



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

## DEPARTMENT ORDER

### IN THE MATTER OF

WASHINGTON COUNTY COMMUNITY COLLEGE	)	MAINE POLLUTANT
CALAIS, WASHINGTON COUNTY, MAINE	)	DISCHARGE
OVERBOARD DISCHARGE	)	ELIMINATION SYSTEM PERMIT
ME0102831	)	AND
W001339-5D-E-R	)	WASTE DISCHARGE LICENSE
<b>APPROVAL</b>	)	<b>RENEWAL</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 WASHINGTON COUNTY COMMUNITY COLLEGE (“WCCC/permittee”) with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

### APPLICATION SUMMARY

On May 15, 2024 the Department accepted as complete an application for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102831/Maine Waste Discharge License (WDL) #W001339-5D-D-R (permit hereinafter) which was issued by the Department on January 16, 2019, and authorized the year-round discharge of 10,500 gallons per day (GPD) of secondary treated sanitary wastewater to the St. Croix River, Class SC, in Calais, Maine.

### PERMIT SUMMARY

This permit carries forward all the terms and conditions of the previous permit except this permit is:

1. Establishing a monthly average and daily maximum limits of 14 CFU or MPN/100 mL and 94 CFU or MPN/100 mL for Enterococci bacteria from April 15<sup>th</sup> – October 31<sup>st</sup> with a 1/month monitoring frequency pursuant to *Standards for Classification of Estuarine and Marine Waters*, 38 M.R.S. §465-B (3).
2. Establishing a year-round testing requirement for and reducing fecal coliform bacteria to a monthly average of 14 CFU / 100mL and a daily maximum of 31 CFU / 100mL with a 1/month monitoring frequency pursuant to *Standards for Classification of Estuarine and Marine Waters*, 38 M.R.S. §465-B (3) and The National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish – 2023 Revision.
3. Establishing a monitoring frequency of 1/month for pH to be consistent with similar permits.

## CONCLUSIONS

BASED on the findings in the Fact Sheet dated May 1, 2026, 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 national resource, that water quality will be maintained and protected.
  - (c) Where the standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification.
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following the 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 Maine law, *Conditions of Licenses*, 38 M.R.S., §414-A(1)(D).
5. The overboard discharge system was in continuing existence for the 12 months preceding June 1, 1987.
6. A non-discharging sub-surface wastewater disposal system could not be installed in compliance with the *Maine Subsurface Wastewater Disposal Rules* at the time the renewal application was accepted for processing by the Department.
7. A publicly owned sewer line is not located on or abutting land owned or controlled by the permittee or is not available for the permittee's use.
8. The discharge is not located within the boundaries of a sanitary district or sewer district.

**ACTION**

THEREFORE, the Department APPROVES the above noted application of WASHINGTON COUNTY COMMUNITY COLLEGE, to discharge a monthly average flow of 10,500 gallons per day of secondary treated sanitary wastewater to the ST. CROIX RIVER, Class SC, in Calais, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. “*Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits*,” revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit 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 remain in effect until final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5 M.R.S. § 10002 and Department Rule *Concerning the Processing of Applications and Other Administrative Matters*, 06-096 C.M.R. ch. 2 § 20(A) (effective September 15, 2024)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 1 DAY OF May, 2026.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Brian Kavanah  
For Melanie Loyzim, Commissioner

Date of initial receipt of application: April 30, 2024

Date of application acceptance: May 15, 2024

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

- The permittee is authorized to discharge secondary treated sanitary wastewater from **Outfall #001A** to the St. Croix River, Class SC. Such discharges shall be limited and monitored by the permittee as specified below<sup>(1)</sup>:

