



STATE OF MAINE
Department of Environmental Protection

JOHN ELIAS BALDACCI
GOVERNOR

David P. Littell
COMMISSIONER

July 31, 2009

Mr. Peter Francine
Heritage Acquisition Corporation
One Bean Pot Circle
Portland, ME 04103

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit ME0001741
Maine Waste Discharge License #**W000980-5R-F-R**
Final Permit – **Heritage Acquisition Corporation**

Dear Mr. Francine:

Enclosed please find a copy of your **final** Maine MEPDES Permit/WDL which was approved by the Department of Environmental Protection. Please read the license and its attached conditions carefully. You must follow the conditions in the license to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State Law and is subject to enforcement action.

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled “*Appealing a Commissioner’s Licensing Decision.*”

If you have any questions regarding this matter, please feel free to contact me at (207) 287-7658 or at phyllis.a.rand@maine.gov.

Sincerely,

A handwritten signature in cursive script that reads "Phyllis Arnold Rand".

Phyllis Arnold Rand
Division of Water Quality Management
Bureau of Land and Water Quality

Enclosure

cc: Fred Gallant, DEP/SMRO
Sandy Mojica, USEPA
Chris MacMillan, MacMillan & Donnelly, Inc.

Doug Koopman, USEPA
Lori Mitchell, DMU

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 624-6550 FAX: (207) 624-6024
RAY BLDG., HOSPITAL ST.

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

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
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1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

**DEPARTMENT ORDER
IN THE MATTER OF**

HERITAGE ACQUISITION CORPORATION)	MAINE POLLUTANT DISCHARGE
PORTLAND, CUMBERLAND COUNTY, ME)	ELIMINATION SYSTEM PERMIT
COOLING WATER)	
ME0001741)	AND
W000980-5R-F-R)	WASTE DISCHARGE LICENSE
APPROVAL)	RENEWAL

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et seq. and Maine Law 38 M.R.S.A., Section 414-A et Seq., and applicable regulations, the Department of Environmental Protection has considered the application of the HERITAGE ACQUISITION CORPORATION with its supportive data, agency review comments, and other related materials on file, and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

The Heritage Acquisition Corporation (“HAC” hereinafter) has applied for renewal of combination Department Waste Discharge License # W000980-5R-E-R/Maine Pollutant Discharge Elimination System permit #ME0001741 (“permit” hereinafter), which was issued on February 6, 2004, and expired on February 6, 2009. The permit approved the discharge of up to a monthly average of 479,000 gallons per day of non-contact cooling water from two separate outfalls from a food processing facility (producing canned baked beans and bread) to the tidewaters of Portland, Class SC, in Portland, Maine.

PERMIT SUMMARY

This permitting action is carrying forward the terms and conditions of the previous permitting action with the following exceptions:

1. Outfall #001 is no longer a designated compliance outfall.
2. The permitted monthly average discharge flow is being revised from 479,000 gallons per day to 460,000 gallons per day.
3. The permittee is required to monitor Outfall #002 for total residual chlorine.
4. The permittee is required to develop a Storm Water Pollution Prevention Plan.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated July 31, 2009, 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, 38 MRSA Section 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) 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 of 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 quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

ACTION

THEREFORE, the Department APPROVES the above noted application of HERITAGE ACQUISITION CORPORATION, to discharge up to a monthly average flow of 0.46 MGD of non-contact cooling water to the tidewaters of Portland, Class SC. The discharges shall be subject to the attached conditions and all applicable standards and regulations:

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. The expiration date of this permit is five (5) years from the date of signature below.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: February 4, 2009

Date of application acceptance: February 4, 2009

This order prepared by Phyllis A. Rand, BUREAU OF LAND AND WATER QUALITY
ME0001741 2009

SPECIAL CONDITIONS

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

1. During the period beginning effective date and lasting through permit expiration, the permittee is authorized to discharge **non-contact cooling waters** from #002. The discharge shall contain only non-contact cooling waters to which nothing has been added but heat. Such discharges shall be limited and monitored by the permittee as specified below⁽¹⁾:

OUTFALL #002

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]	0.46 MGD [03]	0.50 MGD [03]	---	---	1/Month [01/30]	Calculate [CA]
Temperature – Effluent [00011]	--	---	85 °F [15]	100 °F [15]	1/Day [01/01]	Grab [GR]
pH [00400]	---	---	---	6.0 – 8.5 S.U [12]	---	---
Total Residual Chlorine ⁽²⁾ through October 31, 2009 [50060]	---	---	---	Report	1/Quarter [01/90]	Grab [GR]
Total Residual Chlorine ^(2,3) Nov. 1, 2009 – Nov. 31, 2010 [50060]	---	---	---	1.0 mg/L	1/Quarter [01/90]	Grab [GR]
Total Residual Chlorine ⁽²⁾ effective December 1, 2010 [50060]	---	---	---	1.0 mg/L	1/Year [01/YR]	Grab [GR]

SPECIAL CONDITIONS

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

Footnotes:

Sampling Locations: Samples taken for compliance with this permit shall be collected at:

Outfall #002 – After the city water and retort waters combine.

Any change in sampling location(s) must be reviewed and approved by the Department in writing.

1. Sampling and analysis must be conducted in accordance with: a) EPA-approved methods in Title 40, Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, c) as otherwise specified by the Department. Laboratories that are subcontracted to analyze the facility's samples are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000).

All analytical test results shall be reported to the Department including results which are detected below the respective reporting limits (RL's) specified by the Department or as specified by other approved test methods. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the detection limit achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL is not acceptable and will be rejected by the Department

2. The Department's reporting level (RL) for Total Residual Chlorine is 50 ug/L (0.05 mg/L). All TRC test results shall be reported to the Department, including results which are detected below the RL of 0.05 mg/L.
3. Effective upon completion of Retort Discharge Project timeline, November 1, 2009.

B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time which would impair the usages designated by the classification of the receiving waters.
2. The effluent shall not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated by the classification of the receiving waters.

SPECIAL CONDITIONS

B. NARRATIVE EFFLUENT LIMITATIONS (cont'd)

3. The discharge shall not cause visible discoloration or turbidity in the receiving waters which would impair the usages designated by the classification of the receiving waters.
4. Notwithstanding specific conditions of this permit, the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

C. UNAUTHORIZED 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 February 4, 2009, and 2) Only from Outfall #002. Discharges of waste water from any other point source(s) are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5) (Bypass) of this permit.

D. NOTIFICATION REQUIREMENT

In accordance with Standard Condition D (*Reporting Requirements*), the permittee shall notify the Department of any substantial change in the characteristics (quality) and/or volume (quantity) of pollutants in the waste water being discharged and any anticipated impact caused by the change in the quality or quantity of the waste water being discharged.

E. STORM WATER POLLUTION PREVENTION PLAN (SWPPP)

HAC submitted a Storm Water Pollution Prevention Plan (SWPPP) to the Department on May 4, 2009. As the site or any operations conducted change or are expected to change materially or substantially, HAC shall modify its SWPPP as necessary to include such changes and notify the Department and the EPA within 90 days of such modifications to the SWPPP. HAC shall maintain a copy of the SWPPP and any subsequent revisions and shall make the Plan available to any Department or EPA representative upon request.

The SWPPP requirements are intended to facilitate a process whereby HAC thoroughly evaluates potential pollution sources at the facility and selects and implements appropriate measures to prevent or control the discharge of pollutants in storm water runoff. The process involves the following four steps: (1) formation of a team of qualified facility personnel who will be responsible for preparing the SWPPP and assisting in its implementation; (2) assessment of potential storm water pollution sources; (3) selection and implementation of appropriate management practices and controls; and (4) periodic evaluation of the effectiveness of the plan to prevent storm water contamination and comply with the terms and conditions of the permit.

H. MONITORING AND REPORTING

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

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

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

I. REOPENING OF PERMIT FOR MODIFICATIONS

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

J. SEVERABILITY

In the event that any provision(s), or part thereof, of this permit is declared to be unlawful by a reviewing court, the remainder of the permit 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
MAINE WASTE DISCHARGE LICENSE**

Draft FACT SHEET

Date: **July 31, 2009**

PERMIT NUMBER: **ME0001741**
LICENSE NUMBER: **W000980-5R-F-R**

NAME AND ADDRESS OF APPLICANT:

**Heritage Acquisition Corporation
One Bean Pot Circle
Portland, Maine 04103**

COUNTY: **Cumberland County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**One Bean Pot Circle
Portland, Maine 04103**

RECEIVING WATER/CLASSIFICATION: **Tidewaters of Portland/Class SC**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Peter Francine, Plant Engineer
(207) 772-8341
peterf@BGFOODS.com**

1. APPLICATION SUMMARY

The Heritage Acquisition Corporation (“HAC” hereinafter) has applied for renewal of combination Department Waste Discharge License # W000980-5R-E-R/Maine Discharge Elimination System permit #ME0001741 (“permit” hereinafter), which was issued on February 6, 2004, and is due to expire on February 6, 2009. The permit approved the discharge of a monthly average flow of up to 479,000 gallons per day of non-contact cooling water from two separate outfalls from a food processing facility (producing canned baked beans and bread) to the tidewaters of Portland, Class SC, in Portland, Maine. See **Attachment A** of this Fact Sheet for a site location map and **Attachment B** of this Fact Sheet for a facility schematic.

