



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

August 10, 2015

Mr. Richard Knowlton  
Vice President, Operations  
Maine Water Company  
93 Industrial Park Road  
Saco, Maine 04072  
[rknowlton@mainewater.com](mailto:rknowlton@mainewater.com)

*Transmitted via electronic mail  
Delivery confirmation requested*

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0000035  
Maine Waste Discharge License (WDL) Application #W002545-5S-D-R  
**Proposed Draft Permit**

Dear Mr.Knowlton:

Enclosed is a **preliminary draft** MEPDES permit/WDL (permit hereinafter) which the Department proposes to issue as a formal proposed draft document after opportunity for your review and comment. By transmittal of this letter you are provided with an opportunity to comment on the preliminary draft permit and its conditions. If it contains errors or does not accurately reflect present or proposed conditions, please respond to this Department so that changes can be considered.

All comments on the preliminary draft permit must be received in the Department of Environmental Protection office on or before the close of business on **Monday, August 31, 2015**. Failure to submit comments in a timely fashion will result in the proposed draft permit document being issued as drafted. Comments in writing should be submitted to my attention at the following address:

Maine Department of Environmental Protection  
Bureau of Land & Water Quality  
Division of Water Quality Management  
17 State House Station  
Augusta, ME. 04333

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-3901 FAX: (207) 287-3435  
RAY BLDG., HOSPITAL ST.

BANGOR  
106 HOGAN ROAD  
BANGOR, MAINE 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) 764-6477 FAX: (207) 764-1507

If you have any questions regarding the matter, please feel free to call me at 215-1579.

Sincerely,

A handwritten signature in cursive script that reads "Yvette Meunier".

Yvette M. Meunier  
Division of Water Quality Management  
Bureau of Land and Water Quality

Enc.

cc: Stuart Rose, DEP/SMRO  
Pam Parker, DEP/CMRO  
Barry Mower, DEP/CMRO  
Susanne Meidel, DEP/CMRO  
David Webster, USEPA  
Alex Rosenberg, USEPA  
David Pincumbe, USEPA



DEPARTMENT ORDER

IN THE MATTER OF

THE MAINE WATER COMPANY	)	MAINE POLLUTANT DISCHARGE
BIDDEFORD, YORK COUNTY, MAINE	)	ELIMINATION SYSTEM PERMIT
DRINKING WATER TREATMENT FACILITY	)	AND
#ME0000035	)	WASTE DISCHARGE LICENSE
#W002545-5S-D-R <b>APPROVAL</b>	)	<b>RENEWAL</b>

In compliance with the *Federal Water Pollution Control Act*, Title 33 USC, §1251, *Conditions of licenses*, 38 M.R.S.A. § 414-A, and applicable regulations, the Department of Environmental Protection (Department) has considered the application of THE MAINE WATER COMPANY (permittee), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

On June 16, 2015, the Department accepted as complete for processing an application from the District for the renewal of combination Waste Discharge License (WDL) #W002545-5S-C-R/ Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0000035, which was issued on August 5, 2010, for a five-year term. The 8/5/10 permit authorized the discharge of up to a monthly average flow of 0.150 million gallons per day (MGD) of filter cleaning (backwash) wastewater to the Saco River, Class A, in Biddeford, Maine.

By merger agreement dated December 19, 2015 the Biddeford and Saco Water Company merged into The Maine Water Company.

**PERMIT SUMMARY**

This permitting action is carrying forward all the terms and conditions of the previous permitting action except it is:

1. Revising the monitoring and reporting requirements for aluminum to maintain consistency with the requirements of other similar drinking water treatment plants; and
2. Revising the minimum monitoring frequency requirements for settleable solids based on the results of facility testing.

## CONCLUSIONS

Based on the findings summarized in the attached Fact Sheet dated **September 1, 2015**, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding natural resource, that water quality will be maintained and protected;
  - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S.A. § 414-A(1)(D).

**ACTION**

THEREFORE, the Department APPROVES the above noted application of THE MAINE WATER COMPANY to discharge a monthly average of 0.150 million gallons per day (MGD) of filter cleaning (backwash) wastewater from a municipal drinking water treatment plant to the Saco River, Class A, in Biddeford, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit and the authorization to discharge become effective upon the date of signature below and expire at midnight five (5) years from the effective date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the authorization to discharge and the terms and conditions of this permit and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (amended August 25, 2013)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2015.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
PATRICIA W. AHO, Commissioner

Date filed with Board of Environmental Protection \_\_\_\_\_

Date of initial receipt of application: June 16, 2015  
Date of application acceptance: June 16, 2015  
This Order prepared by Yvette Meunier, BUREAU OF WATER QUALITY

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge **drinking water filter cleaning (backwash) wastewater from Outfall #001** to the Saco River. Such discharges are limited and must be monitored by the permittee as specified below<sup>(1)</sup>:

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
<b>Flow</b> <i>[50050]</i>	0.150 MGD <i>[03]</i>	---	---	---	When Discharging <i>[WH/DS]</i>	Measured <i>[MS]</i>
<b>TSS</b> <i>[00530]</i>	20 lbs/day <i>[26]</i>	40lbs/day <i>[26]</i>	30 mg/L <i>[19]</i>	60 mg/L <i>[19]</i>	1/Week <i>[01/30]</i>	Grab <i>[GR]</i>
<b>Settleable Solids</b> <i>[00545]</i>	---	---	0.1 ml/L <i>[25]</i>	---	2/Month <i>[02/30]</i>	Grab <i>[GR]</i>
<b>Total Residual Chlorine<sup>(2)</sup></b> <i>[50060]</i>	---	---	---	0.15 mg/L <i>[19]</i>	1/Week <i>[01/30]</i>	Grab <i>[GR]</i>
<b>Total Aluminum</b> <i>[01105]</i>	---	3.3 lbs/day <i>[26]</i>	---	5.0 mg/L <i>[19]</i>	1/Quarter <i>[01/90]</i>	Grab <i>[GR]</i>
<b>pH</b> <i>[00400]</i>	---	---	---	6.0 – 8.5 SU <i>[12]</i>	1/Week <i>[01/30]</i>	Grab <i>[GR]</i>

The italicized numeric values bracketed in the table and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports.

**FOOTNOTES:** See Page 6 of this permit for applicable footnotes.

## **SPECIAL CONDITIONS**

### **A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

#### **FOOTNOTES**

1. **Sampling** – All effluent monitoring must be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. Any change in sampling location must be approved by the Department in writing. The permittee must conduct sampling and analysis in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services for wastewater. Samples that are sent to a POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (effective April 1, 2010). If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report.
2. **Total Residual Chlorine (TRC)**. The permittee must utilize a USEPA-approved test method capable of bracketing the TRC limitations specified in this permitting action.

### **B. NARRATIVE EFFLUENT LIMITATIONS**

1. The permittee must not discharge effluent that contains a visible oil sheen, foam or floating solids at any time which would impair the uses designated for the classification of the receiving waters.
2. The permittee must not discharge effluent that contains materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the uses designated for the classification of the receiving waters.
3. The permittee must not discharge effluent that causes visible discoloration or turbidity in the receiving waters or that impairs the uses designated for the classification of the receiving waters.
4. The permittee must not discharge effluent that lowers the quality of any classified body of water below such classification, or lowers the existing quality of any body of water if the existing quality is higher than the classification.

### **C. AUTHORIZED DISCHARGES**

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on June 16, 2015; 2) the terms and conditions of this permit; and 3) only from Outfall #001. Discharges of wastewater from any other point source(s) are not authorized under this permit, and must be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

## SPECIAL CONDITIONS

### D. NOTIFICATION REQUIREMENT

In accordance with Standard Condition D, the permittee must notify the Department of the following:

1. Any introduction of pollutants into the wastewater collection and treatment system from an indirect discharger in a primary industrial category discharging process wastewater; and
2. Any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system by a source introducing pollutants to the system at the time of permit issuance. For the purposes of this section, notice regarding substantial change must include information on:
  - (a) the quality and quantity of wastewater introduced to the wastewater collection and treatment system; and
  - (b) any anticipated impact caused by the change in the quantity or quality of the wastewater to be discharged from the treatment system.

