



STATE OF MAINE  
Department of Environmental Protection

JOHN ELIAS BALDACCI  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

Mr. Greg McCrum  
Utilities Manager  
Naturally Potatoes a Basic American Foods Division, LLC  
115 Presque Isle Road  
Mars Hill, ME. 04758

December 22, 2009

RE: Maine Waste Discharge License (WDL) #W007949-5P-D-R  
Permit Compliance System (PCS) Tracking #MEU507949  
**Final License**

Dear Mr. McCrum:

Enclosed please find a copy of your **final** Maine 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 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 call me at 287-7693.

Sincerely,

A handwritten signature in cursive script, appearing to read 'G. Wood'.

Gregg Wood  
Division of Water Quality Management  
Bureau of Land and Water Quality

Enc.

cc: William Sheehan, DEP/NMRO  
Sandy Mojica, USEPA



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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

NATURALLY POTATOES a BASIC AMERICAN FOODS DIVISION, LLC	)	PROTECTION AND IMPROVEMENT OF WATERS
MARS HILL, AROOSTOOK COUNTY, MAINE	)	
SURFACE WASTE WATER DISPOSAL SYSTEM MEU507949	)	WASTE DISCHARGE LICENSE
#W007949-5P-D-R	)	<b>RENEWAL</b>
<b>APPROVAL</b>	)	

Pursuant to the provisions of 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 the NATURALLY POTATOES a BASIC AMERICAN FOODS DIVISION, LLC (NPI hereinafter) with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

NPI has submitted a timely and complete application to the Department for the renewal of Waste Discharge License (WDL) #W007949-5P-B-R which was issued on December 22, 2004 and is due to expire on December 22, 2009. The 12/22/04 WDL authorized the disposal of treated vegetable processing waste water onto the surface of the ground via a surface waste water disposal system (spray irrigation) during the summer months and snowmaking system during the winter months. The processing plant, the waste water treatment system and current disposal systems are all located on a 176-acre spray site in Mars Hill, Maine. The permittee has not requested any substantive modifications to the 12/22/04 WDL.

**LICENSE SUMMARY**

This WDL is carrying forward all the terms and conditions of the previous licensing action except that this licensing action is;

1. Eliminating the requirement to submit a *Spray Irrigation And Snowmaking Performance Report* as an exhibit to the application for the next license renewal.
2. Requiring the licensee to maintain an up-to-date Operations & Maintenance (O&M) Plan.
3. Eliminating the requirement for the submission of a ground water quality monitoring plan for the spray irrigation areas.

## CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated November 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 M.R.S.A., Section 464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
  - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause 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 quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

**ACTION**

THEREFORE, the Department APPROVES the above noted application of NATURALLY POTATOES a BASIC AMERICAN FOODS DIVISION, LLC to operate a surface waste water disposal system (spray irrigation and snowmaking), SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations including:

1. *Standard Conditions of Industrial Waste Discharge Licenses* dated August 14, 1996, copy attached.
2. The attached Special Conditions, including effluent limitations and monitoring requirements.
3. This license 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: November 5, 2009  
Date of application acceptance: November 6, 2009

This Order prepared by Gregg Wood, BUREAU OF LAND & WATER QUALITY  
MEU507949 2009 12/22/09

**SPECIAL CONDITIONS**

**A. LIMITATIONS AND MONITORING REQUIREMENTS**

1. Beginning the effective date of this license, the licensee is authorized to operate a surface waste water treatment and disposal system. The **STORAGE LAGOON EFFLUENT<sup>(1)</sup> (OUTFALL #001)** shall be limited and monitored as specified below.

	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Biochemical Oxygen Demand <i>[00310]</i>	Report mg/L <i>[19]</i>	1/Month <sup>(2)</sup> <i>[01/30]</i>	Grab <i>[GR]</i>
Total Suspended Solids <i>[00530]</i>	Report mg/L <i>[19]</i>	1/Month <sup>(2)</sup> <i>[01/30]</i>	Grab <i>[GR]</i>
Nitrate-Nitrogen <i>[00620]</i>	Report mg/L <i>[19]</i>	1/Month <sup>(2)</sup> <i>[01/30]</i>	Grab <i>[GR]</i>
PH (Standard Units) <i>[00400]</i>	Report S.U. <i>[12]</i>	1/Month <sup>(2)</sup> <i>[01/30]</i>	Grab <i>[GR]</i>
<u>Metals (Total)</u> : Arsenic, Cadmium, Chromium, Copper, Lead, Mercury, Nickel and Zinc <i>[01002, 01027, 01034, 01042, 01051, 71900, 01067, 01092]</i>	Report ug/L <i>[28]</i>	1/5 Years <sup>(3)</sup> <i>[01/5Y]</i>	Grab <i>[GR]</i>

The bracketed italicized numeric values in the table above and the tables that follow are code numbers that the Department personnel utilize to code the monthly Discharge Monitoring Reports.

See pages 8 & 9 for applicable footnotes.

**SPECIAL CONDITIONS**

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

2. The **SPRAY IRRIGATION FIELDS** shall be limited (**May 1<sup>st</sup> – November 30<sup>th</sup>**) and monitored as specified below:

- SF#1** – (Field 1 – 83 acres) Abuts east side of Route #1 (opposite Miller Rd)
- SF#2** – (Field 2 – 17 acres) Abuts east side of Route #1 (opposite Miller Rd)
- SF#3** – (Field 3 – 5 acres) East side of Route #1 abuts west side of Houlton/Presque Isle Multi-Use Trail
- SF#4** – (Field 4 – 6 acres) East side of Route #1 abuts west side of Houlton/Presque Isle Multi-Use Trail
- SF#41** – (Field 41 – 21 acres) N/F Keith McCrum Farm – Northeasterly side of Route #1
- SF#42** – (Field 42 – 19.1 acres) N/F Keith McCrum Farm – Northeasterly side of Route #1
- SF#44** – (Field 44 – 9 acres) N/F Keith McCrum Farm – Southwesterly side of Route #1
- SF#45** – (Field 45 – 4 acres) N/F Keith McCrum Farm – Southwesterly side of Route #1
- SF#46** – (Field 46 – 12 acres) N/F Keith McCrum Farm – Southwesterly side of Route #1

