



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

JAMES P. BROOKS  
ACTING COMMISSIONER

June 13, 2011

Bruce Yates, Jr.  
Global Companies, LLC  
P.O. Box 2678  
South Portland, ME 04116  
[byates@globalp.com](mailto:byates@globalp.com)

*Sent via electronic mail  
Delivery confirmation requested*

**RE: Maine Waste Discharge License (WDL) Application #W002565-5S-I-R  
Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0001775  
Finalized Permit**

Dear Mr. Yates:

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.*"

Sincerely,

Bill Hinkel  
Division of Water Quality Management  
Bureau of Land and Water Quality  
[bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov)  
ph: 207.485.2281

Enc.

ec: Fred Gallant, Lori Mitchell - MeDEP Sandy Mojica, USEPA File #W002565

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DEPARTMENT ORDER

IN THE MATTER OF

GLOBAL COMPANIES, LLC	)	MAINE POLLUTANT DISCHARGE
BULK FUEL STORAGE & TRANSFER FACILITY	)	ELIMINATION SYSTEM PERMIT
SOUTH PORTLAND, CUMBERLAND CTY., MAINE	)	AND
#ME0001775	)	WASTE DISCHARGE LICENSE
#W002565-5S-I-R	)	<b>RENEWAL</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 Department of Environmental Protection (Department) has considered the application of the GLOBAL COMPANIES, LLC (GLOBAL or permittee) with its supportive data, agency review comments, and other related materials on file and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

Global has applied to the Department for the renewal of combination Maine Waste Discharge License (WDL) #W002565-5S-H-R / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0001775, which was issued by the Department on April 14, 2006, and expired on April 14, 2011. The April 14, 2006 permit authorized the discharge of treated storm water runoff from a bulk fuel storage/transfer facility to Barberry Creek, Class C, in South Portland, Maine.

**PERMIT SUMMARY**

**For Outfalls #001A, #002A, and #003A, this permitting action is carrying forward the:**

1. Daily maximum discharge flow limitations of 316 gallons per minute (gpm), 700 gpm, and 800 gpm, respectively;
2. Daily maximum concentration limitation for total suspended solids (TSS);
3. Daily maximum concentration limitation for oil and grease (O&G);

**For Outfall #004A (administrative outfall)**

4. Daily maximum discharge flow limit of 6.6 million gallons per day;
5. Daily maximum concentration limitation for TSS;
6. Daily maximum concentration limitation for O&G; and
7. Daily maximum concentration limit for total residual chlorine (TRC).

## CONCLUSIONS

BASED on the findings summarized in the attached Fact Sheet dated June 13, 2011, and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 M.R.S.A. §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).

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## **ACTION**

THEREFORE, the Department APPROVES the above noted application of GLOBAL COMPANIES, LLC to discharge a daily maximum flow of up to 316 gallons per minute (gpm), 700 gpm, and 800 gpm, respectively, from three outfalls, of treated storm water runoff and up to 6.6 million gallons per day of treated hydrostatic test waters to Barberry Creek, Class C, in South Portland, 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 and the authorization to discharge become effective upon the date of signature below and expire at midnight five (5) years from the effective date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the authorization to discharge and the terms and conditions of this permit and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (effective April 1, 2003)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

Date of initial receipt of application: March 4, 2011

Date of application acceptance: March 4, 2011

This Order prepared by Bill Hinkel, BUREAU OF LAND & WATER QUALITY

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge **treated storm water runoff** from the following outfall points to Barberry Creek in South Portland, Maine. Such discharges shall be limited and monitored by the permittee as specified below <sup>(1)</sup>.

**OUTFALL #001 - Storm water runoff**

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]	---	---	---	316 gpm <sup>(2)</sup> [78]	1/ Quarter [01/90]	Measure [MS]
Total Suspended Solids [00530]	---	---	---	50 mg/L [19]	1/ Quarter [01/90]	Grab <sup>(3)</sup> [GR]
Oil & Grease [00552]	---	---	---	15 mg/L [19]	1/Quarter [01/90]	Grab <sup>(3)</sup> [GR]

**OUTFALL #002 - Storm water runoff**

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]	---	---	---	700 gpm <sup>(2)</sup> [78]	1/ Quarter [01/90]	Measure [MS]
Total Suspended Solids [00530]	---	---	---	50 mg/L [19]	1/ Quarter [01/90]	Grab <sup>(3)</sup> [GR]
Oil & Grease [00552]	---	---	---	15 mg/L [19]	1/Quarter [01/90]	Grab <sup>(3)</sup> [GR]

