to pre-filed testimony and witnesses to the Department prior to the adjudicatory hearing. At the April 14, 2025, adjudicatory hearing, the parties summarized their direct testimony and had an opportunity to cross-examine witnesses.

At the hearing, the Department received testimony from Timothy Downing, representing the petitioners collectively, and Catherine Meikle, representing the dam owner, the North Pond Association. The following Intervenors also provided testimony: Edith Cornwall of the East Pond Association; Laura Rose Day, representing the 7 Lakes Alliance as their Chief Conservation and Special Initiatives Officer; and Christine Keller, representing both the Merrow Lane Road Association and East Pond Association. Additional testimony was

presented by Rick Watson and Don Schassberger on behalf of the North Pond Association; Danielle Wain and Stuart Cole on behalf of the 7 Lakes Alliance; and Gordon Woods on behalf of the East Pond Association.

Members of the public were also given the opportunity to comment on April 14 at an evening portion of the hearing. The Department received and accepted written public comments until April 25, 2025.

The Sixth Procedural Order, dated May 1, 2025, provided the parties with a transcript of the Water Level Hearing and provided the opportunity to submit final closing arguments. Per the Sixth Procedural Order, the parties submitted closing briefs by May 30, 2025, and reply briefs by June 18, 2025.

The Seventh Procedural Order, dated November 13, 2025, provided the parties with the draft Water Level Order via electronic mail (email) and set a deadline to provide comments on the draft of December 19, 2025. The Department received a comment expressing support and no comment expressing opposition to the draft Order. The comment supports the order as being reasonable with the clarification that measurements and readings will utilize the current structures and practices at the dam. All the comments were reviewed and considered to the extent they addressed the provisions of 38 M.R.S. § 840 and were within the scope of the Department's review of the petition. The Department also incorporated all comments and submitted information into the administrative record.

IV. BACKGROUND/EVIDENCE PRESENTED:

A. DAM CHARACTERISTICS PRESENTED BY PETITIONERS, OWNER OF THE DAM, AND INTERVENORS:

The North Pond Dam is located on the outlet of North Pond on Great Meadow Stream. The dam consists of two removable steel beams and a third steel beam embedded in a concrete base. The beams are manually raised in mid-October and lowered after ice out in the spring. The beams are also raised and lowered following rainfall events or in response to drought conditions. The dam is constructed in such a way that in high water events, water can flow around the dam. The dam is maintained by volunteers from the North Pond Association, who monitor the water levels and remove debris.

Paragraph 4 in the Findings of Fact section of the 1987 WQC order states, "Three steel beam flashboards will be stacked on an existing wooden log and attached to the vertical beams...The bottom flashboard will have a permanent hole to release a minimum flow." Condition 5 of the 1987 WQC order further specifies, "The permanent hole in the flashboards shall be sized to maintain a minimum flow of 14.5 cfs."

Neither the petitioners nor the owner of the dam submitted elevation data for the dam. The dam owner uses the height of the steel beams to bring water levels to what had been historically considered a full pond in the spring. There is a measure at the dam which is used as a gauge to follow; this configuration allows some flow around the ends of the

beams and under the bottom removable beam when lowered. However, there is no current means of measuring the rate of flow.

B. RESOURCE DESCRIPTION PRESENTED BY PETITIONERS, OWNER OF THE DAM, AND INTERVENORS:

The petitioners provided testimony that North Pond is a relatively shallow pond supplied by upland watersheds.

In their pre-filed testimony, the owner of the dam referred to the physical description of North Pond as outlined in the North Pond (9-Element) WBPP (2024-2033). The WBPP describes North Pond as a 2,531-acre lake, the second lake in the seven-lake Belgrade Chain of Lakes. The direct watershed, at 18.3 square miles, includes 123 miles of streams, 1,415 acres of wetlands, and 3,328 acres of riparian habitat bordering lakes, ponds, streams, and wetlands. Connected to North Pond on the southwest end of the lake through a shallow channel known as the “Narrows” is Little Pond. North Pond is relatively shallow, with a maximum depth of 5.7 meters, an average depth of 12 feet, and a flushing rate of 1.6 flushes per year. North Pond drains through Great Meadow Stream into Great Pond. The deepest location in the lake is offshore from the outlet of the Serpentine Stream near downtown Smithfield on the eastern shore. Elevation in the watershed ranges from 254 feet above sea level (lake level) to 743 feet at the north end of the watershed (Mt. Tom). North Pond has an average water clarity of 3.2 meters and is listed on the State’s 303(d) list of threatened lakes due to development threats and recent declines in water clarity. Of the 465 shoreline lots on North Pond, an estimated 351 lots are developed.

