



STATE OF MAINE
Department of Environmental Protection

John Elias Baldacci
GOVERNOR

Beth Nagusky
ACTING COMMISSIONER

November 17, 2010

Mr. David Jones
Director of Public Works
City of Lewiston
103 Adams Ave.
Lewiston, ME 04240

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0100994
Maine Waste Discharge License (WDL) Application #W000684-5T-E-R
Final Permit/License

Dear Mr. Jones:

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

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

If you have any questions, please feel free to call me at 287-7693.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Wood'.

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

Enc.

cc: Stuart Rose, DEP/SMRO David Breau, DEP/CMRO Sandy Mojica, USEPA



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

DEPARTMENT ORDER

IN THE MATTER OF

CITY OF LEWISTON)	MAINE POLLUTANT DISCHARGE
LEWISTON, ANDROSCOGGIN COUNTY, ME.)	ELIMINATION SYSTEM PERMIT
COMBINED SEWER OVERFLOWS)	AND
W000684-5T-E-R)	WASTE DISCHARGE LICENSE
ME0100994)	RENEWAL
		APPROVAL

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et seq. and Maine Law 38 M.R.S.A., Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of the CITY OF LEWISTON (City/permittee hereinafter) with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

The City has submitted a timely and complete application to the Department for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0100994/Maine Waste Discharge License (WDL) #W000684-5T-D-R, (permit hereinafter) issued by the Department on December 29, 2005 for five-year term. The 12/29/05 permit authorized the City to discharge of an unspecified quantity of untreated sanitary waste water combined with storm water runoff from (30) combined sewer overflow structures. Fifteen (15) of the CSOs discharged to the Androscoggin River, Class C, thirteen (13) of the CSOs discharged to Jepson Brook, Class B and two (2) discharged to Goff Brook, Class B. All thirty discharge locations were in Lewiston, Maine.

Since issuance of the 12/29/05 permit, the City has eliminated ten (10) CSO outfalls. As a result, the City is now seeking authorization to discharge an unspecified quantity of untreated sanitary waste water combined with storm water runoff from twenty (20) combined sewer overflow structures. Nine (9) of the CSOs discharge to the Androscoggin River, Class C, ten (10) of the CSOs discharge to Jepson Brook, Class B and one (1) discharges to Goff Brook, Class B.

PERMIT SUMMARY

This permitting action requires the permittee to monitor the flow and number of overflow events at the combined sewer overflow (CSO) structure, periodically update the City's CSO Master Plan and annually report progress to eliminate the CSO.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated October 15, 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
 - (e) Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

ACTION

THEREFORE, the Department APPROVES the above noted application of the CITY OF LEWISTON to discharge an unspecified quantity of untreated sanitary waste waters combined with storm water runoff from twenty (20) CSOs to the Androscoggin River, Class C and two minor tributaries of the Androscoggin River, Jepson Brook and Goff Brook, Class B, in Lewiston, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

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

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: May 27, 2010
Date of application acceptance: June 1, 2010

This order prepared by GREGG WOOD, BUREAU OF LAND AND WATER QUALITY.
ME0100994 2010 11/17/10

SPECIAL CONDITIONS

A. CONDITIONS FOR COMBINED SEWER OVERFLOW (CSO)

1. Pursuant to Chapter 570 of Department Rules (Combined Sewer Overflow Abatement), the permittee is authorized to discharge combined storm water and sanitary waste water from the following CSO subject to the conditions and requirements contained herein:

<u>Outfall #</u>	<u>Location</u>	<u>Receiving Water & Class</u>
001	Westbury St	Androscoggin River Class C
002	Locust St.	Androscoggin River Class C
003	Cedar St.	Androscoggin River Class C
004	Lincoln @ North	Androscoggin River Class C
005	Gully Brook	Androscoggin River. Class C
011	Beech St.	Androscoggin River Class C
012	Oak St.	Androscoggin River Class C
013	Northwood (CMP)	Androscoggin River Class C
015	Morningside St.	Goff Bk. Class B
017	Dingley St.	Jepson Bk. Class B
018	Kavanagh St.	Jepson Bk. Class B
021	Lowell/Middle	Androscoggin River Class C
024	Pettingill St.	Jepson Bk. Class B
025	Brooks	Jepson Bk. Class B
026	Bristol	Jepson Bk. Class B
027	College St.	Jepson Bk. Class B
028	Lemont Ave.	Jepson Bk. Class B
029	Farwell/Sabattus	Jepson Bk. Class B
030	Farwell/Connector	Jepson Bk. Class B
033	Russell St.	Jepson Bk. Class B