**SPECIAL CONDITIONS**

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

**OUTFALL #003 - Storm water runoff**

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	<u>Monthly Average</u>	<u>Daily Maximum</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Flow [50050]	---	---	---	800 gpm <sup>(2)</sup> [78]	1/ Quarter [01/90]	Measure [MS]
Total Suspended Solids [00530]	---	---	---	50 mg/L [19]	1/ Quarter [01/90]	Grab <sup>(3)</sup> [GR]
Oil & Grease [00552]	---	---	---	15 mg/L [19]	1/Quarter [01/90]	Grab <sup>(3)</sup> [GR]

**OUTFALL #004 - Hydrostatic test waters**

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	<u>Monthly Average</u>	<u>Daily Maximum</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Flow (Total Gallons) [82220]	---	---	---	6.6 EE6 gal [57]	1/Discharge [01/DS]	Measure [MS]
Total Suspended Solids [00530]	---	---	---	50 mg/L [19]	1/Discharge [01/DS]	Grab <sup>(3)</sup> [GR]
Oil & Grease [00552]	---	---	---	15 mg/L [19]	1/Discharge [01/DS]	Grab <sup>(3)</sup> [GR]
Total Residual Chlorine [50060]	---	---	---	19 µg/L <sup>(4)</sup> [28]	1/Discharge [01/DS]	Grab <sup>(3)</sup> [GR]

**The italicized numeric values in brackets in the tables above and the tables that follow are not limitations but codes used by Department personnel to code monthly Discharge Monitoring Reports (DMRs).**

## SPECIAL CONDITIONS

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

#### FOOTNOTES:

1. **Sampling** – Samples for all parameters shall be collected after the oil/water separators during the first hour of discharge. Sampling and analysis must be conducted in accordance with; a) methods approved in Title 40 *Code of Federal Regulations* (40 CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Human Services. Samples that are sent to another POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of the *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000). Laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of 10-144 CMR 263.

All analytical test results shall be reported to the Department including results which are detected below the respective reporting limits (RLs) specified by the Department or as specified by other approved test methods. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the RL achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL or reporting an estimated value ("J" flagged) is not acceptable and will be rejected by the Department. Reporting analytical data and its use in calculations must follow established Department guidelines specified in this permit or in available Department guidance documents.

2. **Flow** – The flow through the oil/water separators shall consist of storm water runoff only. The direct or indirect discharge of liquids from petroleum product pipelines, transport tanks, vessels or storage tanks through the oil/water separators is not authorized by this permit. No chemical treatment such as dispersants, emulsifiers or surfactants may be added to the oil/water separators or any wastewater discharge stream contributing flow to the separators. There shall be no discharge of tank bottom water alone or in combination with storm water discharge or other wastewaters.

At no time shall the flow through the oil/water separators exceed the design flow of the individual separators. Flow measurement devices or calculated flow estimates via pump curves or tank volumes or other methods must be approved by the Department. Measurement of flow may be suspended upon approval from the Department in the event the permittee limits flow to the separators by installing a permanent constriction to prevent flows from exceeding the design capacity of the separators. The installation, replacement or modification of any flow measurement or constriction device requires prior approval by the Department.

## **SPECIAL CONDITIONS**

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

#### **FOOTNOTES:**

3. **Sample Type** – Storm water runoff from one significant storm event per calendar quarter shall be sampled for TSS, and oil & grease. Significant storm event is defined as any event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable storm event. Suitable size and type of samples shall be collected in accordance with 40 CFR Part 136. Grab samples will be collected within the first hour (first flush) after the diked area(s) drainage area and/or pumpout has started. Separate aliquot samples shall be taken for the analysis for each parameter. Oil & Grease shall be analyzed in accordance with USEPA test method 1664.
4. **Total Residual Chlorine (TRC)** – The permittee shall utilize a USEPA-approved test method capable of bracketing the TRC limitations specified in this permitting action. Compliance with the daily maximum limitation will be based on USEPA's current minimum level (ML) of detection of 50 µg/L (0.05 mg/L). All analytical test results shall be reported to the Department including results which are detected below the ML.

### **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.

### **C. OIL/WATER SEPARATOR MAINTENANCE**

The permittee shall maintain an up-to-date operations and maintenance plan for the oil/water separators. The plan shall include, but not be limited to, measures to ensure the separators perform within the designed performance standards of the system, is maintained on a routine basis to maximize the design capacity and efficiency of the system, and that adequate staffing and training of personnel is provided to ensure compliance with discharge limitations. The operations and maintenance plan shall remain on site at all times and will be subject to periodic inspection by Department personnel.

For the purposes of minimizing suspended solids in the storm water directed to the separators, the permittee shall implement best management practices (BMPs) for erosion and sedimentation control. The permittee shall periodically inspect, maintain and repair erosion and sedimentation control structures as necessary. See Special Condition E, *Storm Water Pollution Prevention Plan* of this permit.

