



STATE OF MAINE
Department of Environmental Protection

JOHN ELIAS BALDACCI
GOVERNOR

David P. Littell
COMMISSIONER

April 14, 2009

Mr. Mark Phillips
Dow Highway Properties
100 Main Street
Suite 500
Dover, NH 03820

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit ME0037052
Maine Waste Discharge License (WDL) Application #W000880-5C-C-R
Proposed Permit – Dow Highway Properties

Dear Mr. Phillips:

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,

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

Enclosure

cc: Bill Johnson, DEP/CMRO Doug Koopman, USEPA
Sandy Mojica, 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
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-6477 FAX: (207) 764-1507



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

DEPARTMENT ORDER

IN THE MATTER OF

DOW HIGHWAY PROPERTIES)	MAINE POLLUTANT DISCHARGE
KITTERY, YORK COUNTY, MAINE)	ELIMINATION SYSTEM PERMIT
OVERBOARD DISCHARGE)	AND
ME0037052)	WASTE DISCHARGE LICENSE
W000880-5C-C-R)	RENEWAL
APPROVAL)	

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 (“Department” hereinafter) has considered the application of DOW HIGHWAY PROPERTIES (“permittee,” hereinafter), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

The permittee submitted an application to the Department to renew Waste Discharge License (WDL) #W000880-66-B-R which was issued by the Department to Ronald Smith dba Johnson’s Mobile Home Park on November 30, 1994 and expired on November 30, 2004. The WDL authorized the year-round discharge of up to 5,000 gallons per day (GPD) of secondary treated sanitary waste water to an unnamed tributary of Spruce Creek, Class B, in Kittery, Maine. Previous permitting actions listed the unnamed tributary as Class SB; however, based upon information from the permittee and the physical location of the discharge, the Department has determined the discharge is to fresh water and, by default, the unnamed tributary is Class B. This two-parcel property was transferred from Ronald Smith to the Lariat Corporation on April 23, 1993. The Lariat Corporation transferred the two-parcel property to Dow Highway Properties on July 24, 2006.

PERMIT SUMMARY

- a. Regulatory - On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (“EPA”) to administer the NPDES permit program in Maine, excluding areas of special interest to Maine Indian Tribes. From that point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) Permit Program and permit #ME0037052 will be utilized as the primary reference number for the Dow Highway Properties facility.

PERMIT SUMMARY (cont'd)

b. Terms and conditions

This permitting action is similar to the 11/30/04 licensing action in that it is:

1. Carrying forward the monthly average and daily maximum technology-based concentration limitations for biochemical oxygen demand (BOD₅) and total suspended solids (TSS);
2. Carrying forward the monthly average flow limitation of 5,000 gallons per day.

This permitting action is different from the 11/30/04 permitting action in that it is:

3. Correcting the classification of Spruce Creek as a Class B surface water body rather than as Class SB;
4. Removing monitoring requirements for fecal coliform bacteria based on the classification of Spruce Creek as a Class B water body;
5. Establishing seasonal water quality-based monitoring requirements for *E. coli* bacteria based on the classification of Spruce Creek as a Class B water body;
6. Establishing a more stringent daily maximum water quality-based limit for total residual chlorine;
7. Establishing weekly average technology-based concentration limits for BOD₅ and TSS;
8. Establishing monthly average, weekly average and daily maximum technology-based mass limitations for BOD₅ and TSS;
9. Establishing a requirement for at least 85% removal of BOD₅ and TSS on a monthly basis;
10. Revising the daily maximum technology-based settleable solids concentration limitation from 0.1 mL/L to 0.3 mL/L;
11. Establishing a requirement for the permittee to develop and keep current, an Operation and Maintenance (O&M) Plan for the waste water treatment system and associated structures;
12. Revising the pH range limitation from 6.0 – 8.5 standard units (SU) to 6.0 – 9.0 SU;
13. Establishing a requirement for the permittee to have a site evaluation performed by a licensed site evaluator with experience in designing systems for the replacement of overboard discharge systems prior the expiration date of the permit;
14. Increasing the BOD₅ and TSS monitoring frequency from 1/Quarter to 1/Month.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated 4/14/09, 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 M.R.S.A. §464(4)(F), will be met, in that:
 - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - (b) Where high quality waters of the State constitute an outstanding 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 or contribute to the failure of the water body to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
 - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in Maine law, 38 M.R.S.A., §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 waste water disposal system could not be installed in compliance with the Maine Subsurface Waste Water 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 DOW HIGHWAY PROPERTIES to discharge a daily maximum flow of up to 5,000 GALLONS PER DAY of secondary treated sanitary waste water to an unnamed tributary of SPRUCE CREEK, Class B, in Kittery, 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 expires 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 2, 2009.