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]	10,500 GPD [07]	---	Report (GPD) [07]	---	---	---	Weekly [01/07]	Calculate [CA]
BOD <sub>5</sub> [00310]	2.6 lbs/day [26]	3.9 lbs/day [26]	4.4 lbs/day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/2 Month [01/60]	Grab [GR]
BOD <sub>5</sub> Percent Removal <sup>(2)</sup> [81010]	---	---	---	85% [23]	---	---	1/2 Month [01/60]	Calculate [CA]
TSS [00530]	2.6 lbs/day [26]	3.9 lbs/day [26]	4.4 lbs/day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/2 Month [01/60]	Grab [GR]
TSS Percent Removal <sup>(2)</sup> [81011]	---	---	---	85% [23]	---	---	1/2 Month [01/60]	Calculate [CA]
Settleable Solids [00545]	---	---	---	---	---	0.3 mL/L [25]	1/2 Month [01/60]	Grab [GR]
Fecal Coliform Bacteria <sup>(3,4)</sup> [31616]	---	---	---	14CFU/100 mL <sup>(4)</sup> [13]	---	31CFU/100 mL [13]	1 Month [01/30]	Grab [GR]
Enterococci Bacteria <sup>(4)</sup> (Seasonally April 15 <sup>th</sup> - October 31 <sup>st</sup> .) [61211]	---	---	---	14CFU/100mL [13]	---	94CFU/100mL [13]	1/Month [1/30]	Grab [GR]
Total Residual Chlorine <sup>(5)</sup> [50060]	---	---	---	---	---	1.0 mg/L [19]	3/Week [03/07]	Grab [GR]
pH <sup>(6)</sup> [00400]	---	---	---	---	---	6.0 – 9.0 SU [12]	1/Month [1/30]	Grab [GR]

Footnotes See Page 5 of this permit for applicable footnotes.

## SPECIAL CONDITIONS

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

#### Footnotes

1. **Monitoring** – All effluent monitoring shall be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. 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 Accreditation 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 license using test procedures approved under 40 C.F.R. Part 136 or as specified in this license, 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. **Percent Removal** – The treatment facility shall maintain a minimum of 85 percent removal of both BOD<sub>5</sub> and TSS for all flows receiving secondary treatment. If the permittee is required to calculate percent removals but does not have access to an influent sampling location, the permittee shall use an assumed influent value of 286 mg/L and measured effluent concentration values.

### **SPECIAL CONDITIONS**

3. **Bacteria Limits** – Fecal coliform bacteria limits and monitoring requirements are in effect year-round.
4. **Bacteria Reporting** – The monthly average bacteria limitations are a geometric mean limitation and test results shall be reported as such.
5. **Total residual chlorine (TRC)** – Limitations and monitoring requirements are applicable whenever elemental chlorine or chlorine-based compounds are being used to disinfect the discharge. For instances when a facility has not disinfected with chlorine-based compounds for an entire reporting period, the facility shall report “NODI-9” for this parameter on the monthly DMR. The permittee shall utilize approved test methods that are capable of bracketing the limitations in this permit.
6. **pH** – The pH value of the effluent must not be lower than 6.0 SU nor higher than 9.0 SU at any time unless these limitations are exceeded due to natural causes. The permittee must provide oral notification of any exceedance within 24 hours from the time the permittee becomes aware of the circumstances and shall submit a written explanation of the exceedance within 5 days of the time the permittee becomes aware of the circumstances.

### **A. ANNUAL DISCHARGE FEES**

Pursuant to *Annual waste discharge license fees*, 38 M.R.S. §353-B, the permittee is required to pay an applicable annual fee for discharges authorized by this permit. Failure to pay an annual fee within 30 days of the billing date of a license/permit is sufficient grounds for revocation of the permit under *Board responsibilities and duties*, 38 M.R.S. §341-D, (3) and is subject to penalties for non-payment.

## **SPECIAL CONDITIONS**

### **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 unsuitable 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. TREATMENT PLANT OPERATOR**

The person who has the management responsibility over the treatment facility must hold a Maine **Grade I** (or higher) Biological Treatment certificate (or higher) or must be a Maine Registered Professional Engineer pursuant to *Wastewater Treatment Plant Operators*, 32 M.R.S. § 4171-4182 and *Wastewater Treatment Plant Operator Certification*, 06-096 C.M.R. Ch. 531 (effective July 24, 2023). All proposed contracts for facility operation by any person must be reviewed by the Department before the Permittee may engage the services of the contract operator.

### **D. 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 May 15, 2024, 2) the terms and conditions of this permit; and 3) only from Outfall #001A. 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.

## SPECIAL CONDITIONS

### E. NOTIFICATION REQUIREMENT

In accordance with Standard Condition D, the permittee shall 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.

### F. SITE EVALUATION FOR TRANSFERRED AND RENEWED PERMITS

**Prior to permit transfer or transfer of the property** occupying the permitted overboard discharge system, a site evaluation must be performed (if not done so within the most recent five-year period) by a licensed site evaluator with experience in designing systems for the replacement of overboard discharge systems.