2. PERMIT SUMMARY

- a. Terms and Conditions - This permitting action is carrying forward the terms and conditions of the previous permitting action with the following exceptions:
1. Outfall #001 is no longer a designated compliance outfall.
 2. The permitted monthly average discharge flow is being revised from 479,000 gallons per day to 460,000 gallons per day.
 3. The permittee is required to monitor Outfall #002 for total residual chlorine.
 4. The permittee is required to develop a Storm Water Pollution Prevention Plan.
- b. History - The most current regulatory actions include the following:

August 19, 1987 - The Department issued WDL #W000980-57-A-R for five-year term.

August 31, 1987 - The EPA issued NPDES permit #ME0001741 for a five-year term.

December 17, 1993 - The EPA issued a letter to the Burnham & Morrill Company (former owner) indicating that the application submitted on August 21, 1993 for the renewal of the NPDES permit was complete for processing. The application has not been acted on as of the date of this permitting action.

February 14, 1994 - The Department issued License by Rule Order #W000980-57-B-R for a five-year term.

December 7, 1998 - The Department issued WDL #W000980-5R-C-R for a five-year term.

April 14, 1999 - The Department issued WDL #W000980-5R-D-T that transferred the WDL from the Burnham and Morrill Company to the HAC.

January 12, 2001 - The Department received authorization from EPA to administer the NPDES Program in Maine.

February 6, 2004 - The Department issued combination WDL#W000908-5R-E-R /MEPDES #ME0001741 to HAC for a five-year term.

February 4, 2009 - The HAC submitted a timely application to the Department for the renewal of combination WDL/ MEPDES permit # W000980-5R-E-R/ ME0001741.

June 11, 2009 - The HAC submitted a timetable for the HAC Retort Discharge Project which will relocate Outfall #002.

2. PERMIT SUMMARY

- c. Source Description - The HAC facility in Portland is a food processing plant producing canned baked beans, brown bread and other food products. There are two discharges from the facility. The discharge from Outfall #001 previously consisted of storm water and water from water-cooled compressors. Subsequent to the issuance of the previous MEPDES permit, HAC modified the compressor overflow drain system to discharge directly to the City of Portland's wastewater treatment facility. On January 20, 2009, HAC conducted dye testing to confirm that, with the exception of stormwater and the discharge from Outfall #002, HAC has no other discharges into Casco Bay.

Based on previous and recent inspections of the HAC facility, Department personnel determined HAC raw materials had the potential to contaminate storm water flows from the facility. This permitting action is requiring HAC to develop and maintain a Storm Water Pollution Prevention Plan in order to address the ongoing issues related to the storage and handling of raw materials.

In its *Application for Renewal of Maine Waste Discharge License #W000908-5R-C-R*, HAC requested Department approval for the removal of Outfall #001 as a regulated outfall at this location. Given the removal of cooling water from Outfall #001 and the requirement that HAC must implement a Stormwater Pollution Prevention Plan, the Department is granting removal of Outfall #001 as a regulated outfall.

Outfall #002 intermittently discharges up to a daily maximum of 500,000 gpd of non-contact cooling water associated with cooling production retort (sterilization) units. Sanitary waste water and industrial waste water generated at the facility is conveyed to the City of Portland's waste water treatment facility and is subject to the City of Portland's requirements under the Industrial Pretreatment Program.

HAC is in the process of relocating Outfall #002 from its current location west of the existing building to south of the existing building's concrete delivery dock. The anticipated completion date of this relocation project is October 31, 2009.

- d. Waste Water Treatment – There is no formal treatment of the cooling water prior to discharge to the tidewaters. HAC adds city water to the cooling water as needed in order to control the temperature of the discharge.