### E. MONITORING AND REPORTING

Monitoring results obtained during the previous month must be summarized for each month and reported on separate Discharge Monitoring Report (DMR) forms provided by the Department and **postmarked on or before the thirteenth (13<sup>th</sup>) day of the month or hand-delivered to the Department's Regional Office such that the DMRs are received by the Department on or before the fifteenth (15<sup>th</sup>) day of the month** following the completed reporting period. A signed copy of the DMR and all other reports required herein must be submitted to the Department assigned inspector (unless otherwise specified by the Department) at the following address:

Department of Environmental Protection  
Southern Maine Regional Office  
Bureau of Water Quality  
Division of Water Quality Management  
312 Canco Road  
Portland, ME 04103

Alternatively, if the permittee submits an electronic DMR (eDMR), the completed eDMR must be electronically submitted to the Department by a facility authorized DMR Signatory not later than close of business on the **15<sup>th</sup> day of the month** following the completed reporting period. Hard copy documentation submitted in support of the eDMR must be postmarked on or before the **thirteenth (13<sup>th</sup>) day of the month or hand-delivered** to the Department's Regional Office such that it is received by the Department on or before the fifteenth (15<sup>th</sup>) day of the month following the completed reporting period. Electronic documentation in support of the eDMR must be submitted not later than close of business on the 15<sup>th</sup> day of the month following the completed reporting period.



## SPECIAL CONDITIONS

### F. OPERATIONS AND MAINTENANCE (O&M) PLAN

The permittee must maintain a current written comprehensive Operation & Maintenance (O&M) Plan for the facility. The plan must provide a systematic approach by which the permittee must at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

**By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades,** the permittee must evaluate and modify the O&M Plan including site plan(s) and schematic(s) for the wastewater treatment facility to ensure that it is up-to-date. The O&M Plan must be kept on-site at all times and made available to Department and U.S. Environmental Protection Agency (USEPA) personnel upon request.

**Within 90 days of completion of new and or substantial upgrades of the wastewater treatment facility,** the permittee must submit the updated O&M Plan to their Department inspector for review and comment.

### G. PRACTICAL ALTERNATIVES ANALYSIS

*Standards for classification of fresh surface waters, 38 M.R.S.A. §465(2)(C) states, "Prior to issuing a discharge license [to a Class A waterbody], the Department shall require the applicant to objectively demonstrate to the Department's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available. Discharges into waters of this classification licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist."*

**Upon submission of an application for permit renewal or modification,** the permittee must submit to the Department, for review and approval, a practical alternatives analysis for the discharge from the permittee to the Saco River [*PCS Code 34099*].

### H. REOPENING OF PERMIT FOR MODIFICATION

In accordance with 38 M.R.S.A. § 414-A(5) and upon evaluation of the tests results or monitoring requirements specified in Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at any time and with notice to the permittee, modify this permit to: 1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded, (2) require additional monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

## **I. SEVERABILITY**

In the event that any provision(s), or part thereof, of this permit is declared to be unlawful by a reviewing court, the remainder of the permit must remain in full force and effect, and must be construed and enforced in all aspects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.

**MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
MAINE WASTE DISCHARGE LICENSE**

**PROPOSED DRAFT**  
**FACT SHEET**

DATE: **SEPTEMBER 2, 2015**

PERMIT NUMBER: **#ME0000035**

WASTE DISCHARGE LICENSE: **#W002545-5S-D-R**

NAME AND ADDRESS OF APPLICANT:  
**THE MAINE WATER COMPANY  
93 INDUSTRIAL PARK ROAD  
SACO, MAINE 04072**

COUNTY: **YORK**

NAME AND ADDRESS WHERE DISCHARGE(S) OCCUR(S):  
**466 SOUTH STREET  
BIDDEFORD, MAINE 04005**

RECEIVING WATER CLASSIFICATION: **SACO RIVER/CLASS A**

COGNIZANT OFFICIAL CONTACT INFORMATION:  
**MR. RICHARD KNOWLTON  
(800) 287-1643  
[rknowlton@mainewater.com](mailto:rknowlton@mainewater.com)**

**1. APPLICATION SUMMARY**

Application: On June 16, 2015, the Department of Environmental Protection (Department) accepted as complete for processing an application from the District for the renewal of combination Waste Discharge License (WDL) #W002545-5S-C-R/ Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0000035, which was issued on August 5, 2010, for a five-year term. The 8/5/10 permit authorized the discharge of up to a monthly average flow of 0.150 million gallons per day (MGD) of filter cleaning (backwash) wastewater to the Saco River, Class A, in Biddeford, Maine.

## 2. PERMIT SUMMARY

- a. Terms and Conditions: This permitting action is carrying forward all the terms and conditions of the previous permitting action except it is:
1. Revising the monitoring and reporting requirements for aluminum to maintain consistency with the requirements of other similar drinking water treatment plants; and
  2. Revising the minimum monitoring frequency requirements for settleable solids based on the results of facility testing.

- b. History: The most current relevant regulatory actions include:

January 8, 1979 – The US Environmental Protection Agency (USEPA) issued NPDES permit #ME0000035 to the permittee for the continued discharge of filter backwash wastewater to the Saco River in Biddeford. The permit expired on January 8, 1984 and superseded the previous (initial) NPDES permit issued on February 15, 1974.

April 11, 1991 – The Department issued WDL #W002545-59-A-R to the permittee for the discharge of up to 0.080 MGD of filter cleaning (backwash) wastewater to the Saco River in Biddeford. This licensing action superseded WDL #2545 issued on December 14, 1983 and WDL #419 issued on March 8, 1974.

November 18, 1996 – The USEPA issued General Permit #MEG640008 to the permittee for the continued discharge of filter backwash wastewater to the Saco River in Biddeford. The General Permit required the permittee to monitor the discharge on a weekly basis, compile the data by calendar quarter and submit biannual reports to the USEPA Region I Office.

July 24, 2001 – The permittee submitted a General Application to the Department for the renewal of WDL #W002545-59-A-R. The application was accepted for processing on July 30, 2001 and assigned WDL #W002545-5S-B-R/MEPDES #ME0000035.

September 13, 2003 – The Maine Legislature amended the Maine Surface Water Classification Program at 38 M.R.S.A. §467(12)(A)(10) by reclassifying the Saco River at the point of discharge from Class B to Class A.

June 24, 2005 – The permittee submitted, as an addendum to their 7/24/01 renewal application, a practical alternatives analysis to address the 2003 water quality classification upgrade of the Saco River.

August 12, 2005 – The Department issued WDL#W002545-5S-B-R for a five-year term.

August 5, 2010 – The Department issued WDL#W002545-5S-C-R for a five-year term.

December 19, 2013 – By merger agreement the Biddeford and Saco Water Company merged into The Maine Water Company.

## 2. PERMIT SUMMARY (cont'd)

June 16, 2015 – The permittee submitted a timely and complete application to the Department for renewal of the August 5, 2010 MEPDES permit. The application was accepted for processing on August 14, 2014, and was assigned WDL W002545-5S-D-R / MEPDES #ME00000351.

- c. Source Description: The permittee operates a municipal drinking water treatment plant on South Street in Biddeford, Maine, to supply potable water to approximately 14,500 residential and commercial customers in the cities of Biddeford and Saco and the towns of Old Orchard Beach and a portion of Scarborough (Pine Point area). The permittee also sells water on a wholesale basis to the Kennebunk, Kennebunkport and Wells Water District. A map showing the location of the treatment facility is included as Fact Sheet **Attachment A**. Original construction of the facility was completed in 1936 and the current design capacity of the plant is 13.0 MGD. Currently, the permittee extracts and treats approximately 5.5-6.0 MGD of water from the Saco River.