**Transfers** - The Department may not grant approval for permit transfer if the site evaluation concludes that a non-discharging wastewater disposal system designed in compliance with the Maine Subsurface Wastewater Disposal Rules administered by the Maine Department of Health and Human Services, Division of Environmental Health can be installed as an alternative system for the overboard discharge. Pursuant to *Waste Discharge Licenses*, 38 M.R.S. §413(3) the alternative system would need to be installed within 90 days of property transfer, except that, if soil conditions are poor due to seasonal weather, the alternative system may be installed as soon as soil conditions permit.

**Renewals** – Pursuant to *Conditions of Licenses*, 38 M.R.S. §414-A(1-B), if a technologically proven alternative is identified, the alternative must be installed within 180 days of the application's being accepted by the department, subject to availability of funding under section 411-A. If the applicant is not eligible for funding under section 411-A, the alternative system must be installed within 180 days. If the applicant is eligible for funding but no funding is available, the installation of an alternative system may be postponed until funding is available.

## **SPECIAL CONDITIONS**

### **G. OPERATION & MAINTENANCE (O&M) PLAN**

**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 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.

### **H. SEPTIC TANKS**

1. All septic treatment tanks and other holding or treatment tanks must be regularly inspected (at least once every three years) and maintained to ensure that they are providing best practicable treatment.
2. Tank contents should be removed whenever the sludge and scum occupy one-third of the tank's liquid capacity or whenever levels approach maximum design capacity whichever is less. Following pumping, the tanks must be checked for damage at key joints and the inlet and outlet baffles and repaired promptly if damaged. The permittee must keep a pumping log including the date of pumping, quantity of material removed, name and number of the licensed contractor, pumping frequency and other relevant observations. The logs must be kept current and available to the Department for inspection upon request.

## SPECIAL CONDITIONS

### I. MONITORING AND REPORTING

#### Electronic Reporting

*NPDES Electronic Reporting*, 40 C.F.R. 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 Discharge Monitoring Reports (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. Documentation submitted electronically to the Department in support of the electronic DMR must be submitted no later than midnight on the 15th day of the month following the completed reporting period.

### J. COMPLIANCE SCHEDULE

1. In compliance with *Conditions of Licenses*, 38 M.R.S. §414-A(1-B), The permittee must provide the Department with a current site evaluation conducted by a Licensed Site Evaluator (LSE) to determine whether an alternative to the overboard discharge system exists no later than September 30, 2026.
2. In order to be compliant with year-round fecal coliform limits and chlorination, the permittee has stated that they will need to make improvements to its testing access point. The Department concurs with the permittee's assessment and grants a delay in year-round testing for fecal coliform. The permittee will make the necessary improvements to its testing access point and comply with year-round testing for fecal coliform no later than September 30, 2027.

### K. REOPENING OF PERMIT FOR MODIFICATIONS

In accordance with *Conditions of Licenses*, 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/District, 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.

**L. 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 shall remain in full force and effect and shall 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  
AND  
WASTE DISCHARGE LICENSE**

**FACT SHEET**

DATE: **May 1, 2026**

MEPDES PERMIT: **ME0102831**  
WASTE DISCHARGE LICENSE: **W001339-5D-E-R**

NAME AND ADDRESS OF APPLICANT:

**WASHINGTON COUNTY COMMUNITY COLLEGE  
One College Drive  
Calais, Maine 04619**

COUNTY: **Washington County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**One College Drive  
Calais, Maine**

RECEIVING WATER / CLASSIFICATION: **St. Croix River/Class SC**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Annaleis Hafford  
(207) 223-2232**

CONTRACT OPERATOR: **[annaleis@olverassociatesinc.com](mailto:annaleis@olverassociatesinc.com)  
**207-223-2232****

**1. APPLICATION SUMMARY**

- a. Application: On May 15, 2024 the Department accepted as complete an application for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102831/Maine Waste Discharge License (WDL) #W001339-5D-D-R (permit hereinafter) which was issued by the Department on January 16, 2019, and authorized the year-round discharge of 10,500 gallons per day (GPD) of secondary treated sanitary wastewater to the St. Croix River, Class SC, in Calais, Maine. See Attachment A of this Fact Sheet for a location map.