## **SPECIAL CONDITIONS**

### **D. HYDROSTATIC TEST WATER**

Tanks being hydrostatically tested must be clean of product, all construction debris, including sandblasting grit, prior to testing and discharge. The discharge must be dechlorinated if test results indicate that discharged waters will violate the daily maximum limits for total residual chlorine established in this permit. Hydrostatic test water from tanks that have been washed, cleaned and certified for welding need not be discharged through an oil/water separator. The permittee shall notify the Department of an intended discharge of hydrostatic test water at least three days, excluding weekends, prior to the discharge.

### **E. STORM WATER POLLUTION PREVENTION PLAN (SWPPP)**

*On or before September 1, 2011*, the permittee shall develop a Storm Water Pollution Prevention Plan (SWPPP) for the facility that is consistent with the SWPPP requirements established in the Department's *Multi-Sector General Permit Maine Pollutant Discharge Elimination System Stormwater Discharge Associated with Industrial Activity*, dated April 26, 2011 [*PCS Code 62199*]. The permittee shall maintain and periodically update the SWPPP. As the site or any operations conducted on it have changed or are expected to change materially or substantially, the permittee shall modify its SWPPP as necessary to include such changes and notify the Department within 90 days of such modifications to the plan. The permittee shall maintain a copy of the SWPPP and any subsequent revisions at the terminal and shall make the plan available to any Department or USEPA representative upon request.

The SWPPP requirements are intended to facilitate a process whereby the permittee thoroughly evaluates potential pollution sources at the facility and selects and implements appropriate measures to prevent or control the discharge of pollutants in storm water runoff. The process involves the following four steps: (1) formation of a team of qualified facility personnel who will be responsible for preparing the SWPPP and assisting the appropriate facility staff in its implementation; (2) assessment of potential storm water pollution sources; (3) selection and implementation of appropriate management practices and controls; and (4) periodic evaluation of the effectiveness of the plan to prevent storm water contamination and comply with the terms and conditions of the permit.

### **F. AUTHORIZED DISCHARGES**

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on April 14, 2011; 2) the terms and conditions of this permit; and 3) only from Outfalls #001A, 002A and #003A. Outfall #004A is an administrative outfall utilized to track test results for hydrostatic water discharges. 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)(*Bypass*) of this permit.

## SPECIAL CONDITIONS

### G. MONITORING AND REPORTING

Monitoring results obtained during the previous month must be summarized for each month and reported on separate Discharge Monitoring Report (DMR) forms provided by the Department and **postmarked on or before the thirteenth (13<sup>th</sup>) day of the month or hand-delivered to a Department Regional Office such that the DMRs are received by the Department on or before the fifteenth (15<sup>th</sup>) day of the month** following the completed reporting period. A signed copy of the DMR and all other reports required herein must be submitted to the following address:

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

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

### H. NOTIFICATION REQUIREMENT

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

1. Any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system. For the purposes of this condition, notice regarding substantial change shall include information on:
  - (a) the quality and quantity of wastewater introduced to the wastewater collection and treatment system; and
  - (b) any anticipated impact caused by the change in the quantity or quality of the wastewater to be discharged from the treatment system.

## **SPECIAL CONDITIONS**

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

Upon evaluation of the tests results or monitoring requirements specified 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 effluent and or ambient water quality monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

### **J. SEVERABILITY**

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

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

**FACT SHEET**

**DATE: JUNE 13, 2011**

MEPDES PERMIT NUMBER: **#ME0001775**  
WASTE DISCHARGE LICENSE NUMBER: **#W002565-5S-I-R**

NAME AND ADDRESS OF APPLICANT:

**GLOBAL COMPANIES, LLC  
P.O. BOX 2678  
SOUTH PORTLAND, MAINE 04116**

COUNTY: **CUMBERLAND**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**GLOBAL COMPANIES, LLC  
1 CLARK ROAD  
SOUTH PORTLAND, MAINE 04116**

RECEIVING WATER / CLASSIFICATION: **BARBERRY CREEK/CLASS C**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **MR. BRUCE YATES, JR.**  
**(207) 767-8259**  
[byates@globalp.com](mailto:byates@globalp.com)

**1. APPLICATION SUMMARY**

- a. Application: Global Companies, LLC (GLOBAL or permittee) has applied to the Department of Environmental Protection (Department) or the renewal of combination Maine Waste Discharge License (WDL) #W002565-5S-H-R / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0001775, which was issued by the Department on April 14, 2006, and expired on April 14, 2011. The April 14, 2006 permit authorized the discharge of treated storm water runoff from a bulk fuel storage/transfer facility to Barberry Creek, Class C, in South Portland, Maine.