	<b>Monthly Total</b> as specified	<b>Weekly Average</b> as specified	<b>Daily Maximum</b> as specified	<b>Measurement Frequency</b> as specified	<b>Sample Type</b> as specified
Application Rate (Weekly) <sup>(4)</sup> <i>[51125]</i>	---	54,300 gal/acre <sup>(5)</sup> <i>[8B]</i>	---	1/Week <i>[01/07]</i>	Calculate <i>[CA]</i>
Flow - Total Gallons <i>[82220]</i>	Report (Gallons) <i>[80]</i>	---	---	1/Month <i>[01/30]</i>	Calculate <i>[CA]</i>

The permittee is not authorized to utilize these fields SF-41, SF-42, SF-44, SF-45 or SF-46 until sampling of monitoring wells MW11, MW12, MW13, MW14, MW15, MW16, MW17, MW18, MW19 & MW20 have been sampled to determine background/baseline ground water quality. See Special Condition A(4) for list of parameters to be sampled.

See pages 8 & 9 for applicable footnotes.

**SPECIAL CONDITIONS**

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

3. The **SNOWMAKING FIELD** shall be limited (**November 1 – March 30**) and monitored as specified below:

**SM#1 – 7.5 acre area located in the approximate center of the existing 100-acre spray irrigation system.**

	<b>Monthly Total<sup>(6)</sup></b> as specified	<b>Weekly Average</b> As specified	<b>Daily Maximum</b> as specified	<b>Measurement Frequency</b> as specified	<b>Sample Type</b> as specified
Application Rate <small>[51128]</small>	24 million gallons <small>[57]</small>	---	---	1/Season <small>[01/SN]</small>	Calculate <small>[CA]</small>

See pages 8 & 9 for applicable footnotes.

**SPECIAL CONDITIONS**

**A. LIMITATIONS AND MONITORING REQUIREMENTS**

**4. GROUND WATER MONITORING WELLS (MW3, MW4, MW6, MW7, MW8, MW9, MW10 MW11, MW12, MW13, MW14, MW15, MW16, MW17, MW18, MW19 & MW20)**

	<b>Daily Maximum</b> as specified	<b>Measurement Frequency</b> as specified	<b>Sample Type</b> as specified
Depth to Water Level Below Landsurface <i>[72019]</i>	Report (feet) <sup>(7)</sup> <i>[27]</i>	2/Year <sup>(8)</sup> <i>[02/YR]</i>	Measure <i>[MS]</i>
Nitrate-Nitrogen <i>[00620]</i>	10 mg/L <i>[19]</i>	2/Year <sup>(8)</sup> <i>[02/YR]</i>	Grab <i>[GR]</i>
Specific Conductance <i>[00095]</i>	Report (umhos/cm) <i>[11]</i>	2/Year <sup>(8)</sup> <i>[02/YR]</i>	Grab <i>[GR]</i>
Temperature (°F) <i>[00011]</i>	Report (°F) <i>[15]</i>	2/Year <sup>(8)</sup> <i>[02/YR]</i>	Grab <i>[GR]</i>
PH (Standard Units) <i>[00400]</i>	Report (S.U.) <i>[12]</i>	2/Year <sup>(8)</sup> <i>[02/YR]</i>	Grab <i>[GR]</i>
Total Suspended Solids <i>[00530]</i>	Report (mg/L) <i>[19]</i>	2/Year <sup>(8)</sup> <i>[02/YR]</i>	Grab <i>[GR]</i>
<u>Metals (Total):</u> Arsenic, Cadmium, Chromium, Copper, Lead, Mercury, Nickel and Zinc <i>[01002, 01027, 01034, 01042, 01051, 71900, 01067, 01092]</i>	Report ug/L <i>[28]</i>	1/5 Years <sup>(3)</sup> <i>[02/5Y]</i>	Grab <i>[GR]</i>

See pages 8 & 9 for applicable footnotes.

## SPECIAL CONDITIONS

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

Footnotes – [Special Condition A(1), A(2), A(3) A(4)]

#### Lagoon Effluent

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. 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 2/13/00).

All detectable analytical test results shall be reported to the Department including results which are detected below the respective reporting limits (RLs) specified by the Department. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the actual 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 a <X lbs/day, where X is the parameter specific limitation established in the permit. Compliance with this license will be evaluated based on whether or not a compound is detected at or above the Department's RL.

- (1) Storage lagoon effluent shall be sampled at a point in the operations building prior to being pumped to the spray field(s) or snowmaking field and shall be representative of what is actually being applied to the fields. Any change in sampling location must be approved by the Department in writing.
- (2) Storage lagoon effluent sampling shall be conducted 1/Month on a year-round basis. The permittee is not required to test for these parameters during a month where no wastewater was disposed of via the disposal systems. Report as NODI-C on the applicable DMR.
- (3) Metals testing shall be performed in the twelve-month period prior to the expiration date of the license.

#### Spray-Irrigation/Snowmaking Fields

- (4) Weekly is defined as Sunday through Saturday. A field's daily or weekly application rate is the total gallons sprayed over the applicable period of time divided by the area of the field(s) utilized. Note: 27,152 gallons is equivalent to one acre-inch. The licensee shall measure the flow of waste water to the irrigation area by the use of a flow measuring device that is checked for calibration at least once per calendar year.

## **SPECIAL CONDITIONS**

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

Footnotes – [Special Condition A(1), A(2), A(3) & A(4)]

#### Groundwater Monitoring and Underdrain Monitoring

- (5) For Discharge Monitoring Report (DMR) reporting purposes, the licensee shall report the highest weekly application rate for the month in the applicable box on the form. Compliance with weekly reporting requirements must be reported for the month in which the calendar week ends.
- (6) For DMR reporting purposes, the licensee shall report the total gallons of waste water applied to SM#1 during the period November 1<sup>st</sup> – March 30<sup>th</sup> on the March DMR of each year.
- (7) Depth to water level below the land surface shall be conducted in the months of **May and October** of each calendar year and measured to the nearest one tenth (1/10<sup>th</sup>) of a foot as referenced from the surface of the ground at the base of the monitoring well.
- (8) Ground water sampling shall be conducted the months of **May and October** of each year. Sampling, handling and preservation shall be conducted in accordance with federally approved methods.

