



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM  
COMMISSIONER

September 05, 2025

Mr. Craig Douglas  
Brunswick and Topsham Water District  
Holden Station  
P.O. BOX 489  
Topsham, ME. 04086  
cwdouglas@btwater.org

*Sent via electronic mail  
Delivery confirmation requested*

*RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0002763  
Maine Waste Discharge License (WDL) Application #W009192-5S-C-R  
Proposed Draft MEPDES Permit Renewal*

Dear Mr. Douglas:

Enclosed is a **proposed draft** MEPDES permit and Maine WDL which the Department proposes to issue as a final document after opportunity for your review and comment. By transmittal of this letter, you are provided with an opportunity to comment on the proposed draft permit and its special and standard 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.

By copy of this letter, the Department is requesting comments on the proposed draft permit from various state and federal agencies and from any other parties who have notified the Department of their interest in this matter.

The comment period begins today, Friday, September 05, 2025, and ends on **Monday, October 06, 2025**. All comments on the proposed draft permit must be received in the Department of Environmental Protection office on or before the close of business **Thursday, October 06, 2025**. Failure to submit comments in a timely fashion may result in the proposed draft/license 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 Water Quality  
Division of Water Quality Management  
17 State House Station  
Augusta, ME 04333-0017

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

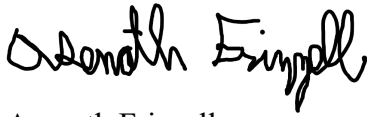
BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

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  
(207) 764-0477 FAX: (207) 760-3143

If you have any questions regarding the matter, please feel free to call me at 207-215-6856.

Sincerely,

A handwritten signature in black ink, appearing to read "Asenath Frizzell". The signature is fluid and cursive, with the first name "Asenath" being more prominent than the last name "Frizzell".

Asenath Frizzell  
Division of Water Quality Management  
Bureau of Water Quality

Enclosure

cc: Galen Nickerson, DEP/SMRO  
Fred Gallant, DEP/SMRO  
Gregg Wood, DEP/CMRO  
Holly Ireland, DEP/CMRO  
Laura Crossley, DEP/CMRO  
Lori Mitchell, DEP/CMRO  
Michael Cobb, USEPA  
Kathryn Rosenberg, USEPA  
Richard Carvalho, USEPA  
Sean Mahoney, CLF  
Maine IFW  
Maine DMR



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

BRUNSWICK & TOPSHAM WATER DISTRICT )	MAINE POLLUTANT DISCHARGE
TOPSHAM, SAGadahoc COUNTY )	ELIMINATION SYSTEM PERMIT
DRINKING WATER PLANT )	AND
ME0002763 )	WASTE DISCHARGE LICENSE
W009192-5S-C-R )	RENEWAL
<b>APPROVAL</b>	

In compliance with the applicable provisions of *Pollution Control*, 38 M.R.S. §§ 411 – 424-C, *Water Classification Program*, 38 M.R.S. §§ 464 – 470 and *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251 *et seq*, and applicable rules of the Department of Environmental Protection (“Department”), the Department has considered the application of the BRUNSWICK & TOPSHAM WATER DISTRICT (“BTWD”, “permittee”), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

On January 02, 2024, the Department accepted as complete for processing an application from Brunswick & Topsham Water District for the renewal of combination Waste Discharge License (WDL) # W009192-5S-B-N/ Maine Pollutant Discharge Elimination System (MEPDES) # ME0002763, which was issued by the Department on January 3, 2019. The January 3, 2019 permit authorized the monthly average discharge of 0.08 million gallons per day (MGD) of drinking water ion exchange regeneration wastewater from a drinking water facility to the Androscoggin River, Class B, Topsham, Maine. The January 3, 2019 permit also authorized an unspecified amount of filter backwash from an iron and manganese removal facility to two lagoons to groundwater, Class GW-A, Topsham, Maine. Since the January 3, 2019 permitting action the Jackson station water treatment plant was decommissioned and the Holden station water treatment plant was opened.

**PERMIT SUMMARY**

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

1. Updating Special Condition A, *Effluent Limits and Monitoring Requirements*, Footnote 1 to include sufficiently sensitive methods.
2. Updated the monitoring frequency for pH, from 1/week to 1/month due to the frequency of the discharge being every 28 days.
3. Eliminate the paper submission requirement under Special Condition E, *Monitoring & Reporting*.
4. Added Special Condition G Lagoon Maintenance to add clarification on the operation and maintenance of Lagoon requirements.
5. Updated the monitoring frequency for biological oxygen demand and total suspended solids from 2/Month to 1/Month due to the frequency of the discharge being every 28 days.

## CONCLUSIONS

Based on the findings in the attached Proposed Fact Sheet dated September 5, 2025, 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. § 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. Where the standards of classification of the receiving waterbody are not met, the discharge will not cause or contribute to the failure of the waterbody to meet the standards of classification;
  - d. Where the actual quality of any classified receiving waterbody 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 waterbody, 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 *Conditions of licenses*, 38 M.R.S. § 414-A(1)(D).

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**ACTION**

THEREFORE, the Department APPROVES the above noted application of the BRUNSWICK & TOPSHAM WATER DISTRICT to discharge a monthly average discharge of 0.08 MGD of ion exchange regeneration (backwash and rinsate) wastewater from a municipal drinking water treatment plant to the Androscoggin River Class B, in Topsham, Maine, and an unspecified amount of filter backwash from an iron and manganese removal facility to two lagoons to groundwater, Class GW-A, 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 becomes effective upon the date of signature below and expires 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 terms and conditions of this permit and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act and Other Administrative Matters*, 5 M.R.S. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 C.M.R. ch. 2 (21)(A) (effective September 15, 2024)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2025.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
for MELANIE LOYZIM, Commissioner

Date of initial receipt of application: January 02, 2024

Date of application acceptance: January 22, 2024

This Order prepared by Asenath Frizzell, BUREAU OF WATER QUALITY

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge filter backwash wastewater from two lagoons from **Outfall #001A** to groundwater in Topsham, Maine. Such discharges are limited and must be monitored by the permittee as specified below<sup>(1)</sup>:

<b>Effluent Characteristic</b>	<b>Daily Minimum</b>	<b>Daily Maximum</b>	<b>Measurement Frequency</b>	<b>Sample Type</b>
Flow <i>[50050]</i>	---	Report (gpd) <i>[07]</i>	1/Week <i>[01/07]</i>	Estimate <i>[ES]</i>
pH <sup>(3)</sup> <i>[00400]</i>	---	6.0 – 9.0 S.U. <i>[19]</i>	1/Week <i>[01/07]</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 (DMRs).

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

## SPECIAL CONDITIONS

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. The permittee is authorized to discharge drinking water ion exchange regeneration wastewater from **Outfall #002A** to the Androscoggin River, in Topsham, Maine. 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
Flow [50050]	0.08 MGD [03]	Report MGD [03]	---	---	Continuous [CN]	Metered [MT]
TSS [00530]	10 lbs./day [26]	20 lbs./day [26]	30 mg/L [19]	60 mg/L [19]	1/Month [01/30]	Composite <sup>(2)</sup> [CP]
Settleable Solids [00545]	---	---	---	0.3 ml/L [25]	1/Month [01/30]	Composite <sup>(2)</sup> [CP]
pH <sup>(3)</sup> [00400]	---	---	---	6.0 – 9.0 SU [12]	1/Month [01/30]	Grab [GR]

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 (DMRs).

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

## **SPECIAL CONDITIONS**

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

#### **FOOTNOTES:**

1. **Sampling** – Effluent sampling takes place before the water enters the sump discharge pipe and is discharged to the river. 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 (C.F.R.) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 C.F.R. 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 pursuant to *Waste discharge licenses*, 38 M.R.S. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 C.M.R. ch. 263 (amended March 15, 2023). Laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of 10-144 C.M.R. ch. 263. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 C.F.R. 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 (DMR).