## 2. PERMIT SUMMARY

a. Terms and conditions: **This permitting action is carrying forward the:**

**For Outfalls #001A, #002A, and #003A, this permitting action is carrying forward the:**

1. Daily maximum discharge flow limitations of 316 gallons per minute (gpm), 700 gpm, and 800 gpm, respectively;
2. Daily maximum concentration limitation for total suspended solids (TSS);
3. Daily maximum concentration limitation for oil and grease (O&G);

**For Outfall #004A (administrative outfall)**

4. Daily maximum discharge flow limit of 6.6 million gallons per day;
5. Daily maximum concentration limitation for TSS;
6. Daily maximum concentration limitation for O&G; and
7. Daily maximum concentration limit for total residual chlorine (TRC).

b. History: This section provides a summary of significant licensing/permitting actions that have been completed for the Global facility.

August 7, 1999 – The Department issued WDL renewal #W002565-5S-C-R to Northeast Petroleum for a five-year term.

August 30, 1999 – The U.S. Environmental Protection Agency (USEPA) issued National Pollutant Discharge Elimination System (NPDES) permit #ME0001775 to Northeast Petroleum for a five-year term.

January 12, 2001 – The Department received authorization from the USEPA to administer the NPDES permit program in Maine, excluding areas of special interest to Maine Indian Tribes. From that point forward, the program has been referred to as the MEPDES program, and MEPDES permit #ME0001775 has been utilized as the primary reference number for Global's facility.

January 17, 2001 – The Department issued WDL renewal #W002565-5S-E-R to Fore River Properties. It is noted the WDL transferred the WDL from Northeast Petroleum to Fore Rivers Properties.

August 1, 2001 – The Department issued combination MEPDES permit modification and transfer #ME0001775/WDL #W002565-5S-F-T to Global Companies LLC. The permit modified and transferred the 1/17/01 WDL from Fore River Properties to Global Companies, LLC. The permit had an expiration date of January 17, 2006.

## 2. PERMIT SUMMARY (cont'd)

September 1, 2001 – The Department issued combination MEPDES permit modification #ME0001775/WDL #W002565-5S-G-M to Global Companies, LLC. The permit had an expiration date of January 17, 2006.

April 14, 2006 – The Department issued WDL #W002565-5S-H-R to Global for a five-year term.

April 12, 2011 – Global submitted a timely and complete General Application to the Department for renewal of the April 14, 2006 MEPDES permit. The application was accepted for processing on April 14, 2011, and was assigned WDL #W002565-5S-I-R / MEPDES #ME0001775.

- c. Source Description: The primary activities of the Global Companies South Portland facility are the receipt, transport, and total storage of approximately 28 million gallons of energy fuels including #2 and #6 fuel oils and kerosene. The facility also stores asphalt. Fuel is received at the storage and transfer facility by either ship or tank trucks. Fuels are loaded onto local delivery trucks via two loadings racks to be delivered to customers in surrounding communities in the area. A map showing the location of the facility and receiving water is included as Fact Sheet **Attachment A**.
- d. Wastewater Treatment: The Tank Farm at Global's South Portland Terminal is divided into multiple secondary containment areas. Storm water collected from within each of the secondary containment areas either is allowed to evaporate and slowly infiltrate into the ground, or is drained from the secondary containment via subsurface piping. Global maintains three oil/water separator treatment units and an outfall for each. A detailed description of drainage areas and containment areas provided by Global is included as Fact Sheet **Attachment B**.

Treated wastewater is conveyed for discharge to Barberry Creek via three 10" diameter outfall pipes designated Outfalls #001A, #002A and #003A in this permitting action.

## 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, *Certain deposits and discharges prohibited*, 38 M.R.S.A. § 420 and *Surface Waters Toxics Control Program*, 06-096 CMR 530 (effective October 9, 2005) 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 minor river drainages*, 38 M.R.S.A. § 468(1)(D)(1) classifies all minor drainages in South Portland, including Barberry Creek, as Class C waters. *Standards for classification of fresh surface waters*, 38 M.R.S.A. § 465(4) describes the standards for Class C waters.

#### 5. RECEIVING WATER QUALITY CONDITIONS

*The State of Maine 2008 Integrated Water Quality Monitoring and Assessment Report*, (Report) prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists a 3.03-mile segment of Barberry Creek as “*Category 4-A: Rivers and Streams With Impaired Use, TMDL Completed.*” Impairment in this context refers to failure to meet Class C aquatic life criteria based on calendar year 2003 sampling results. The Barberry Creek Total Maximum Daily Load (TMDL), which was approved by the USEPA on June 21, 2007, may be viewed at <http://www.maine.gov/dep/blwq/docmonitoring/tmdl2.htm>. This permitting action requires Global to maintain a Storm Water Pollution Prevention Plan to minimize the presence of pollutants in the discharge. In addition, storm water collected in the secondary containment areas that is directly discharged to Barberry Creek is treated using an oil/water separator. Global is also committed to following best management practices (BMPs), good housekeeping practices and preventative maintenance BMPs as described in Fact Sheet **Attachment C** included with Global’s March 2011 permit application. Based on the pollution prevention plans, implementation of BMPs to minimize pollutants in the storm water discharge and use of oil/water separators to treat storm water prior to discharge, the Department is making a best professional judgment determination that the discharge as permitted will not cause or contribute to non-attainment of the receiving water to meet the aquatic life standards for Class C waters. The Department reserves the right to reopen this permit in accordance with Special Condition I to establish new or revised effluent limitations or monitoring requirements based on new information regarding the Barberry Creek TMDL.