The permittee utilizes two low-lift intake pumps to convey water from the river to the treatment facility. Prior to entering the facility, the permittee injects alum to assist in color removal, sodium aluminate (during winter months and during periods of excessive river turbidity) to enhance color removal, lime for pH adjustment, and a polymer (when necessary) to enhance flocculation. The pretreated water is pumped to a two-cell flocculation basin that consists of two (2) two-stage flocculation zones and turbine-style mixers. Each cell has a capacity of approximately 134,000 gallons. (This treatment unit was created in calendar year 2000 from the pre-existing, baffled flocculation basin and a portion of the pre-existing sedimentation basin.) The water continues to a 1.1 million gallon sedimentation basin with a designed retention time of approximately 1.5 to 2 hours. After settling, the water is treated with gaseous chlorine to a residual concentration of approximately 1 part per million (ppm) for disinfection and with a filtration aid polymer. The water is equally-distributed to a filter train consisting of six (6) dual media (anthracite/sand) rapid sand filters. The surface area of each filter unit is 441 square feet and the total surface area of all filters is 2,646 square feet. Filtered water is treated with gaseous chlorine to a residual concentration of approximately 1.5 ppm and with a corrosion inhibitor before entering two (2) clearwells with a total combined capacity of 400,000 gallons. Water is treated in line with hydrofluorosilicic acid for consumer dental protection, with ammonia to convert free chlorine to chloramine (NH<sub>2</sub>Cl) and lime to adjust the pH as the finished water is pumped to the distribution system.

The permittee generates wastewater during daily filter cleaning procedures that are performed to maintain treatment system efficiency and during the continuous removal of accumulated solids from the sedimentation basin.

- d. Wastewater Treatment: The permittee performs filter cleaning cycles during each operating day and the number of cleaning cycles varies depending on the turbidity of the source waters. The turbidimeters that monitor filter performance are located on the filter effluent piping. The permittee reported that they perform a maximum of six (6) filter cleaning cycles per day (each filter cleaned once) and a minimum of three cycles per day.

## 2. PERMIT SUMMARY (cont'd)

Each filter cleaning cycle generates between 10,000 and 18,000 gallons of wastewater and requires between 15 and 35 minutes to complete. The filters are taken offline and cleaned independently. The permittee utilizes finished water that has been returned to the plant from one of the distribution system lines to complete filter cleaning cycles. Water used for filter cleaning is stored in an elevated backwash tank and then flows by gravity to the filter being cleaned. All wastewater generated during cleaning cycles is conveyed directly to a 600,000-gallon sedimentation lagoon for settling prior to discharge. Discharge occurs when the production of potable water has ceased for the day (usually between 7pm and 10pm). The lagoon drain is then opened and supernatant drains from the lagoon into the Saco River until 5am the next morning. A schematic of the potable and wastewater treatment processes is included as Fact Sheet **Attachment B**.

The treatment plant operator initiates filter cleaning cycles by closing the influent valve and allowing the remaining water to filter down through the filter media. The filter effluent valve is closed when the water level over the filter reaches a point approximately three inches above the surface of the filter media. After the filter effluent valve is closed completely, the air scour blower is started and run for four minutes. After most of the entrained air has been released from the filter bed, the backwash influent valve is opened as is the drain valve and finished water either from the distribution system or from the backwash tank is forced up through the filter bed for approximately 3 to 5 minutes at average rates of approximately 3,000 to 4,000 GPM during a high rate upflow backwash sequence. This sequence generates approximately 12,000 gallons of wastewater. Following the backwash, the permittee performs a 5 to 30-minute filter-to-waste sequence using finished water, which generates up to approximately 3,000 gallons of wastewater. The filter is brought back into production mode by closing the backwash and drain valves and opening the influent valve. Wastewater generated during the backwash and filter-to-waste sequences is conveyed to a 600,000-gallon sedimentation lagoon prior to discharge and supernatant is conveyed to the outfall pipe on an intermittent basis. Installation of the air scour blower was completed by permittee on June 13, 2005. Use of the air scour blower has significantly reduced the quantity of water used during filter backwash procedures and quantity of wastewater generated from filter cleaning activities.

Wastewater (supernatant) from the lagoon is conveyed to the Saco River in Biddeford via a 30-inch diameter discharge pipe identified as, "30" [30-inch] Sewer Outflow" on Fact Sheet **Attachment B**. Compliance samples are collected from the 30-inch outflow pipe. The discharge is intermittent and is manually controlled. The outfall pipe terminates on the shore of the Saco River between the top of the embankment and the mean highwater elevation. Therefore, the Department considers this a bank discharge that does not achieve complete and rapid mixing with the receiving waters. The lagoon also has a drain and an overflow pipe. In accordance with Special Condition C of this permit, the permittee is only authorized to discharge from Outfall #001.

The permittee also generates wastewater during the removal of settled solids (sludge) from the sedimentation basin. The permittee utilizes a suction sludge removal system that conveys accumulated solids from the bottom of the sedimentation basin to the lagoon.

## 2. PERMIT SUMMARY (cont'd)

The permittee estimates that between 10,000 and 30,000 gallons of wet sludge are pumped to the lagoon each day. Settled solids are removed from the lagoon once every three years and are transported to an on-site, approximately 250,000-gallon, freeze-thaw solids storage area. Discharge associated with the freeze-thaw storage area goes through an underdrain and into the lagoon. The permittee is not required by State law to obtain a permit for the storage of the solids as long as they remain stored and unburied on the permittee's property.

Sanitary wastewater is collected in a holding tank that is pumped out by a local septage hauler twice per week.

## 3. CONDITIONS OF PERMIT

*Conditions of licenses*, 38 M.R.S.A. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S.A. § 420 and 06-096 CMR 530 require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (last amended July 29, 2012), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

## 4. RECEIVING WATER QUALITY STANDARDS

*Classification of major river basins*, 38 M.R.S.A. § 467(12)(A)(10) classifies "the Saco River from the confluence with the impoundment formed by the Cataract Project Dams to the Interstate 95 bridge, including all impoundments as a Class A water." *Standards for classification of fresh surface waters*, 38 M.R.S.A. § 465(2) describes the standards for Class A waters.

## 5. RECEIVING WATER QUALITY CONDITIONS

*The State of Maine 2012 Integrated Water Quality Monitoring and Assessment Report*, prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists a 24.1-mile section (ADB Assessment ID 619R) of the main stream of the Saco River between the Little Ossipee River and tidewaters as, "Category 2: Rivers and Streams Attaining Some Designated Uses, Insufficient Information For Other Uses." The Report also lists the Saco River at Biddeford-Saco (ADB ID 619R01) as, "Category 4-A Rivers and Streams with Impaired Use other than Mercury, TMDL Completed." The impaired use in this context refers to recreation caused by combined sewer overflows. The City of Biddeford and City of Saco have developed and implemented a Combined Sewer Overflow (CSO) master plan for the elimination of all CSO points associated with the collection system. As the City of Biddeford and City of Saco upgrade the sewer collection systems in accordance with the CSO Master Plan and Nine Minimum

## 5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

Controls, there should be reductions in the frequency and volume of CSO activities and in the discharge of wastewater receiving primary treatment only, and, over time, improvement in the quality of the wastewater discharged to the receiving waters. The Department has no information at this time that permittee's water treatment processes contributes to an increase in the bacteria content of the receiving water and the Department has no information at this time that the discharge from the permittee causes or contributes to non-attainment status of the standards for Class A waters.