2. Prohibited Discharges

- a) The discharge of dry weather flows is prohibited. All such discharges shall be reported to the Department in accordance with Standard Condition D (1) of this permit.
- b) No discharge shall occur as a result of mechanical failure, improper design or inadequate operation or maintenance.
- c) No discharges shall occur at flow rates below the maximum design capacity of the wastewater treatment facility, pumping stations or sewerage system.

SPECIAL CONDITIONS

A. CONDITIONS FOR COMBINED SEWER OVERFLOW (CSO) (cont'd)

3. Narrative Effluent Limitations

- a) The effluent shall not contain a visible oil sheen, settled substances, foam, or floating solids at any time that impair the characteristics and designated uses ascribed to the classification of the receiving waters.
- b) The effluent shall not contain materials in concentrations or combinations that are hazardous or toxic to aquatic life; or which would impair the usage designated by the classification of the receiving waters.
- c) 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.
- d) Notwithstanding specific conditions of this permit, the effluent by itself or in combination with other discharges shall 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.

4. CSO Long Term Control Plan (see Sections 2 & 3 of Chapter 570 Department Rules)

The permittee shall continue to work with the Auburn Sewerage District and the Lewiston-Auburn Water Pollution Control Authority (LAWPCA) to implement CSO control projects in accordance with the most currently approved CSO Master Plan and implementation schedule in a document entitled City of Lewiston, Maine, Auburn Sewerage District, and Lewiston Auburn Water Pollution Control Authority (LAWPCA), Clean Water Act Master Plan Ten Year Update, June 2010, Final Report.

By December 31, 2011, (PCS Code 04599) the permittee shall complete construction of the sewer separation projects on College Street contributing to CSO #012, Oak Street, the portion of the Jepson Brook watershed contributing to CSO #033, Russell Street and Lincoln Street contributing to CSO #001 Westbury Street and CSO #002, Locust Street.

By December 31, 2013, (PCS Code 04599) the permittee shall complete construction of the sewer separation projects in the Jepson Brook watershed contributing to CSO #017, Dingley Street, CSO #018, Kavanagh Street, CSO #28, Lemont Street, CSO #29, Farwell/Sabattus and CSO #030, Farwell/Connector.

By June 30, 2015, (PCS Code 06699) the permittee shall submit to the Department for review and approval an Updated CSO Master Plan and implementation schedule.

SPECIAL CONDITIONS

A. CONDITIONS FOR COMBINED SEWER OVERFLOW (CSO) (cont'd)

To modify the dates and or projects specified in Special Condition A(4) of this permit (but not dates in the Master Plan), the permittee must file an application with the Department to formally modify this permit. The work items identified in the abatement schedule may be amended from time to time based upon approval by the Department. The permittee must notify the Department in writing prior to any proposed changes to the implementation schedule.

5. Nine Minimum Controls (NMC) (see Section 5 Chapter 570 of Department Rules, copy attached)

The permittee shall implement and follow the Nine Minimum Control documentation. Work performed on the Nine Minimum Controls during the year shall be included in the annual CSO Progress Report (see below).

6. CSO Compliance Monitoring Program (see Section 6 Chapter 570 of Department Rules)

The permittee shall conduct flow monitoring according to a Department approved *Compliance Monitoring Program* on Outfall 001, as part of the CSO Master Plan.

Results shall be submitted annually as part of the annual CSO Progress Report (see below), and shall include annual precipitation, and actual CSO volumes. Any abnormalities during CSO monitoring shall also be reported. The results shall be reported on the Department on form “*CSO Activity and Volumes*” (**Attachment A** of this permit) or similar format and submitted to the Department on diskette.

CSO control projects that have been completed shall be monitored for volume and frequency of overflow to determine the effectiveness of the project toward CSO abatement. This requirement shall not apply to those areas where complete separation has been completed and CSO outfalls have been eliminated.

