



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

August 3, 2010

VIA ELECTRONIC MAIL

Mr. C.S. Mansfield, Jr., President
Biddeford & Saco Water Company
P.O. Box 304
Biddeford, ME 04005-0304
info@biddefordsacowater.com

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0000035
Maine Waste Discharge License #W002545-5S-C-R
Final Permit/License – Biddeford and Saco Water Company

Dear Mr. Mansfield:

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

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

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

Sincerely,

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

Enclosure

cc: Stuart Rose, DEP/SMRO David Webster, USEPA Sandy Mojica, USEPA Lori Mitchell, DMU

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
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PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
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PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 760-3143



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

DEPARTMENT ORDER

IN THE MATTER OF

BIDDEFORD AND SACO WATER COMPANY) MAINE POLLUTANT DISCHARGE
DRINKING WATER TREATMENT FACILITY) ELIMINATION SYSTEM PERMIT
BIDDEFORD, YORK COUNTY, MAINE) AND
ME0000035) WASTE DISCHARGE LICENSE
W002545-5S-C-R) **APPROVAL**) **RENEWAL**

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et. seq. and *Conditions of Licenses*, 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 BIDDEFORD AND SACO WATER COMPANY (“permittee,” hereinafter), with its supportive data, agency review comments, and other related material on file and finds the following facts:

APPLICATION SUMMARY

The permittee has submitted a timely and complete application to the Department for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0000035/ Maine Waste Discharge License (WDL) #W002545-5S-B-R (“permit,” hereinafter) which was issued by the Department on August 12, 2005 and is due to expire on August 12, 2010. The 8/12/05 permit authorized the discharge of up to a monthly average flow of 0.150 million gallons per day (MGD) of filter cleaning (backwash) wastewater to the Saco River, Class A, in Biddeford, Maine.

PERMIT SUMMARY

This permitting action is carrying forward the terms and conditions of the 08/12/05 permitting action including:

1. Carrying forward the monthly average and daily maximum technology-based mass and concentration limits for total suspended solids (TSS);
2. Carrying forward the settleable solids limit of 0.1 mL/L as a monthly average limitation;
3. Carrying forward the pH range limitation;
4. Carrying forward the monthly average discharge flow limitation of 0.150 MGD;

PERMIT SUMMARY (cont’d)

5. Carrying forward the daily maximum technology-based total residual chlorine concentration limit of 1.0 mg/L and a minimum monitoring frequency requirement of once per week;
6. Carrying forward the daily maximum technology-based total aluminum concentration and mass limits, and a minimum monitoring frequency requirement of once per week;
7. Carrying forward the minimum monitoring frequency requirements for discharge flow, TSS, settleable solids and pH;
8. Carrying forward the requirement to maintain an Operations and Maintenance (O&M) Plan;
9. Carrying forward the requirement to submit a Practical Alternatives Analysis concurrent with submission of a permit renewal or modification application.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated August 3, 2010, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 MRSA Section 464(4)(F), will be met, in that:
 - a. Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - b. Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
 - c. The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause 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

CONCLUSIONS (con'td)

- 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 discharges will be subject to effluent limitations that require application of best practicable treatment.
5. The discharge is necessary and there are no reasonable alternatives available to eliminate the discharge.

ACTION

THEREFORE, the Department APPROVES the application of the BIDDEFORD AND SACO WATER COMPANY, to discharge up to a monthly average flow of 0.150 MILLION GALLONS PER DAY of filter cleaning (backwash) wastewater from a drinking water treatment facility to the Saco River, Class A, in Biddeford, Maine. The discharges shall be subject to the attached conditions and all applicable standards and regulations including:

1. *“Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits,”* revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit expires five (5) years from the date of signature below.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application May 20, 2010

Date of application acceptance May 21, 2010

This Order prepared by PHYLLIS A. RAND, BUREAU OF LAND & WATER QUALITY
ME0000035 2010

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Beginning the effective date of the permit, the permittee is authorized to discharge drinking water filter cleaning (backwash) wastewater to the Saco River via **Outfall #001A**. Such treated wastewater discharges shall be limited and monitored by the permittee as specified below⁽¹⁾.

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow <i>[50050]</i>	0.150 MGD <i>[03]</i>	---	---	---	When Discharging <i>[WH/DS]</i>	Measured <i>[MS]</i>
Total Suspended Solids (TSS) <i>[00530]</i>	20 lbs/Day <i>[26]</i>	40 lbs/Day <i>[26]</i>	30 mg/L <i>[19]</i>	60 mg/L <i>[19]</i>	1/Week <i>[01/07]</i>	Grab <i>[GR]</i>
Settleable Solids <i>[00545]</i>	---	---	0.1 mL/L <i>[25]</i>	---	1/Week <i>[01/07]</i>	Grab <i>[GR]</i>
Total Residual Chlorine ⁽²⁾ <i>[50060]</i>	---	---	---	1.0 mg/L <i>[19]</i>	1/Week <i>[01/07]</i>	Grab <i>[GR]</i>
Total Aluminum <i>[01105]</i>	---	3.3 lbs/Day <i>[26]</i>	---	5.0 mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
pH (Std. Units) <i>[00400]</i>	---	---	---	6.0 - 8.5 <i>[12]</i>	1/Week <i>[01/07]</i>	Grab <i>[GR]</i>

The italicized values bracketed in the table and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports.

FOOTNOTES: See page 6 of the permit for applicable footnotes.

SPECIAL CONDITIONS

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

Footnotes:

1. **Effluent monitoring** – All effluent monitoring shall be conducted from the end of the outfall pipe or from a sampling port installed at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. Any change in sampling location must be approved by the Department in writing.

