



STATE OF MAINE
Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patricia W. Aho
COMMISSIONER

April 2, 2012

Mr. Steve Lane
Winterport Water District
P.O. Box 128
Winterport, Maine 04496

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0100749
Maine Waste Discharge License (WDL) Application #W001480-6C-D-R

Dear Mr. Lane:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL **renewal** which was approved by the Department of Environmental Protection. This permit/license replaces the National Pollutant Discharge Elimination System (NPDES) permit #ME0100749, last issued by the Environmental Protection Agency (EPA) on February 2, 2004. Once replaced, all terms and conditions of the 2/2/04 NPDES permit are null and void. Please read this permit/license renewal and its attached conditions carefully. You must follow the conditions in the order to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State Law and is subject to enforcement action.

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

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

Sincerely,

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

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

Enc.

cc: Tanya Hovell, DEP/EMRO Phil Garwood, DEP/CMRO
Sandy Mojica, USEPA



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

DEPARTMENT ORDER

IN THE MATTER OF

WINTERPORT WATER DISTRICT)	MAINE POLLUTANT DISCHARGE
WINTERPORT, PENOBSCOT COUNTY, MAINE)		ELIMINATION SYSTEM PERMIT
PUBLICLY OWNED TREATMENT WORKS)	AND
ME0100749)	WASTE DISCHARGE LICENSE
W001480-6C-D-R)	RENEWAL
APPROVAL)	

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

APPLICATION SUMMARY

The WWD has submitted a timely and complete application to the U.S. Environmental Protection Agency (EPA hereinafter) and the Maine Department of Environmental Protection (Department hereinafter) for the renewal of combination National Pollutant Discharge Elimination System (NPDES) permit #ME0100749/Maine Waste Discharge License (WDL) #W001480-5L-C-R, which was issued on February 2, 2004, and expired on February 2, 2009. The NPDES permit/WDL authorized the discharge of up to a monthly average flow of 0.11 million gallons per day (MGD) of primary treated wastewaters and an unspecified quantity of primary treated swirl concentrator effluent from a combined sewer overflow (CSO) to a segment of the Penobscot River subject to tidal action, Class SC, in Winterport, Maine.

PERMIT SUMMARY

- a. Regulatory - On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (EPA) 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 Maine Pollutant Discharge Elimination System (MEPDES) permit program and permit #ME0100749 (same as the NPDES permit number) has been and will be utilized as the primary reference number for this facility.

As noted above, the previous permitting/licensing action authorized the discharge of primary treated wastewater pursuant to Section 301(h) of the Clean Water Act. Section 301(h) [often referred to as a 301(h) waiver] provides a vehicle by which a permittee may request a variance from secondary treatment requirements. Issuance of a permit granting such a variance may only

PERMIT SUMMARY (cont'd)

be issued by the EPA as authorization to do so cannot be granted to states. The EPA granted the original variance to the WWD on May 9, 1985. On March 22, 2012, the EPA issued a letter to the WWD notifying the Town the EPA made a final decision to deny a 301(h) waiver from secondary treatment requirements. Therefore, the Department is issuing a combination MEPDES/WDL requiring that the discharge from the WWD's wastewater treatment facility receive a secondary level of treatment prior to discharge to the Penobscot River. See Section 2(b) of the Fact Sheet attached to this permitting action for a more detailed explanation for the justification for the requirement for the higher level of treatment. This permitting action also authorizes the discharge of primary treated sanitary/stormwater via a dedicated wet weather treatment system considered to be a combined sewer overflow (CSO) point.

This permitting action is similar to the 2/2/04 licensing action in that it is:

1. Carrying forward the seasonal (May 15 – September 30) monthly average and daily maximum concentration limits for fecal coliform bacteria;
2. Carrying forward the daily maximum water quality based limitation for total residual chlorine;
3. Carrying forward the NPDES permit number of ME0100749;
4. Carrying forward the requirement to maintain an up to date Operations and Maintenance (O&M) plan and Wet Weather Management plan.
5. Carrying forward the authorization to discharge primary treated swirl concentrator effluent from a combined sewer overflow (CSO).
6. Carrying forward the requirement to maintain a CSO Master Plan with a long term goal to minimize discharges from the CSO. The Department understands that the WWD wishes to keep this point open as it has reduced flows upstream of the swirl concentrator to what it feels are the lowest practical levels and has had to operate its swirl concentrator very infrequently.
7. Carrying forward the pH range limitation to 6.0 – 9.0 standard units.