In accordance with 40 C.F.R. § 122.44(i)(1)(iv), the permittee must monitor according to sufficiently sensitive test procedures (i.e., methods) approved under 40 C.F.R. Part 136 or required under 40 C.F.R. chapter I, subchapter N or O, for the analysis of pollutants or pollutant parameters (except WET). A method is "sufficiently sensitive" when: 1) The method minimum level (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or 2) The method has the lowest ML of the analytical methods approved under 40 C.F.R. Part 136 or required under 40 C.F.R. chapter I, subchapter N or O for the measured pollutant or pollutant parameter. The term "minimum level" refers either to the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in the following ways: they may be published in a method; they may be based on the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a laboratory, by a factor.

2. **pH monitoring** – Monitoring for pH must be conducted through a grab sample collected prior to discharge to the infiltration lagoons (Outfall #001A) or Outfall #002A.
3. **Composite Samples** – Composite means a combined sample consisting of one grab sample collected during each minute of the initial 10-minute backwash phase of the regeneration cycle.

### **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 usages 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 usages designated for the classification of the receiving waters.
3. The permittee must not discharge effluent that imparts color, taste, turbidity, toxicity, radioactivity or other properties which cause those waters to be unsafe for the designated uses and characteristics ascribed to their classification.
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 January 22, 2024; 2) the terms and conditions of this permit; and 3) only from Outfalls #001A and #002A. Discharges of wastewater from any other point source are not authorized under this permit, and must be reported in accordance with Standard Condition D(1)(f), Twenty-four hour reporting, of this permit.

### 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 into the system at the time of permit issuance.
3. For the purposes of this section, adequate notice must include information on:
  - a. The quality and quantity of wastewater introduced to the wastewater collection and treatment system; and
  - b. Any anticipated impact of the change in the quantity or quality of the wastewater to be discharged from the treatment system.

### E. MONITORING AND REPORTING

#### Electronic Reporting

*NPDES Electronic Reporting*, 40 C.F.R. Part 127, requires MEPDES permit holders to submit monitoring results obtained during the previous month on an electronic discharge monitoring report to the regulatory agency utilizing the USEPA electronic system.

Electronic DMRs submitted using the USEPA NetDMR system, must be:

1. Submitted by a facility authorized signatory; and

2. Submitted no later than **midnight on the 15<sup>th</sup> day of the month** following the completed reporting period.

Documentation submitted in support of the electronic DMR may be attached to the electronic DMR. Toxics reporting must be done using the Department toxsheet reporting form. An electronic copy of the Toxsheet reporting document must be submitted to your Department compliance inspector as an attachment to an email. Documentation submitted electronically to the Department in support of the electronic DMR must be submitted no later than midnight on the 15<sup>th</sup> day of the month following the completed reporting period.

## **F. OPERATIONS AND MAINTENANCE PLAN**

The permittee must have a current written comprehensive Operation & Maintenance (O&M) Plan. 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 EPA 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. LAGOON MAINTENANCE**

1. The banks of the lagoons must be inspected weekly during the operating season and properly maintained at all times. There must be no overflow through or over the banks. Any signs of leaks, destructive animal activity or soil erosion of the banks must be repaired immediately. The Department must be notified in writing within five (5) days of such incidents documenting the corrective action(s) that were taken to eliminate the overflow.
2. The banks of the lagoon must be maintained to keep them free of woody vegetation and other vegetation that may be detrimental to the integrity of the bank and/or lagoon liner. The waters within the lagoon must be kept free of all vegetation (i.e. grasses, reeds, cattails, etc.) that hinders the operation of the lagoon.
3. The permittee must maintain the lagoon freeboard at a level no higher than design levels.
4. The treatment and storage lagoons must be dredged as necessary to maintain the proper operating depths in both lagoons that will provide best practicable treatment of the wastewater. All material removed from the lagoons must be properly disposed of in accordance with all applicable State and Federal rules and regulations.

## **H. REOPENING OF PERMIT FOR MODIFICATION**

In accordance with 38 M.R.S. § 414-A(5) and upon evaluation of the test results in the 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 limitations 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, 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**

**FACT SHEET**

DATE: **September 5, 2025**

PERMIT NUMBER: **ME0002763**

WASTE DISCHARGE LICENSE: **W009192-5S-C-R**

NAME AND ADDRESS OF APPLICANT:

**BRUNSWICK & TOPSHAM WATER DISTRICT  
P.O. BOX 489  
TOPSHAM, MAINE 04086**

COUNTY: **SAGadahoc**

NAME AND ADDRESS WHERE DISCHARGE(S) OCCUR(S):

**BRUNSWICK & TOPSHAM WATER DISTRICT - HOLDEN STATION FACILITY  
276 RIVER ROAD  
TOPSHAM, MAINE 04086**

RECEIVING WATER CLASSIFICATION: **GROUND WATER/CLASS GW-A**

COGNIZANT OFFICIAL CONTACT INFORMATION:

**MR. JOSHUA COBB  
PO BOX 489  
TOPSHAM, ME 04086  
(207) 729-9956  
[JCOBB@BTWATER.ORG](mailto:JCOBB@BTWATER.ORG)**

## 1. APPLICATION SUMMARY

- a. Application: On January 02, 2024, the Department accepted as complete for processing an application from Brunswick & Topsham Water District for the renewal of combination Waste Discharge License (WDL) # W009192-5S-B-N/ Maine Pollutant Discharge Elimination System (MEPDES) # ME0002763, which was issued by the Department on January 3, 2019. The January 3, 2019 permit authorized the monthly average discharge of 0.08 million gallons per day (MGD) of drinking water ion exchange regeneration wastewater from a drinking water facility to the Androscoggin River, Class B, Topsham, Maine. The January 3, 2019 permit also authorized an unspecified amount of filter backwash from an iron and manganese removal facility to two lagoons to groundwater, Class GW-A, Topsham, Maine. **Since the January 3, 2019 permitting action the Jackson station water treatment plant was decommissioned and the Holden station water treatment plant was opened.**
- b. Source Description: The Brunswick-Topsham Water District has been using the Jackson/Holden Station lagoon facility for disposal of backwash filtration water since the early 1970's. The following source description was copied from the permittee's application materials. The Jackson/Holden Treatment Facility has a design capacity of approximately 3.6 million gallons per day (MGD), but generally produces an average-day production volume of about 2.0 MGD. The well source water has approximately 0.5 to 0.8 mg/L iron and 0.25 mg/L manganese, which are removed using manganese oxide coated filtration housed in pressure filters. The pressure filters are periodically backwashed to restore performance of the filters. Filtered water is pumped directly to the water distribution system and consumed by the BTWD customers. The backwash sequence includes a reverse flush process, a drain down process and periodic flushing with an oxidant (potassium permanganate). Filter backwash wastes are discharged through an air gap into a sump pit in the Holden Station floor. Wastes flow from the sump by gravity to the existing lagoon through a 12-inch diameter discharge pipe." Filtration units are generally backwashed once per week each and may be backwashed twice per week during warmer months. The daily maximum flow to the lagoons is expected to be equal to or less than 80,000 gallons per day with an average of approximately 40,000 gallons per day. See **Attachment A** of this Fact Sheet for a site location map.
- c. Wastewater Treatment: The filter backwash flows to the solids capture lagoon which acts as a sand filter. Underdrains below this lagoon flow to the infiltration lagoon. Waste is not treated in any manner before being discharged to the Solids Handling Lagoon (Lagoon #1) where solids will settle out and clarified liquids will flow over a weir to the Infiltration Lagoon (Lagoon #2). Infiltration to ground water will take place in Lagoon #2.