Sampling and analysis must be conducted in accordance with; a) methods approved in Title 40 *Code of Federal Regulations* (40 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 Human Services. Samples that are sent to another POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of the *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000). Laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of 10-144 CMR 263.

All analytical test results shall be reported to the Department including results which are Detected below the respective reporting limits (RLs) specified by the Department or as specified by other approved test methods. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the detection limit achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL is not acceptable and will be rejected by the Department. For mass, if the analytical result is reported as <Y or if a detectable result is less than a RL, report a <X lbs/day, where X is the parameter specific limitation established in the permit. See **Attachment A** of this permit for a list of the Department's RLs.

2. **Total Residual Chlorine (TRC)** – The permittee shall utilize approved test methods that are capable of bracketing the limitation of 1.0 mg/L.

B. NARRATIVE EFFLUENT LIMITATIONS

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

SPECIAL CONDITIONS

B. NARRATIVE EFFLUENT LIMITATIONS (cont'd)

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

C. UNAUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on 5/21/10; 2) the terms and conditions of this permit; and 3) only from Outfall #001A. Discharges of waste water from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5)(*Bypass*) of this permit.

D. NOTIFICATION REQUIREMENT

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

1. Any introduction of pollutants into the waste water collection and treatment system from an indirect discharger in a primary industrial category discharging process waste water; and
2. Any substantial change in the volume or character of pollutants being introduced into the waste water collection and treatment system by a source introducing pollutants into the system at the time of permit issuance. For the purposes of this section, notice regarding substantial change shall include information on:
 - (a) the quality and quantity of 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.

E. OPERATION & MAINTENANCE (O&M) PLAN

This facility shall maintain a current written comprehensive Operation & Maintenance (O&M) Plan. The plan shall provide a systematic approach by which the permittee shall at all times, properly operate and maintain all facilities and systems of transport, treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

SPECIAL CONDITIONS

E. OPERATION & MAINTENANCE (O&M) PLAN (cont'd)

By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades, the permittee shall evaluate and modify the O&M Plan including site plan(s) and schematic(s) for the waste water treatment facility to ensure that it is up-to-date. The O&M Plan shall be kept on-site at all times and made available to Department and EPA personnel upon request.

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

F. PRACTICAL ALTERNATIVES ANALYSIS

Standards for classification of fresh surface waters, 38 M.R.S.A. §465(2)(C) states, "Prior to issuing a discharge license [to a Class A waterbody], the Department shall require the applicant to objectively demonstrate to the Department's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available. Discharges into waters of this classification licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist."

Upon submission of an application for permit renewal or modification, the permittee shall submit to the Department, for review and approval, a practical alternatives analysis for the discharge from the permittee to the Saco River [*PCS Code 20099*].

G. REOPENING OF PERMIT FOR MODIFICATIONS

Upon evaluation of the tests results or monitoring requirements specified in Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at 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 effluent and or ambient water quality monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

H. MONITORING AND REPORTING

Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report (DMR) forms provided by the Department and **postmarked on or before the thirteenth (13th) day of the month or hand-delivered to a Department Regional Office such that the DMR's are received by the Department on or before the fifteenth (15th) day of the month** following the completed reporting period.

SPECIAL CONDITIONS

H. MONITORING AND REPORTING (cont'd)

A signed copy of the DMR and all other reports required herein shall be submitted to the following address:

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

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

I. SEVERABILITY

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

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

FACT SHEET

August 3, 2010

MEPDES PERMIT: **ME0000035**
WASTE DISCHARGE LICENSE: **W002545-5S-C-R**

NAME AND ADDRESS OF APPLICANT:

**BIDDEFORD AND SACO WATER COMPANY
181 Elm Street, P.O. Box 304
Biddeford, Maine 04005-0304**

COUNTY: **YORK**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**BIDDEFORD AND SACO WATER COMPANY
466 South Street
Biddeford, Maine 04005**

RECEIVING WATER / CLASSIFICATION: **SACO RIVER / CLASS A**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. C.S. Mansfield, Jr.**
President
(207) 282-1543, ext. 76
info@biddefordsacowater.com

1. APPLICATION SUMMARY

The Biddeford and Saco Water Company ("permittee," hereinafter) has submitted a timely and complete application to the Department for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0000035/ Maine Waste Discharge License (WDL) #W002545-5S-B-R ("permit," hereinafter) which was issued by the Department on August 12, 2005 and is due to expire on August 12, 2010. The 8/12/05 permit authorized the discharge of up to a monthly average flow of 0.150 million gallons per day (MGD) of filter cleaning (backwash) wastewater to the Saco River, Class A, in Biddeford, Maine.

2. PERMIT SUMMARY

- a. Terms and Conditions: This permitting action is carrying forward the terms and conditions of the 08/12/05 permitting action including:
1. Carrying forward the monthly average and daily maximum technology-based mass and concentration limits for total suspended solids (TSS);
 2. Carrying forward the settleable solids limit of 0.1 mL/L as a monthly average limitation;
 3. Carrying forward the pH range limitation;
 4. Carrying forward the monthly average discharge flow limitation of 0.150 MGD;
 5. Carrying forward the daily maximum technology-based total residual chlorine concentration limit of 1.0 mg/L and a minimum monitoring frequency requirement of once per week;
 6. Carrying forward the daily maximum technology-based total aluminum concentration and mass limits, and a minimum monitoring frequency requirement of once per week;
 7. Carrying forward the minimum monitoring frequency requirements for discharge flow, TSS, settleable solids and pH;
 8. Carrying forward the requirement to maintain an Operations and Maintenance (O&M) Plan;
 9. Carrying forward the requirement to submit a Practical Alternatives Analysis concurrent with submission of a permit renewal or modification application.
- b. Facility History: This section provides a summary of significant licensing/permitting actions that have been completed for the permittee.