The WBPP references that the Maine Department of Inland Fisheries & Wildlife (MDIFW) documented four occurrences of threatened, endangered, or species of special concern in the watershed, including the great blue heron and eastern ribbon snake. The Maine Natural Areas Program identified one rare plant in the watershed: Vasey’s pondweed. North Pond contains 19 species of fish, including native and introduced species. MDIFW does not stock North Pond; however, East Pond is occasionally stocked with brown trout, which may occasionally make it to North Pond through the Serpentine. The Serpentine Marsh is classified by MDIFW as an Inland Wading Bird and Waterfowl Habitat and is considered a Wetland of Special Significance.

C. EVIDENCE PRESENTED BY PETITIONERS, OWNER OF THE DAM, AND INTERVENORS REGARDING NORTH POND WATER LEVELS:

The dam owner presented testimony related to the purpose of the North Pond Association and their management of the North Pond Dam, as well as a description of the dam and their historical operation of the dam since the dam was built. The dam owner testified that the dam has been operated in such a way as to maintain a consistent water level, minimize erosion of the shoreline, and provide habitat for wildlife in and on the water while allowing for public access for recreation on the pond. The owner of the dam provided testimony

that the dam allows some flow around the ends of the beams and even under the bottom removable beam when lowered, but that they do not have a way of measuring the rate of flow.

The petitioners presented testimony based on their experience and recollection regarding the management of water levels, describing physical characteristics of North Pond, the aquatic resources therein, and historical water levels. The petitioners asserted that water levels are being maintained by the dam 12-18 inches above historical levels due to the use of the second removable beam, which they testify was added to the dam after October 22, 1987. They contend that water levels during periods of high water are causing impacts to the shoreline, including bank and beach erosion and loss of shoreline trees. The petitioners also provided testimony asserting damage to the lake's wetland and bog system, damage caused by stagnant water downstream during low flows, and loss of waterfowl nesting habitat.

Intervenor Christine Keller presented testimony regarding the history of water quality improvement efforts on North Pond and the Merrow Lane Road Association and East Pond Association's support for science-based watershed solutions to preserve the collective investments towards those efforts. Intervenor Edith Cornwall provided testimony describing the physical characteristics and hydrology of East Pond, which drains into North Pond. Further testimony was provided by Christine Keller concerning the prevention of invasive plant fragments from entering North Pond and the effects of low water levels on property owners along the Serpentine. Laura Rose Day provided testimony that the 7 Lakes Alliance has been working to ensure the health of the North Pond watershed through their programs and testified that there is no evidence that changes in North Pond's water quality are due to dam management. The 7 Lakes Alliance provided further testimony that lowering the water level beyond the current operational range on the lake will have ecological and water quality impacts, and that most shoreline erosion on North Pond is caused by human development activity and the removal of littoral vegetation, not water levels. The 7 Lakes Alliance recommends flexibility in dam management in response to water quality conditions that might be harmful to public health and to facilitate remediation efforts.

1. Recreation

The petitioners testified that some shoreline owners are concerned about the recreational aspect of not having a beach due to higher water levels than pre-dam conditions. The petitioners also testified that stagnant water and shallower water levels in the streams below the dam has virtually eliminated the use of those areas for recreation due to turbidity.

Testimony presented at the Water Level Hearing by the dam owner and intervenors indicated that access from private property for recreational use of North Pond is limited in periods of low water levels. The dam owner testified that occasionally water levels are adjusted based on the needs of Great Pond.

2. Shoreline Erosion

The petitioners provided testimony that there has been property damage, land erosion, and loss of shoreline trees as a result of high water levels. In their pre-filed testimony, the petitioners provided photos of the water levels at the dam, “whale rock,” and several shoreline locations, as well as photos of bank erosion near a set of stairs.

The owner of the dam testified that there is no evidence that the dam or management of the dam has caused the erosion damage asserted by the petitioners.

Intervenor 7 Lakes Alliance testified that shoreline erosion identified on North Pond has been caused by human development activities and removal of vegetation, and that reducing water levels would simply move where the erosion is happening. Through surveying North Pond, the 7 Lakes Alliance has concluded that ice action has caused a lot of shoreline damage. In the winter, when the water levels are at their lowest, the ice expands and pushes up on the shoreline, causing ice berms. They further testified that between survey years 2016 and 2022, there was a reduction in shoreline erosion sites.