3. CONDITIONS OF PERMITS

Maine law, 38 M.R.S.A. Section 414-A, requires that the effluent limitations prescribed for discharges including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S.A., Section 420 and Department rule 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, require the regulation of toxic substances not to exceed levels set forth in Department rule 06-096 CMR Chapter 584,

3. CONDITIONS OF PERMITS (cont'd)

Surface Water Quality Criteria for Toxic Pollutants, 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

Maine law, 38 M.R.S.A., §469(1)(E)(2) states that at the point of discharge, the tidewaters in Portland are classified as Class SC waters. Maine law, 38 M.R.S.A., §465-A(3) contains the classification standards for Class SC waters.

The most relevant Department regulation associated with regulating the discharges from the HAC facility is Department rule Chapter 582, *Regulations Relating to Temperature*. For discharges to marine waters the regulation states that, “no discharge of pollutants shall cause the monthly mean of the daily maximum ambient temperatures in any tidal body of water, as measured outside the mixing zone, to be raised more than 4 degrees Fahrenheit, nor more than 1.5 degrees Fahrenheit from June 1 to September 30. In no event shall any discharge cause the temperature of any tidal waters to exceed 85 degrees Fahrenheit at any point outside a mixing zone established by the Board.”

5. RECEIVING WATER QUALITY CONDITIONS

The 2008 *Maine Integrated Water Quality Report* published by the Department pursuant to Section 305(b) of the Federal Water Pollution Control Act indicates the Portland-Falmouth Maine Department of Marine Resources (MeDMR) Area #14, Waterbody ID #804-1, Class SB/SC, is listed in the table entitled, *Category 5-B-1, Estuarine and Marine Waters Impaired Only by Bacteria (TMDL Required)*. The TMDL in the case of MeDMR Area #14 is the continued implementation of the City of Portland’s and the Portland Water District’s CSO Master Plans.

Currently, MeDMR Area #14 is closed to the harvesting of shellfish. See **Attachment C** of this Fact Sheet for a map of Area #14. This segment is listed as impaired due to the presence of four sewage treatment plant outfalls, stormwater, elevated fecal coliform bacteria and nonpoint source pollution. The MeDMR closed or restricted Area #14 on August 27, 2008, based on ambient water quality data that at that time indicated the area did not meet or marginally met the standards in the National Shellfish Sanitation Program. In addition, MeDMR closes areas by default in the vicinity of outfall pipes associated with treated sanitary waste water discharges in the event of a failure of the disinfection system. Therefore, Area #14 remains closed as of the date of this permitting action.

Because the sanitary waste water generated at the HAC facility is conveyed to a publicly owned treatment works and because there are no pollutants or chemicals added to the cooling water effluent except for heat, the Department has no information at this time that the discharge from HAC is causing or contributing to the impairment status of the receiving waterbody.

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

The 2008 305(b) report also lists all estuarine and marine waters in a category entitled, *Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants*. The waters are listed as partially supporting fishing (“shellfish consumption”) due to elevated levels of PCBs and other persistent, bioaccumulating substances in lobster tomalley.

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

OUTFALL #002 - Discharges of city water associated with cooling production retort (sterilization) units.

- a. Flow – This permitting action is carrying forward the daily maximum flow limitation of 0.50 MGD from the previous permitting action. This permitting action is revising the monthly average flow limitation from 0.479 MGD to 0.46 MGD to reflect the removal of Outfall #001.

A review of the DMR’s submitted by the permittee for the period of December 2004 – December 2008 (n = 43) indicate the following:

Flow

Value	Limit (MGD)	Range (MGD)	Mean (MGD)
Monthly Average	0.46	0.35 – 0.40	0.36
Daily Maximum	0.50	0.38 – 0.42	0.40

- b. Temperature – This permitting action is carrying forward the monthly average and daily maximum temperature limitations of 85°F and 100°F, respectively, from the previous permitting action.

A review of the DMR’s submitted by the permittee for the period of December 2004 – December 2008 (n = 43) indicate the following:

Temperature

Value	Limit (Deg. F)	Range (Deg. F)	Mean (Deg. F)
Monthly Average	85	63 – 84	74
Daily Maximum	100	73 – 121	90

The permittee regulates the discharge temperature through the addition of city water to a mixing tank prior to discharge. This system is limited in its ability to control the discharge temperature and the 95°F limit in past licensing actions was difficult to meet when cooling water and multiple retort units were released simultaneously. During the previous permitting action, the Department considered the permittee’s request to increase the daily maximum temperature limitation from 95°F to 100°F. In granting the request, the Department determined that the 5°F increase in the daily maximum temperature limitation was insignificant in its impact to the receiving waters.