January 8, 1979 – The USEPA issued NPDES permit #ME0000035 to the permittee for the continued discharge of filter backwash wastewater to the Saco River in Biddeford. The permit expired on January 8, 1984 and superseded the previous (initial) NPDES permit issued on February 15, 1974.

April 11, 1991 – The Department issued WDL #W002545-59-A-R to the permittee for the discharge of up to 0.080 MGD of filter cleaning (backwash) wastewater to the Saco River in Biddeford. This licensing action superseded WDL #2545 issued on December 14, 1983 and WDL #419 issued on March 8, 1974.

November 18, 1996 – The USEPA issued General Permit #MEG640008 to the permittee for the continued discharge of filter backwash wastewater to the Saco River in Biddeford.

2. PERMIT SUMMARY (cont'd)

The General Permit required the permittee to monitor the discharge on a weekly basis, compile the data by calendar quarter and submit biannual reports to the USEPA Region I Office.

July 24, 2001 – The permittee submitted a General Application to the Department for the renewal of WDL #W002545-59-A-R. The application was accepted for processing on July 30, 2001 and assigned WDL #W002545-5S-B-R/MEPDES #ME0000035.

September 13, 2003 – The Maine Legislature amended the Maine Surface Water Classification Program at 38 M.R.S.A. §467(12)(A)(10) by reclassifying the Saco River at the point of discharge from Class B to Class A.

June 24, 2005 – The permittee submitted, as an addendum to their 7/24/01 renewal application, a practical alternatives analysis to address the 2003 water quality classification upgrade of the Saco River.

August 12, 2005 – The Department issued WDL#W002545-5S-B-R for a five-year term.

May 20, 2010 – The permittee submitted a General Application to the Department for renewal of WDL #W002545-5S-B-R. The application was accepted for processing on May 21, 2010 and was assigned WDL #W002545-5S-C-R.

- c. Source Description: The permittee operates a municipal drinking water treatment plant on South Street in Biddeford, Maine, to supply potable water to approximately 14,500 residential and commercial customers in the cities of Biddeford and Saco and the towns of Old Orchard Beach and a portion of Scarborough (Pine Point area). The permittee also sells water on a wholesale basis to the Kennebunk, Kennebunkport and Wells Water District. A map showing the location of the treatment facility is included as Fact Sheet **Attachment A**. Original construction of the facility was completed in 1936 and the current design capacity of the plant is 13.0 MGD. Currently, the permittee extracts and treats approximately 5.5-6.0 MGD of water from the Saco River.

The permittee utilizes two low-lift intake pumps to convey water from the river to the treatment facility. Prior to entering the facility, the permittee injects alum to assist in color removal, sodium aluminate (during winter months and during periods of excessive river turbidity) to enhance color removal, lime for pH adjustment, and a polymer (when necessary) to enhance flocculation. The pretreated water is pumped to a two-cell flocculation basin that consists of two (2) two-stage flocculation zones and turbine-style mixers. Each cell has a capacity of approximately 134,000 gallons. (This treatment unit was created in calendar year 2000 from the pre-existing, baffled flocculation basin and a portion of the pre-existing sedimentation basin.) The water continues to a 1.1 million gallon sedimentation basin with a designed retention time of approximately 1.5 to 2

2. PERMIT SUMMARY (cont'd)

hours. After settling, the water is treated with gaseous chlorine to a residual concentration of approximately 1 part per million (ppm) for disinfection and with a filtration aid polymer. The water is equally-distributed to a filter train consisting of six (6) dual media (anthracite/sand) rapid sand filters. The surface area of each filter unit is 441 square feet and the total surface area of all filters is 2,646 square feet. Filtered water is treated with gaseous chlorine to a residual concentration of approximately 1.5 ppm and with a corrosion inhibitor before entering two (2) clearwells with a total combined capacity of 400,000 gallons. Water is treated inline with hydrofluosilicic acid for consumer dental protection, with ammonia to convert free chlorine to chloramine (NH_2Cl) and lime to adjust the pH as the finished water is pumped to the distribution system.

The permittee generates wastewater during daily filter cleaning procedures that are performed to maintain treatment system efficiency and during the continuous removal of accumulated solids from the sedimentation basin.

- d. Wastewater Treatment: The permittee performs filter cleaning cycles during each operating day and the number of cleaning cycles varies depending on the turbidity of the source waters. The turbidimeters that monitor filter performance are located on the filter effluent piping. The permittee reported that they perform a maximum of six (6) filter cleaning cycles per day (each filter cleaned once) and a minimum of three cycles per day. Each filter cleaning cycle generates between 10,000 and 18,000 gallons of wastewater and requires between 15 and 35 minutes to complete. The filters are taken offline and cleaned independently. The permittee utilizes finished water that has been returned to the plant from one of the distribution system lines to complete filter cleaning cycles. Water used for filter cleaning is stored in an elevated backwash tank and then flows by gravity to the filter being cleaned. All wastewater generated during cleaning cycles is conveyed directly to a 600,000-gallon sedimentation lagoon for settling prior to discharge. Discharge occurs when the production of potable water has ceased for the day (usually between 7pm and 10pm). The lagoon drain is then opened and supernatant drains from the lagoon into the Saco River until 5am the next morning. A schematic of the potable and wastewater treatment processes is included as Fact Sheet **Attachment B**.