The 2008 Report also lists Maine’s fresh waters as “*Category 4-A: Rivers and Streams with Impaired Use, TMDL Completed.*” All freshwaters formerly listed in Category 5-C are moved to Category 4-A (TMDL Completed) due to USEPA approval of a Regional Mercury TMDL. Impairment in this context refers to a statewide fish consumption advisory due to elevated levels of mercury in some fish tissues. The Report states, “*Impairment caused by atmospheric deposition of mercury; a regional scale TMDL has been approved. Maine has a fish consumption advisory for fish taken from all freshwaters due to mercury. Many waters, and many fish from any given water, do not exceed the action level for mercury. However, because it is impossible for someone consuming a fish to know whether the mercury level exceeds the action level, the Maine Department of Human Services decided to establish a statewide advisory for all freshwater fish that recommends limits on consumption. Maine has already instituted statewide programs for removal and reduction of mercury sources.*”

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Effluent Limitation Basis: Discharges from activities associated with bulk petroleum stations and terminal operations must satisfy best conventional technology (BCT) and best available technology (BAT) requirements and must comply with more stringent water quality standards if BCT and BAT requirements are not adequate. On September 25, 1992, EPA promulgated through its General Permit for Storm Water Discharge Associated with Industrial Activity, that the minimum BAT/BCT requirement for storm water discharges associated with industrial activity is a Storm Water Pollution Prevention Plan (SWPPP) [57 FR, 44438]. In addition to a SWPPP, the Department is carrying numeric effluent limitations and or monitoring requirements forward from the previous permitting action for petroleum constituents to ensure the discharge(s) do not contribute to violations of the State's water quality standards.

### Storm Water Runoff Only – Outfalls #001A, #002A, and #003A

- b. Flow: Typically, the treatment technology for storm water runoff employed by bulk storage petroleum terminals is an oil/water (O/W) separator. This device uses gravity to separate the lower-density oils from water resulting in an oil phase above the oil/water interface and a heavier particulate (sludge) phase on the bottom of the O/W separator. It follows that the sizing of O/W separators is based on the following design parameters: water-flow rate, density of oil to be separated, desired percentage removal of oil, and the operating temperature range.

The previous permit established daily maximum flow limits of 316 gallons per minute (gpm), 700 gpm, and 800 gpm, respectively, for Outfalls #001A, #002A and #003A that were based on information supplied by the permittee as to the design capacity of the O/W separator. The permittee has indicated the capacity has not changed from the previous permitting action and is therefore being carried forward in this permitting action.

- c. Total Suspended Solids (TSS): Total suspended solids have been limited in this permit to minimize the potential carryover of petroleum fractions to the receiving water(s) by adsorption to particulate matter or suspended solids. Both heavy metals and polynuclear aromatic hydrocarbons (PAHs) readily adsorb to particulate matter.

The previous permitting action established a daily maximum concentration limit of 50 mg/L for TSS based on a Department best professional judgment (BPJ) of limits that were achievable for bulk fuel storage and transfer facilities located in the State of Maine. The 8/30/99 NPDES permit issued by the USEPA established a daily maximum concentration limit of 100 mg/L based on a USEPA Region I BPJ determination that the technology guidelines promulgated at 40 CFR Part 423—*Steam Electric Power Generating Point Source Category*, for point source discharges of low volume waste water were appropriate to control the discharge of sediment particles and oils from bulk storage petroleum terminals in the region.

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

The Department issued WDL renewals for most of the permitted bulk fuel storage and transfer facilities in calendar years 1997 - 2000 with a daily maximum concentration limit of 50 mg/L for TSS. Global has been able to consistently comply with the daily maximum limit of 50 mg/L after implementing the SWPPP and properly operating and maintaining the O/W separators. Given the non-attainment of aquatic life standards as described in Section 5 of this Fact Sheet, the Department is carrying forward the previously established daily maximum limit of 50 mg/L for each of the three outfall points.

Based on a review of quarterly effluent data for the three outfall points for the period of March 2008 – March 2011, Global has had only one exceedence (72 mg/L at Outfall #003A July 2008 sample) of the 50 mg/L TSS limit.

- d. Oil and Grease (O&G): The previous permitting action contained a daily maximum concentration limit of 15 mg/L based on Department best professional judgment of best practicable treatment for oil/water separators at bulk fuel terminals.

Based on a review of quarterly effluent data for the three outfall points for the period of March 2008 – March 2011, Global has been in compliance with the 15 mg/L daily maximum limit at each of the three outfalls during each of the 13 sampling events.

