



STATE OF MAINE
Department of Environmental Protection

JOHN ELIAS BALDACCI
GOVERNOR

David P. Littell
COMMISSIONER

March 13, 2009

Mr. Robert Marsh
Pine Tree Trout
2190 Main Street
Sanford, Maine 04073

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0110493
Maine Waste Discharge License (WDL) Application # W-008245-5Q-B-M
Minor Revision – Effluent and Ambient Monitoring Requirements

Dear Mr. Marsh:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL Minor Revision which was approved by the Department of Environmental Protection. Please read the revision, permit/license, and its attached conditions carefully. You must follow the conditions in the order 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 the matter, please feel free to contact Stuart Rose, your compliance inspector, at (207) 822-6345 or stuart.m.rose@maine.gov or me at (207) 287-6114 or Robert.D.Stratton@maine.gov.

Sincerely,

Robert D. Stratton
Division of Water Quality Management
Bureau of Land and Water Quality

Enc.

pc: Stuart Rose, Lori Mitchell (MEDEP); Sandy Mojica (USEPA)

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

DEPARTMENT ORDER

IN THE MATTER OF

PINE TREE TROUT FISH HATCHERY)	MAINE POLLUTANT DISCHARGE
SANFORD, YORK COUNTY, MAINE)	ELIMINATION SYSTEM PERMIT
FISH HATCHERY)	AND
#ME0110493)	WASTE DISCHARGE LICENSE
#W-008245-5Q-B-R)	MINOR REVISION
APPROVAL)	

Pursuant to the provisions of Maine Law 38 M.R.S.A., Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department, MEDEP) has considered the minor revision request by PINE TREE TROUT, with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

MINOR REVISION REQUESTED

Based on the number of fish at the Pine Tree Trout facility during sensitive and less sensitive times of the year for the receiving water, Branch Brook, and the results of effluent and ambient monitoring conducted to date, the Department is making a best professional judgement (BPJ) determination to revise effluent limits and monitoring requirements for BOD₅ and TSS to only be in effect: (a) from June 1 through September 30 when there are more than 550 pounds of fish on site and (b) from October 1 through May 31 when there are more than 1,000 pounds of fish on site. Further, this action revises ambient water quality monitoring (AWQM) requirements in Branch Brook for dissolved oxygen, water temperature, and time of day to only be in effect from June 1 through September 30 when there are more than 550 pounds of fish on site. Accordingly, the Department is revising the limitations and monitoring requirements established for these parameters in Permit Special Condition A.1 and A.2, *Effluent Limitations and Monitoring Requirements*, of MEPDES Permit #ME0110493 / Maine WDL #W008245-5Q-A-N, issued by the Department on December 22, 2006 and revised on June 15, 2007 and November 19, 2007. This action is being taken pursuant to Permit Special Condition P, which follows.

P. 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, new water quality monitoring data or modeling information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at anytime and with notice to the permittee, modify this permit to; 1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded, (2) require additional monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

MINOR REVISION SUMMARY

This minor revision modifies the effluent limitations and monitoring requirements as follows:

1. establishing seasonal production based thresholds based on Department BPJ, below which effluent BOD₅ and TSS limitations and monitoring requirements and Ambient Water Quality Monitoring requirements are not required.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated March 13, 2009, and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 MRSA Section 464(4)(F), will be met, in that:
 - (a) Existing groundwater 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 waterbody to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected;
and
 - (e) Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

ACTION

THEREFORE, the Department APPROVES the minor revision of MEPDES Permit #ME0110493 / Maine WDL #W008245-5Q-A-N, issued by the Department on December 22, 2006 (revised on June 15, 2007 and November 19, 2007), to PINE TREE TROUT FISH HATCHERY to discharge fish hatchery and rearing facility wastewater to Branch Brook, Class A, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions applicable To All Permits," revised July 1, 2002, copy attached to the 12/22/06 MEPDES Permit / Maine WDL cited above.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All other terms and conditions in the 12/22/06 MEPDES Permit / Maine WDL and 6/15/07 and 11/19/07 revisions not modified by this minor revision remain in effect and enforceable.
4. This minor revision **expires on December 22, 2011**, concurrent with the 12/22/06 MEPDES Permit / Maine WDL.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

This Order prepared by Robert D. Stratton, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- The permittee is authorized to discharge **fish hatchery wastewater from Outfall #001A (fish hatchery and rearing station)** to Branch Brook. Such discharges shall be limited and monitored by the permittee as specified below¹:

Monitoring Parameter	Discharge Limitations and Reporting Requirements				Minimum Monitoring Requirements		
	Monthly Average as specified	Daily Maximum as specified	Monthly Average as specified	Daily Maximum as specified	Daily Minimum as specified	Measurement Frequency as specified	Sample Type as specified
Flow <i>[50050]</i>	report MGD <i>[03]</i>	report MGD <i>[03]</i>	---	---	---	Daily <i>[01/01]</i>	Measured <i>[MS]</i>
BOD ² <i>[00310]</i> From June 1-Sept 30 yearly when >550 lbs of fish on site; From Oct 1-May 31 yearly when >1000 lbs of fish on site.	3.6 lbs/day <i>[26]</i>	6 lbs/day <i>[26]</i>	6 mg/L <i>[19]</i>	10 mg/L <i>[19]</i>	---	1/Month <i>[01/30]</i>	Composite ³ <i>[CP]</i>
TSS ² <i>[00530]</i> From June 1-Sept 30 yearly when >550 lbs of fish on site; From Oct 1-May 31 yearly when >1000 lbs of fish on site.	3.6 lbs/day <i>[26]</i>	6 lbs/day <i>[26]</i>	6 mg/L <i>[19]</i>	10 mg/L <i>[19]</i>	---	1/Month <i>[01/30]</i>	Composite ³ <i>[CP]</i>
Total Phosphorus ⁴ From June 1 – Sept 30 yearly beginning 2009 <i>[00665]</i>	0.23 lbs/day <i>[26]</i>	report lbs/day <i>[26]</i>	0.39 mg/L <i>[19]</i>	report mg/L <i>[19]</i>	---	1/Month <i>[01/30]</i>	Composite ³ <i>[CP]</i>
Orthophosphate (as P) ⁴ From June 1 -Sept 30, 2007 <i>[04175]</i>	report lbs/day <i>[26]</i>	report lbs/day <i>[26]</i>	report mg/L <i>[19]</i>	report mg/L <i>[19]</i>	---	1/Month <i>[01/30]</i>	Composite ³ <i>[CP]</i>
Fish on Hand <i>[45604]</i>	report lbs/day <i>[26]</i>	report lbs/day <i>[26]</i>	---	---	---	Once/2 weeks <i>[01/14]</i>	Calculated <i>[CA]</i>
Effluent Dissolved Oxygen ⁵ <i>[00300]</i> From June 1 – Sept 30 yearly	---	---	report mg/L <i>[19]</i>	report mg/L <i>[19]</i>	7.5 mg/L <i>[19]</i>	1/week <i>[01/07]</i>	Measured <i>[MS]</i>
pH <i>[00400]</i>	---	---	---	6.0-8.5 S.U. <i>[12]</i>	---	Once/2 weeks <i>[01/14]</i>	Grab <i>[GR]</i>

The italicized numeric values bracketed in the table above and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports (DMRs). Footnotes are found on Page 7.

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. The permittee is required to conduct **Ambient Water Quality Monitoring** in Branch Brook as specified below **from June 1 through September 30 each year when more than 550 pounds of fish are on site**, designated as **Outfall #001B** for the purpose of Permit Compliance System tracking.

Monitoring Parameter	Discharge Limitations and Reporting Requirements					Minimum Monitoring Requirements	
	Monthly Average as specified	Daily Maximum as specified	Monthly Average as specified	Daily Maximum as specified	Daily Minimum as specified	Measurement Frequency as specified	Sample Type as specified
Dissolved Oxygen ⁵ Ambient Location 1: In Branch Brook above outfall. [00300]	---	---	Report mg/L [19]	Report mg/L [19]	Report mg/L [19]	1/week [01/07]	Measured [MS]
Water Temperature ⁵ Ambient Location 1 [00010]	---	---	Report Degrees Celsius [04]	Report Degrees Celsius [04]	Report Degrees Celsius [04]	1/week [01/07]	Measured [MS]
Time of Day ^{5,6} Ambient Location 1 [80273]	---	---	---	Report 24-hour time [1Q]	---	1/week [01/07]	Record [RC]
Dissolved Oxygen ⁵ Ambient Location 2: In Branch Brook below outfall. [00300]	---	---	Report mg/L [19]	Report mg/L [19]	Report mg/L [19]	1/week [01/07]	Measured [MS]
Water Temperature ⁵ Ambient Location 2 [00010]	---	---	Report Degrees Celsius [04]	Report Degrees Celsius [04]	Report Degrees Celsius [04]	1/week [01/07]	Measured [MS]
Time of Day ^{5,6} Ambient Location 2 [80273]	---	---	---	Report 24-hour time [1Q]	---	1/week [01/07]	Record [RC]

The italicized numeric values bracketed in the table above and in subsequent text are code numbers that Department personnel utilize to code the monthly DMRs. Footnotes are found on Page 7.