The treatment plant operator initiates filter cleaning cycles by closing the influent valve and allowing the remaining water to filter down through the filter media. The filter effluent valve is closed when the water level over the filter reaches a point approximately three inches above the surface of the filter media. After the filter effluent valve is closed completely, the air scour blower is started and run for four minutes. After most of the entrained air has been released from the filter bed, the backwash influent valve is opened as is the drain valve and finished water either from the distribution system or from the backwash tank is forced up through the filter bed for approximately 3 to 5 minutes at average rates of approximately 3,000 to 4,000 GPM during a high rate upflow backwash

2. PERMIT SUMMARY (cont'd)

sequence. This sequence generates approximately 12,000 gallons of wastewater. Following the backwash, the permittee performs a 5 to 30-minute filter-to-waste sequence using finished water, which generates up to approximately 3,000 gallons of wastewater. The filter is brought back into production mode by closing the backwash and drain valves and opening the influent valve. Wastewater generated during the backwash and filter-to-waste sequences is conveyed to a 600,000-gallon sedimentation lagoon prior to discharge and supernatant is conveyed to the outfall pipe on an intermittent basis. Installation of the air scour blower was completed by permittee on June 13, 2005. Use of the air scour blower has significantly reduced the quantity of water used during filter backwash procedures and quantity of wastewater generated from filter cleaning activities.

Wastewater (supernatant) from the lagoon is conveyed to the Saco River in Biddeford via a 30-inch diameter discharge pipe identified as, "30" [30-inch] Sewer Outflow" on Fact Sheet **Attachment B**. Compliance samples are collected from the 30-inch outflow pipe. The discharge is intermittent and is manually controlled. The outfall pipe terminates on the shore of the Saco River between the top of the embankment and the normal high-water elevation. Therefore, the Department considers this a bank discharge that does not achieve complete and rapid mixing with the receiving waters. The lagoon also has a drain and an overflow pipe. In accordance with Special Condition C of this permit, the permittee is only authorized to discharge from Outfall #001A.

The permittee also generates wastewater during the removal of settled solids (sludge) from the sedimentation basin. The permittee utilizes a suction sludge removal system that conveys accumulated solids from the bottom of the sedimentation basin to the lagoon. The permittee estimates that between 10,000 and 30,000 gallons of wet sludge are pumped to the lagoon each day. Settled solids are removed from the lagoon once every three years and are transported to an on-site, approximately 250,000-gallon, freeze-thaw solids storage area. Discharge associated with the freeze-thaw storage area goes through an underdrain and into the lagoon. The permittee is not required by State law to obtain a permit for the storage of the solids as long as they remain stored and unburied on the permittee's property.

Sanitary wastewater is collected in a holding tank that is pumped out by a local septage hauler twice per week.

3. CONDITIONS OF PERMIT

Conditions of Licenses, 38 M.R.S.A. Section 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, *Certain Deposits and Discharges Prohibited*, 38 M.R.S.A. Section 420 and *Surface Water Toxics Control Program*, 06-096

3. CONDITIONS OF PERMIT (cont'd)

CMR 530, require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584, and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

4. RECEIVING WATER QUALITY STANDARDS

The Maine Legislature reclassified the Saco River at the point of discharge from Class B to Class A. PL 2003, c.317, §15 (effective September 13, 2003). Maine law, 38 M.R.S.A. §467(12)(A)(10) classifies the Saco River from the confluence with the impoundment formed by the Cataract Project Dams to the Interstate 95 bridge as a Class A water.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2008 Integrated Water Quality Monitoring and Assessment Report, prepared pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists a 24.1-mile section (Segment 619R) of the main stem of the Saco River between the Little Ossipee River and tidewater as, “*Category 2: Rivers and Streams Attaining Some Designated Uses, Insufficient Information For Other Uses.*” The Report also lists Segment 619R as, “*Category 5-B: Rivers and Streams Impaired By Bacteria From Combined Sewer Overflows (TMDL Required).*” The City of Biddeford and City of Saco have developed and implemented a Combined Sewer Overflow (CSO) master plan for the elimination of all CSO points associated with the collection system. As the City of Biddeford and City of Saco upgrade the sewer collection systems in accordance with the CSO Master Plan and Nine Minimum Controls, there should be reductions in the frequency and volume of CSO activities and in the discharge of wastewater receiving primary treatment only, and, over time, improvement in the quality of the wastewater discharged to the receiving waters. The Department has no information at this time that permittee’s water treatment processes contributes to an increase in the bacteria content of the receiving water and the Department has no information at this time that the discharge from the permittee causes or contributes to non-attainment status of the standards for Class A waters.

In addition, the Report lists all freshwaters in Maine as only partially attaining the designated use of recreational fishing due to a fish consumption advisory (Category 5-C). The advisory was established in response to elevated levels of mercury in some fish caused by atmospheric deposition.

6. PRACTICAL ALTERNATIVES ANALYSIS

On September 13, 2003, the Maine Legislature amended the Maine Surface Water Classification Program at 38 M.R.S.A. §467(12)(A)(10) by reclassifying the Saco River at the point of discharge from Class B to Class A. 38 M.R.S.A. §465(2)(C) states, in part,

“Prior to issuing a discharge license [to a Class A waterbody], the Department shall require the applicant to objectively demonstrate to the Department’s satisfaction that the discharge is necessary and that there are no other reasonable alternatives available. Discharges into waters of this classification licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist.”

The Department initially licensed the permittee’s discharge to the Saco River on March 8, 1974, and on December 14, 1983, authorized the discharge of a monthly average of up to 80,000 gallons per day. The reclassification was completed with the knowledge that permittee was authorized to discharge to the river segment proposed for upgrade. Neither the Maine Legislature nor the Department viewed the discharge from permittee as precluding the classification upgrade and the upgrade was not intended to affect the existing licensed discharge from the facility. The Department has taken the position that existing discharges to Class A waters that were licensed prior to January 1, 1986 may continue until a practical alternative exists, and those discharges will be subject to effluent limitations at least as stringent as those established in the previous licensing action. Any proposed new discharge, however, would be subject to the “equal to or better than” standard for Class A waters.