### Hydrostatic Test Water (Outfall #004)

The permittee has indicated that hydrostatic testing of pipelines and tanks with water is periodically performed to confirm facility integrity. Therefore, the authorization to discharge hydrostatic test waters is being carried forward in this permitting action in accordance with the following conditions. During the period of March 2008 – March 2011, Global reported one hydrostatic test water discharge and was in compliance with all applicable limitations.

- e. Flow: The previous permitting action established, and this permitting action is carrying forward, a daily maximum discharge flow limitation of 6.6 million gallons (6.6 EE6) which is equal to the volume of the largest tank on site, 158,000 barrels.
- f. Total Suspended Solids: The previous permitting action established, and this permitting action is carrying forward, a daily maximum limit of 50 mg/L based on a Department BPJ of limits that are achievable given the tanks that are hydrostatically tested have been washed and cleaned in preparation for repair and testing.
- g. Oil & Grease: The previous permitting action established, and this permitting action is carrying forward, a daily maximum limit of 15 mg/L which is a Department BPJ of limits that are achievable given the tanks that are hydrostatically tested have been washed and cleaned in preparation for repair and testing.

## 6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

- h. Total residual chlorine (TRC): The previous permitting action established, and this permitting action is carrying forward, a daily maximum limit of 0.019 mg/L (same as 19 µg/L), which is equal to the acute ambient water quality criteria (AWQC) given the dilution at 7Q10 (the 7-day low flow that statistically occurs once every 10 years) is assumed to be 1:1. Compliance with the daily maximum limitation will be based on USEPA's current minimum level (ML) of detection of 50 µg/L (0.05 mg/L). All analytical test results shall be reported to the Department including results which are detected below the ML.

## 7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has determined the existing water uses will be maintained and protected and that the discharge will not cause or contribute to the failure of Barberry Creek to meet standards for Class C classification.

## 8. PUBLIC COMMENTS

Public notice of this application was made in the *Portland Press Herald* newspaper on or about February 25, 2011. 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).

## 9. DEPARTMENT CONTACTS

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

Bill Hinkel  
Division of Water Quality Management  
Bureau of Land & Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017  
e-mail: [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov)  
Telephone: (207) 485-2281

## 10. RESPONSE TO COMMENTS

During the period of May 10, 2011 through June 9, 2011, the Department solicited comments on the proposed draft Maine Pollutant Discharge Elimination System Permit to be issued to Global Companies, LLC for the proposed discharges. On June 7, 2011, the permittee submitted written comments on the draft permit which resulted in minor changes to the draft permit.

## 10. RESPONSE TO COMMENTS (cont'd)

**Comment #1:** The permittee indicated that they currently have a Storm Water Pollution Prevention Plan (SWPPP) for the site but that it was developed in accordance with the Department's 2005 Storm Water General Permit. The permittee requested additional time to develop a new SWPPP that conforms to the renewed Storm Water General Permit which was issued by the Department on April 26, 2011.

**Response #1:** The draft permit was revised to allow the permittee until September 1, 2011 to revise the SWPPP to be consistent with the requirements for the 2011 general permit.

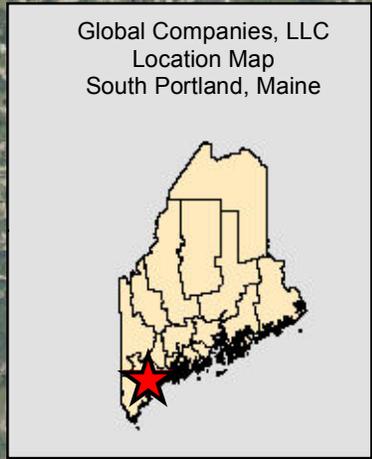
**Comment #2:** The permittee indicated that asphalt is also stored on the site and should be noted in the fact sheet.

**Response #2:** The Department noted asphalt storage on page 3 of the fact sheet.

**Comment #3:** The permittee stated that the map included as a fact sheet attachment does not show the location of outfalls #002 and #003.

**Response #3:** The Department will obtain geospatial data from the permittee for these outfall points and add these to the Department's "Facility Outfall" layer in GIS.

# **ATTACHMENT A**



Map created by  
Maine DEP  
May 2011

# **ATTACHMENT B**

The Tank Farm at the South Portland Terminal is divided into multiple secondary containment areas. Storm water collected from within each of the secondary containment areas either is allowed to evaporate and slowly infiltrate the ground, or is drained from the secondary containment via subsurface piping. The drainage features associated with each of the containment areas is described below:

### **Outfall 001**

Tank 1 Containment Area - storm water flows to one low elevation area. It is located on the northwest side of the tank basin and drains by gravity into Tank 8 basin. The drainage line is controlled by a manually operated butterfly valve maintained in the closed position until storm water needs to be drained.