Date of application acceptance: February 9, 2009.

This Order prepared by Phyllis Arnold Rand, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- Beginning the effective date of this permit, the permittee is authorized to discharge secondary treated sanitary waste water from **Outfall #001** to an unnamed tributary of Spruce Creek, Class B. Such discharges shall be limited and monitored by the permittee as specified below⁽¹⁾:

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]	5,000 GPD [07]	---	Report (GPD) [07]	---	---	---	Monthly [01/30]	Measured [MS]
BOD₅ [00310]	1.2 lbs/day [26]	1.9 lbs/day [26]	2.1 lbs/day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Month [01/30]	Grab [GR]
BOD₅ Percent Removal ⁽²⁾ [81010]	---	---	---	85% [23]	---	---	---	---
TSS [00530]	1.2 lbs/day [26]	1.9 lbs/day [26]	2.1 lbs/day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Month [01/30]	Grab [GR]
TSS Percent Removal ⁽²⁾ [81011]	---	---	---	85% [23]	---	---	---	---
Settleable Solids [00545]	---	---	---	---	---	0.3 mL/L [25]	---	---
<i>E. coli</i> Bacteria ⁽³⁾ (May 15-September 30) [31633]	---	---	---	64/100 mL ⁽⁴⁾ [13]	---	427/100 mL [13]	1/Month [01/30]	Grab [GR]
Total Residual Chlorine ⁽⁵⁾ [50060]	---	---	---	---	---	0.026 mg/L [19]	2/Week [02/07]	Grab [GR]
pH [00400]	---	---	---	---	---	6.0 – 9.0 SU [12]	---	---

ME0037052
W000880-5C-C-R

PERMIT

Page 6 of 10

Footnotes See Page 6 of this permit for applicable footnotes.

SPECIAL CONDITIONS

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

Footnotes

1. **Sampling** – Sampling shall be conducted after the last treatment process such that samples are representative of what is actually being discharged to the receiving waters. Sampling shall be conducted in accordance with federally approved methods for sampling, handling and preservation. Samples shall be analyzed by a laboratory certified by the State of Maine's Department of Human Services and in accordance with methods approved in Title 40, *Code of Federal Regulations* (CFR) Part 136. Samples that are sent to a waste water treatment plant licensed pursuant to *Waste Discharge Licenses*, 38 M.R.S.A. § 413, are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (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. For mass, if the analytical result is reported as <Y or if a detectable result is less than a RL, report as <X lbs/day, where X is the parameter-specific limitation established in the permit.

2. **Percent Removal** – The treatment facility shall maintain a minimum of 85 percent removal of both BOD₅ 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.
3. **Bacteria Limits** – *E. coli* bacteria limits and monitoring requirements are seasonal and apply between May 15th and September 30th of each year. The Department reserves the right to impose bacteria limits on a year-round basis to protect the health, safety, and welfare of the public.
4. **Bacteria Reporting** – The monthly average *E. coli* bacteria limitation is a **geometric mean** limitation and sample results shall be reported as such.
5. **Total Residual Chlorine** – Compliance will be based on EPA's minimum level (ML) of detection of 0.01 mg/L. All analytical test results shall be reported to the Department including results which are detected below the ML of 0.01 mg/L.

SPECIAL CONDITIONS

B. ANNUAL DISCHARGE FEES

Pursuant to Maine law, 38 M.R.S.A. §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 permit is sufficient grounds for accruing interest charges, penalties or revocation of the permit.

C. 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.
3. The discharges 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.

D. DISINFECTION

If chlorination is used as the means of disinfection, an approved chlorine contact tank providing the proper detention time consistent with good engineering practice must be utilized followed by a dechlorination system if the imposed total residual chlorine (TRC) limit cannot be achieved by dissipation in the detention tank. The total residual chlorine in the effluent shall at no time cause any demonstrable harm to aquatic life in the receiving waters. The dose of chlorine applied shall provide a TRC concentration that will effectively reduce *E. coli* bacteria levels to or below those specified in Special Condition A, “*Effluent Limitation and Monitoring Requirements*,” of this permit.

E. TREATMENT PLANT OPERATOR

The person who has the management responsibility over the wastewater treatment facility must hold a **Grade I** certificate, or equivalent as allowed pursuant to *Sewerage Treatment Operators*, Title 32 M.R.S.A., Sections 4171-4182 and *Regulations for Wastewater Operator Certification*, 06-096 CMR 531 (effective May 8, 2006). All proposed contracts for facility operation by any person must be approved by the Department within two weeks of the contractor being retained by the licensee.