On June 13, 2005, the permittee informed the Department that the installation of a new air scour sequence in the filter cleaning process has been completed and has resulted in a reduction in wastewater generated and discharged. The permittee did, however, seek to increase the authorized discharge flow limit as a result of increasing customer demand for potable water. In the previous permitting action, the Department eliminated the daily maximum discharge flow limit and established a monthly average limit of 0.150 MGD for consistency with the monitoring requirements established for other drinking water treatment facilities in Maine. All mass-based limits established in the permit, however, are based on the previously licensed flow limit of 0.080 MGD to ensure there is no net increase in pollutant loading to the receiving waters. The Department does not consider an increase in the authorized discharge flow limitation to constitute an increased or new discharge. Maine law provides that this discharge may continue provided there is no practical alternative.

As an exhibit to the permittee’s application for renewal of WDL #002545-5S-B-R, the permittee submitted a letter dated June 23, 2005, and provided an update to the letter in 2010, providing a practical alternatives analysis for the elimination of the discharge to the Class A segment of the Saco River. The analysis considered conveying the effluent to the City of Biddeford’s publicly owned treatment works (POTW), extending the outfall pipe approximately 4,000 feet down river to a Class B segment of the Saco River, spray irrigation of lagoon supernatant, and relocating the discharge to a surface drainage course that serves as tributary to the Saco River. The permittee determined that all four alternatives were

6. PRACTICAL ALTERNATIVES ANALYSIS (cont'd)

economically or environmentally not practical. The permittee cited distance (5,000 feet), overtaxing the capacity of the City of Biddeford's sewage collection system and capital and operating costs as factors causing the alternative of discharge to the POTW prohibitive. The permittee cited environmental disturbances (in-stream work in the Saco River), property access (easements required for all properties extending to the thread of the river), and difficult construction conditions (the relocated outfall would have to be extended under or through the Maine Turnpike) as factors making the outfall extension alternative prohibitive. The permittee cited lack of available land and operating costs as factors causing the spray irrigation alternative prohibitive. The permittee cited property access (easement required), legality (discharge to a drainage area of less than 10 square miles prohibited by Maine law), and potential water quality degradation of a small brook as factors causing the alternative to relocate the discharge to a different surface water drainage course prohibitive.

The Department concurs that there are no practical alternates to the discharge to the Class A segment of the Saco River available to the permittee at this time. The Department has further determined in this permitting action that the discharge from the permittee, as permitted, will not cause or contribute to non-attainment of the designated standards for Class A waters.

In accordance with the requirements of 38 M.R.S.A. §465(2)(C), Special Condition F of this permitting action requires permittee to submit a practical alternatives analysis concurrent with an application for permit renewal or modification to demonstrate that there are no practical alternatives available to eliminate the discharge to the Class A segment of the Saco River.

7. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Flow: This permitting action is carrying forward the monthly average discharge flow limit of 0.150 MGD.

A summary of discharge flow data as reported on the monthly Discharge Monitoring Reports (DMRs) submitted to the Department for the period March 2005 – March 2010 (# DMRs = 54) indicates the monthly average discharge flow ranged from 0.06 MGD to 0.13 MGD with an arithmetic mean of 0.08 MGD. The permittee was in compliance with their monthly average flow limitation 100% of the time.

- b. Dilution Factors: Dilution factors associated with the discharge from the permittee were derived in accordance with freshwater protocols established in *Surface Water Toxics Control Program*, 06-096 CMR 530 (effective October 9, 2005). The outfall pipe associated with the discharge from the permittee terminates above the normal high water line of the Saco River. Typically, these types of discharges do not achieve complete and rapid mixing with the receiving waters since initial dilution is based on mixing resulting from the momentum of a discharge as it exits a discharge pipe (jet effect) as well as the dispersion of the effluent plume as it rises to the surface of the receiving water.

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

06-096 CMR 530(D)(4)(a) states:

“Analyses using numerical acute criteria for aquatic life must be based on ¼ of the 1Q10 stream design flow to prevent substantial acute toxicity within any mixing zone, according to EPA’s Mixing Zone Policy and to ensure a Zone of Passage of at least ¾ of the cross-sectional area of any stream as required by Department rule. Where it can be demonstrated that a discharge achieves rapid and complete mixing with the receiving water, by way of an efficient diffuser or other effective method, analyses may use a greater proportion of the stream design, up to and including all of it, as long as the Zone of Passage is maintained.”

The permittee has not provided the Department with information as to the mixing characteristics of the effluent with the receiving water. Consequently, this permitting action is utilizing ¼ of the 1Q10 stream design flow in acute evaluations as required by 06-096 CMR 530.

With a discharge flow limit of 0.150 MGD, dilution factors associated with the permittee’s discharge may be calculated as follows:

$$\text{Acute: } 1\text{Q}10 = 250 \text{ cfs} \quad \Rightarrow \frac{(250 \text{ cfs})(0.6464^*) + 0.150 \text{ MGD}}{0.150 \text{ MGD}} = 1,078:1$$

$$\text{Mod. Acute: } \frac{1}{4} 1\text{Q}10 = 62.5 \text{ cfs} \quad \Rightarrow \frac{(62.5 \text{ cfs})(0.6464) + 0.150 \text{ MGD}}{0.150 \text{ MGD}} = 270:1$$

$$\text{Chronic: } 7\text{Q}10 = 448 \text{ cfs} \quad \Rightarrow \frac{(448 \text{ cfs})(0.6464) + 0.150 \text{ MGD}}{0.150 \text{ MGD}} = 1,932:1$$

$$\text{Harmonic Mean: } 7\text{Q}10 = 1,724 \text{ cfs} \quad \Rightarrow \frac{(1,724 \text{ cfs})(0.6464) + 0.150 \text{ MGD}}{0.150 \text{ MGD}} = 7,430:1$$

*Conversion factor, cubic feet per second to million gallons per day.