Tank 8 Containment Area - Storm water flows to a low elevation sump in the southern end of the tank basin. Storm water is then pumped through a manually operated force main into the Tank 9 basin.

Tank 9 Containment Area - Storm water flows to three low elevation areas. The first is located on the southeast side of the tank basin and gravity flows into Tank 3 basin. The second low elevation area is located on the west side of the basin and gravity flows into Tank 2 basin. Both drainage lines are controlled by manually operated butterfly valves maintained in the closed position until storm water needs to be drained. The third low elevation area is located in the northern corner of the tank basin, which drains by gravity into Tank 8 basin through a manually operated gate valve.

Tank 3 Containment Area - Storm water flows to a low elevation sump on the southwest side of the tank basin. The sump gravity flows into Tank 2 basin through a manually operated butterfly valve maintained in the closed position until storm water is drained.

Tank 14 Containment Area - Storm water flows to a low elevation manually operated pumping station located in the center of the tank basin. When storm water needs to be drained, it is pumped through a force main into Tank 15 basin.

Tank 15 Containment Area - Storm water flows to a low elevation area located on the east side of the tank basin and drains by gravity into Tank 2 basin. A butterfly valve (manually operated) controls the flow of storm water from Tank 15 to Tank 2 basin. The butterfly valve is maintained in the closed position until storm water is drained.

Tank 2 Containment Area - Storm water flows to a low elevation manually operated pumping station located at the southern end of the tank basin. When storm water is drained, it is pumped through a force main into a catch basin located in front of the distillate loading rack.

### Truck Loading Racks

The South Portland Terminal has 2 truck loading racks: a distillate oil rack and a heavy oil truck

rack. The heavy oil rack is located within the terminal yard and is contained by the asphalt curbing. Storm water would flow towards the low elevation catch basin and drain to OWS-1 through a normally closed motor operated valve. The distillate loading rack, including the canopy roof is also located inside the asphalt berm, and has a sloped concrete pad draining into 6 catch basins, which are piped, to a common subsurface drainage line. Storm water collected in the No.6 Fuel Oil truck loading rack catch basins flows by gravity to OWS-1, through a normally closed motor operated valve. To drain storm water from the yard/rack areas the valve would be energized to open, to allow the water to flow to OWS-1 where it is treated and discharged to permitted outfall 001 on the Barberry Creek.

### **Outfall 002**

Tank 4 Containment Area - Storm water flows toward a catch basin located on the northwestern side of the tank basin. This catch basin drains by gravity to OWS-2 through a manually operated gate valve maintained in the closed position, until storm water is drained. Treated storm water is discharged to the permitted outfall number 002.

### **Outfall 003**

Tanks 5, 6 & 7 Containment Areas - Tanks 5, 6 & 7 each have their own sub-containment areas. The tank basins for Tank 5 and 7 are drained by gravity through subsurface piping (beneath the intermediate dikes) to the Tank 6 basin and into the manhole in the north corner of the containment area. The drainage lines from both Tank 5 and 7 are each equipped with a manually operated gate valve maintained in the closed position. The combined storm water collected in the catch basin at Tank 6 is drained by gravity through a manually operated butterfly valve into Tank 16 basin.

Tank 16 Containment Area - The storm water collected at the far south and far western side of Tank 16 is collected in a low elevation area (behind Tank 7) and pumped through a force main into the catch basin at the near southeastern corner of the tank. All storm water collected on the south and east of the tank basin gravitates to this catch basin, and gravitates through a hard pipe into the catch basin at the northeastern corner of the tank basin. Storm water collected on the northern and western side of the tank gravitates to the northeastern catch basin. Storm water also drains from tank 6 catch basin into this dike area at the southeastern catch basin. All storm water flows to a low elevation at the catch basin located on the northeast side of the containment area. This first catch basin will act as the settling basin before the water will gravitate into the pump station. Storm water will be pumped by the force main into OWS-3, where it is treated and discharged to the permitted outfall number 003.

### **Outfall 004**

Outfall 004 is not a physical outfall; it is specifically used to discharge hydrostatic test water from storage tanks. Hydrostatic test water being drained from tanks which has been cleaned, washed and certified gas free safe for hotwork does not need to be discharged through an oil-water separator. The influent and effluent test water is sampled and analyzed in accordance with the

MEPDES and MEWDL permits before being discharged.

### **Outside Secondary Containment (Terminal Yard, Garage, and Vessel Dock)**

Terminal Yard - The terminal yard consists of paved and unpaved areas surrounding the office buildings, garages, truck loading racks, and miscellaneous areas. The yard is encased with asphalt curbing from the north side of the office building to the north side of the #6 Fuel Oil truck loading rack and around the western perimeter of the yard incasing the complete truck loading rack area, which is drained through the catch basin system to OWS 001. The storm water falling outside the bermed area of the terminal yard would eventually flow to the east into Barberry Creek or to the north into the Fore River.