3. Public and Private Water Supplies

The owner of the dam and Intervenor Cornwall testified that North Pond serves as a private domestic water supply to some camps on the pond and along the Serpentine. On behalf of Intervenor Christine Keller, Intervenor Edith Cornwall testified that six Mellow Lane households draw water from the Serpentine. Low water levels in this area and boat traffic exceeding the no-wake speed limit result in stirring of sediments, which are then drawn into the water lines of the houses.

4. Downstream Flows

North Pond’s outlet, Great Meadow Stream, leads to Great Pond. 7 Lakes Alliance testified that during periods of excessive algal blooms in North Pond, water should not be released downstream, as Great Pond is listed as an impaired waterbody. They further testified that low levels of microcystin algal toxin have been detected within North Pond and should not be passed downstream.

V. DEPARTMENT FINDINGS:

A. RESOURCE DESCRIPTION:

North Pond is an inland body of water that has been artificially formed or increased with a surface area in excess of thirty acres, meeting the definition of a great pond pursuant to 38 M.R.S. § 480-B(5). North Pond is a 2,531-acre Class GPA lake located in the towns of Smithfield, Mercer, and Rome (MIDAS 5344).¹ See 38 M.R.S. § 465-A. North Pond is the second lake in the seven-lake Belgrade Chain of Lakes and is connected by a shallow

¹ The unique 4-digit code assigned to a lake.

channel to Little Pond. North Pond tributaries include Pattee Brook, Leach Brook, and Bog Stream on the north side of the lake, as well as Serpentine Stream to the east. East Pond drains into North Pond through a wetland called the Serpentine. The North Pond Watershed includes 123 miles of streams, 1,415 acres of wetlands, and 3,328 acres of riparian habitat.

North Pond has an average depth of 12 feet and a maximum depth of 19 feet. The Pond flushes at a rate of 1.6 flushes per year. Water levels are controlled through natural precipitation and evaporation, a dam at the inlet of Mill Stream (controlling flow from East Pond), and the North Pond Dam at the outlet of North Pond on Great Meadow Stream, which flows into Great Pond. Principal fisheries on North Pond are smallmouth bass, largemouth bass, white perch, and chain pickerel.

North Pond is listed on the Department's Nonpoint Source Priority Watersheds List as a "Threatened" waterbody, as well as being listed as "Most at Risk from New Development" under the Department's *Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams* rule, 06-096 C.M.R. ch. 502. North Pond has an approved WBPP, as acknowledged in a January 22, 2024, letter by Department staff with the Division of Environmental Assessment.

Currently, there is no written management plan for the control of water levels at North Pond.

B. DAM CHARACTERISTICS:

The North Pond Dam meets the definition of a dam set forth in 38 M.R.S. § 817(3).

The North Pond Dam was built in 1987 to manage the water level of North Pond. The dam consists of two removable steel beams that sit on a 13-inch concrete base with one steel beam embedded. The dam is 31'6" wide and 25.5 inches in height. The removable steel beams are manually raised or lowered during the spring and fall seasons. The dam is located in Great Meadow Stream on the outlet of North Pond at 44°36'28.1" North Latitude and 69°49'25.7" West Longitude, in the Town of Smithfield.

C. TITLE, RIGHT, OR INTEREST:

The North Pond Dam is owned and operated by the North Pond Association, a Maine Non-Profit Corporation. The deeds recorded in the Somerset County Registry of Deeds (Book 3566, Page 327) and the Kennebec County Registry of Deeds (Book 8811, Page 116) state that North Pond Association, Inc., is granted ownership of the dam structure and access to the dam with the right to repair and maintain the dam and control the water levels. The Department finds the water flowage rights reside with the land on which the North Pond Dam stands, now and with any future conveyance.

D. MAINTENANCE OF PUBLIC ACCESS AND USE:

The Department must consider the water levels necessary to maintain the public rights of access to and use of water for navigation, fishing, fowling, recreation, and other lawful public uses.

Public access to North Pond is available at a state-owned boat launch on Bog Stream. The parties and public did not otherwise provide testimony or evidence relevant to this criterion.