SPECIAL CONDITIONS

F. 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 February 9, 2009; 2) the terms and conditions of this permit; and 3) only from Outfall #001. Discharges of waste water from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5)(*Bypass*) of this permit.

G. NOTIFICATION REQUIREMENT

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

1. Any substantial change or proposed 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. For the purposes of this section, notice regarding substantial change shall include information on:
 - (a) the quality and quantity of wastewater introduced to the wastewater collection and treatment system; and
 - (b) any anticipated impact caused by the change in the quantity or quality of the wastewater to be discharged from the treatment system.

H. SITE EVALUATION FOR TRANSFERRED AND RENEWED PERMITS

On or before January 1, 2013, or prior to permit transfer or transfer of the property occupying the permitted overboard discharge system, a site evaluation must be performed by a licensed site evaluator with experience in designing systems for the replacement of overboard discharge systems.

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 Waste Water Disposal Rules administered by the Maine Department of Health and Human Services, Division of Environmental Health, can be installed as a replacement system for the overboard discharge.

The Department may not grant approval for a **permit renewal** if the site evaluation concludes that a non-discharging wastewater disposal system can be installed as a replacement system for the overboard discharge and the Department has offered the permittee funding for the renewal of the discharge.

SPECIAL CONDITIONS

I. OPERATION & MAINTENANCE (O&M) PLAN

This facility shall have a current written comprehensive Operation & Maintenance (O&M) Plan. The plan shall provide a systematic approach by which 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.

By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades, the permittee shall 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 shall be kept on-site at all times and made available to Department and EPA personnel upon request.

Within 90 days of completion of new and/or substantial upgrades of the waste water treatment facility, the permittee shall submit an updated O&M Plan to their Department inspector for review and comment.

J. SEPTIC TANKS

1. Septic tanks and other treatment tanks shall be regularly inspected (at least once per calendar year) and maintained to ensure that they are providing best practicable treatment. The permittee shall maintain logs of inspections/maintenance that records the date, notes on observations, repairs conducted etc. The logs shall be maintained on site at all times and made available to Department personnel upon request.
2. Tank contents should be removed whenever the sludge and scum occupies one-third of the tank's liquid capacity or whenever levels approach maximum design capacity. Following pumping, the tanks shall be checked for damage at key joints and the inlet and outlet baffles, and repaired promptly if damaged. The permittee shall keep a pumping log including the date of pumping, quantity of material removed, name and number of licensed contractor, pumping frequency and other relevant observations.

K. 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 or ambient water quality monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

SPECIAL CONDITIONS

L. 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 **postmarked on or before 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 on or before 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 to the Department's compliance inspector (unless otherwise specified) at the following address:

Overboard Discharge Inspector
Department of Environmental Protection
Bureau of Land and Water Quality
17 State House Station
Augusta, Maine 04333-0017

M. 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

April 14, 2009

MEPDES PERMIT: **ME0037052**
WASTE DISCHARGE LICENSE: **W000880-5C-C-R**

NAME AND ADDRESS OF APPLICANT:

**DOW HIGHWAY PROPERTIES
100 Main Street
Suite 500
Dover, New Hampshire 03820**

COUNTY: **York County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**Dow Highway Properties
4 Dana Avenue
Kittery, Maine**

RECEIVING WATER / CLASSIFICATION: **unnamed tributary to Spruce Creek/Class B**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mark Phillips
(603) 433-1566
greatbaynh@comcast.net**

1. APPLICATION SUMMARY

- a. Application: The permittee submitted an application to the Department to renew Waste Discharge License (WDL) #W000880-66-B-R which was issued by the Department to Ronald Smith dba Johnson's Mobile Home Park on November 30, 1994 and expired on November 30, 2004. The WDL authorized the year-round discharge of up to 5,000 gallons per day (gpd) of secondary treated sanitary waste water to an unnamed tributary of Spruce Creek, Class B, in Kittery, Maine. Previous permitting actions listed the unnamed tributary as Class SB; however, based upon information from the permittee and the physical location of the discharge, the Department has determined the discharge is to fresh water and, by default, the unnamed tributary is Class B. This two-parcel property was transferred from Ronald Smith to the Lariat Corporation on April 23, 1993. The Lariat Corporation transferred the two-parcel property to Dow Highway Properties on July 24, 2006.