In 2012 the BTWD hired the engineers Wright-Pierce to complete a study on the facility titled the Jackson Station Strategic Planning Report. This report identified the need for multiple facility upgrades including treatment process upgrades. The treatment process upgrades are needed to remove total organic carbon (TOC), which is a precursor for disinfection by-products, a regulated contaminant in drinking water.

In 2017 and 2018 BTWD retained the piloting firm Blueleaf who piloted multiple processes for use on the Jackson Station (now referred to as the "Holden Station") sources. Ultimately, with help from CDM Smith, BTWD has identified an ion exchange process that regenerates in the same manner to the process currently operated by BTWD at the Taylor Station. This process would be run in conjunction with processes that are currently being used at the Holden Station to remove iron and manganese.

The BTWD is proposing to retain use of the lagoon process for aquifer recharge of the backwash water used in the greensand processes. The facility uses two greensand processes to ensure efficient and effective iron and manganese removal. Both unit processes produce the same backwash stream in quality and quantities that BTWD currently produces. BTWD does not foresee needing to modify the lagoon portion of this discharge permit. BTWD has an additional outfall to the Androscoggin River to allow for backwash and brine regenerate to be discharged to the river as is done at the Taylor Station. BTWD with help from Blueleaf and CDM Smith has studied the backwash and brine regenerate and found it to be of similar quality and quantity as the Taylor Station. See **Attachment B** of this fact sheet for a schematic of the facility process.

## 2. PERMIT SUMMARY

### a. Terms and Conditions:

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

1. Updating Special Condition A, *Effluent Limits and Monitoring Requirements*, Footnote 1 to include sufficiently sensitive methods.
2. Updated the monitoring frequency for pH from 1/week to 1/month due to the frequency of the discharge being every 28 days.
3. Eliminate the paper submission requirement under Special Condition E, *Monitoring & Reporting*.
4. Added Special Condition G Lagoon Maintenance to add clarification on the operation and maintenance of Lagoon requirements.
5. Updated the monitoring frequency for biological oxygen demand and total suspended solids from 2/Month to 1/Month due to the frequency of the discharge being every 28 days.

### b. History: This section provides a summary of significant licensing actions and milestones that have been completed for the BTWD.

*August 5, 2013* – The Department issued WDL #W008261-5S-A-N/Integrated Compliance Information System (ICIS) permit #MEU508261, which was issued on August 5, 2013. The 8/5/13 license authorized BTWD to dispose of an unspecified amount of filter backwash wastewater from an iron and manganese removal facility to two lagoons with a maximum design flow of 80,000 gallons per day to ground water, Class GW-A in Topsham.

*June 11, 2018* – The BTWD submitted a timely and complete General Application to the Department for renewal of the 8/5/13 WDL W008261-5S-A-N. The application was accepted for processing on June 12, 2018, and was assigned a new WDL #W009192-5S-B-N/ME0002763 due to the inclusion of a surface water discharge to the Androscoggin River (Outfall 002A).

*January 3, 2019* – The Department issued WDL #W009192-5S-B-N/MEPDES #ME0002763 for a five year term. Establishing limits for settleable solids and Outfall #002A to the Androscoggin River.

*October 17, 2022* – BTWD decommissioned Jackson Station Water treatment facility and opened the Holden Station water treatment facility in Topsham.

*January 2, 2024* – The BTWD submitted a timely and complete General Application to the Department for the renewal of the MEPDES #ME0002763/WDL #W009192-5S-B-N. The application was accepted for processing on January 22, 2024 and was assigned WDL #W009192-5S-C-R.

### 3. CONDITIONS OF PERMIT

*Conditions of licenses*, 38 M.R.S. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require the 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, *Certain Deposits and Discharges Prohibited*, 38 M.R.S. § 420 and Department rule *Surface Water Toxic Control Program*, 06-096 C.M.R. ch. 530, require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 C.M.R. ch. 584 (last amended February 16, 2020), 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. § 467(1)(A)(3) classifies the Androscoggin River, main stem, including all impoundments “(3) *From Worumbo Dam in Lisbon Falls to a line formed by the extension of the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction*”, which includes the river at the point of discharge, as Class B waters. *Standards for classification of fresh surface waters*, 38 M.R.S. § 465(3) describes the standards for Class B waters as follows.

**“3. Class B waters.** *Class B shall be the 3rd highest classification.*

- A. *Class B waters must be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; agriculture; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under [Title 12, section 403](#); navigation; and as habitat for fish and other aquatic life. The habitat must be characterized as unimpaired.*
- B. *Class B waters must be of sufficient quality to support all aquatic species indigenous to those waters without detrimental changes in the resident biological community. The dissolved oxygen content of Class B waters may not be less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration may not be less than 9.5 parts per million and the one-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas. Between April 15th and October 31st, the number of Escherichia coli bacteria in these waters may not exceed a geometric mean of 64 CFU or MPN per 100 milliliters over a 90-day interval or 236 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval.*

C. *Discharges to Class B waters may not cause adverse impact to aquatic life in that the receiving waters must be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.*

(1-A) *For the purpose of allowing the discharge of aquatic pesticides or chemicals approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency to restore resident biological communities affected by an invasive species, the department may find that the discharged effluent will not cause adverse impact to aquatic life as long as the materials and methods used do not cause a significant loss of any nontarget species and allow restoration of nontarget species. The department may find that an unavoidable, temporary loss of nontarget species does not constitute a significant loss of nontarget species.*

(2) *For the purpose of allowing the discharge of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety, the department may find that the discharged effluent will not cause adverse impact to aquatic life as long as the materials and methods used provide protection for nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website."*

*Classification of Ground Waters, 38 M.R.S. § 470 states; "All ground water shall be classified as not less than Class GW-A, except as otherwise provided in this section. The board may recommend to the Legislature the reclassification of any ground water, after careful consideration, public hearings and in consultation with other state agencies and the municipalities and industries involved, and where the board finds that it is in the best interests of the public that the waters be so classified."*

*Standards of Classification of Ground Water, 38 M.R.S., Section 465-C(1), describes the standards for waters classified as Class GW-A as "1. **Class GW-A.** Class GW-A shall be the highest classification and shall be of such quality that it can be used for public water supplies. These waters shall be free of radioactive matter or any matter that imparts color, turbidity, taste or odor which would impair usage of these waters, other than that occurring from natural phenomena."*

## 5. RECEIVING WATER QUALITY CONDITIONS

*The State of Maine Department of Environmental Protection 2018/2020/2022 Integrated Water Quality Monitoring and Assessment Report (Report), prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists the Androscoggin River (Assessment Unit ID ME0104000210\_425R\_01\_01) main stem from Pejepscot Dam to Brunswick Dam, which includes the receiving water at the point of discharge, as, "Category 4-B: Rivers and Streams Impaired by Pollutants - Pollution Control Requirements Reasonably Expected to Result in Attainment." Impairment in this context refers to a fish consumption advisory due to the presence of dioxin (including 2,3,7,8-TCDD).*

The Report lists as "Category 4-C Rivers and Streams with Impairment not Caused by a Pollutant" for inadequate fish passage in Brunswick that prohibits migration of American Shad and as "Category 5-D: Rivers and Streams Impaired by Legacy Pollutants" for polychlorinated biphenyls.

The Report lists all of Maine's fresh waters 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 (Total Maximum Daily Load (TMDL) Completed) due to USEPA approval of a Regional Mercury TMDL in December 2007. 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, recommending limits on consumption for all freshwater fish. Maine has instituted statewide programs for removal and reduction of mercury sources."