Specific conductance (calibrated to 25.0° C), temperature, and pH are considered to be “field” parameters, and are to be measured in the field via instrumentation. The licensee is required to test for these parameters whether waste water was disposed of via the spray-irrigation system or not.

### **B. NARRATIVE EFFLUENT LIMITATIONS**

1. The effluent shall not contain materials in concentrations or combinations which would impair the uses designated by the classification of the groundwater.
2. The effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

### **C. TREATMENT PLANT OPERATOR**

The person who has the management responsibility over the treatment facility must hold a **Grade SITS-II or Grade II or higher** certificate (or Registered Maine Professional Engineer) pursuant to Title 32 M.R.S.A. §4171 *et seq.* 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 before the permittee may engage the services of the contract operator.

## SPECIAL CONDITIONS

### D. 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 (13<sup>th</sup>) day of the month or hand-delivered to a Department Regional Office such that the DMRs are received by the Department on or before the fifteenth (15<sup>th</sup>) 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 following address:

Department of Environmental Protection  
Bureau of Land and Water Quality  
1235 Central Drive - Skyway Park  
Presque Isle, ME 04769

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

### E. AUTHORIZED DISCHARGES

The licensee is authorized to discharge treated process waste water only in accordance with the terms and conditions of this WDL and only to the spray irrigation/snowmaking disposal fields identified in the Waste Discharge License application accepted by the Department on November 6, 2009. Discharge of waste water from any other location or from sources other than those indicated on said application requires written authorization from the Department.

### F. NOTIFICATION REQUIREMENT

In accordance with Standard Condition #6, the licensee shall notify the Department of any substantial change in the volume or character of pollutants being introduced into the waste water collection and treatment system. For the purposes of this section, notice regarding substantial change shall include information on:

- (a) the quality and quantity of waste water introduced to the waste water collection and treatment system; and
- (b) any anticipated impact caused by the change in the quantity or quality of the waste water to be discharged from the treatment system.

## **SPECIAL CONDITIONS**

### **G. GENERAL OPERATIONAL CONSTRAINTS**

1. All waste waters shall receive biological treatment through a properly designed, operated and maintained lagoon system prior to disposal.
2. The surface waste water disposal facilities shall be effectively maintained and operated at all times so that there is no discharge to surface waters, nor any contamination of ground water which will render it unsatisfactory for usage as a public drinking water supply.
3. The surface waste water disposal system shall not cause the lowering of the quality of the ground water, as measured in the ground water monitoring wells specified by this license, below the State Primary and Secondary Drinking Water Standards specified in the Maine State Drinking Water Regulations pursuant to Maine Law 22 M.R.S.A. § 2601.

In the event the ground water monitoring results indicate adverse effects, the licensee may be required to take immediate remedial action(s), which may include but not limited to, adjustment of the irrigation schedule or application rates, a reduction of the pollutant loading, or ceasing operation of the system until the ground water attains applicable standards.

4. The licensee shall maintain a file on the location of all system components and relevant features. Each component shall be mapped and field located sufficiently to allow adequate inspections and monitoring by both the licensee and the Department.
5. System components including collection pipes, tanks, manholes, pumps, pumping stations, spray disposal fields, and monitoring wells shall be identified and referenced by a unique system identifier in all logs and reports.

### **H. SPRAY IRRIGATION OPERATIONAL CONSTRAINTS**

1. Suitable vegetative cover shall be maintained. Waste water may not be applied to areas without sufficient vegetation or ground cover as to prevent erosion or surface water runoff outside the designated boundaries of the spray fields.
2. At least 10 inches of separation from the ground surface to the ground water table shall be present prior to spray irrigation.
3. No waste water shall be applied to the site following a rainfall accumulation exceeding 1.0 inch within the previous 8-hour period. A rain gauge shall be located on site to monitor daily precipitation. The licensee shall also manage application rates by taking into consideration the forecast for rain events in the 48-hour period in the future.
4. No waste water shall be applied where there is more than 0.5 inches of snow present on the surface of the ground.

## **SPECIAL CONDITIONS**

### **H. SPRAY IRRIGATION OPERATIONAL CONSTRAINTS (cont'd)**

5. No waste water shall be applied when there is any evidence of frost or frozen ground within the upper 10 inches of the soil profile.
6. No traffic or equipment shall be allowed in the spray-irrigation field except where installation occurs or where normal operations and maintenance are performed.

### **I. SNOWMAKING OPERATIONAL CONSTRAINTS**

1. Snow from effluent shall only be made when conditions are conducive to snowmaking or ice making. When conditions are such that the effluent from the snow guns results in a liquid being sprayed on the site, the operator will cease snowmaking operations until proper conditions exist. Snowmaking will be interrupted to prevent runoff occurring off the site.
2. The licensee shall inspect all snowmaking equipment, effluent pipes and pipelines periodically for leaks and other maintenance requirements. Upon the detection of a leak, the section needing repair shall be shutdown immediately and the necessary repairs or replacements made prior to startup.

### **J. SPRAY IRRIGATION AND SNOWMAKING OPERATIONAL PROCEDURES, LOGS AND REPORTS**

1. Prior to the commencement of spray irrigation for the season, the licensee shall notify the Department's compliance inspector that site conditions are appropriate (frozen ground, soil moisture, etc.) for spray irrigation.
2. The licensee shall install the equivalent of one ground water level inspection well per spray field to verify that 10 inches of separation from the ground surface to the observed ground water level is present prior to spraying. Depths to ground water shall be recorded in accordance with the format of "*Depth to Groundwater*" provided as **Attachment "A"** of this license.
3. The licensee shall at all times maintain in good working order and operate at maximum efficiency all waste water collection, treatment and/or control facilities. Should significant malfunctions or leaks be detected, the licensee must shut down the malfunctioning/leaking sections of the spray system and make necessary repairs before resuming operation. The licensee shall cease irrigation if runoff is observed outside the designated boundaries of the spray field(s).