PERMIT SUMMARY (cont'd)

This permitting action is different from the 2/2/04 licensing action in that it is:

8. Increasing the monthly average flow limit from 0.11 MGD to 0.20 MGD for the existing waste water treatment facility.
9. Establishing monthly average, weekly average and daily maximum technology based concentration limitations for biochemical oxygen demand (BOD₅) and total suspended solids (TSS);
10. Establishing monthly average, weekly average and daily maximum technology based mass limitations for BOD₅ and TSS.
11. Establishing a requirement for a minimum of 85% removal of BOD₅ and TSS across the treatment facility;
12. Establishing a daily maximum technology based concentration limit for settleable solids;
13. Establishing an annual certification requirement for toxics testing.
14. Incorporating previously established average and maximum concentration limits for total mercury.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated October 25, 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 natural resource, that water quality will be maintained and protected;

CONCLUSIONS (cont'd)

- (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.
 5. The Department is issuing this permit with secondary treatment requirements as a result of the decision by the EPA to deny the waiver from secondary treatment. The current wastewater treatment facility is only able to provide a primary level of treatment and it is understood that compliance with the secondary limits established in this permit will require an upgrade of the facility subject to the terms and conditions negotiated between the Town and the State of Maine in separate legal document.

ACTION

THEREFORE, the Department APPROVES the above noted application of the WINTERPORT WATER DISTRICT to discharge up to a monthly average flow of 0.20 MGD of secondary treated wastewater from Outfall #001, an unspecified quantity of primary treated swirl concentrator effluent from a CSO to the Penobscot River, Class SC, in Winterport, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits," revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit becomes effective upon the date of signature below and expires at midnight five (5) years after that date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of this permit and all subsequent 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

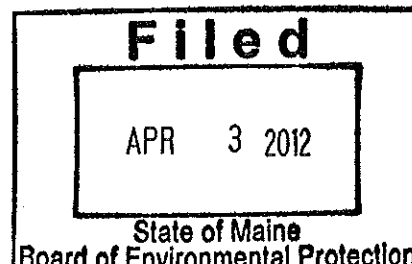
DONE AND DATED AT AUGUSTA, MAINE, THIS 2 DAY OF April 2012.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
Patricia W. Aho, Commissioner

Date of initial receipt of application September 2, 2008.

Date of application acceptance September 3, 2008.



Date filed with Board of Environmental Protection _____

This Order prepared by GREGG WOOD, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. Beginning the effective date of this permit, the permittee is authorized to discharge secondary treated sanitary wastewater from Outfall 001 to the Penobscot River in Winterport. Such discharges shall be limited and monitored by the permittee as specified below⁽¹⁾.

Effluent Characteristic	Discharge Limitations					Monitoring Requirements		
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]	0.20 MGD [03]	---	Report MGD [03]	---	---	---	Continuous [99/99]	Recorder [RC]
BOD ₅ [00310]	28 lbs./day [26]	41 lbs./day [26]	46 lbs./day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Week [01/07]	Composite [24]
BOD ₅ Percent Removal ⁽²⁾ [81010]	---	---	---	85% [23]	---	---	1/Month [01/30]	Calculate [CA]
TSS [00530]	28 lbs./day [26]	41 lbs./day [26]	46 lbs./day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Week [01/07]	Composite [24]
TSS Percent Removal ⁽²⁾ [81011]	---	---	---	85% [23]	---	---	1/Month [01/30]	Calculate [CA]
Settleable Solids [00545]	---	---	---	---	---	0.3 ml/L [25]	1/Week [01/07]	Grab [GR]
Fecal Coliform Bacteria ⁽³⁾ [31616] (May 15 – September 30)	---	---	---	15/100 ml ⁽⁴⁾ [13]	---	50/100 ml [13]	1/Week [01/07]	Grab [GR]
Total Residual Chlorine ⁽⁵⁾ [50060]	---	---	---	---	---	0.85 mg/L [19]	5/Week [05/07]	Grab [GR]
pH [00400]	---	---	---	---	---	6.0 – 9.0 SU [12]	5/Week [05/07]	Grab [GR]
Mercury (Total) ⁽⁶⁾ [71900]	---	---	---	45 ug/L [3M]	---	67 ug/L [3M]	1/Year [01/YR]	Grab [GR]
The italicized numeric values bracketed in the table and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports.								

Footnotes: See pages 7 & 8 of this permit for applicable footnotes.

SPECIAL CONDITIONS

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

Footnotes:

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

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. **Percent removal** – Secondary treated wastewaters shall maintain a minimum of 85 percent removal of both BOD₅ and TSS. The percent removal shall be based on a monthly average calculation using influent and effluent concentrations. The percent removal shall be waived when the monthly average influent concentration is less than 200 mg/L. For instances when this occurs, the facility shall report "NODI-9" on the monthly Discharge Monitoring Report (DMR).
3. **Fecal coliform bacteria** - Limits are seasonal and apply between May 15th and September 30th of each calendar year. The Department reserves the right to require disinfection on a year-round basis to protect the health and welfare of the public.
4. **Fecal coliform bacteria** – The monthly average limitation is a geometric mean limitation and shall be calculated and reported as such.
5. **Total residual chlorine (TRC)** – Limitations and monitoring requirements for TRC are applicable any time elemental chlorine or chlorine based compounds are being utilized to disinfect the discharge(s). The permittee shall utilize approved test methods that are capable of bracketing the limitations in this permit.