## 6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- a. Dilution Factors: The department establishes applicable dilution factors for the discharge in accordance with freshwater protocols established in *Surface Water Toxics Control Program*, 06-096 C.M.R. 530. In April 2025, the department's Division of Environmental Assessment updated the 1Q10s, 7Q10s, and harmonic mean flows along the lower Androscoggin River using flow data from the USGS gage in Auburn for the 1987–2024 record period and tributary inflow estimates from USGS regression equations. Using the results of this update and a monthly average flow limit of 0.08 MGD for the facility's discharge, dilution factors for the facility are calculated as follows:

$$\text{Modified Acute: } 1/4^{\text{th}} \text{ of } 1\text{Q}10 = 323 \text{ cfs} \Rightarrow \frac{(323 \text{ cfs})(0.6464) + 0.08 \text{ MGD}}{0.08 \text{ MGD}} = 2,611:1$$

$$\text{Acute: } 1\text{Q}10 = 1,291 \text{ cfs} \Rightarrow \frac{(1,291 \text{ cfs})(0.6464) + 0.08 \text{ MGD}}{0.08 \text{ MGD}} = 10,432:1$$

$$\text{Chronic: } 7\text{Q}10 = 1,441 \text{ cfs} \Rightarrow \frac{(1,441 \text{ cfs})(0.6464) + 0.08 \text{ MGD}}{0.08 \text{ MGD}} = 11,644:1$$

$$\text{Human Health: Harm. Mean} = 4,164 \text{ cfs} \Rightarrow \frac{(4,164 \text{ cfs})(0.6464) + 0.08 \text{ MGD}}{0.08 \text{ MGD}} = 33,646:1$$

06-096 C.M.R. ch. 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.*

The BTWD has not provided information as to the actual mixing characteristics of the effluent with the receiving water. Therefore, the Department is utilizing the default stream flow of ¼ of the 1Q10 in acute evaluations.

- b. Flow: The previous permitting action established, and this permitting action is carrying forward a reporting condition with a 1/Week monitoring requirement to estimate flow to Lagoon No. 1. Information received from the permittee's consultant and application indicates that the backwash sequence generates on average, approximately 31,000 gallons per day.

The Department reviewed 21 Discharge Monitoring Reports (DMRs) that were submitted for the period January 2019 through December 2024. A review of the data indicates the following:

**Flow (N=66)**

Value	Limit gpd	Range gpd	Mean gpd
Daily Maximum	Report	0.04 – 0.88	0.10

- c. pH: The previous permitting action established, and this permitting action is carrying forward a technology- based pH limit of 6.0 – 9.0 standard units (SU), which is based on 06-096 C.M.R. ch. 525 (3)(III)(c), and a minimum monitoring frequency requirement of once per week.

The Department reviewed 66 DMRs that were submitted for the period January 2019 through December 2024. A review of data indicates the following:

**pH (N=66)**

Value	Limit (SU)	Minimum (SU)	Maximum (SU)
Range	6.0 – 9.0	7.14	8.63

**OUTFALL #002A**

- d. Flow: The previous permitting action established, and this permitting action is carrying forward, a monthly average discharge flow limit of 0.08 MGD based on the design capacity for the treatment facility, and a daily maximum discharge flow reporting requirement.

The Department reviewed 22 Discharge Monitoring Reports (DMRs) that were submitted for the period January 2019 through December 2024. A review of the data indicates the following:

**Flow (N=22)**

Value	Limit MGD	Range MGD	Mean MGD
Monthly Average	0.08	0.02 – 0.04	0.02
Daily Maximum	Report	0.02 – 0.05	0.02

- e. Total Suspended Solids: The previous permitting action established, and this permitting action is carrying forward, a monthly average technology-based concentration limit of 30 mg/L, based on the secondary treatment requirement specified at Effluent Guidelines and Standards, 06-096 C.M.R. ch. 525 (3)(III) (effective January 12, 2001). A daily maximum concentration limit of 60 mg/L, which is based on the Department's best professional judgment of best practicable treatment for secondary treated wastewater. The previous permitting action established, and this permitting action is carrying forward, technology-based monthly average and daily maximum mass limits of 10.0 lbs/day and 20.0 lbs/day, respectively. These limits are based on the daily maximum flow criterion of 0.08 MGD.

Monthly Average Mass: (30 mg/L)(8.34 lbs./gallon)(0.08 MGD) = 20 lbs./day

Daily Maximum Mass:  $(60 \text{ mg/L})(8.34 \text{ lbs./gallon})(0.08 \text{ MGD}) = 40 \text{ lbs./day}$

The Department reviewed 21 DMRs that were submitted for the period January 2019 through December 2024. A review of data indicates the following:

**Total Suspended Solids Mass (N =21)**

Value	Limit (lbs/day)	Range (lbs/day)	Mean (lbs/day)
Monthly Average	10	0.03 – 10.82*	1.04
Daily Maximum	20	0.03 – 10.82	1.40

\*1 excursion for the monthly average occurred in January 2024.

**Total Suspended Solids Concentration (DMRs=21)**

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Monthly Average	30	0.20 – 70.8*	10.3
Daily Maximum	60	0.20 – 70.8*	10.6

\*2 excursions occurred for the monthly average in the months of April 2023 and January 2024. 1 excursion for the daily maximum occurred in January 2024.

- f. Settleable Solids: The previous permitting action established and this permitting action is carrying forward a daily maximum concentration limit of 0.3 ml/L for settleable solids, which is considered a best practicable treatment limitation (BPT) for discharges from drinking water treatment facilities in Maine.

The Department reviewed 21 DMRs that were submitted for the period January 2019 through December 2024. A review of data indicates the following:

**Settleable Solids (DMRs=21)**

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Daily Maximum	0.3	0.01 – 0.15	0.1

- g. pH: The previous permitting action established, and this permitting action is carrying forward a technology- based pH limit of 6.0 – 9.0 standard units (SU), which is based on 06-096 C.M.R. ch. 525 (3)(III)(c), and a minimum monitoring frequency requirement of once per week.

The Department reviewed 21 DMRs that were submitted for the period January 2019 through December 2024. A review of data indicates the following:

**pH (DMRs=21)**

Value	Limit (SU)	Minimum (SU)	Maximum (SU)
Range	6.0 – 9.0	6.88	8.33

- h. Analyzer Water: Holden station has water from an analyzer going straight to the lagoon discharge. Compliance has asked for the facility to perform bucket tests to determine the volume being added to the discharge. The permittee has also been performing pH and TRC tests on the water.

## 7. ANTI-BACKSLIDING (FOR RENEWALS)

Federal regulation 40 C.F.R. §122.44(l) contains the criteria for what is often referred to as the anti-backsliding provisions of the Federal Water Pollution Control Act (Clean Water Act). In general, the regulation states that except for provisions specified in the regulation, effluent limitations, standards, or

conditions must be at least as stringent as the final effluent limitations, standards or conditions in the previous permit. Applicable exceptions include: (1) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation and (2) information is available which was not available at the time of the permit issuance (other than revised regulations, guidance, or test methods) and which would justify the application of less stringent effluent limitations at the time of permit issuance. All limitations in this permit are equally or more stringent than those in the previous permit.

## **8. ANTI-DEGRADATION**

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 Androscoggin River to meet standards for Class B classification.

As licensed, 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 waterbody to meet standards for Class GW-A classification.

## **9. PUBLIC COMMENTS**

Public notice of this application was made in the *Times Record* newspaper on or about March 14, 2024. 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 C.M.R. ch. 522 (effective January 12, 2001).