## **SPECIAL CONDITIONS**

### **J. SPRAY IRRIGATION AND SNOWMAKING OPERATIONAL PROCEDURES, LOGS AND REPORTS (cont'd)**

4. **The licensee shall maintain a daily log** of all spray irrigation and snowmaking operations which records, the date, weather and soil conditions, rainfall, areas irrigated, volume sprayed (gallons), application rates (daily and weekly), and other relevant observations/comments from daily inspections. The log shall be in accordance with the format of the "*Monthly Operations Log*" provided as **Attachment "B"** of this license.

Weekly application rates shall be reported in accordance with the format of the "*Spray Irrigation Application Report by Week*" provided as **Attachment "C"** of this license. The *Monthly Operations Log, Spray Irrigation Application Report by Week, and Depth to Groundwater* for each month shall be submitted to the Department as an attachment to the monthly Discharge Monitoring Reports (DMRs). Copies will also be maintained on site for Department review and for license operation maintenance purposes.

### **K. LAGOON MAINTENANCE**

1. The banks of the lagoon shall be inspected periodically during the operating season and properly maintained at all times. There shall be no overflow through or over the banks. Any signs of leaks, destructive animal activity or soil erosion of the banks shall be repaired immediately.
2. The banks of the lagoon shall be maintained to keep them free of woody vegetation and other vegetation that may be detrimental to the integrity of the bank and/or lagoon liner.
3. The waters within the lagoon shall be kept free of all vegetation (i.e. grasses, reeds, cattails, etc) that hinders the operation of the lagoon.
4. The licensee shall maintain the lagoon freeboard at design levels or at least two (2) feet whichever is greater. The storage lagoon shall be operated in such a way as to balance the disposal of waste water, including the necessary storage capacity for precipitation, to ensure that design freeboard levels are maintained.
5. The treatment and storage lagoons shall be dredged as necessary to maintain the proper operating depths in both lagoons that will provide best practicable treatment of the waste water. All material removed from the lagoon(s) shall be properly disposed of in accordance with all applicable State and Federal rules and regulations.

## **SPECIAL CONDITIONS**

### **L. INSPECTIONS AND MAINTENANCE**

The licensee shall periodically inspect all system components to ensure the facility is being operated and maintained in accordance with the design of the system. Maintenance logs shall be maintained for each major system component including pumps, pump stations, septic tanks, lagoons, spray apparatus, and pipes. At a minimum, the logs shall include the unique identifier [see Special Condition G(5)], the date of maintenance, type of maintenance performed, names or person performing the maintenance, and other relevant system observations.

### **M. GROUND WATER MONITORING WELLS**

1. All monitoring wells shall be equipped with a cap and lock to limit access and shall be maintained in a secured state at all times. The integrity of the monitoring wells shall also be verified annually.
2. The Department reserves the right to require increasing the depth and or relocating any of the ground water monitoring wells if the well is perennially dry or is determined not to be representative of ground water conditions.

### **N. OPERATIONS AND MAINTENANCE (O & M) PLAN AND SITE PLAN(S)**

The licensee shall maintain a current written comprehensive Operation & Maintenance (O & M) Plan. The plan shall provide a systematic approach by which the licensee shall at all times, properly operate and maintain all facilities and the systems of treatment and control (and related appurtenances) which are installed or used by the licensee to achieve compliance with the conditions of this license. Of particular importance is the management of the spray application sites such that the two spray sites are given ample periods of rest to prevent over application.

**By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades**, the licensee 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 the Department personnel upon request.

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

## **SPECIAL CONDITIONS**

### **O. REOPENING OF LICENSE FOR MODIFICATIONS**

Upon evaluation of any required test results, results of inspections and/or reporting required by the Special Conditions of this licensing action, additional site specific or any other pertinent information or test results obtained during the term of this license, the Department may, at any time and with notice to the licensee, modify this license to require additional monitoring, inspections and/or reporting based on the new information.

### **P. SEVERABILITY**

In the event that any provision, or part thereof, of this license is declared to be unlawful by a reviewing court, the remainder of the license shall remain in full force and effect, and shall be construed and enforced in all respects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.



# **ATTACHMENT A**

**Depth to Groundwater (Tenths of Feet)**      (Month/Year) ( \_\_\_\_\_ / \_\_\_\_\_ )

Field Name/#	Monitoring Location	Depth to Groundwater (Measured From Ground Surface in Tenths of Feet)					Number of Exceptions	Monthly Average Depth
		Week 1	Week 2	Week 3	Week 4	Week 5		
Total Number of Exceptions								

Note: Special Condition G of the License requires that a depth of 10 inches from the ground surface to the groundwater table must be present prior to spraying.

Signature of Responsible Official: \_\_\_\_\_, Date \_\_\_\_\_

# **ATTACHMENT B**



# **ATTACHMENT C**

**Spray Application Report by Week**

(Month/Year) ( \_\_\_\_\_ / \_\_\_\_\_ )

Weekly Application Rate \_\_\_\_\_ gallons/acre; \_\_\_\_\_ inches

Field Name/#	Effective Spray Area (Acres, when all used)	Weekly Limit (Gallons/acre)	Actual Spray Application Rates (Gallons per acre)					Number of Exceptions to Weekly Limit	Monthly Average
			Week 1	Week 2	Week 3	Week 4	Week 5		
Note: 1 acre-inch is equivalent to 27,150 gallons of liquid 27,150 gallons per acre is equivalent to 1.0 inch						Total Number of Exceptions			

A spray-field's weekly application rate is the total gallons sprayed (Sunday through Saturday) divided by the size of the spray-field in acres or the size in acres of that portion of the spray field utilized.