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

- c. **pH** – The pH range limit of 6.0 - 8.5 standard units (S.U.) in the previous license is being carried forward in this permitting action and is considered best practicable treatment (BPT) by the Department.
- d. **Total residual chlorine (TRC)**: The previous permitting action did not establish TRC limitations for HAC. During this permit renewal process, the Department established TRC limitations for HAC as similar facilities discharging to the waters of Casco Bay are required to test for TRC.

Based upon a site visit in Spring 2009, the Department determined that there was insufficient dilution at low tide to assimilate HAC's effluent TRC concentration enough to comply with the acute ambient water quality criteria (AWQC) for TRC. During the Spring of 2009, HAC conducted a TRC Study and the effluent TRC results ranged from 0.11 mg/L – 0.88 mg/L, as the water utilized for cooling at the HAC facility is obtained from Portland Water District's potable water supply. After discussions with HAC it was determined that relocation of Outfall #002 was feasible with the goal being compliance with the acute AWQC for TRC. The permittee has proposed to relocate Outfall #002 so that it discharges off an existing pier and is submerged under all tidal conditions.

Department Regulation Chapter 530, *Surface Water Toxics Control Program*, §D(3)(b) states that 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 or CORMIX. With a monthly average permitted flow of 0.46 MGD and the location and configuration of the proposed outfall structure, the Department has established dilution factors as follow:

Acute = 77:1 Chronic = 173:1 Harmonic mean ⁽¹⁾ = 519:1

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.

The Department limits the discharge of total residual chlorine to ensure attainment of the in-stream water quality criteria for chlorine and that BPT technology is utilized to abate the discharge of chlorine. Permits issued by this Department impose the more stringent of

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

the calculated water quality based or BPT based limits. End-of-pipe water quality based thresholds for TRC may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A&C Dil. Factors	Calculated	
			Acute Limit	Chronic Limit
13 ug/L	7.5 ug/L	77:1, 173:1	1.0 mg/L	1.30 mg/L

Example calculation: Acute $(0.013 \text{ mg/L})(77) = 1.0 \text{ mg/L}$

The Department establishes a daily maximum best practicable treatment (BPT) limitation of 1.0 mg/L for facilities that discharge 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 unless the water quality based thresholds calculated are lower than the BPT limits. The permittee does not need to dechlorinate the effluent prior to discharge in order to consistently achieve compliance with the calculated acute water quality-based threshold. Therefore, this permitting action is establishing a daily maximum water quality based concentration limit of 1.0 mg/L that is applicable on a year-round basis as chlorine is toxic year-round and not seasonally.

Maine law 38 M.R.S.A. §414(2) *Schedules of Compliance*, authorizes the Department to establish schedules of compliance for water quality based limitations within the terms and conditions of a license. The law states that the schedule(s) may include interim and final dates for attainment of specific standards necessary to carry out the purposes of the law and must be as short as possible based on consideration of the technological, economic and environmental impact of the steps necessary to attain those standards.

The permittee has submitted a scope of work and schedule to relocate the outfall pipe such that compliance with AWQC will be achieved on or before November 1, 2009. The Department has reviewed the schedule and deemed it as short as possible based on consideration of the technological, economic and environmental impact of the steps necessary to attain those standards. In the interim, the permittee shall analyze and report TRC values on the monthly DMR.

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has made a determination based on a best professional judgment that the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the waterbody to meet standards for Class SC classification.

8. PUBLIC COMMENTS

Public notice of this application was made in the *Portland Press Herald* on or about 1/23/09. The Department receives public comments on an application until the date a final agency action is taken on that 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.

9. DEPARTMENT CONTACTS

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

Phyllis Rand
Division of Water Quality
Bureau of Land and Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone: (207) 287-7658
phyllis.a.rand@maine.gov

10. RESPONSE TO COMMENTS

During the period of June 17, 2009, through July 17, 2009, the Department solicited comments on the proposed draft Maine Pollutant Discharge Elimination System Permit to be issued to Heritage Acquisition Corporation for the proposed discharge. The Department received one significant comment and several minor comments on the draft permit from Heritage Acquisition Corporation in a letter to the Department dated July 8, 2009. The significant comment and Department response is as follows:

Comment: *Based on the TRC [Total Residual Chlorine] test results obtained by B&M during April 2009 and on information supplied by the Portland Water District, B&M believes that it is very unlikely that the TRC concentrations in its cooling water discharge will reach or exceed 1.0 mg/L. Portland Water District personnel have indicated that the concentrations measured by B&M this past April likely represent some of the highest levels that would be anticipated in the water supply throughout the year. Lower levels are generally expected during other times of the year due to warmer water temperatures and the corresponding effect on TRC volatility. Therefore, B&M respectfully requests that the Department consider reducing the required monitoring frequency to once per calendar year following successful completion of one round of quarterly sampling. This approach will provide a means for assessing compliance on an ongoing basis, while minimizing the financial impact associated with monitoring.*

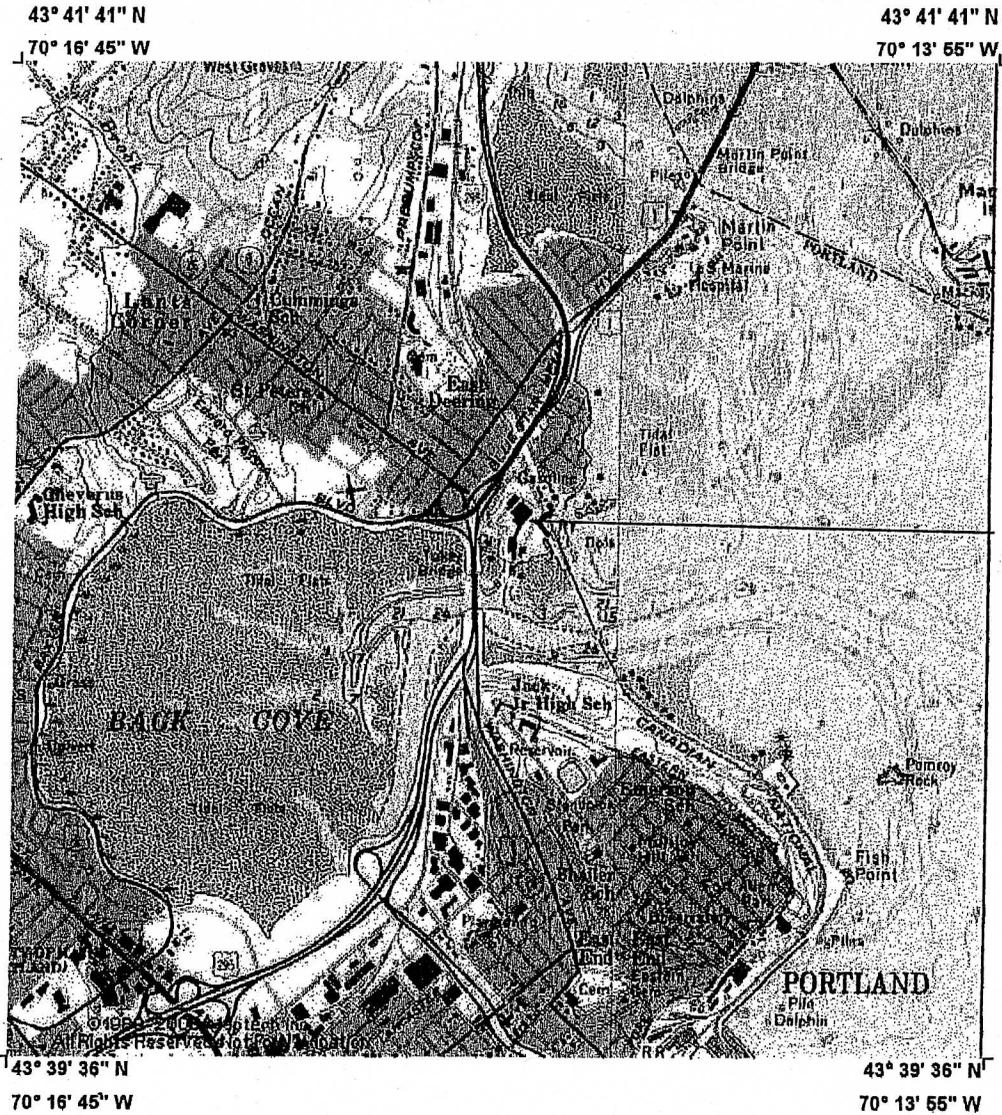
Department Response: The Department concurs with the permittee and the minimum monitoring requirements for total residual chlorine have been adjusted accordingly.