## **10. DEPARTMENT CONTACTS**

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

Asenath Frizzell  
Division of Water Quality Management  
Bureau of Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 215-6856  
e-mail: [Asenath.Frizzell@maine.gov](mailto:Asenath.Frizzell@maine.gov)

## **11. RESPONSE TO COMMENTS**

*This section reserved for future comments*

# **ATTACHMENT A**



#### MEPDES Facility

- ACTIVE FACILITY
- INACTIVE FACILITY

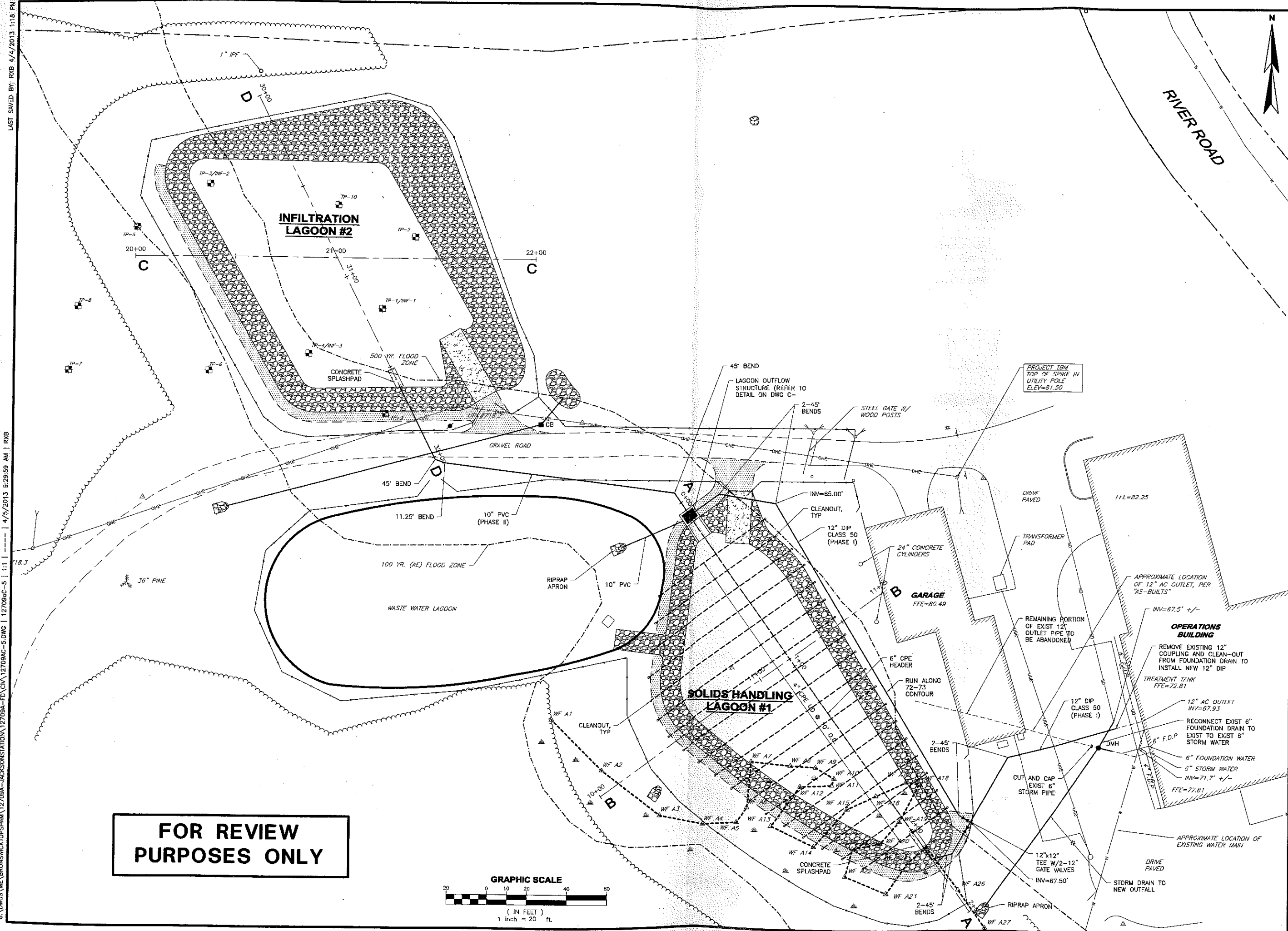
#### MEPDES Outfalls

- ACTIVE OUTFALL
- INACTIVE OUTFALL

#### CSO

- ACTIVE CSO
- CLOSED CSO

## **ATTACHMENT B**

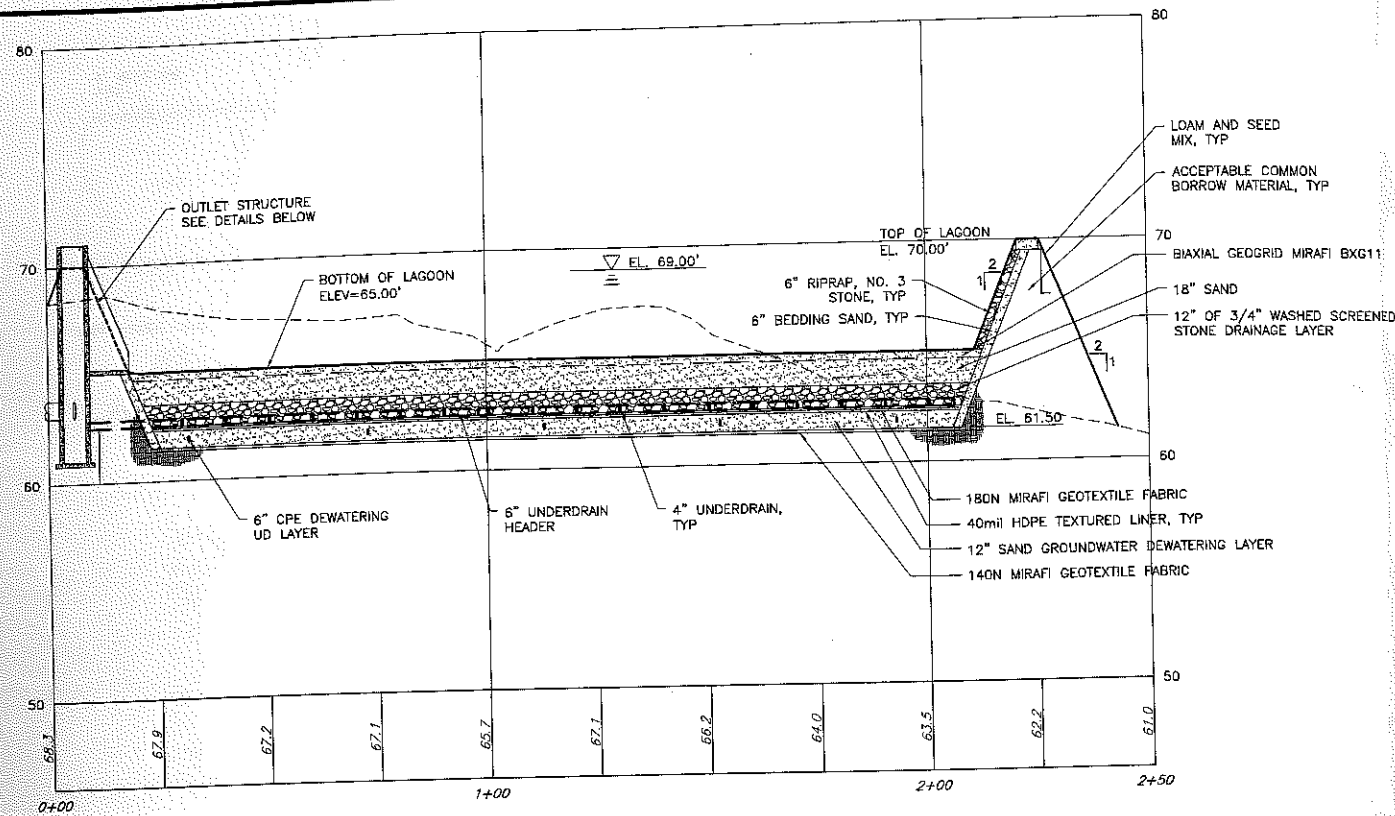


**FOR REVIEW  
PURPOSES ONLY**