Signature of Responsible Official: \_\_\_\_\_, Date \_\_\_\_\_

**MAINE WASTE DISCHARGE LICENSE**

**FACT SHEET**

Date: **November 13, 2009**

PERMIT NUMBER: **MEU507949**  
LICENSE NUMBER: **W007949-5P-D-R**

NAME AND ADDRESS OF APPLICANT:

**NATURALLY POTATOES a BASIC  
AMERICAN FOODS DIVISION, LLC  
P. O. Box 390  
Mars Hill, Maine 04758**

COUNTY: **Aroostook County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**U.S. Route #1  
Mars Hill, Maine 04758**

RECEIVING WATER/CLASSIFICATION: **Ground Water/Class GW-A**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Greg McCrum  
Utility Manager  
(207) 227-2434  
e-mail: [gmccrun@baf.co](mailto:gmccrun@baf.co)**

**1. APPLICATION SUMMARY**

- a. Application: Naturally Potatoes a Basic American Foods Division LLC (NPI hereinafter) has submitted a timely and complete application to the Department for the renewal of Waste Discharge License (WDL) #W007949-5P-B-R which was issued on December 22, 2004 and is due to expire on December 22, 2009. The 12/22/04 WDL authorized the disposal of vegetable processing water onto the surface of the ground via a surface waste water disposal system (spray irrigation) during the summer months and snowmaking system during the winter months. The processing plant, the waste water treatment system and current disposal systems are all located on a 176-acre spray site in Mars Hill, Maine. See **Attachment A** of this Fact Sheet for a location map. The permittee has not requested any substantive modifications to the 12/22/04 WDL.

## 1. APPLICATION SUMMARY (cont'd)

- b. Source Description: NPI processes raw potatoes into various food products including cut, sliced, diced and or mashed potatoes for the restaurant business sector. NPI processes approximately 700,000 – 1,000,000 lbs of potatoes per day totaling 200 million pounds per year. Raw potatoes are brought in directly from the fields or storage facilities via trucks and off loaded to a conveyor where they are graded and sorted according to the product being processed. The potatoes are washed, cut, sliced, diced and packaged for shipping or washed, cooked, mashed and cooled and packaged for shipping. The processing facility currently operates four days per week, two shifts per day with processing during the day and clean-up in the evening.

Sources of waste water totaling 40,000 gpd to 50,000 gpd are associated with the processing of raw potatoes are limited to wash waters, process waters and clean-up waters containing minor quantities of disinfectants. Sanitary waste waters generated at the facility are conveyed to the municipal waste water treatment facility which is also permitted/licensed by this Department

- c. Waste Water Treatment: All process and clean-up waters generated at the facility are pumped to a lagoon system for treatment and eventually applied to the surface of the ground via a spray irrigation or snowmaking operation. Potato wash waters at the front end of the process are put through hydroclones to remove settleable soil and then the water is sent to the lagoon system.

The biological treatment process consists of two smaller aerated treatment lagoons and one larger aerated storage lagoon that were constructed in 1997. The two treatment lagoons are constructed with an earthen liner consisting of 30 inches of thick glacial till covered by a 4-inch layer of bituminous asphalt. The storage lagoon has an earthen liner consisting of a 24-inch layer of clay. In the past two years, Basic American Foods has hired an engineering firm to help with the upgrades to the treatment ponds. In 2008, four surface aerators were placed in the storage lagoon to help eliminate low dissolved oxygen level problems which has lead to odor problems. Since the aerators have been in place, their have no been any odor complaints. Mixers are installed in the storage lagoon each spring which has resulted in oxygen levels being consistently maintained above 1.5 mg/L. In the spring of 2009, all the coarse bubble aerators were removed from the treatment ponds and replaced with EDI fine bubble aeration. Four of the six lines making up the grid pattern are currently in place and the last two lines are to be installed in the spring of 2010. The addition of the fine bubble aeration system gives the treatment system the capacity to treat waste waters from the processing facility at full production loading levels.

## 1. APPLICATION SUMMARY (cont'd)

Each treatment lagoon has a surface area of 0.5 acres, each are 10 feet-deep and each has a working volume of 0.5 million gallons. At the average daily flow rate of 125,000 gpd, each treatment lagoon system provides for an average detention time of 4 days. The storage lagoon has a surface area of approximately 3.0 acres, is 20 feet deep, and has a working volume of 10 million gallons. The storage lagoon provides for a maximum detention time of approximately 80 days. Flows to the spray irrigation fields and snowmaking fields are measured via a 6-inch in-line magnetic meter.

Spray Irrigation - Between May 1<sup>st</sup> and November 30<sup>th</sup> of each year, waste water from the aerated lagoon is currently conveyed to four existing spray fields SF#1 (83 acres), SF#2 (17 acres), SF#3 (5 acres), and SF#4 (6 acres). The licensee has SF #41(21 acres), SF #42 (19 acres), SF #44 (9 acres), SF#45 (4 acres) and SF #46 (12 acres) in reserve if needed. All nine spray fields total approximately 176 acres. See **Attachment B** of this Fact Sheet. Waste water is applied to each spray field in a circular pattern measuring 700 feet in diameter via a center pivoting agricultural irrigation mechanism. The licensee also has a retractable rain wheel spray apparatus that applies the treated waste water in a circular pattern measuring 150 feet in diameter.

Snowmaking: Between November 1<sup>st</sup> and March 30<sup>th</sup> of each year, waste water from the storage lagoon is converted to snow via compressed air and stored in piles on a parcel of land encompassing approximately 7.5 acres. See **Attachment B** of this Fact Sheet. The licensee utilizes four mobile snow guns (similar in design to those utilized at ski areas) to distribute the snow over the 7.5-acre parcel. Water from the snow piles will be slowly released to the environment via evaporation (assume 15%) during the snowmaking process, sublimation (assume 20%) of the snow piles over time and infiltration into the ground as the snow piles melt in the spring and early summer. Based on other snowmaking sites licensed by the Department, melting generally occurs during the months of March (5%), April (15%), May (30%), June (40%) and July (10%). On average, the application rate of 24 million gallons of snow melting water over a period of 22 weeks on 7.5 acres is 0.6 inches/week or 1.1 million gallons per week.

A high intensity Class B soil survey of the existing spray/snowmaking site indicates the soils consist of topsoil (cropland) and glacial tills that are generally well drained soils and conducive to surface waste water disposal.

## 2. LICENSE SUMMARY

- a. Terms and conditions - This WDL is carrying forward all the terms and conditions of the previous licensing action except that this licensing action is;
  1. Eliminating the requirement to submit a *Spray Irrigation And Snowmaking Performance Report* as an exhibit to the application for the next license renewal.
  2. Requiring the licensee to maintain an up-to-date Operations & Maintenance (O&M) Plan.
  3. Eliminating the requirement for the submission of a ground water quality monitoring plan for the spray irrigation areas.
- b. History: The most current relevant regulatory actions and or significant events include the following;

*January 31, 1997* – The Department issued WDL #W007949-5P-A-N for a five-year term in the name of Freshway Inc.