Garage Area - The last two bays in the garage drain into the Tank 14 basin. All other drains in the garage have been plugged and sealed. Global has an agreement with Maine D.E.P. not to store any petroleum, paint or other hazardous products in the 2 bays that have drainage. They will be used primarily for vehicle storage.

Vessel Dock - The surface of the Vessel Dock (in the vicinity of the loading/unloading manifolds) is a concrete structure surrounded by six (6) inch concrete curbs. Four (4) drains are located on the concrete surface of the Vessel Dock. These drains are normally maintained in the open position and precipitation falling on the deck is directly drained to the Fore River. During product transfer operations the four (4) drains are closed. Storm water accumulated on the concrete vessel dock is visually inspected for a sheen prior to discharge. If any product is observed, it is removed with absorbent material. All vessels except tugboat refueling are boomed during product transfer operations.

### **Pollutant Control Measures**

Global has implemented a Spill Prevention Control and Countermeasures Plan (SPCC) and a Storm Water Pollution Prevention Plan (SWP<sup>3</sup>) for the South Portland, Maine facility. Spill prevention and storm water management training and storm water best management practices are presented in the SPCC / SWP<sup>3</sup> and are carried out by terminal personnel.

The bulk storage tanks at this terminal are surrounded by earthen dikes. Based on the facility's SPCC the tanks are surrounded by dikes that are adequately sized to contain potential spills. The storm water drainage system at the terminal directs surface runoff to three oil water separators (OWS 001,002, & 003) and associated licensed discharge outfalls (001, 002, & 003). Global upgraded the drainage and separator systems in 2001. After processing by the OWS, storm water is discharged to Barberry Creek through licensed outfalls.

No flapper-type drain valves are used to drain containment areas.

# **ATTACHMENT C**

### Materials Stored

The Global Companies, LLC South Portland, Maine Terminal currently receives, stores, and distributes various distillate and residual petroleum products, asphalt, red dye distillate additive, and a heating oil additive called Fuel Oil Plus+. See Attachment 1 (Facility Map) for the locations of marine dock, bulk storage tanks, loading racks, and the terminal yard.

### Management Practices

While operating the South Portland, Maine Terminal, Global Companies, LLC will follow general Best Management Practices (BMPs). The following is a summary of the principle BMPs.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.
2. The effluents shall not cause a visible oil sheen nor an objectionable discoloration of the receiving waters.
3. All discharges shall not cause violations of water quality standards of the receiving waters.
4. The effluent shall not contain materials in concentrations or combinations that are hazardous or toxic to human health, aquatic life of the receiving surface water or which would impair the uses designated by its classification.
5. The discharge shall not impart color, taste, turbidity, toxicity, radioactivity, or other properties that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their use.
6. Notwithstanding specific conditions of the MEPDES 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 unless in accordance with State of Maine Antidegradation Statutes and Regulations.
7. There shall be no discharge of either untreated tank bottom drawoffs or ship/barge bilge water alone or in combination with other wastewater unless specifically approved by U.S. Environmental Protection Agency (EPA) and the State (Maine Department of Environmental Protection).
8. The use of chemicals (i.e. disinfecting agents, detergents, emulsifiers, etc.) shall not be added to the collection and treatment system without prior approval by EPA and the State to prevent hydrocarbon and/or particulate matter carryover into the Fore River.

In addition to following the principle BMPs Global will practice good housekeeping and Preventive Maintenance BMPs. The following is a summary of these BMPs:

1. Drip receptacles will be used to catch minor drips while disconnecting hoses and loading arms at the vessel dock and distillate truck loading rack.
2. The loading racks will be kept clear of unnecessary equipment and debris.
3. Small spills due to normal loading / unloading operations such as minor overfills are immediately cleaned up using a combination of absorbent pads and Speedi-Dry.
4. The rack and vessel dock is inspected daily to ensure that the areas are kept clean and orderly.
5. The truck loading rack drainage system is cleaned twice per year or as deemed necessary by daily inspections.

6. Oil Water Separators are cleaned once per year or as deem necessary by daily / monthly inspections.

**Frequency of Herbicide Usage**

The South Portland Terminal has an outside vendor apply a growth retardant (herbicide) to dike walls and a weed killer to dike floors at a minimum of once per year during the spring months.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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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).

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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

**5. Publicly owned treatment works.**

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

**E. OTHER REQUIREMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



# DEP INFORMATION SHEET

## Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

### SUMMARY

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

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### **LEGAL REFERENCES**

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

#### **HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD**

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

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

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

#### **WHAT YOUR APPEAL PAPERWORK MUST CONTAIN**

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

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

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

#### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

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

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

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

#### **II. APPEALS TO MAINE SUPERIOR COURT**

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

#### **ADDITIONAL INFORMATION**

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

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

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