**GRAPHIC SCALE**

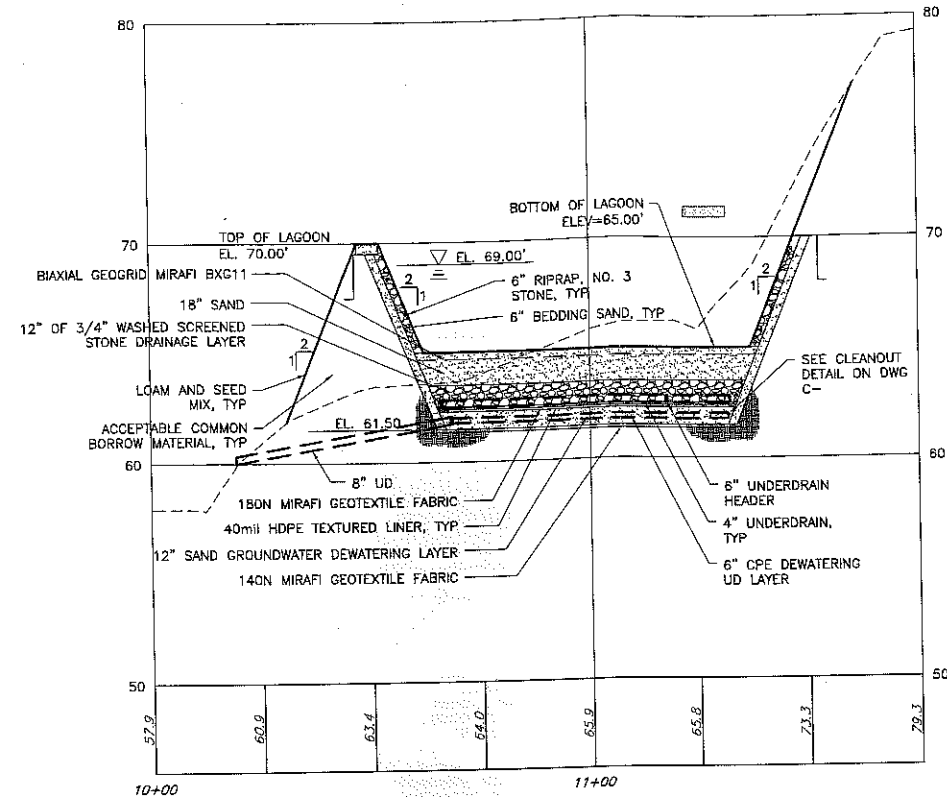
( IN FEET )  
1 inch = 20 ft.

<b>BRUNSWICK-TOPSHAM WATER DISTRICT</b> <b>JACKSON STATION LAGOON AND</b> <b>RESIDUALS HANDLING PROJECT</b> <b>TOPSHAM, MAINE</b>	<b>WRIGHT-PIERCE</b> <b>Engineering a Better Environment</b>  <b>Offices Throughout New England</b> <b>888.621.8156   <a href="http://www.wright-pierce.com">www.wright-pierce.com</a></b>		DRAWING BY: RXB CHECKED BY: JDP DATE: _____ APPROVED BY: _____ DATE: _____ BOOK NO: _____ PROJECT NO: 12709A SCALE: AS NOTED		SUBMISSIONS/REVISIONS NO. DATE APPRO. DATE	
	<b>SITE PIPING PLAN</b>					



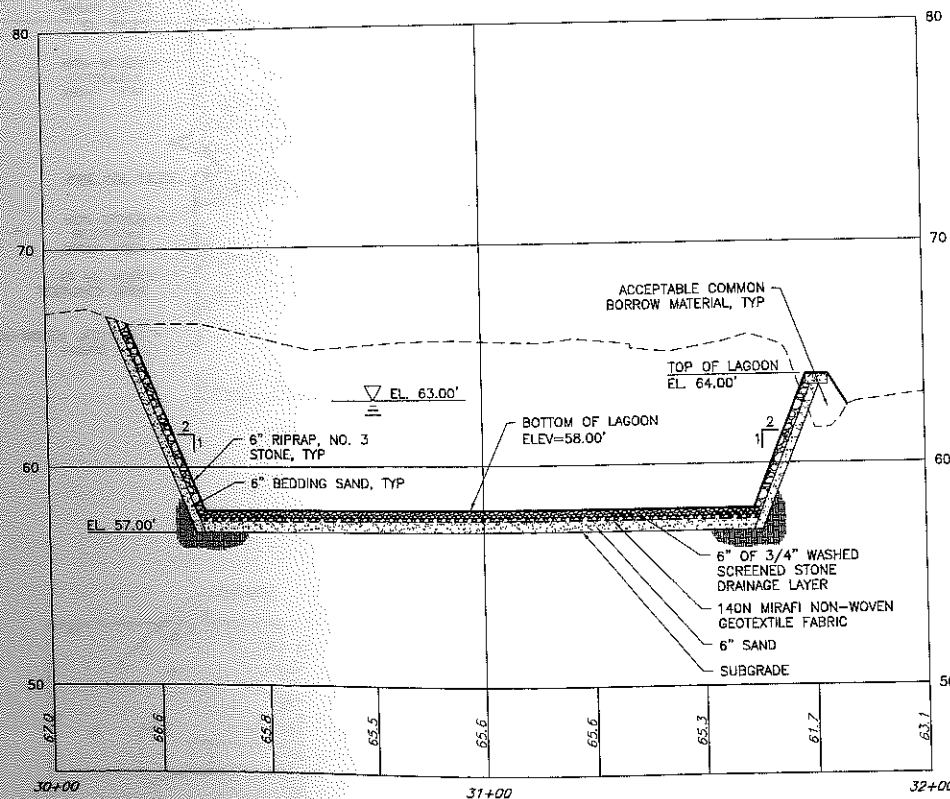
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SCALE:  
VERT: 1"=4'  
HORIZ: 1"=20'