7. Annual CSO Progress Reports (see Section 7 of Chapter 570 of Department Rules)
By March 1 of each year, (PCS Code 11099) the permittee shall submit *CSO Progress Reports* covering the previous calendar year (January 1 to December 31). The CSO Progress Report shall include, but is not necessarily limited to, the following topics as further described in Chapter 570: CSO abatement projects, schedule comparison, progress on inflow sources, costs, flow monitoring results, CSO activity and volumes, nine minimum controls update, sewer extensions, and new commercial or industrial flows.

SPECIAL CONDITIONS

A. CONDITIONS FOR COMBINED SEWER OVERFLOW (CSO) (cont'd)

The CSO Progress Reports shall be completed on a standard form entitled “*Annual CSO Progress Report*”, furnished by the Department, and submitted in electronic form, if possible, to the following address:

CSO Coordinator
Department of Environmental Protection
Bureau of Land and Water Quality
Division of Water Quality Management
17 State House Station
Augusta, Maine 04333
e-mail: CSOCoordinator@maine.gov

8. Signs

The permittee shall maintain an identification sign at the CSO location as notification to the public that intermittent discharges of untreated sanitary wastewater occur. The sign must be located at or near the outfall and be easily readable by the public. The sign shall be a minimum of 12" x 18" in size with white lettering against a green background and shall contain the following information:

**CITY OF LEWISTON
WET WEATHER
SEWAGE DISCHARGE
NAME AND OUTFALL NUMBER**

9. Definitions

For the purposes of this permit, the following terms are defined as follows:

- a. Combined Sewer Overflow - a discharge of excess waste water from a municipal or quasi-municipal sewerage system that conveys both sanitary wastes and storm water in a single pipe system and that is in direct response to a storm event or snowmelt.
- b. Dry Weather Flows - flow in a sewerage system that occurs as a result of non-storm events or are caused solely by ground water infiltration.
- c. Wet Weather Flows - flow in a sewerage system that occurs as a direct result of a storm event, or snowmelt in combination with dry weather flows.

B. UNAUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with the terms and conditions of this permit and only from outfalls cited in Special Condition A(1) of this permit. Discharges of waste water from any other point source are not authorized under this permit, but shall be reported in accordance with Standard Condition B(5)(*Bypass*) of this permit.

SPECIAL CONDITIONS

C. REOPENING OF PERMIT FOR MODIFICATIONS

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

D. 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.

ATTACHMENT A

**MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
CSO ACTIVITY AND VOLUMES**

MUNICIPALITY OR DISTRICT REPORTING YEAR YEARLY TOTAL PRECIPITATION _____ INCHES	FLOW DATA (GALLONS PER DAY) OR BLOCK ACTIVITY ("1")
MEPDES / NPDES PERMIT NO. _____ SIGNED BY: _____ DATE: _____	

CSO EVENT NO.	START DATE OF STORM	PRECIP. DATA		FLOW DATA (GALLONS PER DAY) OR BLOCK ACTIVITY ("1")						EVENT OVERFLOW GALLONS	EVENT DURATION HRS	
		TOTAL INCHES	MAX. HR. INCHES	LOCATION: NUMBER:	LOCATION: NUMBER:	LOCATION: NUMBER:	LOCATION: NUMBER:	LOCATION: NUMBER:	LOCATION: NUMBER:			
1												
2												
3												
4												
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25												
TOTALS												

Note 1: Flow data should be listed as gallons per day. Storms lasting more than one day should show total flow for each day.

Note 2: Block activity should be shown as a "1" if the block floated away.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

AND

MAINE WASTE DISCHARGE LICENSE

FACT SHEET

Date: **October 15, 2010**

PERMIT NUMBER: **ME0100994**

LICENSE NUMBER: **W000684-5T-E-R**

NAME AND ADDRESS OF APPLICANT:

**CITY OF LEWISTON
Department of Public Works
103 Adams Avenue
Lewiston, ME 04240**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**Throughout the City of Lewiston
Lewiston, ME. 04240**

RECEIVING WATER/CLASSIFICATION: **Androscoggin River/Class C
Goff Brook/Class B
Jepson Brook/Class B**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. David Jones
Director of Public Works
(207) 513-3003
Email: djones@ci.lewiston.me.us**