*December 22, 2004* – The Department WDL renewal #W007949-5P-B-R for a five-year term in the name of Naturally Potatoes Inc.

November 5, 2009 – Naturally Potatoes Inc. submitted a timely and complete application to the Department to renew the 12/22/04 WDL.

## 3. CONDITIONS OF THE LICENSE

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 Water Classification System.

## 4. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A § 470 indicates the groundwater at the point of discharge is classified as Class GW-A receiving waters. Maine law, 38 M.R.S.A., §465-C describes the standards for Class GW-A waters as the highest classification of groundwater and shall be of such quality that it can be used for public water supplies. These waters shall be free of radioactive matter or any matter that imparts color, turbidity, taste or odor which would impair the usage of these waters, other than occurring from natural phenomena.

## 5. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Slow rate land irrigation treatment and snowmaking are environmentally sound and appropriate technology for best practicable treatment and disposal of waste water. The soils and vegetation within the irrigation area will provide adequate filtration and absorption to preserve the integrity of the soil, and both the surface and groundwater quality in the area.

### a. Monitoring Parameters

*Biochemical Oxygen Demand (BOD<sub>5</sub>)* - Monitoring for BOD yields an indication the condition of the waste water being applied, of excessive loading of organic material and the effectiveness of the spray-irrigation treatment process.

*Nitrate-nitrogen* - Nitrogen compounds are by-products of the biological breakdown of ammonia in the waste water. Because nitrate-nitrogen is weakly absorbed by soil, it functions as a reliable indicator of contamination from waste-disposal sites. Elevated levels of nitrate-nitrogen in the drinking water supply are of human health concern. The limit of 10 mg/L is a National Primary Drinking Water standard.

*Specific Conductance, Temperature and PH* are considered to be “field” parameters meaning that they are measured directly in the field via instrumentation and does not require laboratory analysis. These parameters are considered as surveillance level monitoring parameters and are used as early-warning indicators of potential groundwater contamination.

*Total Suspended Solids (TSS)* - TSS in the groundwater yields an indication of the integrity of the monitoring wells.

- b. Design Flow: - The daily average influent design flow of the treatment plant is 90,000 gallons per day.
- c. Lagoon Effluent: Monthly monitoring parameters include BOD<sub>5</sub>, TSS, Nitrate-Nitrogen and pH. Monitoring for these parameters yields an indication of the effectiveness of the lagoon treatment process and the condition of the waste water being applied. Monitoring is being required on a year-round basis. Testing for specific metals in the effluent from the storage lagoon is only required to be performed in the twelve-month period prior to the expiration date of the license.

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

- d. Spray Irrigation/Snowmaking Application Rates – The previous licensing action established an application rate of 2.0 inches/week that is being carried forward in this licensing action for all the spray sites (SF#1, SF#2, SF#3, SF#4, SF #41, SF #42, SF #44, SF#45 and SF #46) and snowmaking site (SM#1). The licensee has operated within this range since 1997 without the ground water quality being diminished or runoff from the sites.

Regardless of the calculated rate, the system operator shall monitor each waste application to verify adequate infiltration of the waste into the soil and a spray irrigation or snowmaking cycle must be stopped if runoff outside of the designated sprayfield(s) or snowmaking site is observed.

- e. Ground Water Monitoring

Seven ground water monitoring wells are to be monitored on the existing spray and snowmaking sites and are shown on **Attachment A** of this Fact Sheet. The seven wells are:

Monitoring Wells	Location
MW-3	Southeast corner of the lagoons
MW-4	Northwest corner of the lagoons
MW-6	Easterly of SF#2, westerly of old railroad bed
MW-7	South-southwest of SF#3
MW-8	Westerly edge of SF#1, 500 feet west of US Route #1, Background well
MW-9	East of SM#1
MW-10	Westerly edge of SF#1, 600 feet west of US Route #1, 500 feet south of MW#8, Background well

It is noted MW-11 through MW-20 have been installed but not sampled to date as the licensee has not utilized the corresponding spray fields to dispose of waste water.

Monitoring parameters for all monitoring wells include depth to the water level below the land surface, nitrate-nitrogen, specific conductance, temperature, pH, TSS. Ground water sampling shall now be conducted in May and October of each calendar year. Testing for metals is only required in the twelve-month period prior to the expiration date of the license.

**6. HISTORICAL MONITORING RESULTS**

Below is a summary of the lagoon effluent and ground water monitoring test results and spray application rates for the period November 2005 – May 2009.

**a. Lagoon Effluent**

**BOD (mg/L) (DMRs = 46)**

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	Report	100-600	611

**TSS (mg/L) (DMRs = 46)**

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	Report	92 -	974

**pH (standard units) (DMRs = 46)**

Value	Limit (s.u)	Range (s.u)
Daily Maximum	Report	6.4 – 7.7

**Nitrate-Nitrogen (mg/L) (DMRs = 46)**

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	Report	<0.5 – 200	Did not calc*

\* Did not calculate the mean concentration of nitrate-nitrogen due to the extreme variability in values.

**b. Spray application rates**

**Highest Weekly Average Rate (gal/acre)**

Field name	Limit (gal/acre)	Range (gal/acre)	Average (gal/acre)
SF-1 (DMRs = 25)	54,300	13,131 – 50,786	33,021
SF-2 (DMRs = 15)	54,300	15,050 – 49,764	26,279
SF-3 (DMRs = 6)	54,300	7,088 – 38,719	22,230
SF-4 (N/A)	54,300	0	0

**Monthly totals applied (gallons) (DMRs = 26)**

Field Name	Limit (gal)	Range (gal)	Average (gal/mon)
SF-1 (DMRs = 25)	Report	156,850 – 3,818,948	2,760,348
SF-2 (DMRs = 25)	Report	260,470 – 2,952,222	1,534,098
SF-3 (DMRs = 25)	Report	136,620 – 2,840,643	728,557
SF-4 (N/A)	Report	0	0