1. APPLICATION SUMMARY (cont'd)

- b. Source description: Waste water is generated at the year-round 35-unit mobile home park situated on 5 acres. A leased barn attached to the property has ½ bath facilities. The property has not been significantly renovated, expanded or rebuilt since June 1987.
- c. Waste water treatment: All waste water flows by gravity to a series of septic tanks. Liquid from the septic tanks is pumped to a distribution box with a valve that enables the operator to switch between two sand filters. The filtered waste water flows from the bottoms of the sand filters to the chlorinator station for disinfection. The chlorinated waste water then flows into a 2-inch diameter outfall pipe located beneath the septic tanks. The permittee contracts with a local septage hauler for septic tank pumping and maintenance. The permittee uses a Maine-certified laboratory for the sampling and analysis of compliance samples.
- 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 waste water treatment system prior to license renewal and install a replacement system within 180 days if grant money is offered by the Department.

In a letter dated November 20, 2008, a qualified LSE/PE determined that Dow Highway Properties' OBD system could not be replaced with a subsurface alternative due to the lack of room to construct disposal fields (approximately 6,000 square feet of bed required), mapped soil types and a predominance of bedrock; therefore, this permit is being renewed for another five-year term.

2. PERMIT SUMMARY

- a. Regulatory - On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency ("EPA") to administer the NPDES permit program in Maine, excluding areas of special interest to Maine Indian Tribes. From that point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) Permit Program and permit #ME0037052 will be utilized as the primary reference number for the Dow Highway Properties facility.
- b. Terms and conditions

This permitting action is similar to the 11/30/04 licensing action in that it is:

1. Carrying forward the monthly average and daily maximum technology-based concentration limitations for biochemical oxygen demand (BOD₅) and total suspended solids (TSS);
2. Carrying forward the monthly average flow limitation of 5,000 gallons per day.

2. PERMIT SUMMARY (cont'd)

This permitting action is different from the 11/30/04 permitting action in that it is:

3. Correcting the classification of Spruce Creek as a Class B surface water body rather than as Class SB;
4. Removing monitoring requirements for fecal coliform bacteria based on the classification of Spruce Creek as a Class B water body;
5. Establishing seasonal water quality-based monitoring requirements for *E. coli* bacteria based on the classification of Spruce Creek as a Class B water body;
6. Establishing a more stringent daily maximum water quality-based limit for total residual chlorine;
7. Establishing weekly average technology-based concentration limits for BOD₅ and TSS;
8. Establishing monthly average, weekly average and daily maximum technology-based mass limitations for BOD₅ and TSS;
9. Establishing a requirement for at least 85% removal of BOD₅ and TSS on a monthly basis;
10. Revising the daily maximum technology-based settleable solids concentration limitation from 0.1 mL/L to 0.3 mL/L;
11. Establishing a requirement for the permittee to develop and keep current, an Operation and Maintenance (O&M) Plan for the waste water treatment system and associated structures;
12. Modifying the pH range limitation from 6.0 – 8.5 standard units (SU) to 6.0 – 9.0 SU;
13. Establishing a requirement for the permittee to have a site evaluation performed by a licensed site evaluator with experience in designing systems for the replacement of overboard discharge systems prior the expiration date of the permit;
14. Increasing the BOD₅ and TSS monitoring frequency from 1/Quarter to 1/Month.

3. CONDITIONS OF PERMIT

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, *Surface Water Quality Criteria for*

3. CONDITIONS OF PERMIT (cont'd)

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. §468 classifies the unnamed tributary of Spruce Creek at the point of discharge as a Class B waterbody. Maine law, 38 M.R.S.A. §465 (3) contains the standards for Class B waterbodies. Maine law 38 M.R.S.A. §464(4)(A)(1) states “*the Department may not issue a waste discharge license for the direct discharge of pollutants to waters having a drainage area of less than 10 square miles, except that discharges into these waters that were licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist.*” Given that the Dow Highway Properties drainage area is 0.6 square miles and no practical alternatives exist, and the facility was a licensed overboard discharge facility prior to January 1, 1986, the Department has determined that Dow Highway Properties qualifies for this exemption.

5. RECEIVING WATER QUALITY CONDITIONS

The permitted outfall is discharged to an unnamed tributary of Spruce Creek, which flows into Portsmouth Harbor. The 2008 Integrated Water Quality Monitoring and Assessment Report published by the Department pursuant to Section 305(b) of the Federal Water Pollution Control Act lists the waters of Portsmouth Harbor and vicinity (Kittery) in *Category 5-B-1: Estuarine and Marine Waters Impaired only by Bacteria (TMDL Required)*. Currently, the Maine Department of Marine Resources (“Maine DMR”) shellfish harvesting Area 2-A, [Portsmouth Harbor and vicinity (Kittery) and Isles of Shoals], is closed to the harvesting of shellfish. The Maine DMR closed or restricted Area 2-A on August 28, 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, the Maine DMR 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 2-A remains closed as of the date of this permitting action. See **Attachment A** of this Fact Sheet for a map of Area 2-A.