ATTACHMENT A

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ATTACHMENT B

ATTACHMENT C



Maine Department of Marine Resources

Pollution Area No. 14



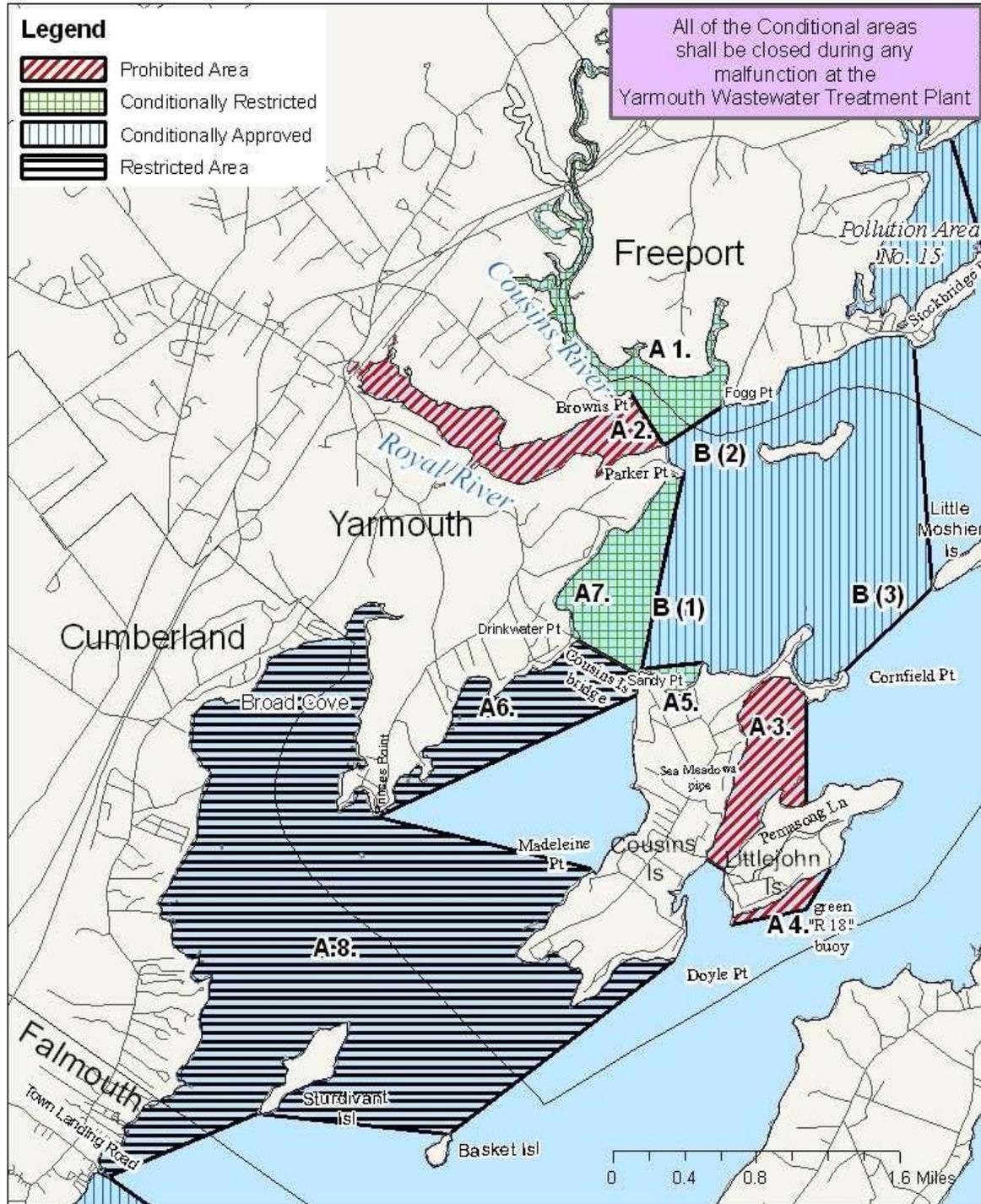
Royal River, Cousins River, and vicinity (Falmouth to Freeport)

12.31.08

Legend

-  Prohibited Area
-  Conditionally Restricted
-  Conditionally Approved
-  Restricted Area

All of the Conditional areas shall be closed during any malfunction at the Yarmouth Wastewater Treatment Plant



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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STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

- 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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STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

- (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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STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