## 2. PERMIT SUMMARY

a, Terms and Conditions: This permit carries forward all the terms and conditions of the previous permit except this permit is:

1. Establishing a monthly average and daily maximum limits of 14 CFU or MPN/100 mL and 94 CFU or MPN/100 mL for Enterococci bacteria from April 15<sup>th</sup> – October 31<sup>st</sup> with a 2/Month monitoring frequency pursuant to *Standards for Classification of Estuarine and Marine Waters*, 38 M.R.S. §465-B (3).
2. Establishing a year-round testing requirement for fecal coliform bacteria pursuant to *Standards for Classification of Estuarine and Marine Waters*, 38 M.R.S. §465-B (3) and The National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish – 2023 Revision.
3. Establishing a monitoring frequency of 1/month for pH to be consistent with similar permits.

b. Source description: The Washington County Community College (WCCC) is a division of the Maine Community College System. The facility is located on a 400-acre parcel in Calais, Maine and serves approximately 500 students and 60 faculty and staff employees.

c. Wastewater treatment: The wastewater treatment system serves only the WCCC and is entirely on its property. The system consists of one 10,000 gallon septic tank connected to a large sand filter bed and one 3,000 gallon septic tank connected to a separate, smaller sand filter bed. Valves in a valve pit allow the sewage flow to be directed to the larger tank and bed or changed to the smaller tank and bed. The treated wastewater is discharged to the St. Croix River via a 6-inch outfall pipe with no diffuser. The outfall depth below mean low water is 2 feet.

d. Replacement Options: In May of 2003, the Maine State Legislature adopted several amendments to the licensing of overboard discharges and the Department revised its rule, Chapter 596, *Overboard Discharges: Licensing and Abandonment*, accordingly. One of the amendments in the revised rule requires OBD owners who are applying to the Department to renew their OBD licenses to hire a licensed site evaluator (LSE) to determine whether or not it is technologically feasible to replace the existing wastewater treatment system prior to license renewal and install a replacement system within 180 days if grant money is offered by the Department. Seasonal conditions currently prohibit a site evaluation from being completed. The permittee has agreed to a Schedule of Compliance to provide to the Department, a site evaluation completed by a Licensed Site Evaluator no later than September 30, 2026. (See Special Condition J of the permit.)

### 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 Toxics 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 estuarine and marine waters*, 38 M.R.S. § 469(7)(B)(1) classifies the tidal waters of the St. Croix River as Class SC waters. *Standards for classification of estuarine and marine waters*, 38 M.R.S. § 465-B, (3) describes the standards for Class SC waters as follows.

3. *Class SC waters. Class SC waters shall be the 3rd highest classification.*

- A. *Class SC waters must be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and other estuarine and marine life.*
- B. *Class SC waters must be of sufficient quality to support all species of fish indigenous to those waters and to maintain the structure and function of the resident biological community. The dissolved oxygen content of Class SC waters may not be less than 70% of saturation. Between April 15th and October 31st, the number of enterococcus bacteria in these waters may not exceed a geometric mean of 14 CFU or MPN per 100 milliliters in any 90-day interval or 94 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval. The number of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration as set forth in its publication "Guide for the Control of Molluscan Shellfish" (2019 revision) or any successor publication.*
- C. *Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.*

## 5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine Department of Environmental Protection 2018/2020/2022 Integrated Water Quality Monitoring and Assessment Report published by the Department pursuant to Section 305(b) of the Federal Water Pollution Control Act, identifies the St. Croix River at the point of discharge as Assessment Unit ID ME010500010809\_SC\_EU\_PE, *Category 3 : Estuarine and Marine Waters with Insufficient Data or Information to Determine if Shellfish Harvesting Designated Use is Attained*).

Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants. All estuarine and marine waters capable of supporting American lobster are listed in Category 5-D, partially supporting fishing (“shellfish” consumption) due to elevated levels of polychlorinated biphenyls (PCBs) and other persistent, bioaccumulating substances in lobster tomalley.