E. SAFETY OF LITTORAL AND RIPARIAN PROPRIETORS AND PUBLIC:

The Department must consider the water levels necessary to protect the safety of the littoral or riparian proprietors and the public.

According to the criteria set by the Maine Emergency Management Agency, the North Pond Dam is not required to have a hazard classification inspection. The parties and public did not otherwise provide testimony or evidence relevant to this criterion.

F. MAINTENANCE OF FISH AND WILDLIFE HABITAT AND WATER QUALITY:

The Department must consider the water levels and minimum flow requirements necessary for the maintenance of fish and wildlife habitat and water quality.

Fish. Based on their review of the petition and expertise, MDIFW fisheries staff commented on September 4, 2024, that they recommend that steady water levels be maintained from May 15 to July 31, as that would be ideal for bass spawning and water-dependent nesting birds, such as loons.

Wildlife. According to the State's Geographic Information System mapping database, there are mapped moderate value Inland Waterfowl and Wading bird Habitats (IWWHs) associated with North Pond. MDIFW commented that slightly lower water elevations might enhance the IWWHs; however, MDIFW did not make specific recommendations on water level elevations or minimum flows.

Water Quality. A WBPP, which is designed for water bodies where water quality is a concern, establishes a plan to manage the water body to improve water quality. A 9-Element WBPP uses 9 elements identified by the U.S. Environmental Protection Agency to help provide a quantitative framework for the planning process that leads to water quality improvements and restoration to attain water quality standards. A 9-Element WBPP was created for North Pond to provide details about the current water quality conditions, watershed characteristics, and steps that can be taken to improve and protect the water quality over the next 10 years. In a letter dated January 22, 2024, Department staff with the Division of Environmental Assessment notified the Kennebec County Soil and Water Conservation District that the Department acknowledges acceptance of North Pond's 9-Element WBPP as an approved plan for protection. The Division of

Environmental Assessment did not provide comments on the water levels required for optimal water quality.

According to the WBPP, water clarity readings in North Pond have been collected since 1970, with 42 years of data collected over the sampling period. North Pond has experienced occasional algal blooms since the 1990s but has experienced a steep decline in water quality beginning in 2018. Between 2018-2022, the lake experienced several severe algal blooms, indicating that it had reached a point where there was too much phosphorus in the lake. This is caused by both external sources of phosphorus from the watershed and by internal phosphorus-loading from existing lake sediments.

G. PREVENTION OF EXCESSIVE SHORELINE EROSION:

The Department must consider the water levels necessary to prevent the excessive erosion of shorelines.

Wave action and water levels are not the primary causes of erosion for North Pond. According to the WBPP, of the 465 shoreline lots on North Pond, an estimated 351 are developed, of which, 90% are estimated to be within 100 feet of the lake. Shoreline erosion is influenced by a combination of natural and development related factors, including topography, soil composition, erosive potential, ice movement, vegetation loss, land alteration, and seasonal runoff. The cumulative effects of these factors contribute to shoreline erosions and there is not sufficient evidence to suggest that water levels and wave action alone are the cause of shoreline erosion on North Pond.

H. ACCOMODATION OF PRECIPITATION AND RUNOFF:

The Department must consider the water levels necessary to accommodate precipitation and run off of waters.

The North Pond watershed has historically included large areas of agricultural, residential, and commercial development, providing sources of nonpoint source pollutants stemming from stormwater runoff, soil erosion, fertilizers, and animal waste, among other pollutants. North Pond is currently threatened by non-point source pollution from development, including agriculture, timber harvesting, residential and commercial development, and roads, and is subject to internal phosphorus loading from sediments. Intense rainfall events will increase the amount of nutrient transport to the lake from the watershed via stormwater runoff that will be available for algal growth. The WBPP outlines treatment for the phosphorus load in North Pond. The existing water level regime and those outlined in the WBPP accommodates precipitation.

I. MAINTENANCE OF PUBLIC AND PRIVATE WATER SUPPLIES:

The Department must consider the water levels necessary to maintain public and private water supplies.

North Pond is not a public drinking water supply.

J. HYDROPOWER GENERATION:

The Department must consider the water levels and flows necessary for any ongoing use of the dam to generate or to enhance downstream generation of hydroelectric or hydromechanical power.

There is no historical or current hydropower generation on North Pond.

K. WATER LEVELS AND DOWNSTREAM FLOWS:

The Department must consider the water levels necessary to provide flows from any dam on the body of water to maintain public access and use, fish propagation and fish passage facilities, fish and wildlife habitat and water quality downstream of the body of water.