In addition, all freshwaters in Maine are listed as "Category 4-A: Waters Impaired by Atmospheric Deposition of Mercury." Impairment in this context refers to a statewide fish consumption advisory due to elevated levels of mercury in some fish tissues. The Report states, "All freshwaters are listed in Category 4-A (TMDL Completed) due to USEPA approval of a Regional Mercury TMDL. Maine has a fish consumption advisory for fish taken from all freshwaters due to mercury. Many waters, and many fish from any given water, do not exceed the action level for mercury. However, because it is impossible for someone consuming a fish to know whether the mercury level exceeds the action level, the Maine Department of Health and Human Services decided to establish a statewide advisory for all freshwater fish that recommends limits on consumption. Maine has already instituted statewide programs for removal and reduction of mercury sources." Pursuant to 38 M.R.S.A. § 420(1-B)(B), "a facility is not in violation of the ambient criteria for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to section 413 subsection 11." The Department has established interim monthly average and daily maximum mercury concentration limits and reporting requirements for this facility pursuant to 06-096 CMR 519.

## 6. PRACTICAL ALTERNATIVES ANALYSIS

On September 13, 2003, the Maine Legislature amended the Maine Surface Water Classification Program at 38 M.R.S.A. §467(12)(A)(10) by reclassifying the Saco River at the point of discharge from Class B to Class A. 38 M.R.S.A. §465(2)(C) states, in part,

*"Prior to issuing a discharge license [to a Class A waterbody], the Department shall require the applicant to objectively demonstrate to the Department's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available. Discharges into waters of this classification licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist."*

The Department initially licensed the permittee's discharge to the Saco River on March 8, 1974, and on December 14, 1983, authorized the discharge of a monthly average of up to 80,000 gallons per day. The reclassification was completed with the knowledge that permittee was authorized to discharge to the river segment proposed for upgrade. Neither the Maine Legislature nor the Department viewed the discharge from permittee as precluding the classification upgrade and the upgrade was not intended to affect the existing licensed discharge from the facility. The Department has taken the position that existing discharges to



## 6. PRACTICAL ALTERNATIVES ANALYSIS (cont'd)

Class A waters that were licensed prior to January 1, 1986 may continue until a practical alternative exists, and those discharges will be subject to effluent limitations at least as stringent as those established in the previous licensing action. Any proposed new discharge, however, would be subject to the “equal to or better than” standard for Class A waters.

On June 13, 2005, the permittee informed the Department that the installation of a new air scour sequence in the filter cleaning process has been completed and has resulted in a reduction in wastewater generated and discharged. The permittee did, however, seek to increase the authorized discharge flow limit as a result of increasing customer demand for potable water. In the previous permitting action, the Department eliminated the daily maximum discharge flow limit and established a monthly average limit of 0.150 MGD for consistency with the monitoring requirements established for other drinking water treatment facilities in Maine. All mass-based limits established in the permit, however, are based on the previously licensed flow limit of 0.080 MGD to ensure there is no net increase in pollutant loading to the receiving waters. The Department does not consider an increase in the authorized discharge flow limitation to constitute an increased or new discharge. Maine law provides that this discharge may continue provided there is no practical alternative.

As an exhibit to the permittee’s application for renewal of WDL #002545-5S-C-R, the permittee submitted an email dated June 22, 2015 which provided an updated practical alternatives analysis dated June 2015 for the elimination of the discharge to the Class A segment of the Saco River. The analysis considered conveying the effluent to the City of Biddeford’s publicly owned treatment works (POTW), extending the outfall pipe approximately 4,000 feet down river to a Class B segment of the Saco River, spray irrigation of lagoon supernatant, and relocating the discharge to a surface drainage course that serves as tributary to the Saco River. The permittee determined that all four alternatives were economically or environmentally not practical. The permittee cited distance (5,000 feet), overtaxing the capacity of the City of Biddeford’s sewage collection system and capital and operating costs as factors causing the alternative of discharge to the POTW prohibitive. The permittee cited environmental disturbances (in-stream work in the Saco River), property access (easements required for all properties extending to the thread of the river), and difficult construction conditions (the relocated outfall would have to be extended under or through the Maine Turnpike) as factors making the outfall extension alternative prohibitive. The permittee cited lack of available land and operating costs as factors causing the spray irrigation alternative prohibitive. The permittee cited property access (easement required), legality (discharge to a drainage area of less than 10 square miles prohibited by Maine law), and potential water quality degradation of a small brook as factors causing the alternative to relocate the discharge to a different surface water drainage course prohibitive.

The Department concurs that there are no practical alternates to the discharge to the Class A segment of the Saco River available to the permittee at this time. The Department has further determined in this permitting action that the discharge from the permittee, as permitted, will not cause or contribute to non-attainment of the designated standards for Class A waters. In accordance with the requirements of 38 M.R.S.A. §465(2)(C), Special Condition F of this permitting action requires permittee to submit a practical alternatives analysis concurrent

## 6. PRACTICAL ALTERNATIVES ANALYSIS (cont'd)

with an application for permit renewal or modification to demonstrate that there are no practical alternatives available to eliminate the discharge to the Class A segment of the Saco River.

## 7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- a. Flow: The previous permitting action established, and this permitting action is carrying forward, a monthly average discharge flow limit of 0.150 MGD based on current wastewater generation rates and a monitoring frequency of “continuous when discharging.”

The Department reviewed 55 Discharge Monitoring Reports (DMRs) that were submitted for the period September 2010 – March 2015. A review of data indicates the following:

### Flow – Outfall #001 (Southern)

Value	Limit (MGD)	Range (MGD)	Mean (MGD)
Monthly Average	0.150	0.04 – 0.12	0.077

- b. Dilution Factors: Dilution factors associated with the permitted discharge flow of 0.150 MGD were derived in accordance with 06-096 CMR 530(4)(A) and were calculated as follows:

$$\text{Mod. Acute: } \frac{1}{4} Q_{10} = 60 \text{ cfs} \quad \Rightarrow \frac{(60 \text{ cfs})(0.6464) + 0.150 \text{ MGD}}{0.150 \text{ MGD}} = 260:1$$

$$\text{Acute: } 1Q_{10} = 241 \text{ cfs} \quad \Rightarrow \frac{(241 \text{ cfs})(0.6464) + 0.150 \text{ MGD}}{0.150 \text{ MGD}} = 1,038:1$$

$$\text{Chronic: } 7Q_{10} = 439 \text{ cfs} \quad \Rightarrow \frac{(439 \text{ cfs})(0.6464) + 0.150 \text{ MGD}}{0.150 \text{ MGD}} = 1,891:1$$

$$\text{Harmonic Mean: } 7Q_{10} = 1,715 \text{ cfs} \quad \Rightarrow \frac{(1,715 \text{ cfs})(0.6464) + 0.150 \text{ MGD}}{0.150 \text{ MGD}} = 7,390:1$$

06-096 CMR 530(4)(B)(1) states,

*Analyses using numerical acute criteria for aquatic life must be based on 1/4 of the 1Q10 stream design flow to prevent substantial acute toxicity within any mixing zone and to ensure a zone of passage of at least 3/4 of the cross-sectional area of any stream as required by Chapter 581. Where it can be demonstrated that a discharge achieves rapid and complete mixing with the receiving water by way of an efficient diffuser or other effective method, analyses may use a greater proportion of the stream design flow, up to and including all of it, as long as the required zone of passage is maintained.*

## 7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

Effluent is discharged to the Saco River via a bank discharge that does not result in complete and rapid mixing of the effluent with the receiving waters. Consequently, the Department is utilizing the default stream flow of ¼ of the 1Q10 in acute evaluations pursuant to Chapter 530.