Compliance with the year-round fecal coliform bacteria limits in this permitting action will ensure that the discharge from Dow Highway Properties will not cause or contribute to the shellfish harvesting closure.

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 PCB’s and other persistent, bioaccumulating substances in lobster tomalley.

Department rule Chapter 519, *Interim Effluent Limitations and Controls for the Discharge of Mercury*, establishes controls on the discharge of mercury to the surface waters of the State

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

through interim effluent limits and implementation of pollution prevention plans. However, Section 1(A)(1) of the Chapter 519 rule states in part:

“This rule applies to all persons licensed or permitted pursuant to 38 MRSA §413 to discharge pollutants to the surface waters of the State except as described below. For the purposes of this rule, the term licensee also means permittee.

Categorical exclusions. This rule does not apply to the following categories of licensees: combined sewer overflows, snow dumps, pesticide applications, and over board discharges licensed pursuant to 38 MRSA §413.[emphasis added] Except, however, specific members of these categories may be required by the department to comply with this rule on a case by case basis...”

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 Rules, 10-144 CMR 241, 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 38 M.R.S.A § 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 waste water 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.A. §414-A, and *Maine's Water Classification Laws* 38 M.R.S.A. §§ 464 to 469.
- (7) The discharge receives best practicable treatment consistent with requirements in Section 9 of Department rule Chapter 596.

The discharge from Dow Highway Properties has met all the above criteria with the exception of 5(c) because it has a drainage area of 0.6 square miles. However, in a letter dated November 20, 2008, a qualified LSE/PE determined that Dow Highway Properties' OBD system could not be replaced with a subsurface alternative due to the lack of room to construct disposal fields. Therefore, the Department is approving of the renewal of the permittee's waste discharge license.

- b. Flow: Waste water flows are measured using two water meters located on either side of Dana Avenue. The meter readings are added together to determine flow totals. The previous licensing action established a monthly average flow limitation of 5,000 gallons per day (GPD) and a monthly measurement frequency, both of which are being carried forward in this permitting action.

Flow data information was inadvertently omitted from the monthly DMR's for the period February 2004 – February 2009.

- c. Dilution Factors - The Department established applicable dilution factors for the discharge in accordance with freshwater protocols established in Department Rule Chapter 530, *Surface Water Toxics Control Program*, October 2005. With a monthly average flow limit of 5,000 gpd and a 7Q10 of 0.029 cfs (18, 750 gpd), the dilution factors are as follow:

$$\text{Acute: } 1\text{Q}10 = 16,160 \text{ gpd}^{(1)} \Rightarrow \frac{16,160 \text{ gpd} + 5,000 \text{ gpd}}{5,000 \text{ gpd}} = 4:1$$

$$\text{Modified Acute: } = 4,040 \text{ gpd}^{(2)} \Rightarrow \frac{4,040 \text{ gpd} + 5,000 \text{ gpd}}{5,000 \text{ gpd}} = 2:1$$

$$\text{Chronic: } 7\text{Q}10 = 18,750 \text{ gpd}^{(3)} \Rightarrow \frac{18,750 \text{ gpd} + 5,000 \text{ gpd}}{5,000 \text{ gpd}} = 5:1$$

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

$$\text{Harmonic Mean:} = 56,250 \text{ gpd}^{(4)} \Rightarrow \frac{56,250 \text{ gpd} + 5000}{5,000 \text{ gpd}} = 12:1$$

Footnotes:

- (1) 85% of the 7Q10.
 - (2) Chapter 530 (4)(B)(1) states that analyses using numeric acute criteria for aquatic life must be based on 1/4 of the 1Q10 stream design flow to prevent substantial acute toxicity within any mixing zone. The 1Q10 is the lowest one-day flow over a ten-year recurrence interval. The regulation goes on to say that where it can be demonstrated that a discharge achieves rapid and complete mixing with the receiving water by way of an efficient diffuser or other effective method, analyses may use a greater proportion of the stream design, up to including all of it. Based on information provided by the permittee as to the configuration and location of the outfall pipe, the Department has made the determination that the discharge does not receive rapid and complete mixing with the receiving water; therefore, the default stream flow of 1/4 of the 1Q10 is applicable in acute statistical evaluations pursuant to Chapter 530.
 - (3) The 7Q10 was calculated by USGS equation using a watershed area of 0.6 mi².
 - (4) The harmonic mean dilution factor is approximated by multiplying the chronic receiving water flow (7Q10) by a factor of 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 (BOD₅) and Total Suspended Solids (TSS): The previous licensing action established technology-based monthly average and daily maximum BOD₅ and TSS concentration limits of 30 mg/L and 50 mg/L, respectively. The monthly average concentration limit is based on secondary treatment requirements as defined in Department rule, 06-096 CMR Chapter 525(3)(III) and for the daily maximum concentration limit of 50 mg/L, the basis of which is a best professional judgment by the Department of best practicable treatment (BPT). This permitting action is establishing a weekly average technology-based concentration limit of 45 mg/L based on secondary treatment requirements as defined in Department rule, 06-096 CMR Chapter 525(3)(III).