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Best Practicable Treatment (BPT) - Overboard discharges may be permitted only where no technologically proven alternative exists. Overboard discharge treatment systems must be capable of meeting secondary treatment standards as described in CMR Chapter 525, Section 3 and Chapter 596 section 9, unless the Department finds that alternate limits are appropriate. After accepting a renewal application as complete for processing, the Department shall approve an overboard waste discharge license only if all of the following criteria are met:
  - (1) A publicly owned sewer line is not located on or abutting land owned or controlled by the applicant or is not available for the applicant's use.
  - (2) A subsurface wastewater disposal system cannot be installed in compliance with the *Subsurface Wastewater Disposal Rule*, 10-144 CMR ch. 241 (effective date September 23, 2023), on land owned or controlled by the applicant. Or, a subsurface wastewater disposal system can be installed on land owned or controlled by the applicant and the applicant is eligible for grant funding pursuant to *Condition of licenses*, 38 M.R.S. §411-A but no funding is available.
  - (3) The discharge is not located within the boundaries of a sanitary or sewer district and the district has not agreed to service and maintain a holding tank at an annual fee that does not exceed those fees charged to other similar users of the district's services who are physically connected to the sewers of the district.
  - (4) For a school, the volume or quantity of wastewater that is discharged does not exceed;
    - (a) the limit imposed by the previous license.
    - (b) the actual or estimated flow at the time of current application if a license volume increase is necessary.

**6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)**

- (5) The receiving water is not:
  - (a) A Class GPA, AA, A, or SA water;
  - (b) A tributary to Class GPA water; or
  - (c) A waterbody with a drainage area of less than 10 square miles,
- (6) The discharge meets the requirements of *Maine’s Pollution Control Laws* 38 M.R.S. §414-A, and *Maine’s Water Classification Laws* 38 M.R.S. §§464 to 469.
- (7) The discharge receives best practicable treatment consistent with requirements in Section 9 of Department rule Chapter 596.

The discharge from the WCCC facility has met all the above criteria. Site evaluation conducted in 2008 from a licensed site evaluator concluded that a replacement subsurface wastewater disposal system cannot be installed in compliance with the Subsurface Rules, 10-144 CMR 241, on land owned or controlled by the applicant.

- b. Flow: A previous permitting action established a monthly average flow limitation of 10,500 gallons per day (gpd) and a daily maximum reporting requirement along with a weekly measurement frequency, both of which are being carried forward in this permitting action. The Discharge Monitoring Report (DMR) data for the period February 2019 – July 2025 indicates the permittee has reported flow values as follows:

**Flow (DMRs = 77)**

Value	Limit (gpd)	Range (gpd)	Mean (gpd)
Monthly Average	10,500	199 – 6,457	2,919
Daily Maximum	Report	937 – 41,076	4,448

- c. Dilution Factors – Department rule 06-096 CMR, Chapter 530, *Surface Water Toxics Control Program*, §4(A)(2) states,

(2) *For estuaries where tidal flow is dominant and marine discharges, dilution factors are calculated as follows. These methods may be supplemented with additional information such as current studies or dye studies:*

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

- (a) *For discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model.*
- (b) *For discharges to estuaries, dilution must be calculated using a method such as MERGE, CORMIX or another predictive model determined by the Department to be appropriate for the site conditions.*
- (c) *In the case of discharges to estuaries where tidal flow is dominant and marine waters, the human health criteria must be analyzed using a dilution equal to three times the chronic dilution factor.*

With a permitted flow of 10,500 GPD, the location and configuration of the outfall structure, the Department has made a best professional judgment that dilution factors are follows:

Acute = 103.4:1      Chronic = 30,692:1      Harmonic Mean<sup>(1)</sup> = 92,076:1

### Footnote:

- (1) The harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by three (3). This multiplying factor is based on guidelines for estimation of human health dilution presented in the USEPA publication "*Technical Support Document for Water Quality-based Toxics Control*" (Office of Water; EPA/505/2-90-001, page 88) and represents an estimation of harmonic mean flow on which human health dilutions are based in a riverine 7Q10 flow situation.
- d. Biochemical Oxygen Demand (BOD<sub>5</sub>) and Total Suspended Solids (TSS): This permit carries forward technology based monthly average, weekly average, and daily maximum BOD<sub>5</sub> and TSS concentration limits of 30 mg/L, 45 mg/L and 50 mg/L, respectively. The monthly average and weekly average concentration limits are based on secondary treatment requirements as defined in Department rule, 06-096 CMR Chapter 525(3)(III), and the daily maximum concentration limit of 50 mg/L is based on a best professional judgment by the Department of best practicable treatment (BPT). This permitting action carries forward all three technology-based concentration limits.