The WBPP states that the lake elevation is 254 feet (mean sea level) and the normal high water line is unknown.

The North Pond Dam is a rudimentary, hand-operated, steel-beam dam. The Department's 1987 WQC order set a specific minimum flow of 14.5 cfs. However, the North Pond Association testified that they do not possess the necessary equipment to measure and regulate this specific discharge rate accurately. The current configuration of the dam allows for some flow around the ends of the beams and under the bottom removable beam, even when lowered. The North Pond Association supports establishing a minimum flow, provided it also includes a minimum water level and allows periods when the dam can be closed to prevent compromised water from flowing downstream during periods of excessive algal blooms.

VI. DEPARTMENT ANALYSIS & CONCLUSION:

Pursuant to 38 M.R.S. § 840(4)(A-H), the Department must analyze eight criteria before setting a water level regime and minimum flow requirements for North Pond. Considering the evidence presented above, the Department determines that outflows from North Pond should continue to be maintained by the seasonal raising and lowering of the existing steel beams. This water level management regime is consistent with the WBPP and current uses of North Pond and will provide for a stable water level with appropriate provision for variation based on relevant considerations such as heavy precipitation events or prevention of the release of waters to Great Pond during periods of excessive algal blooms.

While the removal of the second steel beam, as requested by petitioners, would result in a reduction in water levels that may slightly enhance IWWH, such a reduction in water levels may negatively affect recreational and domestic uses. Evidence presented on the effect of water levels on shoreline erosion is mixed and does not persuasively suggest the need for lower water levels. The Department concludes that, on balance, the evidence

presented on the eight criteria in 38 M.R.S. § 840(4)(A-H) does not necessitate the permanent removal of the second steel beam.

Further, while the 1987 WQC order discusses allowing flow through a hole in the bottom beam of the dam, the Department no longer finds this requirement to be necessary. In addition to regulating minimum flow and water levels, the dam plays a critical role in limiting the spread of invasive plants and toxins. Accordingly, the dam operator must retain the ability to limit flows as much as possible during periods of heightened risk. Otherwise, during normal operating conditions, maintaining a steady minimum flow to Great Meadow Stream helps protect both the water quality and habitat. The North Pond Dam is designed to support this continuous flow through the use of spacers and its current configuration, which ensures a constant level of leakage. Increasing flows from North Pond into Great Meadow Stream increases the risk of transferring invasive plants and toxins, as well as limiting recreational and domestic use of North Pond.

THEREFORE, the Department ORDERS that a water level and minimum flow regime be established for North Pond in the towns of Smithfield, Mercer, and Rome, in Somerset and Kennebec Counties, Maine, and that all necessary actions be undertaken by the North Pond Dam Association, owner of the NORTH POND DAM, to ensure compliance with this water level and minimum flow regime as follows, SUBJECT TO THE FOLLOWING STANDARD AND SPECIAL CONDITIONS and all applicable standards and regulations:

1. Standard Conditions for Water Level Orders, a copy attached.
2. The invalidity or unenforceability of any provision, or part thereof, of this Order shall not affect the remainder of the provision or any other provisions. This Order shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
3. Effective upon the date of this Order, the North Pond Dam must be operated under normal conditions in a manner to maintain water levels in accordance with the Department's regulations.
4. The water level in North Pond must be maintained within a range of fluctuations, controlled by two steel beams and measured using the current measurement practices of reading the water level at the dam site, to the extent practicable, as follows:
 - A. Following ice-out conditions and until October 14 of any given year, the water level of North Pond must be gradually raised, and maintained between 16 and 20 inches at the dam, utilizing steel beams to provide water access for the recreational launch and use of boats, to capture high water in order to maximize wildlife brood cover, to ensure waterfowl production and survival, to safeguard spawning activities, to provide essential habitat, cover and protection for fry, and to provide adequate feeding locations for juvenile fish for as long as possible.