The previous licensing action did not establish mass limitations for BOD₅ and TSS. Department rule 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 establishing monthly average, weekly average and daily maximum BOD₅ and TSS mass limitations based on calculations using the permittee's daily maximum permitted flow limitation of 5,000 GPD (0.005 MGD) and the applicable concentration limits as follows:

Monthly Average Mass Limit: (30 mg/L)(8.34 lbs/gallon)(0.005 MGD) = 1.2 lbs/day

Weekly Average Mass Limit: (45 mg/L)(8.34 lbs/gallon)(0.005 MGD) = 1.9 lbs/day

Daily Maximum Mass Limit: (50 mg/L)(8.34 lbs/gallon)(0.005 MGD) = 2.1 lbs/day

The previous licensing action established a minimum monitoring frequency requirement of 1/Quarter for BOD₅ and TSS. Based on the history of noncompliance, this permitting action is increasing the monitoring frequency for BOD₅ and TSS from 1/Quarter to 1/Month.

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 2004 – February 2009 (n=15) indicate the following:

BOD₅ Concentration

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	5 – 179	30
Daily Maximum	50	5 – 265	36

TSS concentration

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	5 – 54	19
Daily Maximum	50	5 – 76	20

This permitting action is also establishing a new requirement for a minimum of 85% removal of BOD₅ and TSS pursuant to Chapter 525(3)(III)(a)(3) and (b)(3) of the Department's rules.

- e. Settleable Solids: The previous licensing action did not establish monitoring requirements for settleable solids. The Department has since reconsidered its position on limitations for settleable solids for OBD's and consistency with BPT limits established for all other MEPDES permits issued for similar discharges. In order to maintain consistency with similar permits, this permitting action is establishing a daily maximum settleable solids concentration limit of 0.3 mL/L but is not establishing a regular monitoring frequency; however, the limitations are in effect and enforceable at all times.
- f. E. coli and Fecal coliform bacteria: The previous licensing action established a year-round water quality-based monthly average fecal coliform concentration limit of 15 colonies/100 mL (geometric mean) and a daily maximum (instantaneous level) limit of 50 colonies/100 mL at a

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

1/Quarter monitoring frequency. Due to the correction of the classification of Spruce Creek as a Class B surface water rather than Class SB, this permitting action is removing the fecal coliform reporting requirements and is establishing seasonal monthly average and daily maximum *E. coli* limits of 64 colonies/100 mL and 427 colonies/100mL, respectively, which are based on the State of Maine Water Classification Program criteria for Class B waters found at 38 M.R.S.A. §465(3)(B) and Department guidance for facilities discharging in Class B waters with an acute dilution of at least 1.1:1.

The bacteria limitations established in this permitting action are being reduced from year-round to seasonal and apply between May 15 and September 30 of each year to be consistent with the time frame established in Maine law, 38 M.R.S.A., §465(3)(B). These limitations are being established in this permitting action with a once per month (1/Month) monitoring frequency based on Department best professional judgment of a sample frequency that is adequate to determine ongoing compliance with this permit. Although *E. coli* bacteria limits are seasonal, the Department reserves the right to impose year-round bacteria limits if deemed necessary to protect the health, safety and welfare of the public.

A review of the monthly average and daily maximum fecal coliform data as reported on the DMR's submitted for the period February 2004 – February 2009 indicate both the monthly average (geometric mean) and daily maximum fecal coliform bacteria discharged ranged from 2 colonies/100 mL – 104 colonies/100 mL. The DMR data indicate the permittee was been in compliance with the geometric mean limitation 73% of the time.

- g. Total Residual Chlorine (TRC): The previous licensing action established a daily maximum technology-based TRC concentration limit of 0.1 mg/L at a testing frequency of 2/Week. 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
0.019 mg/L	0.011 mg/L	2:1(A) 5:1(C)	0.04 mg/L	0.06 mg/L

Example Acute Limit Calculation: $(0.019)(2) = 0.04$

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

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 (modified) and chronic total residual chlorine limits, Dow Highway Properties is required to dechlorinate the effluent prior to discharge in order to consistently achieve compliance with the calculated water quality-based thresholds. Therefore, this permitting action is establishing a daily maximum water quality-based concentration limit of 0.04 mg/L for total residual chlorine. Compliance shall be based on EPA's minimum level (ML) of detection of 0.05 mg/L. All analytical test results shall be reported to the Department including results which are detected below the ML of 0.05 mg/L. It is noted the quarterly Discharge Monitoring Reports (DMR's) are coded with the numeric value of 0.05 mg/L such that detectable results reported below the RL will not be considered a violation of the permit.

