



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

August 10, 2010

Ms. Ellen Rossi  
Jasper Wyman & Son  
P.O. Box 100  
Milbridge, ME 04658

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0036919  
Maine Waste Discharge License (WDL) Application #W007847-5O-E-M  
**Final MEPDES Permit/WDL Modification-Jasper Wyman & Son**

Dear Ms. Rossi:

Enclosed please find a copy of your **final** Maine MEPDES Permit/WDL modification 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](mailto:phyllis.a.rand@maine.gov).

Sincerely,

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

Enclosure

cc: Clarissa Trasko, DEP/EMRO David Webster, USEPA Sandy Mojica, USEPA  
Lori Mitchell, DMU John Pond, CES, Incorporated

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

## DEPARTMENT ORDER

### IN THE MATTER OF

JASPER WYMAN & SON	)	MAINE POLLUTANT DISCHARGE
DEBLOIS, WASHINGTON COUNTY	)	ELIMINATION SYSTEM PERMIT
BLUEBERRY PROCESSING/STORM WATER	)	AND
#ME0036919	)	WASTE DISCHARGE LICENSE
#W007847-5O-E-M	)	<b>MODIFICATION</b>
<b>APPROVAL</b>		

Pursuant to the provisions of the *Federal Water Pollution Control Act*, Title 33 USC, §1251, *Conditions of Licenses*, 38 M.R.S.A. § 414-A, and applicable regulations, the Maine Department of Environmental Protection (Department) is hereby modifying the combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0036919/Maine Waste Discharge License (WDL) #W007847-5O-C-R issued to JASPER WYMAN & SON (Wyman's) on March 19, 2007. With its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

### APPLICATION SUMMARY

Wyman's has applied to the Department for modification of the 3/19/07 MEPDES permit/WDL. The 3/19/07 MEPDES permit/WDL and subsequent permit modification #ME0036919/WDL#W007847-5O-D-M dated 3/12/08 authorizes the discharge of blueberry processing waste waters via a surface wastewater disposal system (75,600 gallons per acre per week for seven (7) spray irrigation fields), as well as the discharge of storm water to Great Falls Branch, Class A, in Deblois, Maine.

### MODIFICATION SUMMARY

The Department is modifying the aforementioned MEPDES permit/WDL by authorizing the discharge of an additional 12,640 gallons per acre per week of blueberry processing waste waters resulting from the expansion of the blueberry processing facility in 2008. Wyman's proposal and application increases the waste water application rate from 75,600 gallons per acre per week to 88,240 gallons per acre per week, the daily waste water volume from approximately 148,000 GPD to 333,000 GPD and expands the seven (7) spray irrigation areas from 24.98 acres to 28.05 acres.

## CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated August 10, 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, *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
  - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S.A. § 414-A(1)(D).

**ACTION**

THEREFORE, the Department is hereby MODIFYING the combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0036919/Maine Waste Discharge License (WDL) #W007847-5O-C-R issued to JASPER WYMAN & SON (Wyman's) on March 19, 2007, and APPROVES Wyman's to treat waste water generated at a average daily flow rate of 333,000 gallons per day and to operate a surface waste water disposal (spray irrigation) system that uses spray irrigation to discharge up to 3.25 inches per acre per week (88,240 gallons per acre per week) via seven (7) spray irrigation areas SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached.
2. All terms and conditions in combination MEPDES permit #ME0036919 / WDL #W007847-5O-C-R, dated March 19, 2007, not modified by this permitting action remain in effect and enforceable.
3. The attached Special Conditions, including any effluent limitations and monitoring requirements.
4. This permit modification expires on March 19, 2012, concurrent with combination MEPDES permit #ME0036919 / WDL #W007847-5O-C-R issued by the Department on March 19, 2007.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application June 1, 2010  
Date of application acceptance June 1, 2010

This Order prepared by PHYLLIS A. RAND, BUREAU OF LAND & WATER QUALITY  
ME0036919 Mod 2010

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

- The permittee is authorized to operate a surface waste water disposal system consisting of the following seven (7) spray irrigation areas: **SPRAY IRRIGATION AREAS (PCS IDs) SA-A, SA-B, SA-C, SA-D, SA-E, SA-F, and SA-G.** The seven spray irrigations areas shall be limited and monitored as specified below <sup>(1)</sup>.