- c. Total Suspended Solids (TSS): This permitting action is carrying forward the monthly average and daily maximum technology-based TSS concentration limits of 30 mg/L and 60 mg/L, respectively, and a minimum monitoring frequency requirement of once per calendar quarter. Both concentration limits are based on a Department best professional judgment of best practicable treatment (BPT) for the discharge of wastewater from drinking water treatment facilities in Maine, and are consistent with the limits established for other drinking water treatment facility discharges in Maine.

Waste Discharge License Conditions, 06-096 CMR 523(6)(f) (effective January 12, 2001), states that all pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass. As previously stated, the receiving water was

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

reclassified from Class B to Class A in September 2003. To ensure there is no net increase in pollutant loading to the receiving waters, this permitting action is carrying forward the TSS mass limits based on the previously licensed flow limit of 0.080 MGD as follows:

Monthly Average Mass: $(30 \text{ mg/L})(8.34 \text{ lbs/gallon})(0.080 \text{ MGD}) = 20 \text{ lbs/day}$
 Daily Maximum Mass: $(60 \text{ mg/L})(8.34 \text{ lbs/gallon})(0.080 \text{ MGD}) = 40 \text{ lbs/day}$

This permitting action is carrying forward the TSS minimum monitoring frequency requirement of once per week (1/Week) based on Department guidance for drinking water treatment facilities licensed to discharge greater than 0.075 MGD.

A review of the DMR data for the period March 2005 – March 2010 indicates the monthly average and daily maximum mass and concentration values have been reported as follows:

TSS mass

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)	Number of DMRs	Compliance
Monthly Average	20	0 – 13	3	54	100%
Daily Maximum	40	0 – 24	5	54	100%

TSS concentration

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Number of DMRs	Compliance
Monthly Average	30	0 – 16	4	54	100%
Daily Maximum	60	0 – 33	8	54	100%

- d. Settleable Solids: This permitting action is carrying forward the daily maximum BPJ-based settleable solids concentration limit of 0.1 mL/L and a minimum monitoring requirement of once per calendar quarter. The limit established for the permittee is more stringent than the limit established for all other drinking water treatment facilities in Maine due to its discharge into Class A waters and to ensure there is no net increase in pollutants discharged to the receiving water. In addition, the Department has no information at this time that the discharge from the permittee causes or contributes to measurable adverse impacts to the receiving water. This permitting action is carrying forward the minimum monitoring frequency requirement of once per week (1/Week) based Department guidance for drinking water treatment facilities licensed to discharge greater than 0.075 MGD.

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

A summary of settleable solids data as reported on the monthly Discharge Monitoring Reports (DMRs) submitted to the Department for the period March 2005 – March 2010 (# DMRs = 54) indicates the monthly average settleable solids results ranged from 0.01 mL/L to 0.18 mL/L with an arithmetic mean of 0.03 mL/L. The permittee was in compliance with their monthly average settleable solids limitation 98% of the time.

- e. Total Residual Chlorine (TRC): The permittee utilizes finished, potable water which has been treated with gaseous chlorine in the filter backwash procedure. Consequently, the final effluent is expected to contain residual amounts of chlorine. This permitting action is carrying forward a TRC minimum monitoring frequency requirement of once per week (1/Week) based on Department guidance for drinking water treatment facilities licensed to discharge greater than 0.075 MGD.

With dilution factors as determined above, calculated end-of-pipe (EOP) acute and chronic concentration thresholds associated with the discharge may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	Mod. A & C Dilution Factors	Calculated	
			Acute Threshold	Chronic Threshold
0.019 mg/L	0.011 mg/L	270:1 (Mod. A) 1,932:1 (C)	5.1 mg/L	21.3 mg/L

Example TRC calculation, Modified Acute: $(0.019)(270) = 5.1$ mg/L

The Department has established a daily maximum BPT-based TRC limitation of 1.0 mg/L for facilities that utilize elemental chlorine or chlorine-based compounds in their treatment processes. The BPT-based daily maximum limit of 1.0 mg/L is more stringent than either calculated water quality-based threshold and is therefore being carried forward in this permitting action consistent with the limits established for other drinking water treatment facility discharges in Maine.

A review of the DMR data for the period March 2005 – March 2010 indicates the daily maximum concentration values have been reported as follows:

Total Residual Chlorine

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Number of DMRs	Compliance
Daily Maximum	1.0	0.1 – 1.5	0.7	54	96%

Total Aluminum: The permittee utilizes an aluminum-based coagulant in the water treatment process. Consequently, the final effluent is expected to result in measurable levels of total aluminum. This permitting action is carrying forward the minimum monitoring frequency requirement of once per month (1/Month) from the previous

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

permitting action based on Department guidance for drinking water treatment facilities licensed to discharge greater than 0.075 MGD.

The USEPA's General Permit for drinking water treatment facilities (issued to the permittee on 11/18/96) contained a daily maximum technology-based concentration limit of 5.0 mg/L for total aluminum, which was considered a BPT-based standard for the discharge of aluminum from drinking water treatment facilities in Maine.

In order to determine the permittee's water quality based daily maximum total aluminum concentration limit, this permitting action is applying a default background concentration of 10% of the applicable water quality criteria per 06-096 CMR 530 §4(C) and is reserving 15% of the applicable water quality criteria per 06-096 CMR 530 §4(E) as the Department does not have sufficient information on the background levels of metals in the water column in the Saco River in the vicinity of the permittee's outfall.