- B. From May 15 to July 31, water levels must be maintained as stable as possible and between 12 to 18 inches at the Dam to support optimal fish spawning conditions.
 - C. From October 15 to ice-out conditions of any given year, the North Pond Dam must be managed to prevent seasonal flooding and ice action against the dam's outlet by maintaining water levels between 6 to 10 inches at the Dam to maintain a sufficient in-lake capacity to accommodate winter and spring runoff and heavy precipitation events.
5. Outflow from North Pond Dam must be managed to maintain a continuous minimum flow downstream sufficient to support aquatic habitat, sustain downstream wetlands, and preserve baseflow conditions in Great Pond. This minimum flow shall be maintained through the dam's outlet structure regardless of seasonal water level management activities, including during drawdown or refill periods. In the event of prolonged drought or low inflow conditions, flow may be reduced temporarily but shall resume as soon as conditions allow.
 6. As abnormal weather conditions require, water levels may be reduced to accommodate sudden and large influxes of water to North Pond resulting from heavy precipitation events. However, following such heavy precipitation events, the water level must be allowed to recover to the required levels. During periods of drought, water levels may also decline naturally, and recovery to required levels may take longer than normal.
 7. Dam operators must notify the Department whenever the dam is closed due to the elevated risk of invasive plant or toxin transfer, or for other water quality purposes. The Department may require adjustments to maintain compliance with this Order.
 8. Maintenance and repair activities that require water levels to be drawn down require written permission from the Department. Written permission to reduce water levels may be obtained by submission of a written request to the Department that includes a work plan and schedule.
 9. Maintain complete and accurate logs, records, and supporting documentation sufficient to demonstrate compliance with all terms and conditions of this Order. Such records shall be kept in a manner that allows verification and must be made available upon request by the Department.

THIS ORDER 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 27TH DAY OF JANUARY, 2026.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 

Robert Wood,

For: Melanie Loyzim, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

CB/L3062936AN/ATS#91794

Appendix A

DEFINITIONS

The following definitions are to be used in conjunction with Department Order #L-24447-36-A-N.

1. **Dam.** "Dam" means any man-made artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, which impounds or diverts a river, stream or great pond and which is 2 feet or more in height and has an impounding capacity at maximum water storage elevation of 15 acre-feet or more. Any such artificial barrier constructed solely for the purpose of impounding water to allow timber to be floated downstream in a logging operation shall not be considered a dam for the purposes of this article, unless it has been repaired, modified or maintained by or with the knowledge of the owner, lessee or person in control since the discontinuance of its use in connection with logging operations. Any adjacent property, easements, roads, bridges or works not necessary for the operation or maintenance of a dam or access to the dam shall not be included under the provisions of this article. *38 M.R.S. § 817 (3)*

2. **Great Ponds.** "Great ponds" means any inland bodies of water which in a natural state have a surface area in excess of 10 acres and any inland bodies of water artificially formed or increased which have a surface area in excess of 30 acres. *38 M.R.S. § 480-B (5)*

3. **Normal High Water Line.** "Normal high water line" means that line along the shore of a great pond, river, stream, brook or other nontidal body of water which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or from changes in vegetation and which distinguishes between predominantly aquatic and predominantly terrestrial land. *38 M.R.S. § 480-B (6)*

4. **Normal Repair and Maintenance.** The following are types of normal maintenance, by way of example:

- (a) The resurfacing or repair of dams, canals, powerhouses, retaining walls, or other structures where no cofferdam, dredging, filling, or permanent water level alteration is involved;
- (b) The repair, removal or replacement of flashboards, stop logs, gates, or intake racks where no cofferdam, dredging, filing, or permanent water level alteration is involved;
- (c) Removal of materials collected on trash racks;
- (d) Removal of dri-ki and other accumulated materials where no significant disturbance of soils or lake or river bottom materials is involved;
- (e) Installing or removing booms;
- (f) Placement and removal of non-earthen cofferdams temporarily installed immediately adjacent to an existing structure for the purpose of inspecting or repairing the structure;
- (g) Removal of sediment and debris from gated canals, tunnels and penstocks from which the water has been removed; and
- (h) Sealing of leaks in gates, stop logs and flashboards. *Chapter 450, Administrative Regulations for Hydropower Projects*

Appendix B
STANDARD CONDITIONS FOR WATER LEVEL ORDERS

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL WATER LEVEL ORDERS ISSUED UNDER THE ESTABLISHMENT OF WATER LEVELS STATUTE, TITLE 38 M.R.S. SECTION 840, UNLESS OTHERWISE SPECIFICALLY STATED IN THE ORDER.