REVISED PERMIT SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS , FOOTNOTES:

All sampling and analysis must be conducted in accordance with: (a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, (b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or (c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services unless otherwise approved by the Department. Samples that are sent to a POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000). **All effluent limits are gross, end of pipe limits, unless otherwise specified.**

1. Effluent Monitoring: Effluent values shall be determined through sampling at Outfall #001A, the only authorized facility discharge, following all means of wastewater treatment. All monitoring shall be conducted so as to capture conditions representative of wastewater generating processes at the facility, such as flow-through and cleaning discharge flows, use of therapeutic and disinfecting / sanitizing agents, etc. and in consideration of settling pond detention times. Any change in sampling location must be approved by the Department in writing.
2. BOD and TSS: **Effluent limits and monitoring requirements for BOD and TSS shall only be in effect: (a) from June 1 through September 30 when there are more than 550 pounds of fish on site and (b) from October 1 through May 31 when there are more than 1,000 pounds of fish on site.** When these time frame and production level thresholds are not met, the permittee shall enter "NODI-9" for BOD and TSS on its DMR.
3. Composite Samples: Composite sample means a sample consisting of a minimum of four grab samples collected at two-hour intervals during the working day at the facility. Alternatively, upon Department approval, the permittee may elect to use an automatic composer for sampling.
4. Total Phosphorus and Orthophosphate: Phosphorus limits and monitoring requirements are seasonal and are only in effect from June 1 through September 30 each year. Orthophosphate monitoring requirements are only in effect from June 1 through September 30, 2007. Laboratory analysis shall be conducted on the same sample and shall consist of a low-level phosphorus analysis. See Attachment A of this Permit for sample protocols.
5. Ambient Water Quality Monitoring (AWQM): AWQM shall only be required **from June 1 through September 30 when there are more than 550 pounds of fish on site.** When these time frame and production level thresholds are not met, the permittee shall enter "NODI-9" for AWQM on its DMR. When AWQM is required, in addition to specified DMR reporting requirements, the permittee shall submit all data from effluent dissolved oxygen, ambient dissolved oxygen, water temperature, and time of day monitoring to the Department in a supplemental report accompanying the appropriate monthly discharge monitoring report pursuant to Permit Special Conditions E and O.
6. Time of Day: When required, time of day of ambient dissolved oxygen and temperature monitoring shall be reported using 24-hour time as HH hours, MM minutes, such as 05 hours 10 minutes.

REVISED PERMIT SPECIAL CONDITIONS

O. AMBIENT DISSOLVED OXYGEN AND TEMPERATURE MONITORING:

Based on the low effluent dilution provided in the receiving water and the need for additional data on the effects of Pine Tree Trout's effluent on the water quality of its receiving water, this permitting action requires the permittee to seasonally monitor ambient dissolved oxygen and temperature levels in Branch Brook. The permittee shall monitor ambient dissolved oxygen and temperature (Celsius) from June 1 through September 30 each year beginning the effective date of this permit at a frequency of once per week when there are more than 550 pounds of fish on site and shall report the time of day the monitoring is conducted. The permittee shall report all monitoring results to the Department in a supplemental report accompanying the appropriate monthly discharge monitoring report [21899]. Monitoring shall be conducted within two hours of sunrise, or as indicated in a Department approved monitoring plan, at two locations: (1) in Branch Brook above the Pine Tree Trout outfall in an area representing free-flowing conditions and (2) in Branch Brook below the Pine Tree Trout outfall in an area representing the dissolved oxygen sag point, unless revised by the Department. **On or before three months following the effective date of this permit**, Pine Tree Trout shall submit a plan for ambient dissolved oxygen and temperature monitoring and instrument calibration/data quality control to the Department's Division of Environmental Assessment for review and approval [00201]. The plan shall include a scope of work and schedule, monitoring locations and maps, sampling methods and materials, and reporting procedures for the ambient dissolved oxygen and temperature monitoring program. The plan shall also include procedures for regular instrument calibration to ensure data quality control. Ambient dissolved oxygen and temperature monitoring shall be conducted according to a Department approved monitoring plan.