The total aluminum daily maximum concentration limit may be calculated using the following formula:

$$\text{Concentration Limit Formula} = [(\text{Dilution Factor})(0.75)(\text{criterion})] + (0.25)(\text{criterion})$$

Aluminum(Total):

End-of-pipe (EOP) water quality-based daily maximum concentration limit for aluminum (total) may be calculated as follows:

Mod. Acute dilution factor = 270:1

$$\text{EOP concentration} = [\text{Dilution factor} \times 0.75 \times \text{AWQC}] + [0.25 \times \text{AWQC}]$$

$$\text{EOP} = [270 \times 0.75 \times 750 \text{ ug/L}] + [0.25 \times 750 \text{ ug/L}] = 152 \text{ mg/L}$$

<u>Parameter</u>	<u>Calculated EOP Concentration</u>
Aluminum	152 mg/L

The BPT-based limit of 5.0 mg/L for total aluminum is more stringent than the calculated water quality-based limit and is therefore being carried forward in this permitting action as a daily maximum limit.

To ensure there is no net increase in pollutant loading to the receiving waters, this permitting action is carrying forward the previously licensed flow limit of 0.080 MGD in order to determine the daily maximum water quality-based mass limit for aluminum (total). The total aluminum daily maximum mass limit may be calculated as follows:

$$\text{Daily Maximum Mass Limit} = (5.0 \text{ mg/L})(8.34 \text{ lbs/gallon})(0.080 \text{ MGD}) = 3.3 \text{ lbs/day}$$

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

A review of the DMR data for the period March 2005 – March 2010 indicates the daily maximum mass and concentration values have been reported as follows:

Total Aluminum mass

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)	Number of DMRs	Compliance
Daily Maximum	3.3	0 – 2	1	53	100%

Total Aluminum concentration

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Number of DMRs	Compliance
Daily Maximum	5.0	0 – 3	1	53	100%

- h. pH: This permitting action is carrying forward the pH range limitation of 6.0 – 8.5 standard units (SU), as they are considered by the Department as a BPT standard for drinking water treatment plant discharges in Maine. This permitting action is carrying forward the 1/Week minimum monitoring frequency requirement based on Department guidance for drinking water treatment facilities licensed to discharge greater than 0.075 MGD.

A review of the DMR data for the period March 2005 – March 2009 (#DMRs = 54) showed that the permittee’s pH results ranged from 6.5 SU to 9.8 SU. The permittee was in compliance with the pH limitations 93% of the time.

8. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, 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 A classification.

9. PUBLIC COMMENTS

Public notice of this application was made in the *Biddeford Journal Tribune* on or about May 18, 2010. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

10. DEPARTMENT CONTACTS

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Bureau of Land & Water Quality
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11. RESPONSE TO COMMENTS

During the period of June 30, 2010, through the issuance date of the permit/license, the Department solicited comments on the proposed draft permit/license to be issued for the discharge from the permittee. The Department did not receive comments from the permittee, state or federal agencies or interested parties that resulted in any substantive changes in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

ATTACHMENT A

Legend

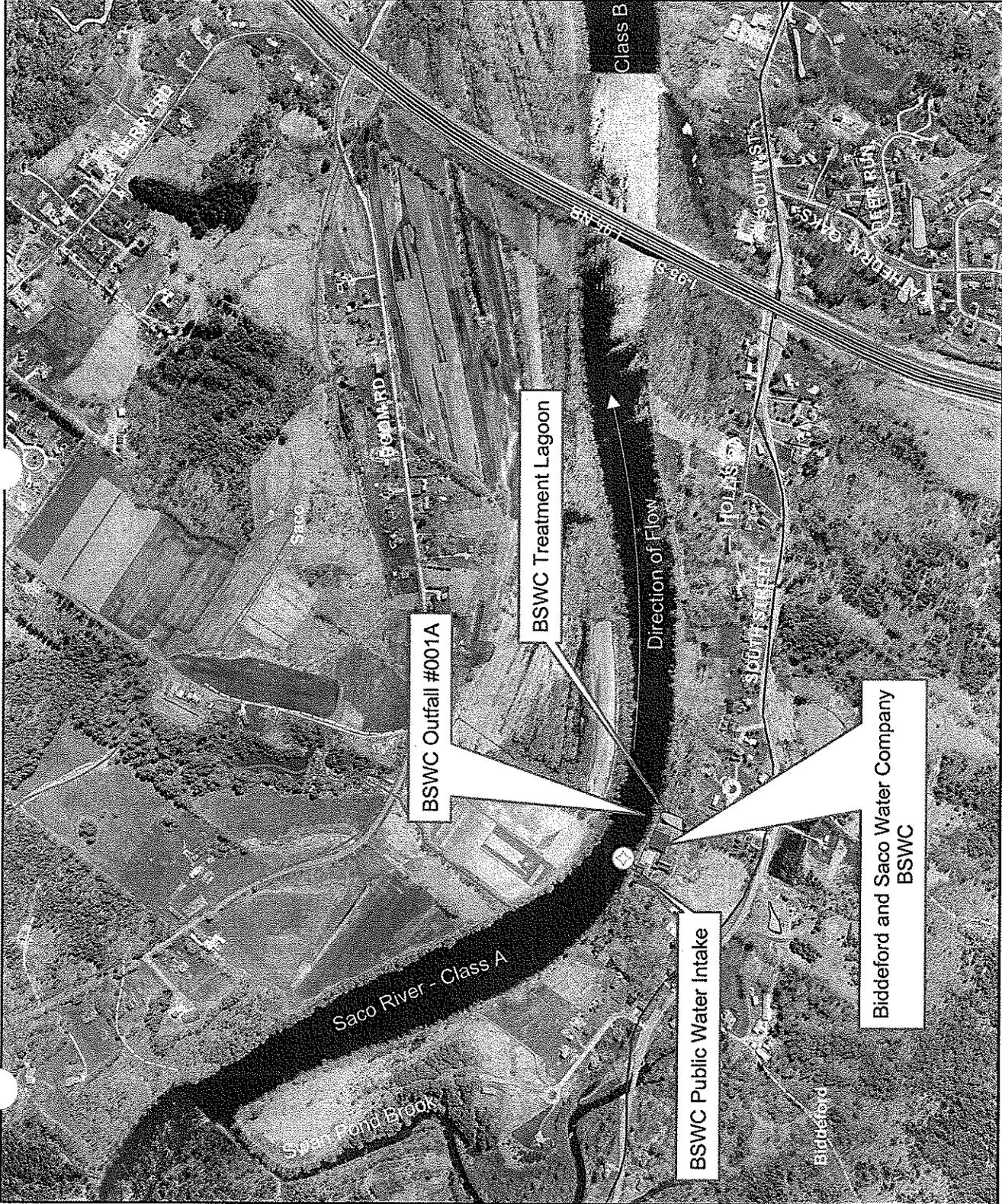
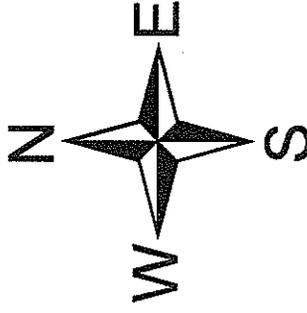
Streams