1. Noncompliance. Should the dam be found, at any time, not to be in compliance with any of the conditions of this Order, or should the owner or its designee operate this dam in any way other than specified by the conditions of this Order, then the terms of this Order shall be considered to have been violated.
2. Compliance with all Applicable Laws. The owner of the dam shall secure and appropriately comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during operation.
3. Inspection and Compliance. Authorized representatives of the Board, Department or the Attorney General shall be granted access to the premises by the owner of the dam at any reasonable time for the purpose of inspecting the operation of the project and assuring compliance by the owner of the dam with the conditions of this Order.
4. Severability. The invalidity or unenforceability of any provision, or part thereof, of this Order shall not affect the remainder of the provision or any other provisions. This Order shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
5. Transfer. Unless otherwise provided in the Order, the owner of the dam may not sell, lease, assign, or otherwise transfer the dam or any portion thereof without submitting written notification to the Department for review and approval where the purpose or consequence of the transfer is to transfer any of the obligations of the owner of the dam as incorporated in this Water Level Order. Prior to any transfer of property subject to this Order, the Department shall be notified of the new owner of the dam and be provided with a signed letter from the new owner of the dam agreeing to comply with the terms of the Water Level Order. In addition to the requirements outlined in the Department's Chapter 2: Rules Concerning the Processing Applications and Other Administrative Matters, the owner of the dam shall provide the Department with evidence that public notice of the transfer of ownership has been sent to all littoral and riparian landowners (Section 21(C)), and provide sufficient evidence of title, right or interest (Section 11(D)).



DEP INFORMATION SHEET

Appeals to the Board of Environmental Protection

Date: November 2024

Contact: Clerk.BEP@maine.gov or
(207) 314-1458

SUMMARY

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of: (1) a final license decision made by the Commissioner of the Department of Environmental Protection ("DEP"); or (2) an insurance claim-related decision ("Clean-up and Response Fund decision") made by the Commissioner or the Office of State Fire Marshal pursuant to [38 M.R.S. § 568-A](#).

Except as explained below, there are two methods available to an aggrieved person seeking to appeal a license decision made by the Commissioner or a Clean-up and Response Fund decision: (1) an administrative appeal before the Board of Environmental Protection ("Board"); or (2) a judicial appeal before Maine's Superior Court. An aggrieved person seeking review of a license decision or Clean-up and Response Fund decision made by the Board may seek judicial review in Maine's Superior Court.

An appeal of a license decision made by the DEP Commissioner or the Board regarding an application for an expedited wind energy development ([35-A M.R.S. § 3451\(4\)](#)), a general permit for an offshore wind energy demonstration project ([38 M.R.S. § 480-HH\(1\)](#)), or a general permit for a tidal energy demonstration project ([38 M.R.S. § 636-A](#)) must be taken to the Supreme Judicial Court sitting as the Law Court.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

A person filing an appeal with the Board should review the applicable rules and statutes, including the DEP's Chapter 2 rule, [Processing of Applications and Other Administrative Matters \(06-096 C.M.R. ch. 2\)](#); Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); and the Maine Administrative Procedure Act, [5 M.R.S. § 11001](#).

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

Within 30 calendar days of the date of: (1) a final license decision of the Commissioner; or (2) a Clean-up and Response Fund decision, an aggrieved person may appeal to the Board for review of that decision. "Aggrieved person" means any person whom the Board determines may suffer a particularized injury as a result of a Commissioner's license decision or a Clean-up and Response Fund decision. A complete appeal must be received by the Board no later than 5:00 p.m. on the 30th calendar day of the decision being appealed. With limited exception, untimely appeals will be dismissed.

HOW TO SUBMIT AN APPEAL TO THE BOARD

An appeal to the Board may be submitted via postal mail or electronic mail (e-mail) and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection
c/o Board Clerk
17 State House Station
Augusta, ME 04333-0017
Clerk.BEP@maine.gov

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee, if the appellant is not the licensee; and (3) if a hearing was held on the application, any intervenors in that hearing proceeding. For appeals of Clean-up and Response Fund decisions made by the State Fire Marshal, the appellant must also send a copy of the appeal to the State Fire Marshal. **Please contact the Board Clerk at clerk.bep@maine.gov or DEP staff at 207-287-7688 with questions or for contact information regarding a specific license or Clean-up and Response Fund decision.**