1. APPLICATION SUMMARY

- a. Application - The City of Lewiston (City/permittee hereinafter) has submitted a timely and complete application to the Department for the renewal of combination Maine Pollutant Discharge Elimination system (MEPDES) permit #ME0100994/Maine Waste Discharge License (WDL) #W000684-5T-D-R, (permit hereinafter) issued by the Department on December 29, 2005, for five year term. The 12/29/05 permit authorized to discharge of an unspecified quantity of untreated sanitary waste water combined with storm water runoff from (30) combined sewer overflow structures. Fifteen (15) of the CSOs discharged to the Androscoggin River, Class C, thirteen (13) of the CSOs discharged to Jepson Brook, Class B and two (2) discharged to Goff Brook, Class B. All thirty discharge locations were in Lewiston, Maine.

1. APPLICATION SUMMARY (cont'd)

Since issuance of the 12/29/05 permit, the City has eliminated the ten (10) CSO outfalls listed below:

<u>Outfall #</u>	<u>Location</u>	<u>Receiving Water & Class</u>
006	Avon St.	Androscoggin River Class C
007	Riverside Cemetary	Androscoggin River Class C
008	Cottage St.	Jepson Bk. Class B
009	River St.	Androscoggin River Class C
010	Oxford St.	Androscoggin River Class C
019	South Ave.	Goff Bk. Class B
020	Lisbon/Essex	Androscoggin River Class C
022	Main (Island)	Jepson Bk Class B
023	Libby Ave.	Jepson Bk Class B
032	Northwood Rd.	Androscoggin River, Class C

As a result, the City is now seeking authorization to discharge an unspecified quantity of untreated sanitary waste water combined with storm water runoff from twenty (20) combined sewer overflow structures. Nine (9) of the CSOs discharge to the Androscoggin River, Class C, ten (10) of the CSOs discharge to Jepson Brook, Class B and one (1) discharges to Goff Brook, Class B. See **Attachment A** of this Fact Sheet for a location map.

- b. Source Description – The City of Lewiston has an existing sanitary sewer collection system consisting of approximately 111 miles of piping and 13 pump stations. The collection system conveys sanitary waste waters generated by residential and commercial entities within the City’s boundaries to the Lewiston-Auburn Water Pollution Control Authority (LAWPCA) waste water treatment facility. Discharges from the LAWPCA facility are regulated by this Department via MEPDES permit #ME0101478. Thirteen of the pump stations associated with the City’s collection system are equipped with on-site back-up power in the event of a power failure. The collection system has twenty remaining (20) CSO outfalls as follows:

<u>Outfall #</u>	<u>Location</u>	<u>Receiving Water & Class</u>
001	Westbury St	Androscoggin River Class C
002	Locust St.	Androscoggin River Class C
003	Cedar St.	Androscoggin River Class C
004	Lincoln @ North	Androscoggin River Class C
005	Gully Brook	Androscoggin River. Class C
011	Beech St.	Androscoggin River Class C
012	Oak St.	Androscoggin River Class C
013	Northwood (CMP)	Androscoggin River Class C
015	Morningside St.	Goff Bk. Class B
017	Dingley St.	Jepson Bk. Class B

1. APPLICATION SUMMARY (cont'd)

<u>Outfall #</u>	<u>Location</u>	<u>Receiving Water & Class</u>
018	Kavanagh St.	Jepson Bk. Class B
021	Lowell/Middle	Androscoggin River Class C
024	Pettingill St.	Jepson Bk. Class B
025	Brooks	Jepson Bk. Class B
026	Bristol	Jepson Bk. Class B
027	College St.	Jepson Bk. Class B
028	Lemont Ave.	Jepson Bk. Class B
029	Farwell/Sabattus	Jepson Bk. Class B
030	Farwell/Connector	Jepson Bk. Class B
033	Russell St.	Jepson Bk. Class B

2. PERMIT SUMMARY

- a. Terms and Conditions - This permitting action requires the permittee to monitor the flow and number of overflow events at the combined sewer overflow (CSO) structure, periodically update the City's CSO Master Plan and annually report progress to eliminate the CSO.
- b. History – The most recent regulatory actions include the following:

June 30, 2010 – The City of Lewiston submitted an Updated CSO Master Plan and implementation schedule entitled, City of Lewiston, Maine, Auburn Sewerage District, and Lewiston Auburn Water Pollution Control Authority (LAWPCA), Clean Water Act Master Plan Ten Year Update, June 2010, Final Report, to the Department for review and approval.