- AA
- A
- B
- C

Public Drinking Water Supplies

Ponds and Lakes

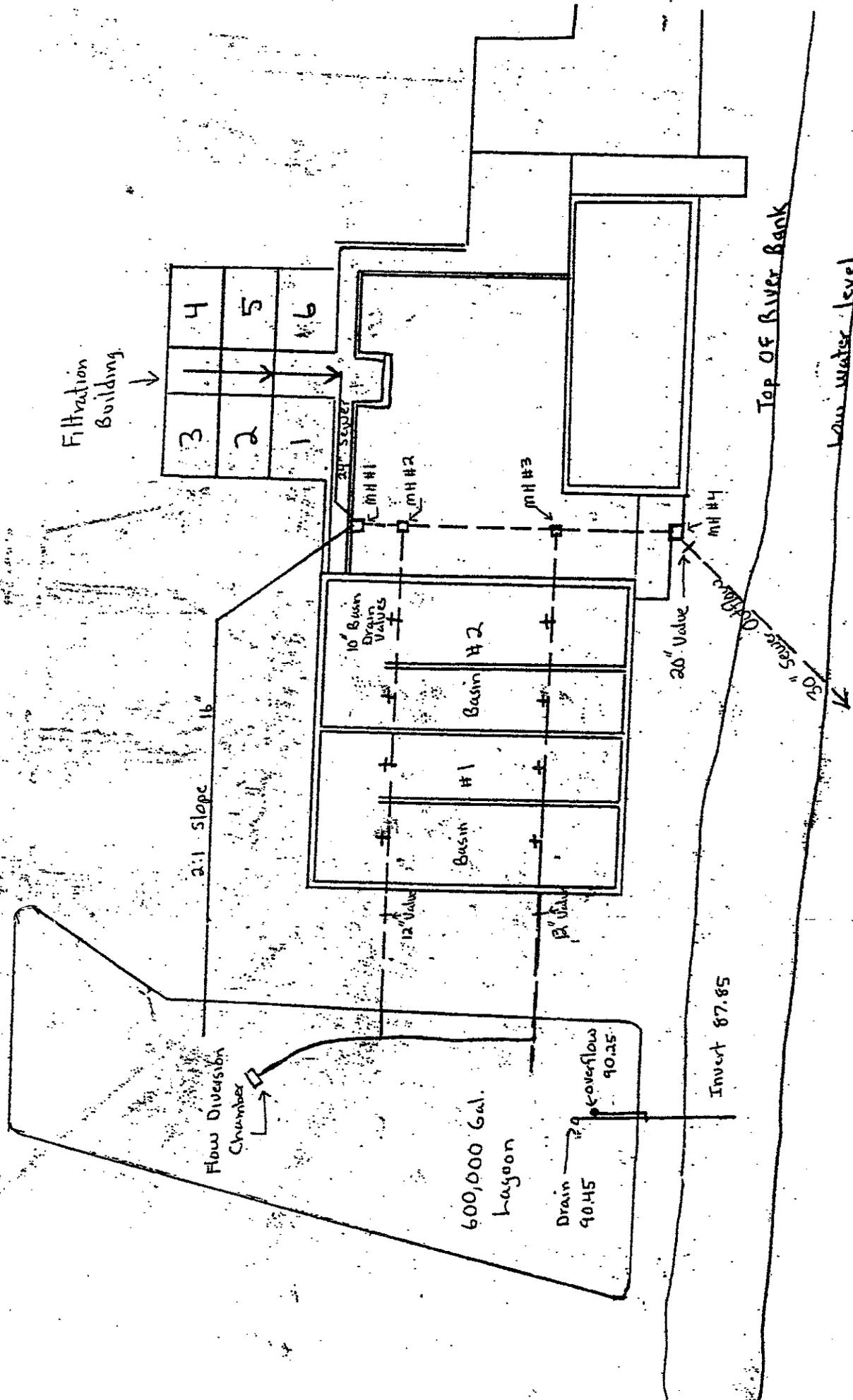
Ponds and Lakes



This map was created by:
 Bill Hinkel
 Division of Water Resource Regulation
 Maine Department of Environmental Protection
 August 15, 2005

Biddeford/Saco, Maine

ATTACHMENT B



BIODIFERO & SAGO WATER CO.
 NPDES NO. ME 0000035

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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

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

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

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

5. Bypasses.

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

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

6. Upsets.

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

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C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

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

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D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

II. APPEALS TO MAINE SUPERIOR COURT

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

ADDITIONAL INFORMATION

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

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