- c. **Total Suspended Solids (TSS):** This permitting action is carrying forward the previously established monthly average and daily maximum concentration limits of 30 mg/L and 60 mg/L, respectively, based on Department best professional judgment of best practicable treatment for discharges from drinking water treatment facilities in Maine. The previous permit established and this permit is carrying forward the monthly average mass limit for TSS and daily maximum mass limit based on the following calculations:

Monthly Average Mass: (30 mg/L)(8.34 lbs./gallon)(0.150 MGD) = 20 lbs./day  
Daily Maximum Mass: (60 mg/L)(8.34 lbs./gallon)(0.150 MGD) = 40 lbs./day

The Department reviewed 55 Discharge Monitoring Reports (DMRs) that were submitted for the period September 2010 – March 2015. A review of data indicates the following:

### TSS mass

Value	Limit (lbs./day)	Range (lbs./day)	Mean (lbs./day)
Monthly Average	20	0.00 – 4.72	1.94
Daily Maximum	40	0.20 – 16.00	4.06

### TSS concentration

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Monthly Average	30	0.20 – 7.90	3.36
Daily Maximum	60	0.30 – 19.00	5.40

Minimum monitoring frequency requirements in MEPDES permits are prescribed by 06-096 CMR Chapter 523§5(i). The USEPA has published guidance entitled, *Interim Guidance for Performance Based Reductions of NPDES Permit Monitoring Frequencies* (USEPA Guidance April 1996). In addition, the Department has supplemented the EPA guidance with its own guidance entitled, *Performance Based Reduction of Monitoring Frequencies - Modification of EPA Guidance Released April 1996* (Maine DEP May 22, 2014). Both documents are being utilized to evaluate the compliance history for each parameter regulated by the previous permit to determine if a reduction in the monitoring frequencies is justified.

Although EPA's 1996 Guidance recommends evaluation of the most current two-years of effluent data for a parameter, the Department is considering 55 months of data (September 2010 – March 2015). A review of the monitoring data for TSS indicates the ratio (expressed in percent) of the long term effluent average to the monthly average limit can be calculated as 10%. According to Table I of the EPA Guidance, a 1/Week monitoring requirement can be reduced to 1/2 Months. However, this reduction is inconsistent with Department guidance, therefore this permitting action is establishing a monitoring frequency of 2/Month for TSS.

**7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

- d. Settleable Solids: The previous permitting action established, and this permitting action is carrying forward a daily maximum concentration limit of 0.1 ml/L and a monthly average reporting requirement. The limit established for the permittee is more stringent than the limit established for all other drinking water treatment facilities in Maine due to its discharge into Class A waters and to ensure there is not net increase in pollutants discharged to the receiving water. In addition, the Department has no information at this time that the discharge from the permittee causes or contributes to measurable adverse impacts to the receiving water.

The Department reviewed 55 Discharge Monitoring Reports (DMRs) that were submitted for the period September 2010 – March 2015. A review of data indicates the following:

**Settleable solids concentration**

Value	Limit (ml/L)	Range (ml/L)	Average (ml/L)
Daily Maximum	0.1	0.01 - 0.1	0.05

Although EPA’s 1996 Guidance recommends evaluation of the most current two-years of effluent data for a parameter, the Department is considering 55 months of data (September 2010 – March 2015). A review of the monitoring data for settleable solids indicates the ratio (expressed in percent) of the long term effluent average to the monthly average limit can be calculated as 50%. According to Table I of the EPA Guidance, a 1/Week monitoring requirement cannot be further reduced. Therefore, this permitting action is carrying forward the 1/Week monitoring requirement.

- e. Total Residual Chlorine (TRC): The permittee utilizes chlorinated water for filter cleaning procedures, therefore the final effluent is expected to contain residual amounts of elemental chlorine or chlorine-based compounds. Limits on the concentration of TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. Department licensing/permitting actions impose the more stringent of either a water quality-based or BPT-based limit.

The previous permitting action established a daily maximum water quality-based limit of 1.0 mg/L for TRC along with a 1/Week monitoring frequency. With a monthly average discharge flow limit of 0.150 MGD and dilution factors as determined above, end-of-pipe acute and chronic water quality-based concentration thresholds may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A & C Dilution Factors	Calculated	
			Acute Threshold	Chronic Threshold
0.019 mg/L	0.011 mg/L	260:1:1 (Mod. A) 1,891:1 (C)	5.0 mg/L	22 mg/L

The Department establishes a daily maximum BPT limitation for TRC of 1.0 mg/L for facilities that utilize elemental chlorine or chlorine-based compounds in their treatment processes. For facilities that must dechlorinate the effluent in order to consistently

## 7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

achieve compliance with water quality-based thresholds, the Department establishes daily maximum limit of 1.0 mg/L. The BPT-based standard of 1.0 mg/L is more stringent than the calculated acute water quality-based threshold of 5.0 mg/L. Therefore the water quality based limitation of 1.0 mg/L is being carried forward in this permitting action.

The Department reviewed 55 Discharge Monitoring Reports (DMRs) that were submitted for the period September 2010 – March 2015. A review of data indicates the following:

### Total residual chlorine

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	1.0	0.30 – 1.10	0.64

Although EPA's 1996 Guidance recommends evaluation of the most current two-years of effluent data for a parameter, the Department is considering 55 months of data (September 2010 – March 2015). A review of the monitoring data for total residual chlorine indicates the ratio (expressed in percent) of the long term effluent average to the monthly average limit can be calculated as 64%. According to Table I of the EPA Guidance, a 1/Week monitoring requirement cannot be further reduced. Therefore, this permitting action is carrying forward the 1/Week monitoring requirement.

- f. pH: The previous permitting action established a technology-based pH range limit of 6.0 - 8.5 standard units (SU) and a monitoring requirement of 1/Week. This permitting action is carrying forward the pH range limit of 6.0 to 8.5 SU, which is considered by the Department as a BPT standard for drinking water treatment facility.

A review of the DMR data for the period September 2010 – March 2015 indicates the permittee fell below the 6.0 SU limit on four occurrences and above 8.5 on one occasion. The permittee's pH results ranged from 5.4 SU to 8.6 SU. The permittee was in compliance with the pH range limitation 90% of said period.

- g. Total Aluminum: The previous permitting action established water quality based daily average mass and concentration limits for total aluminum of 5.0 mg/L and 3.3 lbs/day respectively, and a minimum monitoring frequency requirement of once per month. The basis for establishing aluminum limits is the presence of this metal in the final effluent resulting from the use of an aluminum based coagulant for flocculation of suspended solids in the raw water. The USEPA's General Permit for drinking water treatment facilities in Maine, which was issued to several Maine facilities on or after January 9, 1995, contained a daily maximum concentration limit for aluminum of 5.0 mg/L. This limit was considered a BPT standard for drinking water treatment facility discharges in Maine and has been established in several MEPDES permits, including the permittees, since the State received authorization to administer the NPDES permit program.

Department licensing/permitting actions impose the more stringent of either a water quality-based or BPT-based limit. 06-096 CMR 530(4)(C), states "*The background concentration of specific chemicals must be included in all calculations using the*

## 7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

*following procedures. The Department may publish and periodically update a list of default background concentrations for specific pollutants on a regional, watershed or statewide basis. In doing so, the Department shall use data collected from reference sites that are measured at points not significantly affected by point and non-point discharges and best calculated to accurately represent ambient water quality conditions.” “The Department shall use the same general methods as those in section 4(D) to determine background concentrations. For pollutants not listed by the Department, an assumed concentration of 10% of the applicable water quality criteria must be used in calculations.”* The Department has no information on the background levels of metals in the water column in the Saco River. Therefore, a default background concentration of 10% of applicable water quality criteria is being used in the calculations of this permitting action. 06-096 CMR 530(4)(E), states *“In allocating assimilative capacity for toxic pollutants, the Department shall hold a portion of the total capacity in an unallocated reserve to allow for new or changed discharges and non-point source contributions. The unallocated reserve must be reviewed and restored as necessary at intervals of not more than five years. The water quality reserve must be not less than 15% of the total assimilative quantity.”* Therefore, the Department is reserving 15% of applicable water quality criteria used in the calculations of this permitting action.

Thus, end-of-pipe (EOP) aluminum concentration limit may be derived as follows:

### **Aluminum (Total):**

Acute AWQC = 750 ug/L

Mod. Acute dilution factor = 260:1

EOP concentration = [Dilution factor x 0.75 x AWQC] + [0.25 x AWQC]

EOP = [260 x 0.75 x 0.750 mg/L] + [0.25 x 0.750 mg/L] = 146.4 mg/L

The BPT-based limit of 5.0 mg/L for total aluminum is more stringent than the calculated water quality-based limit and is therefore being carried forward in this permitting action as a daily maximum limit.