May 27, 2010 – The City of Lewiston submitted timely and complete application to the Department to renew the 12/29/05 MEPDES permit.

December 29, 2005 – The Department issued MEPDES permit #ME0100994/Maine WDL #W000684-5T-D-R for a five year term.

September 20, 2005 – The Department issued a letter to the City indicating the proposed scope of work and schedule for CSO abatement projects as part of an updated CSO Master Plan was generally acceptable. Final approval is being withheld until receipt of a letter amendment to the CSO Master Plan Update.

May 25, 2005 – The City submitted a letter to the Department that contained a scope of work and schedule for CSO abatement projects as part of a CSO Master Plan update.

February 7, 2001 – The Department formally approved the City's CSO Master Plan entitled, Auburn Sewer District and City of Lewiston Clean Water Act Master Plan, dated December 2000.

2. PERMIT SUMMARY (cont'd)

November 9, 2000 - The Department issued a letter approving five year CSO abatement schedules for Lewiston and ASD, including a submission date for Master Plan update.

September 29, 2000 - The City of Lewiston submitted its proposed detailed five-year schedule of sewer separation projects.

July 17, 2000- The ASD submitted its proposed detailed five year schedule of sewer separation.

April 20, 2000 - With the U.S. Environmental Protection Agency's (EPA) concurrence, the Department issued a letter to the City of Lewiston, the Auburn Sewerage District (ASD) and the Lewiston-Auburn Water Pollution Control Authority (LAWPCA), stating there was agreement between all parties on a fifteen year schedule of sewer separation (actually to be completed by 2014), with an update of the CSO Master Plan in five years.

April 18, 2000 - The ASD submitted a letter that included a summary of improvements in 1999, a proposed CSO Master Plan Funding Schedule from 1997 to 2014, and five year Capital Improvements Plans for ASD and the City of Auburn.

July 17, 2000 - ASD submitted its detailed five year schedule of sewer separation projects.

February 9, 2000 - The City of Lewiston and ASD submitted responses to comments on the CSO Master Plan by the Department and EPA.

October 15, 1997 - The EPA commented on the Lewiston-Auburn CSO Master Plan.

August 8, 1997 - The Department commented on the Lewiston-Auburn CSO Master Plan.

July 25, 1997 - The City of Lewiston submitted its Nine Minimum Control (NMC) documentation to the Department and EPA.

January 24, 1997 - The ASD submitted its NMC documentation to the Department and EPA.

July 1, 1996 - M&E submitted the CSO Master Plan to the Department and EPA.

December 13, 1995 - The Department received a letter from Steve Johnson, City of Lewiston, stating that CSO # 14, Stetson Brook, and CSO # 16, Newbegin Street, has been sealed by brick and mortar.

3. CONDITIONS OF PERMITS

Maine law, 38 M.R.S.A. Section 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S.A., Section 420 and Department rule 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, require the regulation of toxic substances not to exceed levels set forth in Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

4. RECEIVING WATER QUALITY STANDARDS

Pursuant to Maine law, 38 M.R.S.A. §467(1)(A)(2), from the confluence with the Ellis River (Rumford) to the confluence with Merrymeeting Bay in Brunswick, the Androscoggin River is classified as a Class C waterbody. The river above and below the IP mill is classified as a Class C waterway. Maine law 38 M.R.S.A. §465(4) contains the classification standards for Class C waters.

5. RECEIVING WATER QUALITY CONDITIONS

A document entitled *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 Jepson Brook (assessment unit ME0104000208) in a section of the report entitled *Category 5-B-A: Rivers and Streams Impaired by Pollutants Other Than Those Listed in 5-B Through 5D (TMDL Required.)* Impairment in this context refers to low dissolved oxygen levels, elevated *E. coli* bacteria levels, impaired stream habitat and an impaired benthic macro-invertebrate community. The Report lists the TMDL is a priority and is scheduled to be completed by the end of calendar year 2010.