06-096 CMR Chapter 523, *Waste Discharge License Conditions*, Section 6, *Calculating NPDES permit conditions*, sub-section f(1) states that, "all pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass...."

**6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)**

Therefore, this permitting action is carrying forward the monthly average, weekly average and daily maximum BOD<sub>5</sub> and TSS mass limitations based on calculations using the permittee's daily maximum permitted flow limitation of 10,500 GPD (0.0105 MGD) and the applicable concentration limits as follows:

Monthly Average Mass Limit: (30 mg/L)(8.34 lbs/gallon)( 0.0105 MGD) = 2.6 lbs/day

Weekly Average Mass Limit: (45 mg/L)(8.34 lbs/gallon)( 0.0105 MGD) = 3.9 lbs/day

Daily Maximum Mass Limit: (50 mg/L)(8.34 lbs/gallon)( 0.0105 MGD) = 4.4 lbs/day

This permit carries forward a minimum monitoring frequency requirement of once every two months (1/2 Month) for BOD<sub>5</sub> and TSS. A review of the discharge data as reported on the permittee's Discharge Monitoring Reports (DMR's) submitted to the Department for the period February 2019 – July 2025 indicates the following:

**BOD concentration (Ns = 21)**

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	2 - 19	7
Weekly Average	45	2 - 19	7
Daily Maximum	50	2 - 19	7

**TSS concentration (N = 67)**

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	1 - 28	12
Weekly Average	45	0.13 - 28	12
Daily Maximum	50	1 - 28	12

**BOD Mass (N = 67)**

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	30	0 - 0.8	0.2
Weekly Average	45	0 - 0.8	0.2
Daily Maximum	50	0.02 - 0.8	0.2

**TSS Mass (N = 67)**

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	30	0 - 2.1	0.4
Weekly Average	45	0 - 2.1	0.4
Daily Maximum	50	0.03 - 2.1	0.4

**6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)**

This permitting action carries forward the requirement for a minimum of 85% removal of BOD<sub>5</sub> and TSS pursuant to Chapter 525(3)(III)(a)(3) and (b)(3) of the Department’s rule.

- e. Settleable Solids: This permit carries forward a daily maximum settleable solids technology-based concentration limit of 0.3 mL/L and a regular monitoring frequency of once every two months pursuant to 40 CFR §122, 44(h)(i)(2), to be consistent with monitoring and reporting for BOD<sub>5</sub> and TSS. A review of the discharge data as reported on the permittee’s Discharge Monitoring Reports (DMR’s) submitted to the Department for the period February 2019 – July 2025 indicates the following

**(N = 63)**

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Daily Maximum	0.3	0.10 – 1.00	< 0.114

- f. Fecal coliform bacteria: This permit establishes a year-round fecal coliform monthly average limitation of 14 CFU/100 mL (geometric mean) and a daily maximum limitation of 31 CFU/100 mL to be consistent with the limits established in *Standards for Classification of Estuarine and Marine Waters*, 38 M.R.S. §465-B (3), and The National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish – 2023 Revision and USEPA guidance pursuant to 40 CFR §122, 44(h)(i)(2).

A review of the seasonal monthly average and daily maximum data as reported on the DMRs submitted to the Department for the period February 2019 – July 2025 indicates monthly average and daily maximum fecal coliform bacteria counts have been reported as follows:

**Fecal coliform bacteria (N=42)**

Value	Limit (col/100 ml)	Range (col/100 ml)	Mean (col/100 ml)
Monthly Average	15	0-1,4920	39.2
Daily Maximum	50	0-2,419	119.4

[There were two exceedances for Fecal coliform bacteria during the reporting period.]

**6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)**

- g. Total Residual Chlorine (TRC): The previous permitting action established a daily maximum TRC technology-based concentration limit of 1.0 mg/L along with a 3/Week monitoring requirement. Limitations on TRC are specified to ensure that ambient water quality standards are maintained at all times of the year and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either a water quality-based or BPT-based limit.