To ensure there is no net increase in pollutant loading to the receiving waters, this permitting action is carrying forward the previously licensed flow limit of 0.080 MGD in order to determine the daily maximum water quality-based mass limit for aluminum (total). The total aluminum daily maximum mass limit may be calculated as follows:

Daily Max Mass Limit = (5.0 mg/L)(8.34)(0.080 MGD) = 3.3 lbs/day

This permitting action is carrying forward the water quality based mass limit of 3.3 lbs./day as calculated above. This permitting action is revising the monitoring and reporting requirements for aluminum from monthly to quarterly to maintain consistency with the requirements of other similar drinking water treatment plants.

## 7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

The Department reviewed 55 Discharge Monitoring Reports (DMRs) that were submitted for the period September 2010 – March 2015. It is noted that the permittee exceeded the daily maximum concentration and mass limits of 5.0 mg/L and 3.3 lbs./day, respectively, during March 2011 (5.6 mg/L, 3.7 lbs./day), March 2012 (5.6 mg/L, 3.7 lbs./day) and September 2014 (8.3 mg/L, 5.5 lbs./day). A review of data indicates the following:

### Total aluminum concentration

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	5.0	0.3 – 8.3	1.5

### Total aluminum mass

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Daily Maximum	3.3	0.2 – 5.5	1.1

## 8. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the water body to meet standards for Class A classification.

## 9. PUBLIC COMMENTS

Public notice of this application was made in the *Journal Tribune* newspaper on or about June 16, 2015. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits must have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

## 10. DEPARTMENT CONTACTS

Additional information concerning this permitting action may be obtained from, and written comments sent to:

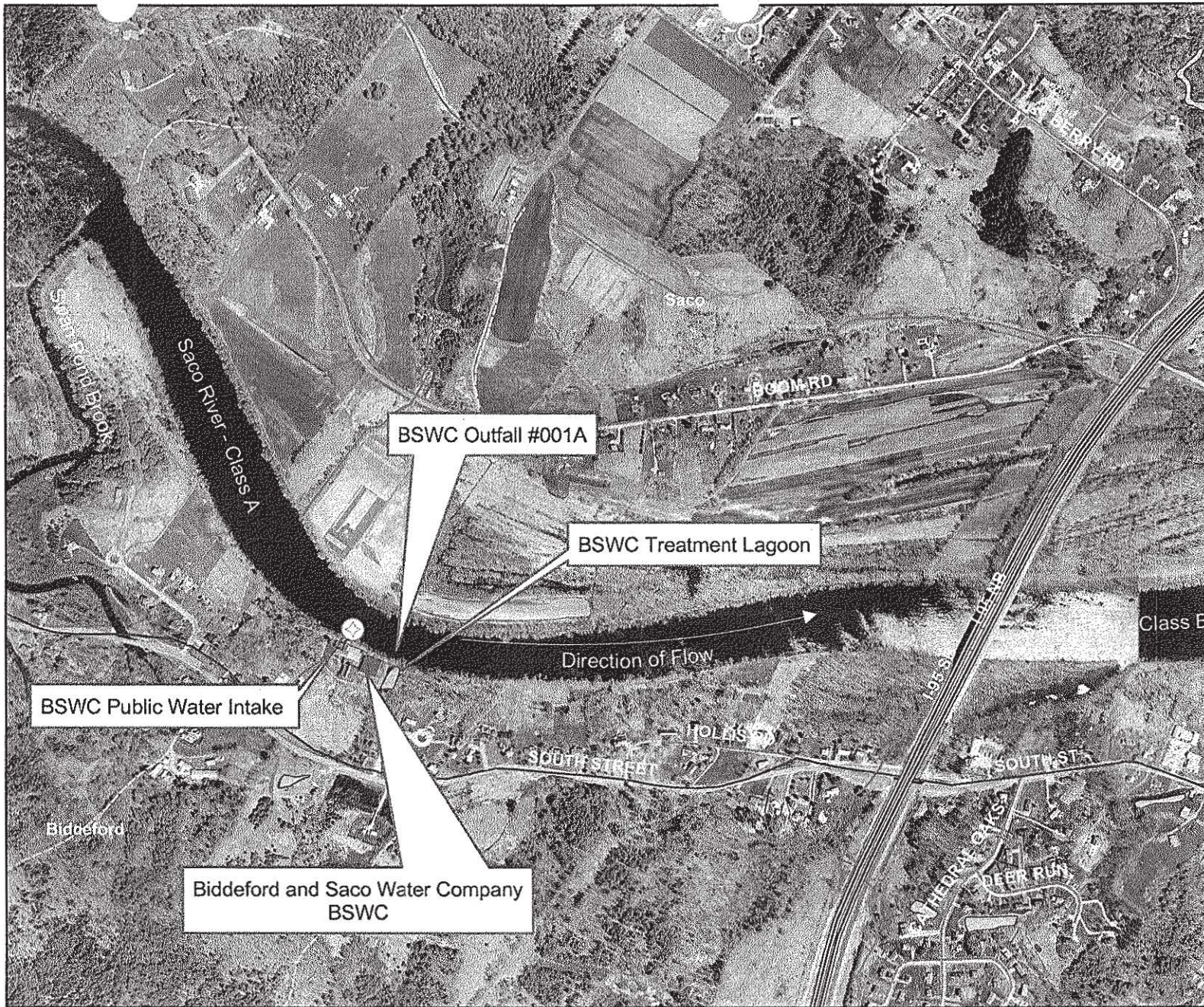
Yvette Meunier  
Division of Water Quality Management  
Bureau of Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 215-1579  
e-mail: [yvette.meunier@maine.gov](mailto:yvette.meunier@maine.gov)

## 11. RESPONSE TO COMMENTS

*Reserved until the end of the public comment period.*

# **ATTACHMENT A**





### Legend

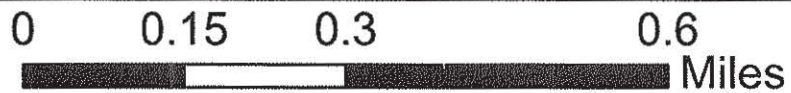
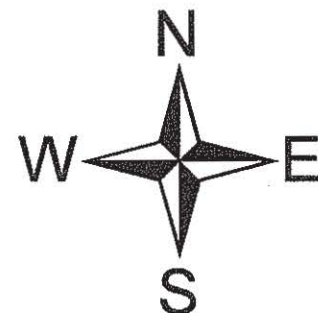
**Streams**