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

MINOR REVISION FACT SHEET

Date: March 13, 2009

MEPDES PERMIT NUMBER: # ME0110493
WASTE DISCHARGE LICENSE: # W-008245-5Q-A-N

NAME AND ADDRESS OF APPLICANT:

PINE TREE TROUT FISH HATCHERY
2190 Main St.
Sanford, Maine 04073

COUNTY: YORK

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

PINE TREE TROUT FISH HATCHERY
2190 Main St.
Sanford, Maine 04073

RECEIVING WATER / CLASSIFICATION: Branch Brook, Class A

COGNIZANT OFFICIAL AND TELEPHONE NUMBER:

Mr. Robert Marsh, (207) 324-9664

1. MINOR REVISION REQUESTED

Based on the number of fish at the Pine Tree Trout facility during sensitive and less sensitive times of the year for the receiving water, Branch Brook, and the results of effluent and ambient monitoring conducted to date, the Department is making a best professional judgement (BPJ) determination to revise effluent limits and monitoring requirements for BOD₅ and TSS to only be in effect: (a) from June 1 through September 30 when there are more than 550 pounds of fish on site and (b) from October 1 through May 31 when there are more than 1,000 pounds of fish on site. Further, this action revises ambient water quality monitoring (AWQM) requirements in Branch Brook for dissolved oxygen, water temperature, and time of day to only be in effect from June 1 through September 30 when there are more than 550 pounds of fish on site. Accordingly, the Department is revising the limitations and monitoring requirements established for these parameters in Permit Special Condition A.1 and A.2, *Effluent Limitations and Monitoring Requirements*, of MEPDES Permit #ME0110493 / Maine WDL #W008245-5Q-A-N, issued by the Department on December 22, 2006 and revised on June 15, 2007 and November 19, 2007. This action is being taken pursuant to Permit Special Condition P, which follows.

1. MINOR REVISION REQUESTED (cont'd)

P. 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, new water quality monitoring data or modeling information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at anytime and with notice to the permittee, modify this permit to; 1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded, (2) require additional monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

2. MINOR REVISION SUMMARY

This minor revision modifies the effluent limitations and monitoring requirements as follows:

- a. establishing seasonal production based thresholds based on Department BPJ, below which effluent BOD₅ and TSS limitations and monitoring requirements and Ambient Water Quality Monitoring requirements are not required.

3. BASIS FOR THE MINOR REVISION

The MEDEP's efforts to revise its fish hatchery and rearing facility wastewater discharge permitting program in years 2003 – 2006 included establishment of revised effluent limitations, monitoring and operational requirements in MEPDES Permits / Maine WDLs for all state, federal, and commercial facilities in Maine. These requirements were established based on site specific water quality concerns, available toxicity information, and the Departments BPJ of best practicable treatment for the industry. As stated in permitting actions, *"It is the Department's intent to evaluate effluent data and potentially revise technology based effluent limits in the future based on statistical evaluations of demonstrated performance of consistently and properly utilized treatment technology. The Department reserves the right to reopen facility discharge permits to establish these limits."*

Based on the number of fish at the Pine Tree Trout facility during sensitive and less sensitive times of the year for the receiving water, Branch Brook, and the results of effluent and ambient monitoring conducted to date, the Department has determined based on BPJ that the revisions described in this permitting action are appropriate. Pursuant to Permit Special Condition P, *Reopening of Permit for Modifications*, in the 12/22/06 MEPDES Permit / Maine WDL and Department Rule (06-096 CMR Chapter 2), the Department is revising the BOD, TSS, and AWQM limitations and/or monitoring requirements as described above. All other limitations and requirements in the Permit / WDL, as previously revised in actions dated June 15, 2007 and November 19, 2007, remain in effect and must be complied with.

4. REVISED FACT SHEET SECTIONS

a. (§ 6.c) EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

BOD and TSS: In licensing actions for twelve state and commercially owned fish hatcheries in 1999 and 2000, the Department established monthly average concentration limits for BOD and TSS of 2 mg/L based on the Department's best professional judgement of best practicable treatment (BPJ of BPT) limits. The BPT limits were developed based on the Department's analysis of effluent data from licensed fish hatcheries in Maine supplied through Discharge Monitoring Reports (DMRs). Based on this analysis, the Department determined that the concentration limits of 2 mg/L constituted achievable levels of these pollutants in fish hatchery wastewater. The Department also required that the BOD and TSS effluent mass be monitored and reported in pounds per 100 pounds of fish on hand. Through extensive facility inspections in 2002, the Department discovered significant variability in facility effluent sampling procedures, calling into question the validity of submitted DMR data, the previous data analysis, and the Department's previous assumptions and conclusions.

In the 2002 proposed NEG, EPA recommended national TSS effluent limitations for re-circulating and flow-through hatcheries of various designs and levels of production. The most restrictive recommended limits were based on a secondary level of fish hatchery wastewater treatment and consisted of a monthly average limit of 6 mg/L and a daily maximum limit of 10 mg/L. The 2002 proposed draft NEG did not propose to regulate BOD as EPA believed it would be managed through best management practices at the hatcheries and treatment for TSS.