The State of Maine 2008 Integrated Water Quality Monitoring and Assessment Report, lists the segments of the Androscoggin River main stem from the confluence of the Nezinscot River to the confluence with the Little Androscoggin River (assessment unit ME0104000208 – 15.5 miles) and the main stem from the confluence with the Little Androscoggin River to the Brunswick Dam (assessment unit ME0104000210 – 22.2 miles) in a section of the report entitled *Category 4-B-1: Rivers and Streams Impaired by Pollutants – Pollution Control Requirements Reasonably Expected to Result in Attainment*. Impairment in this context refers to a fish consumption advisory due to the presence of dioxin. The “*Pollution Control Requirements Reasonably Expected to Result in Attainment*,” refers to the conversion to elemental chlorine free (ECF) bleaching technology in the mid-1990’s at each of the three upstream kraft mills (Fraser Paper NH LLC in Berlin/Gorham, N.H., Rumford Paper Company in Rumford, ME. and Verso Paper in Jay, ME.)

5. RECEIVING WATER QUALITY CONDITIONS

It is noted on May 3, 2005, the Department presented a report to the Natural Resources Committee of the Maine Legislature reporting on the status of each mill's regarding the "above/below" test. In the report, the Department made the determination dioxin levels in the fish tissue from fish collected above and below the Verso Paper and Rumford Paper Company mills, though detectable, were not statistically different. As a result, the Department made the determination that both the Verso Paper and Rumford Paper Company mills are in compliance with Maine law 38 M.R.S.A., §420(2)(I)(3).

In addition, the 2004 assessment report lists all freshwaters in Maine as "*Category 4-A: Rivers and Streams with Impaired Use, TMDL Completed, and Waters Impaired by Atmospheric Deposition.*" Impairment in this context refers to the designated use of recreational fishing due to elevated levels of mercury in some fish caused by atmospheric deposition. As a result, the State has established a fish consumption advisory for all freshwaters in Maine. It is noted the USEPA approved a regional scale TMDL for mercury in calendar year 2008.

The Department is not aware of any information that indicates the intermittent discharges from the CSOs owned by the City of Lewiston are causing or contributing to the continuance of the fish consumption advisory.

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

This permitting action does not establish numeric effluent limitations for the discharges from the City of Lewiston's CSOs. However, in April, 1994, the EPA adopted a National Combined Sewer Overflow Control Policy that strives to: 1) Accurately characterize collection systems through sampling, monitoring and modeling; 2) Implement best management practices as described in its Nine Minimum Controls Strategy and 3) Develop a long term control plan often referred to as a Master Plan.

The City of Lewiston is currently addressing the National Policy by: 1) characterizing the discharge through the installation of flow monitoring equipment to monitor the overflows; and 2) has completed the development of the original CSO Master Plan entitled, Lewiston-Auburn Clean Water Act Master Plan, dated December 2000. The Master Plan was approved by the Department on February 7, 2001. The most recent update of the CSO Master Plan is entitled, City of Lewiston, Maine, Auburn Sewerage District, and Lewiston Auburn Water Pollution Control Authority (LAWPCA), Clean Water Act Master Plan Ten Year Update, June 2010, Final Report. Special Condition A, Conditions For Combined Sewer Overflow (CSO), of this permitting action requires the City of Lewiston to continue to evaluate and take specific actions to eliminate the CSO.

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has determined the existing water uses will be maintained and protected. The Department acknowledges that total elimination of the CSO is a costly long term project. With the implementation of the CSO Master Plan and Nine Minimum Controls, the Department anticipates a significant reduction in CSO discharge events and improvements in the water quality in the Androscoggin River, Goff Brook and Jepson Brook affected by the CSO discharges.

8. PUBLIC COMMENTS

Public notice of this application was made in the Lewiston Sun Journal newspaper on or about May 20, 2010. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing pursuant to Chapter 522 of the Department's rules.