**6. HISTORICAL MONITORING RESULTS**

c. Snowmaking

**SM-1 Monthly totals applied (gallons)**

Year	Limit (gal)	Range (gal)	Average (gal/mon)
Fall 05 - Spring 06	Report	2,099,367 – 9,754,345	5,226,892
Fall 06 - Spring 07	Report	2,125,620 – 13,245,859	6,521,194
Fall 07 - Spring 08	Report	1,402,200 – 6,717,890	2,719,138
Fall 08 - Spring 09	Report	186,844 – 5,867,772	3,848,471

**SM-1 Yearly totals applied (gallons)**

Year	Limit (gal)	Average (gal/mon)
Fall 05 - Spring 06	24,000,000	20,907,570
Fall 06 - Spring 07	24,000,000	26,084,777
Fall 07 - Spring 08	24,000,000	10,876,550
Fall 08 - Spring 09	24,000,000	19,242,355

c. Ground water

Values summarized below are mean values based on six (6) DMRs

Parameter	TSS (mg/L)	Conductance (uhmos/cm)	Nitrate-Nitrogen (mg/L)
Well #.	---	---	---
MW-3	<4	513	0.1
MW-4	5	428	0.1
MW-6	5	618	8.3
MW-7	5	357	1.8
MW-8	5	703	4.4
MW-9	18	1,057	0.5

**7. SYSTEM CALIBRATION**

Discharge rates, application rates and uniformity of application change over time as equipment gets older and components wear, or if the system is operated differently from the assumed design. Operating below design pressure greatly reduces the coverage diameter and application uniformity (resulting in increased ponding). For these reasons, the licensee should field calibrate their equipment on a regular basis to ensure proper application and uniformity, and when operating conditions are changed from the assumed design.

## **8. DISCHARGE IMPACT ON RECEIVING WATER QUALITY**

As licensed, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the water body to meet standards for Class GW-A classification.

## **9. PUBLIC COMMENTS**

Public notice of this application was made in the local newspaper on or about November 9, 2009. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft licenses shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

## **10. DEPARTMENT CONTACTS:**

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

Gregg Wood  
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) 287-7693  
E-mail: [gregg.wood@maine.gov](mailto:gregg.wood@maine.gov)

## **11. RESPONSE TO COMMENTS**

During the period of November 13, 2009, through the issuance date of the license, the Department solicited comments on the proposed draft license to be issued for the discharge(s) from the licensee's facility. The Department did not receive comments from the licensee, state or federal agencies or interested parties that resulted in any substantive change(s) in the terms and conditions.

# **ATTACHMENT A**

68°00'00"  
68.0000°

PRESQUE ISLE 2

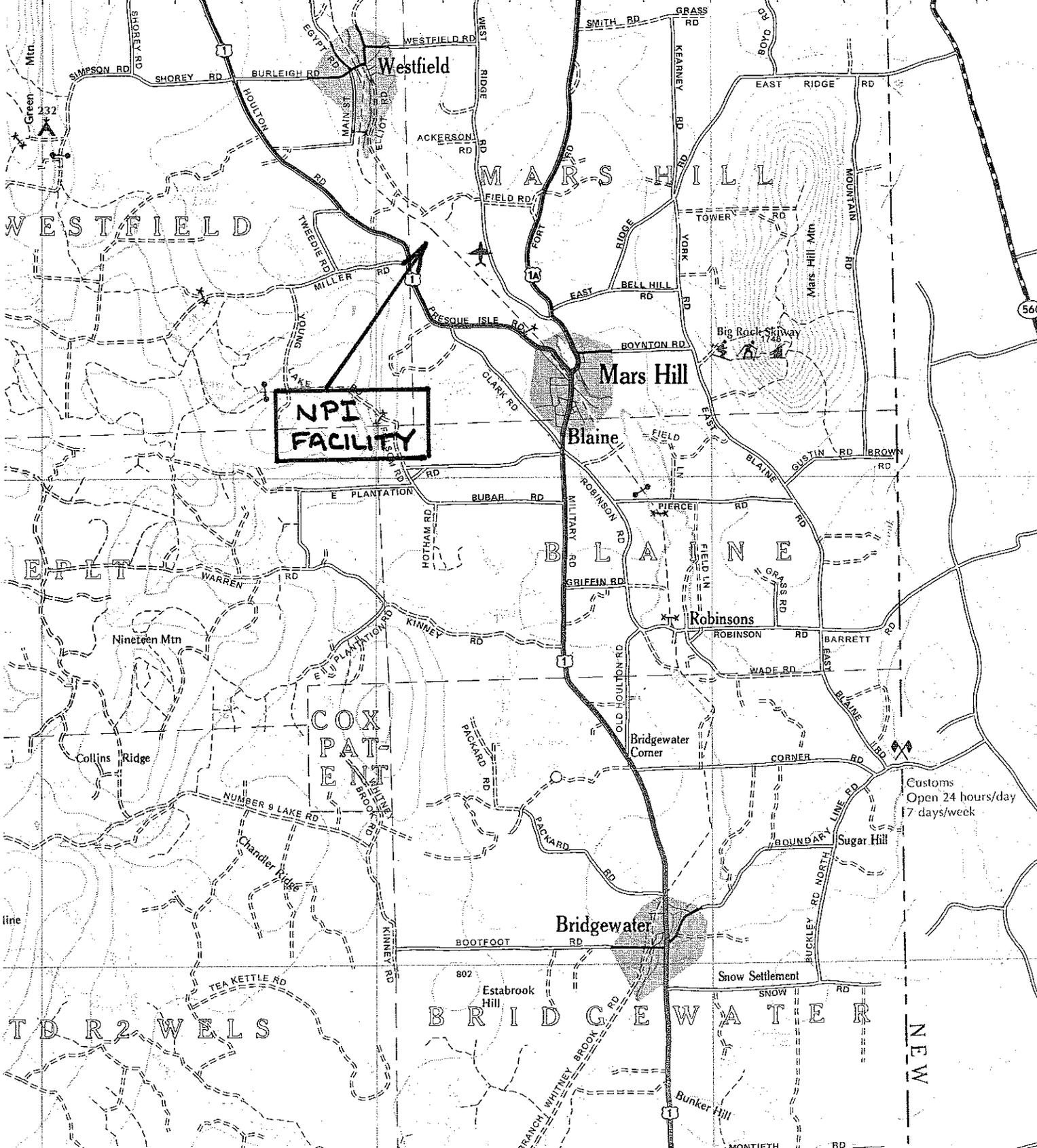
Continue on Map 65

3

67°50'00"  
67.8333°

4

GRAND FA



**NPI  
FACILITY**

Customs  
Open 24 hours/day  
17 days/week

TD R 2 WELS

BRIDGEWATER

NEW

# **ATTACHMENT B**

# Naturally Potatoes

Mars Hill & Westfield, Maine

Future  
Spray  
Areas



PAY RD  
YOUNGS LAKE

FTE 1

Operations Contact: Greg McCrum  
PO Box 390  
Mars Hill, ME 04758  
Tel#: 429-8126