According to EPA's final NEG, effluent from fish hatcheries and rearing facilities can contain "...high concentrations of suspended solids and nutrients, high BOD and low dissolved oxygen levels. Organic matter is discharged primarily from feces and uneaten feed". As stated in the 2002 proposed NEG, "elevated levels of organic compounds contribute to eutrophication and oxygen depletion." This is expressed as BOD "...because oxygen is consumed when microorganisms decompose organic matter". "The greater the BOD, the greater the degree of pollution and the less oxygen available." The discharge of high BOD wastewater to small receiving waters with insufficient dilutions can result in formation of oxygen deficient areas known as sag points. Oxygen sag points represent both localized impacts to habitat and aquatic life as well as barriers to migration throughout the receiving water. Based on this premises and a long standing practice of regulating effluent BOD, the Department considers BOD a significant pollutant and therefore is establishing effluent limitations and monitoring requirements.

In this permitting action the Department is establishing a BPJ of minimum treatment technology for the Pine Tree Trout facility (Permit Special Conditions M, Fact Sheet Section 13). BOD and TSS concentration limits of 6 mg/L for monthly average and 10 mg/L for daily maximum shall be in effect for Outfall #001A. These numbers are based on fish hatchery wastewater secondary treatment projections and the Department's judgement that effluent BOD should also be regulated. The Department has evaluated actual and projected post-facility upgrade effluent quality data for a significant number of

4. REVISED FACT SHEET SECTIONS (cont'd)

fish hatcheries in Maine and determined that facilities incorporating the minimum treatment technology outlined can be expected to consistently meet the BOD and TSS concentration limits established in this permitting action. It is the Department's intent to re-evaluate and potentially revise limits in the future based on statistical evaluations of demonstrated performance of consistently and properly utilized treatment technology for the industry. The Department reserves the right to reopen facility discharge permits to establish these limits pursuant to Special Condition P of this permit. This permitting action also establishes monthly average and daily maximum BOD and TSS mass limits based on the concentration limits, monthly average flow estimate, and a conversion factor of 8.34 lbs/gallon. Based on the number of fish at the facility during sensitive and less sensitive times of the year for the receiving water and Department BPJ, effluent limits and monitoring requirements for BOD and TSS shall be in effect: (a) from June 1 through September 30 when there are more than 550 pounds of fish on site and (b) from October 1 through May 31 when there are more than 1,000 pounds of fish on site.

This permitting action establishes once per month effluent BOD and TSS monitoring based on the Department's BPJ of monitoring frequencies necessary to more accurately characterize facility effluent conditions.

b. (§ 15) AMBIENT DISSOLVED OXYGEN AND TEMPERATURE MONITORING

Based on the low effluent dilution provided in the receiving water and the need for additional data on the effects of the Pine Tree Trout's effluent on the water quality of its receiving water, this permitting action requires the permittee to seasonally monitor ambient dissolved oxygen and temperature levels in Branch Brook. The permittee shall monitor ambient dissolved oxygen and temperature (Celsius) from June 1 through September 30 each year beginning the effective date of this permit at a frequency of once per week when there are more than 550 pounds of fish on site and shall report the time of day the monitoring is conducted. The permittee shall report all monitoring results to the Department in a supplemental report accompanying the appropriate monthly discharge monitoring report. Monitoring shall be conducted within two hours of sunrise, or as indicated in a Department approved monitoring plan, at two locations: (1) in Branch Brook above the Pine Tree Trout outfall in an area representing free-flowing conditions and (2) in Branch Brook below the Pine Tree Trout outfall in an area representing the dissolved oxygen sag point, unless revised by the Department. On or before three months following the effective date of this permit, Pine Tree Trout shall submit a plan for ambient dissolved oxygen and temperature monitoring and instrument calibration/data quality control to the Department's Division of Environmental Assessment for review and approval. The plan shall include a scope of work and schedule, monitoring locations and maps, sampling methods and materials, and reporting procedures for the ambient dissolved oxygen and temperature monitoring program. The plan shall also include procedures for regular instrument calibration to ensure data quality control. Ambient dissolved oxygen and temperature monitoring shall be conducted according to a Department approved monitoring plan.

5. DEPARTMENT CONTACTS

Additional information concerning this minor revision may be obtained from and written comments should be sent to:

Robert D. Stratton
Division of Water Quality Management
Bureau of Land and Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Telephone: (207) 287-6114
Fax: (207) 287-3435
email: Robert.D.Stratton@maine.gov



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.