A review of the daily maximum TRC data as reported on the DMR's submitted to the Department for the period February 2004 – February 2009 indicate the daily maximum TRC discharged ranged from 0.2 mg/L – 1.2 mg/L with an arithmetic mean (n=15) of 0.7 mg/L. The DMR data indicate the facility was out of compliance with the previous license limit of 0.1 mg/L 100% of the time.

- h. pH: The previous licensing action established a pH range limit of 6.0 – 8.5 standard units (SU), considered by the Department at the time as BPT for secondary treated waste water, but did not establish any monitoring frequency requirements. Pursuant to Department rule found at Chapter 525(3)(III)(c), (promulgated subsequent to issuance of the previous licensing action) the pH range limitation is being revised to 6.0 – 9.0 SU, which is considered BPT for secondary treated domestic-type waste water. This permitting action is not establishing a regular monitoring frequency but the limitations are in effect and enforceable at all times.

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

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 B waters.

8. PUBLIC COMMENTS

Public notice of this application was made in the *Portsmouth Herald* newspaper on or about November 26, 2008. 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.

9. DEPARTMENT CONTACTS

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

Phyllis Rand
Division of Water Quality Management
Bureau of Land & Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone: (207) 287-7658
e-mail: Phyllis.A.Rand@maine.gov

10. RESPONSE TO COMMENTS

During the period of March 13, 2009, through the issuance date of the permit/license, the Department solicited comments on the proposed draft permit/license to be issued for the discharge(s) from Dow Highway Properties. The Department did not receive comments from the permittee, state or federal agencies or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