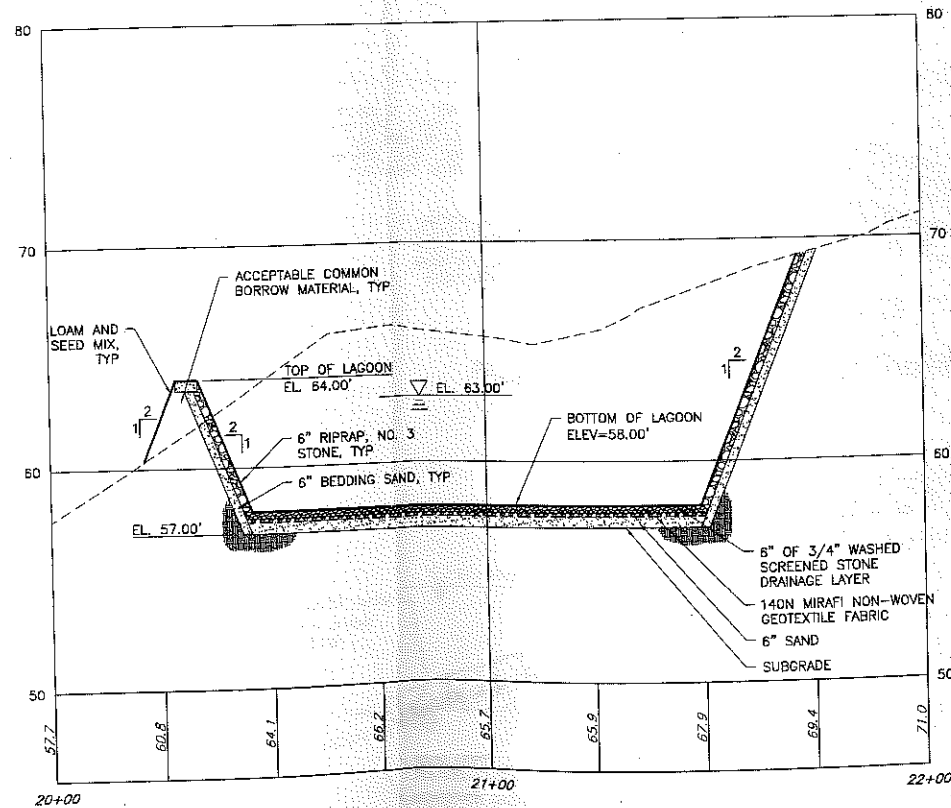
**LAGOON #1 SECTION B-B**

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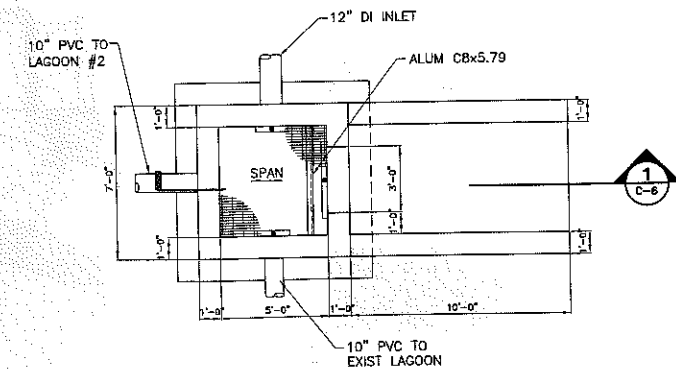
**LAGOON #2 SECTION C-C**

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HORIZ: 1"=20'



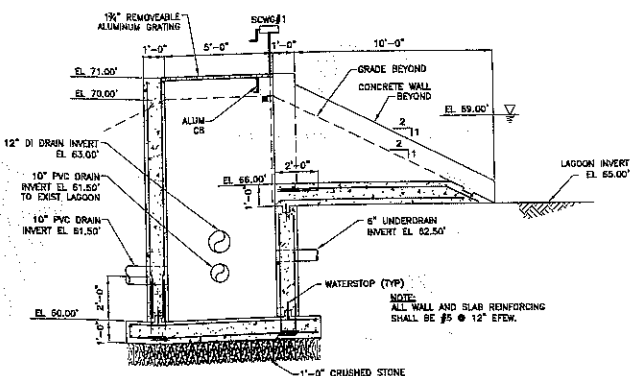
**LAGOON #2 SECTION D-D**

SCALE:  
VERT: 1"=4'  
HORIZ: 1"=20'



**LAGOON #1 OUTFLOW STRUCTURE**

SCALE: 1/4"=1'-0"



**SECTION C-C**

SCALE: 1/4"=1'-0"

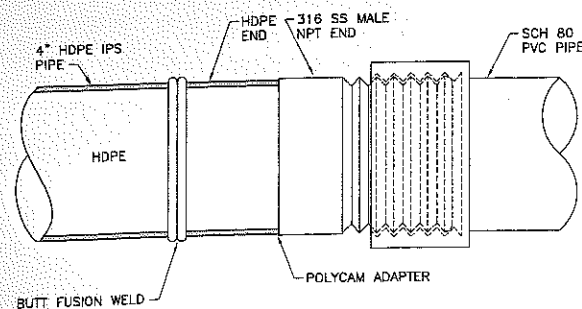
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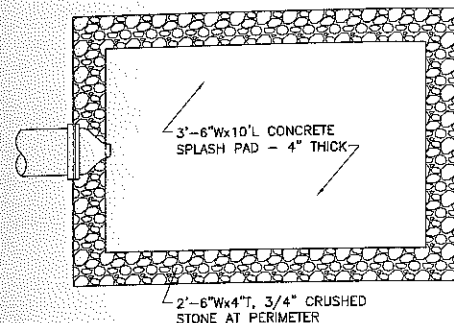
BRUNSWICK-TOPSHAM WATER DISTRICT  
JACKSON STATION LAGOON AND  
RESIDUALS HANDLING PROJECT  
TOPSHAM, MAINE