DEP WDL # W007949-5P-B-R  
DEP Contact: Gregg Wood  
287-7693

MEDEP/DW/RR/19NOV04/DS

Town of Westfield

Town of Mars Hill



Spray Area  
#1 (83 ac)

#3

#2

MW10

MW6

MW9

Snowmaking  
Site

#4

MW4

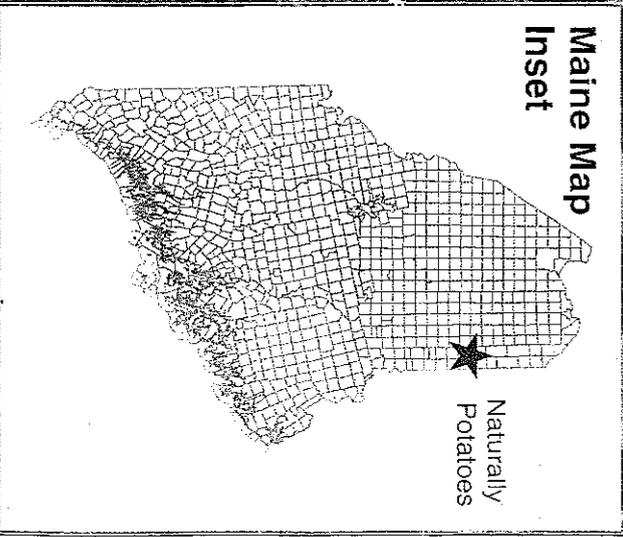
MW3

Lagoon  
Site

WEST RIDGE RD

FIELD

Processing  
Plant



Maine Map  
Inset

Naturally  
Potatoes

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**A. GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**B. OPERATION AND MAINTENANCE OF FACILITIES**

**1. General facility requirements.**

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

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- maximize removal of pollutants unless authorization to the contrary is obtained from the Department.
- (b) The permittee shall at all times maintain in good working order and operate at maximum efficiency all waste water collection, treatment and/or control facilities.
  - (c) All necessary waste treatment facilities will be installed and operational prior to the discharge of any wastewaters.
  - (d) Final plans and specifications must be submitted to the Department for review prior to the construction or modification of any treatment facilities.
  - (e) The permittee shall install flow measuring facilities of a design approved by the Department.
  - (f) The permittee must provide an outfall of a design approved by the which is placed in the receiving waters in such a manner that maximize mixing and dispersion of the wastewaters will be achieved as rapidly as possible.

**2. Proper operation and maintenance.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

**3. Need to halt or reduce activity not a defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

**4. Duty to mitigate.** The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

**5. Bypasses.**

- (a) Definitions.
  - (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
  - (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.
- (c) Notice.
  - (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

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- (ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D(1)(f), below. (24-hour notice).
- (d) Prohibition of bypass.
  - (i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:
    - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
    - (C) The permittee submitted notices as required under paragraph (c) of this section.
  - (ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (d)(i) of this section.

**6. Upsets.**

- (a) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- (c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
  - (ii) The permitted facility was at the time being properly operated; and
  - (iii) The permittee submitted notice of the upset as required in paragraph D(1)(f) , below. (24 hour notice).
  - (iv) The permittee complied with any remedial measures required under paragraph B(4).
- (d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

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**C. MONITORING AND RECORDS**

**1. General Requirements.** This permit shall be subject to such monitoring requirements as may be reasonably required by the Department including the installation, use and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). The permittee shall provide the Department with periodic reports on the proper Department reporting form of monitoring results obtained pursuant to the monitoring requirements contained herein.

**2. Representative sampling.** Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. If effluent limitations are based wholly or partially on quantities of a product processed, the permittee shall ensure samples are representative of times when production is taking place. Where discharge monitoring is required when production is less than 50%, the resulting data shall be reported as a daily measurement but not included in computation of averages, unless specifically authorized by the Department.

**3. Monitoring and records.**

- (a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (b) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.
- (c) Records of monitoring information shall include:
  - (i) The date, exact place, and time of sampling or measurements;
  - (ii) The individual(s) who performed the sampling or measurements;
  - (iii) The date(s) analyses were performed;
  - (iv) The individual(s) who performed the analyses;
  - (v) The analytical techniques or methods used; and
  - (vi) The results of such analyses.
- (d) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in the permit.
- (e) State law provides that any person who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule license, permit approval or decision is subject to the penalties set forth in 38 MRSA, §349.

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**D. REPORTING REQUIREMENTS**

**1. Reporting requirements.**

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

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has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit.

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

(iii) The Department may waive the written report on a case-by-case basis for reports under paragraph (f)(ii) of this section if the oral report has been received within 24 hours.

(g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this section.

(h) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

**2. Signatory requirement.** All applications, reports, or information submitted to the Department shall be signed and certified as required by Chapter 521, Section 5 of the Department's rules. State law provides that any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any order, rule, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

**3. Availability of reports.** Except for data determined to be confidential under A(9), above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. As required by State law, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal sanctions as provided by law.

**4. Existing manufacturing, commercial, mining, and silvicultural dischargers.** In addition to the reporting requirements under this Section, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) One hundred micrograms per liter (100 ug/l);

(ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or

(iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

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

**5. Publicly owned treatment works.**

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

**E. OTHER REQUIREMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



# DEP INFORMATION SHEET

## 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.

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**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.**

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