**APRIL 15 – NOVEMBER 15**

Effluent Characteristic	Discharge Limitations		Minimum Monitoring Requirements	
	Monthly <u>Total</u> as specified	Weekly <u>Maximum</u> as specified	Measurement <u>Frequency</u> as specified	Sample <u>Type</u> as specified
Application Rate (Weekly) <sup>(2)</sup> <i>[01287]</i>	---	88,240 gal/acre/week <sup>(3)</sup> (3.25 inches/acre/week) <i>[8B]</i>	1/Week <i>[01/07]</i>	Calculate <i>[CA]</i>
Flow – Total Gallons <sup>(2)</sup> (collectively for all spray areas) <i>[82220]</i>	Report (Gallons) <i>[80]</i>	---	1/Month <i>[01/30]</i>	Calculate <i>[CA]</i>

The italicized numeric 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 5 of this 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.

2. **Weekly Application Rate** – A field's weekly application rate is the total gallons sprayed over the applicable period of time divided by the size of the wetted area of the spray-irrigation field or the area in acres of that portion of the field utilized. The permittee shall measure the flow of waste water to the irrigation area by the use of a flow measuring device that is checked for calibration at least once per calendar year. Weekly is defined as Sunday through Saturday.
3. **Discharge Monitoring Report (DMR) Reporting** – The permittee shall report the highest weekly application rate for the month in the applicable box on the form. Compliance with weekly reporting requirements must be reported for the month in which the calendar week ends.

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

## **SPECIAL CONDITIONS**

### **C. UNAUTHORIZED DISCHARGES**

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge License Modification, accepted for processing on June 1, 2010; 2) the terms and conditions of this WDL Modification; 3) the terms and conditions of WDL #W007847-5O-C-R issued on March 19, 2007 and subsequent modification WDL#W007847-5O-D-M issued on March 12, 2008; 4) via spray irrigation areas referenced as SA-A, SA-B, SA-C, SA-D, SA-E, SA-F, and SA-G; and 5) storm water outfalls #007, #008, #009. Discharges of wastewater from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

### **D. TREATMENT PLANT OPERATOR**

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

### **E. LAGOON MAINTENANCE**

1. The permittee shall periodically inspect and properly maintain at all times the integrity of the lagoons during the operating season. There may be no overflow through or over the lagoon berms. The permittee shall repair or correct any signs of leaks or overflow immediately.
2. The permittee shall maintain freeboard of the lagoons at design levels (at least 1 foot). The permittee shall operate the lagoons in such a manner as to balance the disposal of wastewater via spray irrigation and to ensure that design freeboard levels are maintained.
3. The permittee shall remove solid materials as necessary from the lagoons to maintain the proper operating depths that will provide best practicable treatment of the wastewater. The permittee shall properly disposed of all material removed from the lagoons in accordance with applicable State and Federal rules and regulations.

### **F. REOPENING OF PERMIT FOR MODIFICATIONS**

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

**SPECIAL CONDITIONS**

**G. SEVERABILITY**

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

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

**FACT SHEET**

**August 10, 2010**

MEPDES PERMIT NUMBER: **#ME0036919**  
WASTE DISCHARGE LICENSE NUMBER: **#W007847-5O-E-M**

NAME AND ADDRESS OF APPLICANT:

**JASPER WYMAN & SON  
P.O. BOX 100  
601 ROUTE 193  
MILBRIDGE, MAINE 04658**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**JASPER WYMAN & SON  
601 ROUTE 193  
DEBLOIS, MAINE 04658**

COUNTY: **WASHINGTON COUNTY**

RECEIVING WATER/CLASSIFICATION:

**SPRAY IRRIGATION  
GROUND WATER, CLASS GW-A**

**STORM WATER  
GREAT FALLS BRANCH, CLASS A**

COGNIZANT OFFICIAL AND PHONE NUMBER: **MS. ELLEN ROSSI  
SENIOR OPERATIONS MANAGER  
(207) 546-3381**

## 1. APPLICATION SUMMARY

Application: Jasper Wyman and Son (Wyman's) has applied to the Department for modification of the 3/19/07 MEPDES permit/WDL. The 3/19/07 MEPDES permit/WDL and subsequent permit modification #ME0036919/WDL#W007847-5O-D-M dated 3/12/08 authorizes the discharge of blueberry processing waste waters via a surface wastewater disposal system (75,600 gallons per acre per week for seven (7) spray irrigation fields), as well as the discharge of storm water to Great Falls Branch, Class A, in Deblois, Maine.