ATTACHMENT A



Maine Department of Marine Resources

Pollution Area No. 2-A

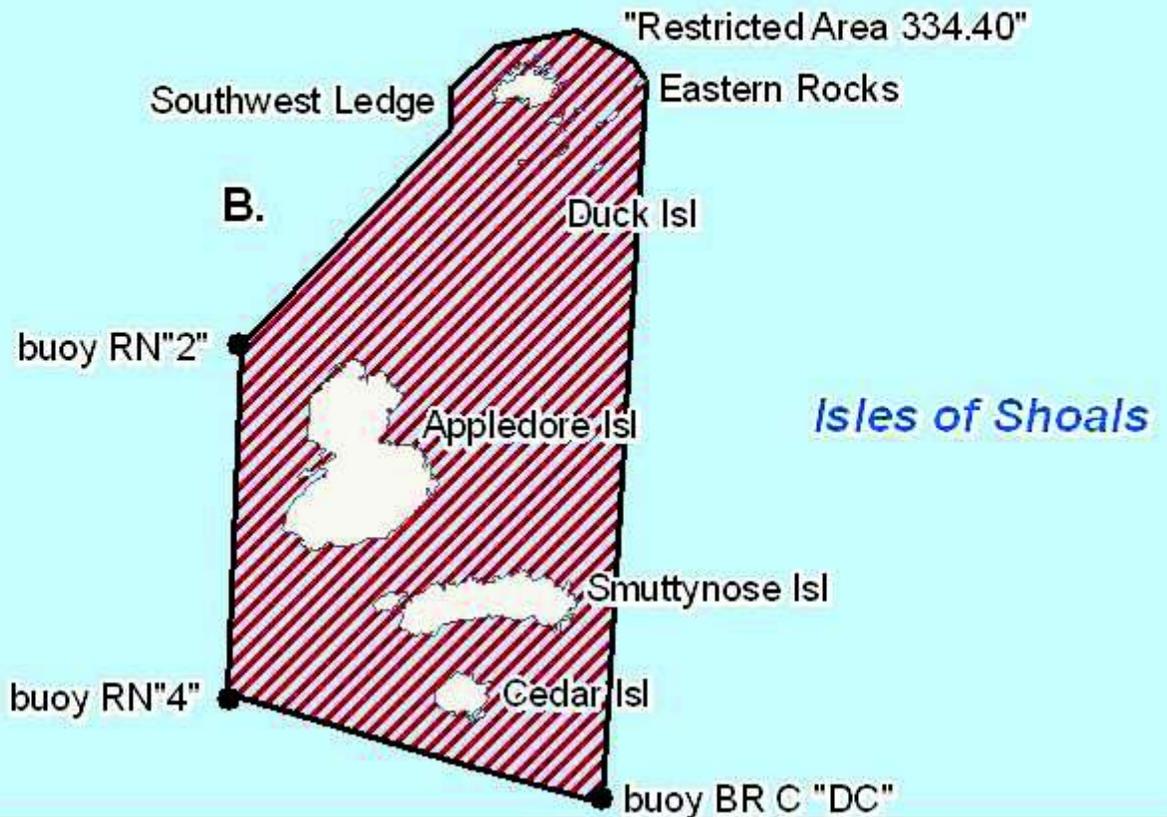
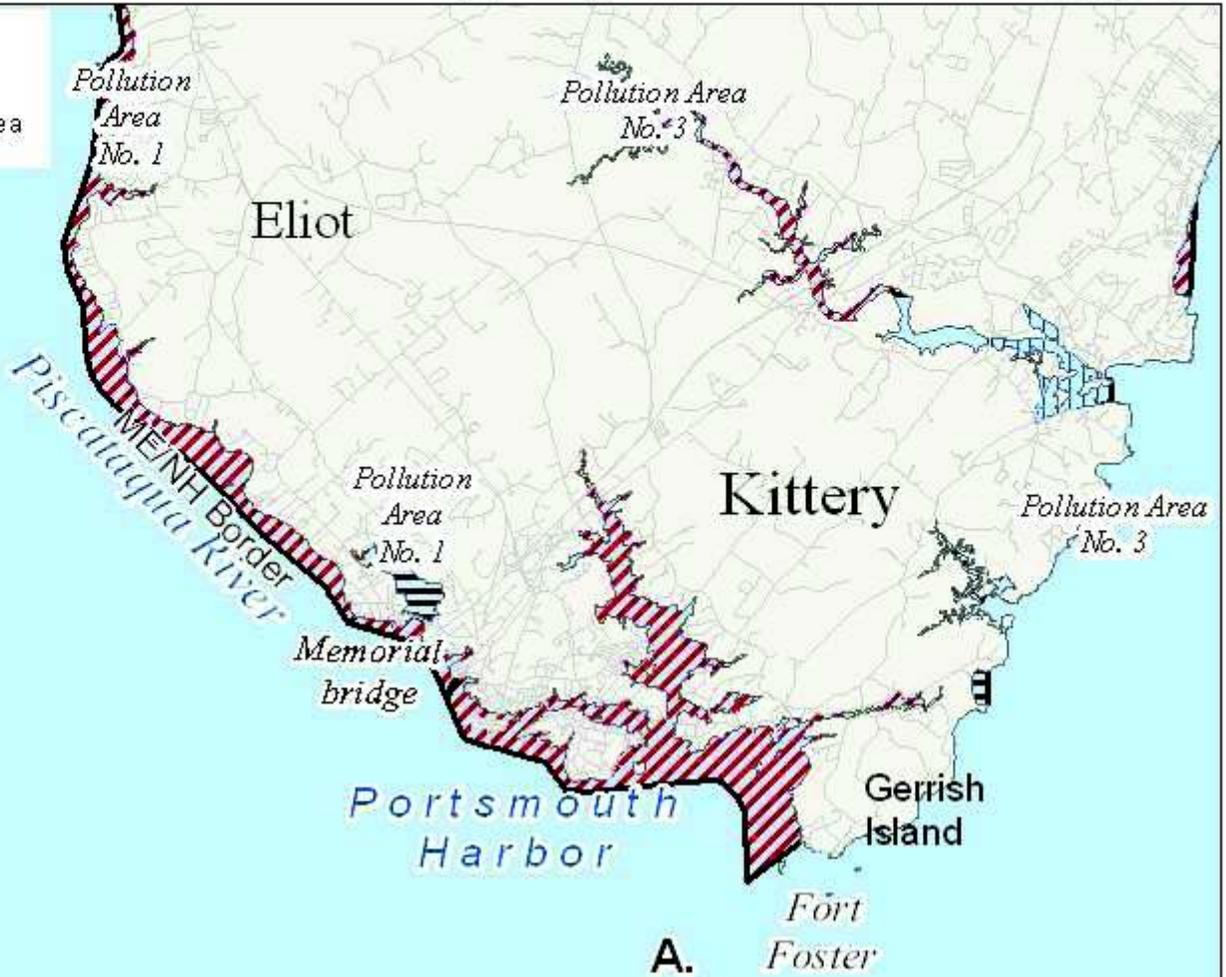


Portsmouth Harbor and vicinity (Kittery) and Isles of Shoals

08-29-08

Legend

 Prohibited_Area



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

CONTENTS

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

A. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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).

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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.