- AA
- A
- B
- C

⊙ Public Drinking Water Supplies

**Ponds and Lakes**

- ▒ Ponds and Lakes



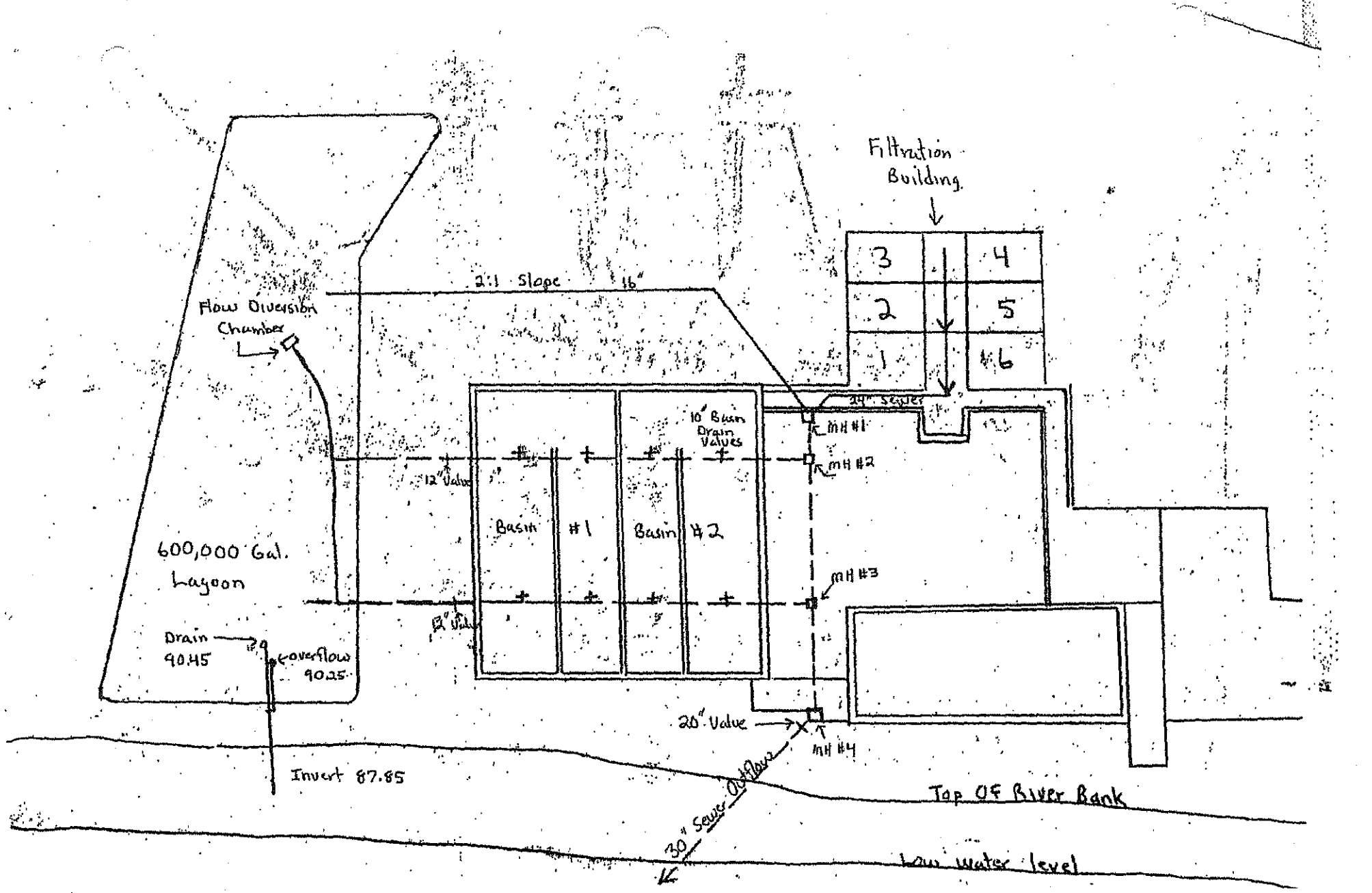
# Biddeford/Saco, Maine

This map was created by:  
 Bill Hinkel  
 Division of Water Resource Regulation  
 Maine Department of Environmental Protection  
 August 15, 2005





# **ATTACHMENT B**



600,000 Gal.  
Lagoon

Drain  
90.45

Coverflow  
90.25

Invert 87.85

2:1 Slope 16'

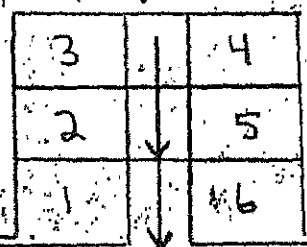
Basin #1

Basin #2

20" Valve

30" Sewer Outfall

Filtration Building



MH #1

MH #2

MH #3

MH #4

Top of River Bank

Low water level

24" Sewer

10 Basin Drain Valves

12" Valve

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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CONTENTS

SECTION	TOPIC	PAGE
A	GENERAL PROVISIONS	
1	General compliance	2
2	Other materials	2
3	Duty to Comply	2
4	Duty to provide information	2
5	Permit actions	2
6	Reopener clause	2
7	Oil and hazardous substances	2
8	Property rights	3
9	Confidentiality	3
10	Duty to reapply	3
11	Other laws	3
12	Inspection and entry	3
B	OPERATION AND MAINTENANCE OF FACILITIES	
1	General facility requirements	3
2	Proper operation and maintenance	4
3	Need to halt reduce not a defense	4
4	Duty to mitigate	4
5	Bypasses	4
6	Upsets	5
C	MONITORING AND RECORDS	
1	General requirements	6
2	Representative sampling	6
3	Monitoring and records	6
D	REPORTING REQUIREMENTS	
1	Reporting requirements	7
2	Signatory requirement	8
3	Availability of reports	8
4	Existing manufacturing, commercial, mining, and silvicultural dischargers	8
5	Publicly owned treatment works	9
E	OTHER PROVISIONS	
1	Emergency action - power failure	9
2	Spill prevention	10
3	Removed substances	10
4	Connection to municipal sewer	10
F	DEFINITIONS	10

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**A. GENERAL PROVISIONS**

**1. General compliance.** All discharges shall be consistent with the terms and conditions of this permit; any changes in production capacity or process modifications which result in changes in the quantity or the characteristics of the discharge must be authorized by an additional license or by modifications of this permit; it shall be a violation of the terms and conditions of this permit to discharge any pollutant not identified and authorized herein or to discharge in excess of the rates or quantities authorized herein or to violate any other conditions of this permit.

**2. Other materials.** Other materials ordinarily produced or used in the operation of this facility, which have been specifically identified in the application, may be discharged at the maximum frequency and maximum level identified in the application, provided:

- (a) They are not
  - (i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
  - (ii) Known to be hazardous or toxic by the licensee.
- (b) The discharge of such materials will not violate applicable water quality standards.

**3. Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of State law and the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

- (a) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act, and 38 MRSA, §420 or Chapter 530.5 for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- (b) Any person who violates any provision of the laws administered by the Department, including without limitation, a violation of the terms of any order, rule license, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

**4. Duty to provide information.** The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

**5. Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

**6. Reopener clause.** The Department reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedule of compliance or other provisions which may be authorized under 38 MRSA, §414-A(5).

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**7. Oil and hazardous substances.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject under section 311 of the Federal Clean Water Act; section 106 of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; or 38 MRSA §§ 1301, et. seq.

**8. Property rights.** This permit does not convey any property rights of any sort, or any exclusive privilege.

**9. Confidentiality of records.** 38 MRSA §414(6) reads as follows. "Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part or any record, report or information, other than the names and addresses of applicants, license applications, licenses, and effluent data, to which the department has access under this subchapter would, if made public, divulge methods or processes that are entitled to protection as trade secrets, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, as long as this disclosure is material and relevant to any issue under consideration by the department."

**10. Duty to reapply.** If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

**11. Other laws.** The issuance of this permit does not authorize any injury to persons or property or invasion of other property rights, nor does it relieve the permittee of its obligation to comply with other applicable Federal, State or local laws and regulations.

**12. Inspection and entry.** The permittee shall allow the Department, or an authorized representative (including an authorized contractor acting as a representative of the EPA Administrator), upon presentation of credentials and other documents as may be required by law, to:

- (a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

**B. OPERATION AND MAINTENANCE OF FACILITIES**

**1. General facility requirements.**

- (a) The permittee shall collect all waste flows designated by the Department as requiring treatment and discharge them into an approved waste treatment facility in such a manner as to

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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- maximize removal of pollutants unless authorization to the contrary is obtained from the Department.
- (b) The permittee shall at all times maintain in good working order and operate at maximum efficiency all waste water collection, treatment and/or control facilities.
  - (c) All necessary waste treatment facilities will be installed and operational prior to the discharge of any wastewaters.
  - (d) Final plans and specifications must be submitted to the Department for review prior to the construction or modification of any treatment facilities.
  - (e) The permittee shall install flow measuring facilities of a design approved by the Department.
  - (f) The permittee must provide an outfall of a design approved by the Department which is placed in the receiving waters in such a manner that the maximum mixing and dispersion of the wastewaters will be achieved as rapidly as possible.