9. DEPARTMENT CONTACTS

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

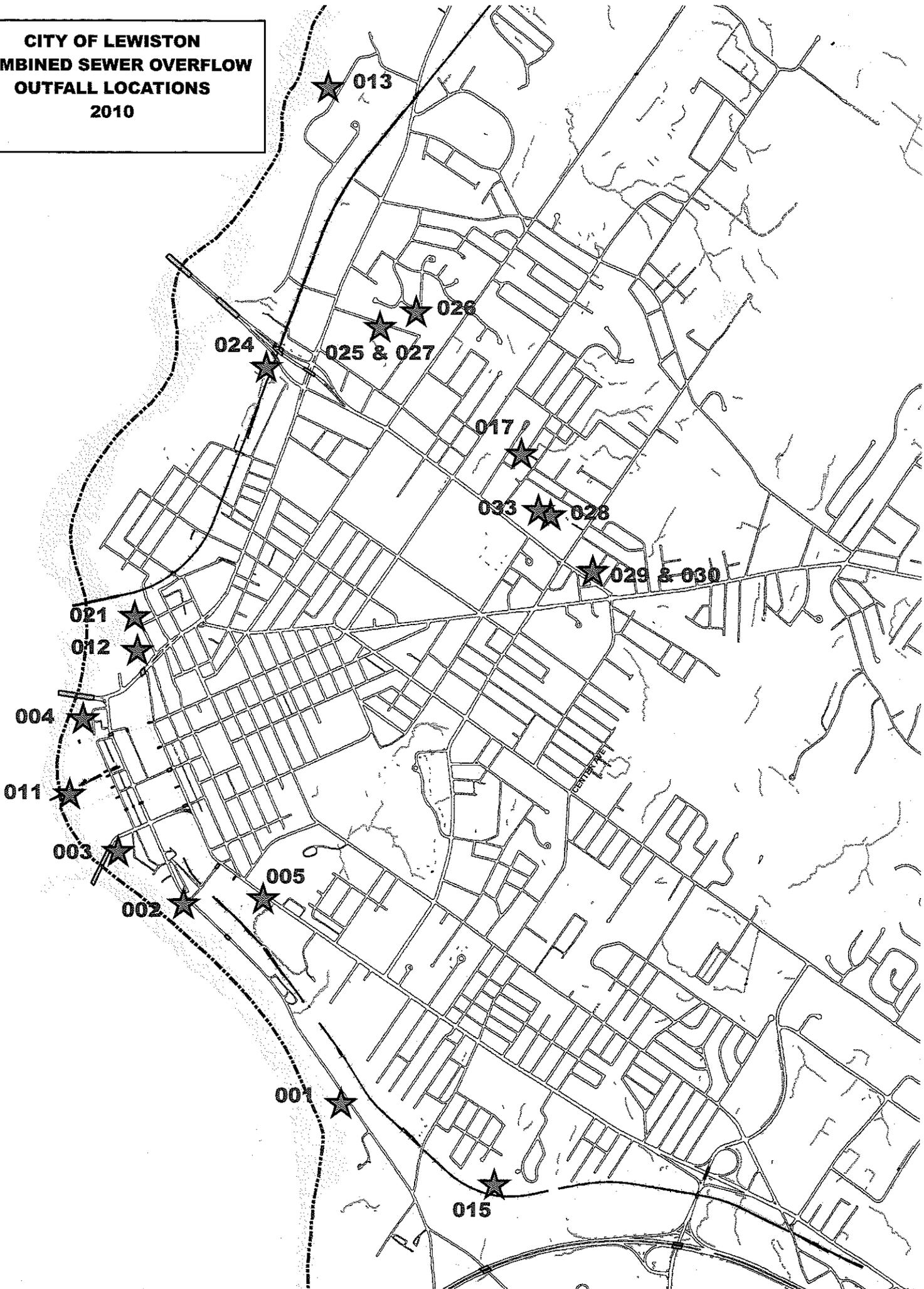
Gregg Wood
Division of Water Quality Management
Bureau of Land and Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
Email: gregg.wood@maine.gov
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10. RESPONSE TO COMMENTS

During the period of October 15, 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(s) from the permittee's facility. The Department did not receive comments from the permittee, state or federal agencies or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

ATTACHMENT A

**CITY OF LEWISTON
COMBINED SEWER OVERFLOW
OUTFALL LOCATIONS
2010**



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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A. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

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