REQUIRED APPEAL CONTENTS

A written appeal must contain the information specified in Chapter 2, section 23(B) or section 24(B), as applicable, at the time the appeal is submitted. **Please carefully review these sections of Chapter 2**, which is available online at <https://www.maine.gov/sos/cec/rules/06/chaps06.htm>, or contact the Board Clerk to obtain a copy of the rule. Failure to comply with the content of appeal requirements may result in the appeal being dismissed pursuant to Chapter 2, section 23(C) or section 24(C).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with the administrative record.* Generally, the record on which the Board decides an appeal is limited to the record prepared by the agency in its review of the application, any supplemental evidence admitted to the record by the Board Chair and, if a hearing is held on the appeal, additional evidence admitted during the hearing. A person who seeks to appeal a decision to the Board is encouraged to contact the DEP (or State Fire Marshal for Clean-up and Response Fund decisions made by that agency) to inspect the record before filing an appeal.
2. *Be familiar with the applicable rules and laws.* An appellant is required to identify the licensing criterion or standard the appellant believes was not satisfied in issuing the decision, the bases of the objections or challenges, and the remedy sought. Prior to filing an appeal, review the decision being appealed to identify the rules and laws that are applicable to the decision. An appellant may contact the DEP or Board staff with any questions regarding the applicable rules and laws or the appeal procedure generally.
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. Unless a separate stay of the decision is requested and granted (*see* Chapter 2, section 23(M)), the licensee may proceed with an approved project pending the outcome of the appeal. Any activity initiated in accordance with the approved license during the pendency of the appeal comes with the risk of not knowing the outcome of the appeal, including the possibility that the decision may be reversed or modified by the Board.
4. *Alternative dispute resolution.* If the appeal participants agree to use mediation or another form of alternative dispute resolution (“ADR”) to resolve the appeal and so notify the Board, the Board will not hear the matter until the conclusion of that effort, provided the participants engaged in the alternative dispute resolution demonstrate satisfactory progress toward resolving the issues. *See* Chapter 2, section 23(H) or contact the Board Executive Analyst (contact information below) for more information on the ADR provision.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will acknowledge receipt of each appeal and develop a service list of appeal participants and any interested persons for use in the appeal proceeding. Electronic mail (e-mail) is the preferred method of communication during an appeal proceeding; however, the Board reserves the right to require paper copies of all filings. Once the Board Chair rules on the admissibility of all proposed supplemental evidence, the licensee (if the licensee is not the appellant) may respond to the merits of the appeal. Instructions specific to each appeal will be provided in correspondence from the Board Executive Analyst or Board Chair. Generally, once all filings in an appeal proceeding are complete, the DEP staff will assemble a packet of materials for the Board (Board packet), including a staff recommendation in the form of a proposed Board Order. Once available, appeal participants will receive a copy of the Board packet and an agenda with the meeting location and start time. Once finalized, the meeting agenda will be posted on the Board's webpage <https://www.maine.gov/dep/bep/index.html>. Appeals will be considered based on the administrative record on appeal and oral argument at a regular meeting of the Board. *See* Chapter 2, Section 23(I). The Board may affirm all or part of the decision under appeal; affirm all or part of the decision under appeal with modifications, or new or additional conditions; order a hearing to be held as expeditiously as possible; reverse the decision under appeal; or remand the decision to the Commissioner or State Fire Marshal, as applicable, for further proceedings.

II. JUDICIAL APPEALS

The filing of an appeal with the Board is not a prerequisite for the filing of a judicial appeal. Maine law generally allows aggrieved persons to appeal final license decisions to Maine's Superior Court (*see* [38 M.R.S. § 346\(1\)](#); [Chapter 2](#); [5 M.R.S. § 11001](#); and [M.R. Civ. P. 80C](#)). A judicial appeal by a party to the underlying proceeding 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 aggrieved person, an appeal must be filed within 40 days of the date the decision was rendered. 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. § 346(4), the Maine Administrative Procedure Act, statutes governing a particular license decision, and the Maine Rules of Civil Procedure for substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal procedure, for administrative appeals contact the Board Clerk at clerk.bep@maine.gov or 207-287-2811 or the Board Executive Analyst at bill.hinkel@maine.gov or 207-314-1458, or for judicial appeals contact the court clerk's office in which the appeal will be filed.

Note: This information sheet, in conjunction with a review of the statutory and rule provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal, and to comply with notice requirements of the Maine Administrative Procedure Act, 5 M.R.S. § 9061. This information sheet is not intended to supplant the parties' obligations to review and comply with all statutes and rules applicable to an appeal and insofar as there is any inconsistency between the information in this document and the applicable statutes and rules, the relevant statutes and rules apply.