## 2. REGULATORY SUMMARY

The Department is modifying the aforementioned MEPDES permit/WDL by authorizing the discharge of an additional 12,640 gallons per acre per week of blueberry processing waste waters resulting from the expansion of the blueberry processing facility in 2008. Wyman's proposal and application increases the waste water application rate from 75,600 gallons per acre per week to 88,240 gallons per acre per week, the daily waste water volume from approximately 148,000 GPD to 333,000 GPD and expands the seven (7) spray irrigation areas from 24.98 acres to 28.05 acres.

a. History: Recent relevant licensing/permitting actions include the following:

March 19, 2007 – The Department issued combination MEPDES permit #ME0036919/WDL #W007847-5O-C-R to Wyman's for the discharge of blueberry processing waste waters via a surface wastewater disposal system (via two spray irrigation fields), as well as the discharge of storm water to Great Falls Branch, Class A, in Deblois, Maine. The 3/19/07 permit is scheduled to expire on March 19, 2012.

March 12, 2008 – The Department issued permit modification WDL#W007847-5O-D-M to Wyman's 3/19/07 permit, authorizing the discharge of an additional 35,000 gallons per day of blueberry processing waste waters and expanded the number of spray irrigation fields from two (2) to seven (7) as a result of the proposed expansion of the blueberry processing facility.

June 1, 2010 – Wyman's submitted a complete General Application to the Department for modification of their 3/19/07 permit. The application was accepted for processing on June 1, 2010 and assigned WDL #W007847-5O-E-M.

b. Modification Requested: The Jasper Wyman & Son processing facility in Deblois, Maine, is a blueberry processing facility. Raw product is harvested, received at the facility, cleaned and flash frozen through freezing tunnels, packaged, and labeled. Frozen blueberries are also stored in bulk and packaged for retail sale at a later date.

In 2008, the facility expanded production by constructing approximately 40,000 square feet of additional freezer storage and 31,000 square feet of production and dock space, requiring a permit modification which was granted by the Department on 3/12/08.

## 2. MODIFICATION SUMMARY (cont'd)

As a result of the expansion, in 2009, the facility generated an average daily flow of approximately 2.4 times the anticipated amount indicated in their 2008 permit modification request. For this reason, Wyman's is requesting a modification for approval of the expansion of the existing spray irrigation system and an increase in the application rate to accommodate the increased process waste water. The existing seven (7) spray irrigation areas will be reorganized and expanded by 3.07 acres to 7 proposed spray irrigation areas with a total proposed area of 28.05 acres. The modification requests also that the spray irrigation system application rate be increased from 2.8 inches/acre/week (75,600 gal/acre/week) to 3.25 inches/acre/week (88,240 gal/acre/week). Based on the proposed expanded spray irrigation system and the increase to the spray irrigation application rate the facility plans to spray irrigate, when allowed, seven days per week, 15 hours per day at 370 gallons per minute, Wyman's proposes a daily application rate of 333,000 gallons/day.

The existing spray irrigation plan contains seven (7) different spray areas (identified as SA-A, SA-B, SA-C, SA-D, SA-E, SA-F, and SA-G) and 84 spray stations. Each spray gun covers an area of approximately 15,395 square feet, or approximately 0.35 acres per spray circle. The proposed expansion of 3.07 acres will increase the number of spray stations from 84 to 95. The spray areas have been arranged so that daily application does not overlap the previous day's application. From the data collected, Wyman's does not anticipate that the increased application rate will increase the pollutant loading to the receiving waters or result in excessive ponding.

Wyman's proposed daily application rate of 333,000 gallons/day would require the facility to store approximately 22,000 gallons of waste water per day during the four-week-long processing season. The existing discharge storage lagoon has been estimated to hold approximately 1.5 million gallons. Based on the anticipated storage volume, this will allow for approximately 68 days of storage, not considering the impacts of precipitation and evaporation.

By operating at the requested discharge volume of 333,000 gallons/day, Wyman's will not operate to the maximum limit of the application rate. The smallest and largest of the spray areas have maximum discharge volumes of 339,724 gallons/day and 376,785 gallons/day, respectively. This additional discharge volume will be used on an "as needed" basis due to weather or process constraints, by increasing the application time to the limits of the approved application rate.

An additional 8.5 acres of land area north of the current spray area has also been designated as reserve areas for future use if necessary. These areas have the same basic soil profile as the areas where spray irrigation is currently operating. In the 3/12/08 permit modification, the Department's hydrogeologist recommended that Wyman's collect baseline ground water monitoring data from monitoring wells within the reserved land areas prior to proposing use of these areas for spray irrigation. This recommendation is strongly supported by the Department to assess changes in ground water quality as the Wyman's facility expands operations.