**2. Proper operation and maintenance.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

**3. Need to halt or reduce activity not a defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

**4. Duty to mitigate.** The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

**5. Bypasses.**

- (a) Definitions.
  - (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
  - (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.
- (c) Notice.
  - (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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- (ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D(1)(f), below. (24-hour notice).
- (d) Prohibition of bypass.
  - (i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:
    - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
    - (C) The permittee submitted notices as required under paragraph (c) of this section.
  - (ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (d)(i) of this section.

**6. Upsets.**

- (a) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- (c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
  - (ii) The permitted facility was at the time being properly operated; and
  - (iii) The permittee submitted notice of the upset as required in paragraph D(1)(f) , below. (24 hour notice).
  - (iv) The permittee complied with any remedial measures required under paragraph B(4).
- (d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**C. MONITORING AND RECORDS**

**1. General Requirements.** This permit shall be subject to such monitoring requirements as may be reasonably required by the Department including the installation, use and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). The permittee shall provide the Department with periodic reports on the proper Department reporting form of monitoring results obtained pursuant to the monitoring requirements contained herein.

**2. Representative sampling.** Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. If effluent limitations are based wholly or partially on quantities of a product processed, the permittee shall ensure samples are representative of times when production is taking place. Where discharge monitoring is required when production is less than 50%, the resulting data shall be reported as a daily measurement but not included in computation of averages, unless specifically authorized by the Department.

**3. Monitoring and records.**

- (a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (b) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.
- (c) Records of monitoring information shall include:
  - (i) The date, exact place, and time of sampling or measurements;
  - (ii) The individual(s) who performed the sampling or measurements;
  - (iii) The date(s) analyses were performed;
  - (iv) The individual(s) who performed the analyses;
  - (v) The analytical techniques or methods used; and
  - (vi) The results of such analyses.
- (d) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in the permit.
- (e) State law provides that any person who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule license, permit approval or decision is subject to the penalties set forth in 38 MRSA, §349.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**D. REPORTING REQUIREMENTS**

**1. Reporting requirements.**

- (a) Planned changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
  - (i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or
  - (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D(4).
  - (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;
- (b) Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- (c) Transfers. This permit is not transferable to any person except upon application to and approval of the Department pursuant to 38 MRSA, § 344 and Chapters 2 and 522.
- (d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
  - (i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices.
  - (ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.
  - (iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.
- (e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- (f) Twenty-four hour reporting.
  - (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit.

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

(iii) The Department may waive the written report on a case-by-case basis for reports under paragraph (f)(ii) of this section if the oral report has been received within 24 hours.

(g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this section.

(h) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

**2. Signatory requirement.** All applications, reports, or information submitted to the Department shall be signed and certified as required by Chapter 521, Section 5 of the Department's rules. State law provides that any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any order, rule, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

**3. Availability of reports.** Except for data determined to be confidential under A(9), above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. As required by State law, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal sanctions as provided by law.

**4. Existing manufacturing, commercial, mining, and silvicultural dischargers.** In addition to the reporting requirements under this Section, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) One hundred micrograms per liter (100 ug/l);

(ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or

(iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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- (b) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
- (i) Five hundred micrograms per liter (500 ug/l);
  - (ii) One milligram per liter (1 mg/l) for antimony;
  - (iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
  - (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

**5. Publicly owned treatment works.**

- (a) All POTWs must provide adequate notice to the Department of the following:
- (i) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA or Chapter 528 if it were directly discharging those pollutants.
  - (ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
  - (iii) For purposes of this paragraph, adequate notice shall include information on (A) the quality and quantity of effluent introduced into the POTW, and (B) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
- (b) When the effluent discharged by a POTW for a period of three consecutive months exceeds 80 percent of the permitted flow, the permittee shall submit to the Department a projection of loadings up to the time when the design capacity of the treatment facility will be reached, and a program for maintaining satisfactory treatment levels consistent with approved water quality management plans.

**E. OTHER REQUIREMENTS**

**1. Emergency action - power failure.** Within thirty days after the effective date of this permit, the permittee shall notify the Department of facilities and plans to be used in the event the primary source of power to its wastewater pumping and treatment facilities fails as follows.

- (a) For municipal sources. During power failure, all wastewaters which are normally treated shall receive a minimum of primary treatment and disinfection. Unless otherwise approved, alternate power supplies shall be provided for pumping stations and treatment facilities. Alternate power supplies shall be on-site generating units or an outside power source which is separate and independent from sources used for normal operation of the wastewater facilities.
- (b) For industrial and commercial sources. The permittee shall either maintain an alternative power source sufficient to operate the wastewater pumping and treatment facilities or halt, reduce or otherwise control production and or all discharges upon reduction or loss of power to the wastewater pumping or treatment facilities.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**2. Spill prevention.** (applicable only to industrial sources) Within six months of the effective date of this permit, the permittee shall submit to the Department for review and approval, with or without conditions, a spill prevention plan. The plan shall delineate methods and measures to be taken to prevent and or contain any spills of pulp, chemicals, oils or other contaminants and shall specify means of disposal and or treatment to be used.

**3. Removed substances.** Solids, sludges trash rack cleanings, filter backwash, or other pollutants removed from or resulting from the treatment or control of waste waters shall be disposed of in a manner approved by the Department.

**4. Connection to municipal sewer.** (applicable only to industrial and commercial sources) All wastewaters designated by the Department as treatable in a municipal treatment system will be cosigned to that system when it is available. This permit will expire 90 days after the municipal treatment facility becomes available, unless this time is extended by the Department in writing.

**F. DEFINITIONS.** For the purposes of this permit, the following definitions shall apply. Other definitions applicable to this permit may be found in Chapters 520 through 529 of the Department's rules

**Average** means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For bacteria, the average shall be the geometric mean.

**Average monthly discharge limitation** means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. Except, however, bacteriological tests may be calculated as a geometric mean.

**Average weekly discharge limitation** means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

**Best management practices ("BMPs")** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

**Composite sample** means a sample consisting of a minimum of eight grab samples collected at equal intervals during a 24 hour period (or a lesser period as specified in the section on monitoring and reporting) and combined proportional to the flow over that same time period.

**Continuous discharge** means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

**Daily discharge** means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**Discharge Monitoring Report ("DMR")** means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by approved States as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

**Flow weighted composite sample** means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

**Grab sample** means an individual sample collected in a period of less than 15 minutes.

**Interference** means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

- (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

**Maximum daily discharge limitation** means the highest allowable daily discharge.

**New source** means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or
- (b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

**Pass through** means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

**Permit** means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of 40 CFR parts 122, 123 and 124. Permit includes an NPDES general permit (Chapter 529). Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

**Person** means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**Point source** means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

**Pollutant** means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or byproducts, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

**Process wastewater** means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

**Publicly owned treatment works ("POTW")** means any facility for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity.

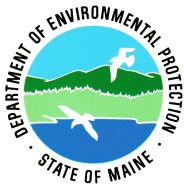
**Septage** means, for the purposes of this permit, any waste, refuse, effluent sludge or other material removed from a septic tank, cesspool, vault privy or similar source which concentrates wastes or to which chemicals have been added. Septage does not include wastes from a holding tank.

**Time weighted composite** means a composite sample consisting of a mixture of equal volume aliquots collected over a constant time interval.

**Toxic pollutant** includes any pollutant listed as toxic under section 307(a)(1) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing section 405(d) of the CWA. Toxic pollutant also includes those substances or combination of substances, including disease causing agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism, including humans either directly through the environment or indirectly through ingestion through food chains, will, on the basis of information available to the board either alone or in combination with other substances already in the receiving waters or the discharge, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in such organism or their offspring.

**Wetlands** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

**Whole effluent toxicity** means the aggregate toxic effect of an effluent measured directly by a toxicity test.



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: March 2012**

**Contact: (207) 287-2811**

### **SUMMARY**

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

#### **HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD**

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

#### **WHAT YOUR APPEAL PAPERWORK MUST CONTAIN**

Appeal materials must contain the following information at the time submitted:



1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

#### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

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

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

## II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

### ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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**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.**

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