With dilution factors as determined in Section 7C of this fact sheet, end-of-pipe (EOP) water quality-based concentration thresholds for TRC may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A & C Dilution Factors	Calculated Acute Limit	Calculated Chronic Limit
0.013 mg/L	0.0075 mg/L	103.4:1 (A) 30,692:1 (C)	1.34 mg/L	230 mg/L

Example: Acute Limit Calculation:  $(0.013 \text{ mg/L}) (103.4) = 1.34 \text{ mg/L}$

The Department has established a daily maximum BPT limitation of 1.0 mg/L for facilities that disinfect their effluent with elemental chlorine or chlorine-based compounds. For facilities that need to dechlorinate the discharge in order to meet water quality-based thresholds, the Department has established daily maximum and monthly average BPT limits of 0.3 mg/L and 0.1 mg/L, respectively. Based on the calculated acute and chronic total residual chlorine limits, the WCCC facility is not required to dechlorinate the effluent prior to discharge in order to consistently achieve compliance with the calculated water quality-based thresholds. This permitting action is carrying forward the technology-based daily maximum TRC concentration limitation of 1.0 mg/L along with the 3/Week monitoring requirement.

A review of the daily maximum data as reported on the DMRs submitted to the Department for the period February 2019 – July 2025 indicates the maximum TRC discharged has been as follows:

**Total residual chlorine (N = 45)**

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Daily Maximum	1.0	0.05 – 0.98	0.57

- h. pH: This permit carries forward a technology-based pH range limit of 6.0 – 9.0 standard units (SU), pursuant to Department rule found at 06-096 CMR Chapter 525(3)(III)(c). This permit also establishes a pH monitoring frequency of 1/Month pursuant to 40 CFR §122, 44(h)(i)(2), and to be consistent with similar permits.

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

- i. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing: Maine law, *Conditions of Licenses*, 38 M.R.S §414-A and *Certain Deposits and Discharges Prohibited*, 38 M.R.S §420, prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. Department rule, 06-096 CMR Chapter 530, *Surface Water Toxics Control Program* (toxics rule) sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected, and narrative and numeric water quality criteria are met. Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, sets forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

Chapter 530 Section (2)(A) specifies the dischargers subject to the rule as, “...*all licensed dischargers of industrial process wastewater or domestic wastes discharging to surface waters of the State must meet the testing requirements of this section. Dischargers of other types of wastewaters are subject to this subsection when and if the Department determines that toxicity of effluents may have reasonable potential to cause or contribute to exceedances of narrative or numerical water quality criteria.*”

Chapter 530 Section (2) (A) specifies the criteria for exemption of certain discharges from toxics testing as follows:

- (1) *Discharges from individual discharge points licensed to discharge less than 50,000 gallons per day of solely domestic wastewater and with a chronic dilution factor of at least 50 to 1, provided no holding tank wastes containing chemicals are accepted by the facility.*
- (2) *Discharges from residential overboard discharge systems; or*
- (3) *Discharges from combined sewer overflow discharge points, provided the owner of the sewerage system is conducting or participating in a discharge abatement program.*

The permittee's facility is exempt from Chapter 530 requirements as it is permitted to discharge less than 50,000 gpd, the chronic dilution factor is greater than 50:1 (Department Best Professional Judgement) and the wastewater has domestic-like characteristics. However, should there be a substantial change in the characteristics of the discharge in the future; the Department may reopen this permit pursuant to Special Condition K, *Reopening of Permit for Modifications*, to incorporate the applicable whole effluent toxicity (WET), priority pollutant or analytical testing requirements cited above.

## 7. ANTI-BACKSLIDING

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.

## 8. ANTI-DEGRADATION

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

## 9. PUBLIC COMMENTS

Public notice of this application was made in the *Calais Advertiser* newspaper on or about April 22, 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 shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

## 10. DEPARTMENT CONTACTS

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

Rod Robert  
Division of Water Quality Management  
Bureau of Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017  
e-mail: [Rodney.robert@maine.gov](mailto:Rodney.robert@maine.gov) Telephone: (207) 680-0576

## 11. RESPONSE TO COMMENTS

During the period March 27, 2026, through the issuance of this permit, the Department solicited comments from the public, the regulatory community, and other interested parties. The Department did not receive comments on the Proposed Draft that resulted in substantive changes to this final permit. Therefore, a formal Response to Comments has not been prepared.

# ATTACHMENT A



ME 0102831 - Attachment A - WCCC Location -

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).

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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

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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.

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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.

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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

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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.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

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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

### 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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