## 2. MODIFICATION SUMMARY (cont'd)

- c. Spray Area Site Conditions: During the 3/12/08 permit modification, CES, Inc., performed a Class B High Intensity Soil Survey for the proposed expansion of the spray irrigation areas. The site conditions and soil map units were found to be consistent with those mapped as part of a Class B High Intensity Soil Survey conducted by S.W. Cole Engineering, Inc., in 1994. Detailed soils information may be reviewed in the fact sheet associated with the 3/19/07 permit as well as in Wyman's 12/10/07 General Application, which includes a copy of CES, Inc.'s November 2007 soil survey report.

## 3. CONDITIONS OF PERMITS

*Conditions of licenses*, 38 M.R.S.A. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S.A., § 420 and 06-096 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 (effective October 9, 2005), 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

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

## 5. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- a. Spray Irrigation Application Rate: This permitting action is modifying the weekly maximum application rate from 75,600 gallons per acre per week (2.8 inches per acre per week) to 88,240 gallons per acre per week (3.25 inches per acre per week) for the spray irrigation areas. This permit modification is carrying forward the identification of a total of seven (7) separate spray irrigation areas authorized for use for the disposal of waste waters. The seven spray areas have been assigned permit compliance system identifiers of SA-A through SA-G. The weekly average limitation is based on the on the characteristics of in-situ soils and to ensure a margin of safety against hydraulically overloading a spray area on any one given day. This permitting action authorizes the use of the spray irrigation system during the period of April 15 through November 15 of each year, provided compliance with the other terms and conditions of this permit. The irrigation flow rate shall be calculated on a daily basis when the system is in use. This permitting action is carrying forward a monthly total reporting requirement for total gallons of wastewater applied to all spray areas collectively.

## 6. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

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

## 7. PUBLIC COMMENTS

Public notice of this application was made in the *Bangor Daily News* newspaper on or about May 27, 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).

## 8. DEPARTMENT CONTACTS

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

Phyllis Rand  
Division of Water Quality Management  
Bureau of Land & Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 287-7658 Fax: (207) 287-3435  
e-mail: [phyllis.a.rand@maine.gov](mailto:phyllis.a.rand@maine.gov)

## 9. RESPONSE TO COMMENTS

During the period of July 9, 2010, through the issuance date of the permit/license, the Department solicited comments on the proposed draft Maine Pollutant Discharge Elimination System Permit to be issued to the permittee for the proposed discharge. The Department received several comments on the draft permit from the permittee in electronic correspondence to the Department dated July 30, 2010. The comments and Department responses are as follows.

1. COMMENT: The current WDL for this site expires in March 2012. Is it possible for this requested modification to be used as a 5 year renewal WDL? The facility would like to avoid the expense of a renewal application in year or so.

RESPONSE: It would take a significant amount of time for the Department to issue this modification as a full-blown permit renewal at this point. In addition, Wyman's 3/19/07 permit, Special Condition O, "Spray Irrigation Performance Report," requires Jasper Wyman to submit a Spray Irrigation Performance Report covering the previous five calendar years as an exhibit to the next application for license renewal. Given that the time-sensitive nature of the facility's operation depends upon this permit modification, the Department has determined it is best to move forward with the process "as is."

**9. RESPONSE TO COMMENTS (cont'd)**

2. COMMENT: The last renewal reduced the lagoon freeboard from a 1 foot to a 2 foot required separation. The original design and effluent discharge requirements were based on a 1 foot separation requirement. Is [sic] there any options to move back to a 1 foot requirement or is there some technical decision used to require a reduction in the separation distance?

RESPONSE: There is no technical decision other than the Department does not want lagoons overflowing. The Department has modified the "Lagoon Maintenance" language to state that the permittee shall maintain freeboard of the lagoon(s) at design levels (at least 1 foot).

3. COMMENT: There appears to be a conflict between generation of wastewater from the facility and actual effluent discharge through spray irrigation. The modification language appears to limit effluent discharge to 333,000 gallons. We do want to make sure that the WDL limit for effluent discharge is the 3.25 inches per acre per week or 88,240 gallons per acre per week along with the proposed total daily gallons for each area to be sprayed. Please refer to the site plan which includes the proposed effluent spray irrigation calculations provided with the modification application.

RESPONSE: The Department's Modification Summary reiterates what was proposed in the application: "Wyman's proposal and application increases the waste water application rate from 75,600 gallons per acre per week to 88,240 gallons per acre per week, the daily waste water volume from approximately 148,000 GPD to 333,000 GPD and expands the seven (7) spray irrigation areas from 24.98 acres to 28.05 acres."

In addition, Special Condition A1, "Application Rate," shows that the permittee is authorized to discharge 88,240 gal/acre/week (3.25 inches/acre/week).

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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.

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

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