LAGOON SECTIONS & DETAILS

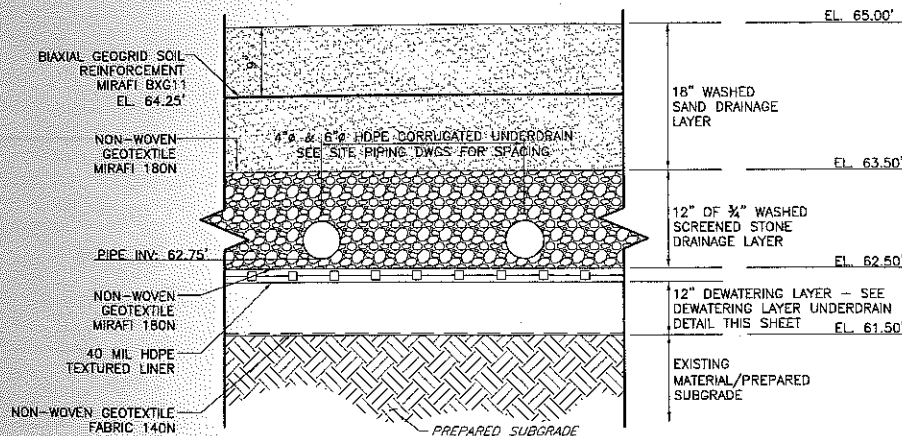
DRAWING  
C-6



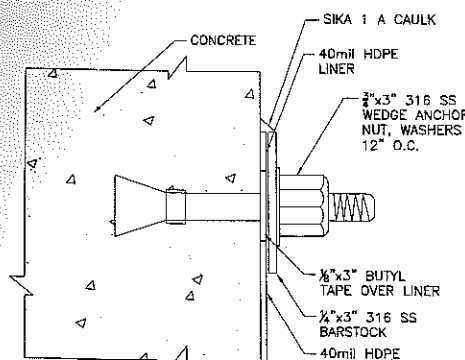
**HDPExPVC COUPLING ADAPTER DETAIL**  
SCALE: NTS



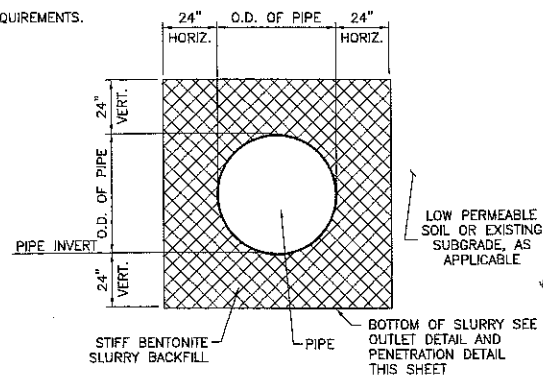
**CONCRETE SPLASH PAD DETAIL**  
SCALE: NTS



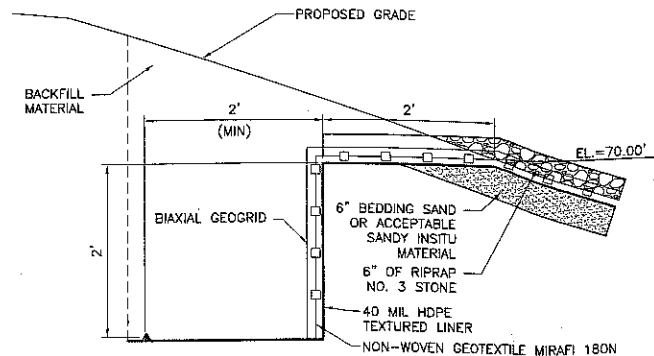
**BASE FILTER SYSTEM SECTION DETAIL**  
SCALE: NTS



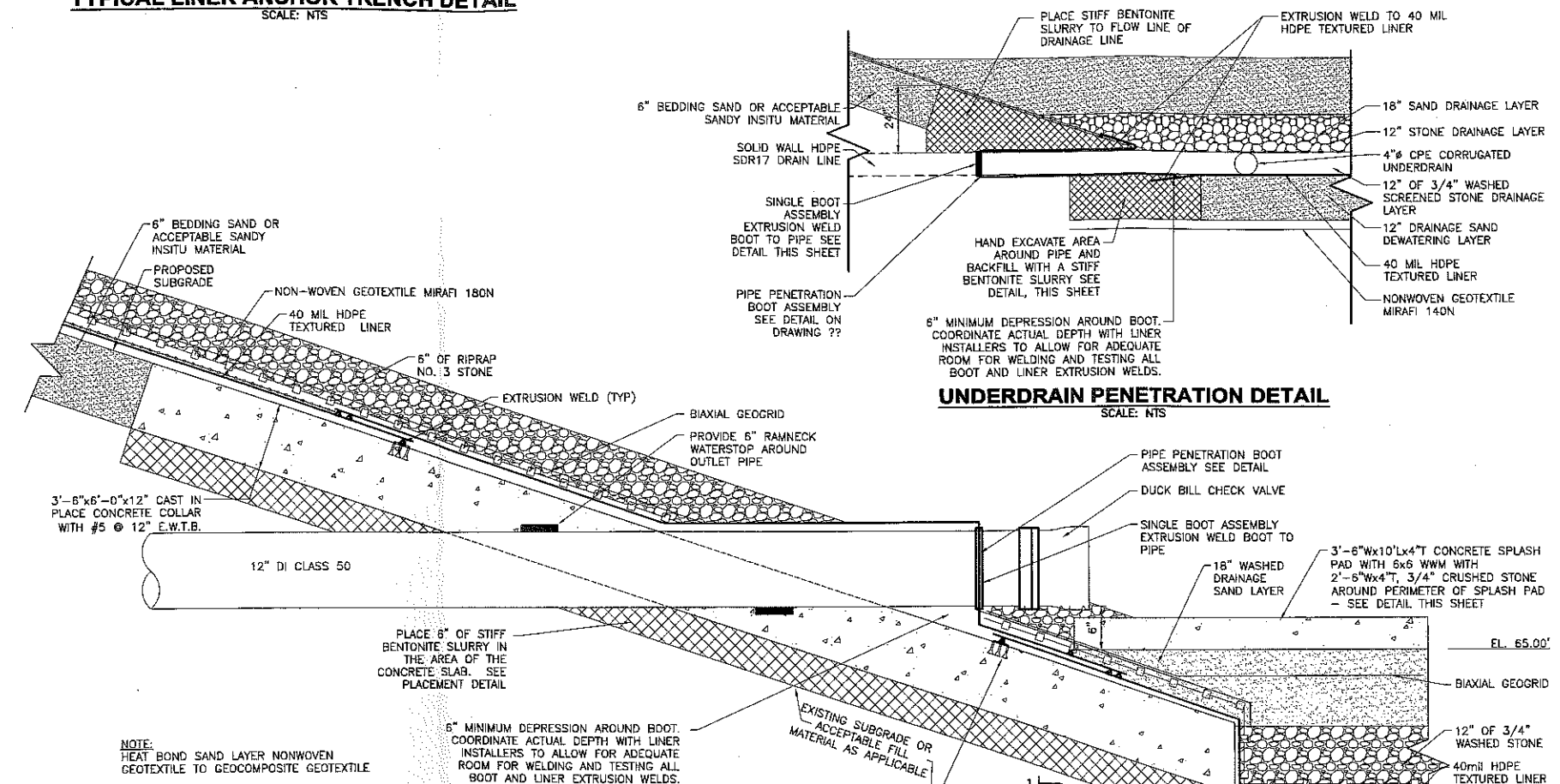
**MECHANICAL ANCHOR DETAIL**  
SCALE: NTS



**BENTONITE SLURRY PLACEMENT DETAIL**  
SCALE: NTS



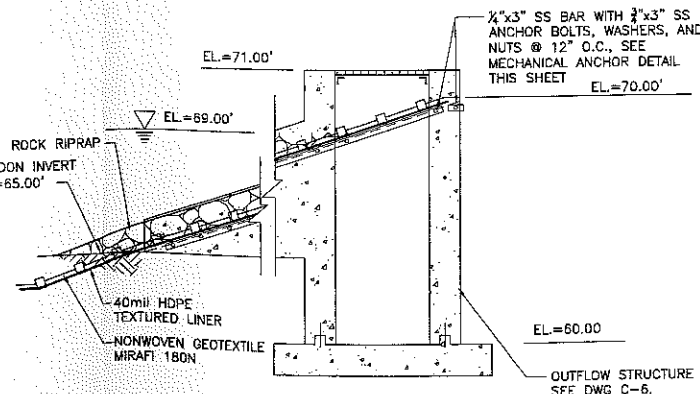
**TYPICAL LINER ANCHOR TRENCH DETAIL**  
SCALE: NTS



**UNDERDRAIN PENETRATION DETAIL**  
SCALE: NTS

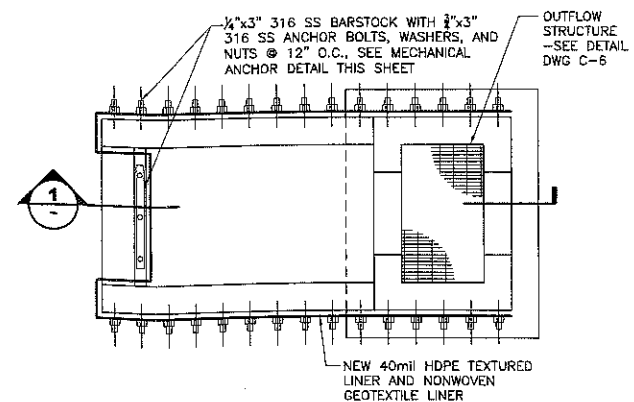
NOTE: HEAT BOND SAND LAYER NONWOVEN GEOTEXTILE TO GEOTEXTILE TO GEOTEXTILE

**SOLID WALL HDPE FORCEMAIN OUTLET DETAIL**  
SCALE: NTS



**SECTION 1**  
SCALE: NTS

**LINER ATTACHMENT DETAIL**  
SCALE: NTS



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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# 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

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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.

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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).

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## 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.

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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.

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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

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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

## Appeals to the Board of Environmental Protection

Date: November 2024

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

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### **SUMMARY**

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

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

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

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

#### **LEGAL REFERENCES**

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

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

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

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

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

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

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

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

#### **REQUIRED APPEAL CONTENTS**

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

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

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

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

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

### **II. JUDICIAL APPEALS**

The filing of an appeal with the Board is not a prerequisite for the filing of a judicial appeal. Maine law generally allows aggrieved persons to appeal final license decisions to Maine's Superior Court (*see* [38 M.R.S. § 346\(1\)](#); [Chapter 2](#); [5 M.R.S. § 11001](#); and [M.R. Civ. P. 80C](#)). A judicial appeal by a party to the underlying proceeding must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other aggrieved person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. *See* 38 M.R.S. § 346(4), the Maine Administrative Procedure Act, statutes governing a particular license decision, and the Maine Rules of Civil Procedure for substantive and procedural details applicable to judicial appeals.

### **ADDITIONAL INFORMATION**

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

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

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