SPECIAL CONDITIONS

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

Footnotes:

6. **Mercury** - All mercury sampling required by this permit or required to determine compliance with limitations established pursuant to Department rule Chapter 519, shall be conducted in accordance with EPA's "clean sampling techniques" found in EPA Method 1669, Sampling Ambient Water For Trace Metals At EPA Water Quality Criteria Levels. All mercury analysis shall be conducted in accordance with EPA Method 1631, Determination of Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Fluorescence Spectrometry. See **Attachment A, Effluent Mercury Test Report**, of this permit for the Department's form for reporting mercury test results.

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 for 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 for the classification of the receiving waters.
3. The discharges shall not cause visible discoloration or turbidity in the receiving waters which would impair the usages designated for 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. TREATMENT PLANT OPERATOR

The person that has direct responsibility for the operation of the existing primary treatment facility must hold a minimum of a **Grade II** certificate (or Registered Maine Professional Engineer) pursuant to *Sewerage Treatment Operators*, 32 M.R.S.A. §§ 4171-4182 and *Regulations for Wastewater Operator Certification*, 06-096 CMR 531 (effective May 8, 2006). Upon completion of the facility upgrade to secondary treatment, the person that has direct responsibility for the operation of the secondary treatment facility must hold a minimum of a **Grade III** certificate (or Registered Maine Professional Engineer). All proposed contracts for facility operation by any person must be approved by the Department before the permittee may engage the services of the contract operator.

D. LIMITATIONS FOR INDUSTRIAL USERS

Pollutants introduced into the wastewater collection and treatment system by a non-domestic source (user) shall not pass through or interfere with the operation of the treatment system.

SPECIAL CONDITIONS

E. AUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, received on September 2, 2008, and accepted for processing on September 3, 2008; 2) the terms and conditions of this permit; and 3) from Outfall #001 and one CSO (Outfall #002). Discharges of waste water from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

F. NOTIFICATION REQUIREMENT

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

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

G. OPERATION & MAINTENANCE (O&M) PLAN

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

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

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

SPECIAL CONDITIONS

H. WET WEATHER MANAGEMENT PLAN

The treatment facility staff shall maintain a current written Wet Weather Management Plan to direct the staff on how to operate the facility effectively during periods of high flow. The Department acknowledges that the existing collection system may deliver flows in excess of the monthly average design capacity of the treatment plant during periods of high infiltration and rainfall.

Within 90 days of completion of new and or substantial upgrades of the waste water treatment facility, the permittee shall submit to the Department for review and approval, a new or revised Wet Weather Management Plan that conforms to Department guidelines for such plans *[PCS Code 06799]*. The revised plan shall include operating procedures for a range of intensities, address solids handling procedures (including septic waste and other high strength wastes if applicable) and provide written operating and maintenance procedures during the events.

Once the Wet Weather Management Plan has been approved, the permittee shall **review their plan annually** and record any necessary changes to keep the plan up to date.

I. EFFLUENT CONDITIONS AND LIMITATIONS FOR COMBINED SEWER OVERFLOWS (CSOs)

Pursuant to Chapter 570 of Department rules, *Combined Sewer Overflow Abatement*, the permittee is authorized to discharge from the following locations of combined sewer overflows (storm water and sanitary wastewater) subject to the conditions and requirements herein.

1. CSO Locations

<u>Outfall #</u>	<u>Outfall Location</u>	<u>Receiving Water and Class</u>
002	Swirl Concentrator	Penobscot River, Class SC

2. Prohibited Discharges

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

SPECIAL CONDITIONS

I. EFFLUENT LIMITATIONS AND CONDITIONS FOR CSO'S (cont'd)

3. Narrative Effluent Limitations

- a. The effluent shall not contain a visible oil sheen, settled substances, foam, or floating solids at any time that impair the characteristics and designated uses ascribed to the classification of the receiving waters.
- b. The effluent shall not contain materials in concentrations or combinations that are hazardous or toxic to aquatic life; or which would impair the usage designated for the classification of the receiving waters.
- c. The discharge shall not impart color, turbidity, toxicity, radioactivity or other properties that cause the receiving waters to be unsuitable for the designated uses and other characteristics ascribed to their class.

4. CSO Master Plan (see Sections 2 and 3 of Department rule Chapter 570)

The permittee shall continue to take the necessary actions to minimize CSO discharges through the swirl concentrator. The permittee shall monitor and document these actions in accordance with the currently approved CSO Master Plan dated July 2010 and as amended.

The Department understands that the WWD has completed all of the remediation milestones within its July 2010 CSO Master Plan and has also begun the process of monitoring and system assessment. **On or before November 1, 2016, [PCS Code 06699]** the permittee shall submit a CSO Master Plan update evaluating the success of the abatement projects and the future plans for the existing swirl concentrator.

To modify the date cited above, the permittee must file an application with the Department to formally modify the permit. Work items identified in an approved abatement schedule may be amended from time to time based on mutual agreements between the permittee and the Department. The permittee must notify the Department in writing prior to any proposed changes to the implementation schedule.

5. Nine Minimum Controls (NMC) (see Section 5 of Department rule Chapter 570)

The permittee shall implement and follow the Nine Minimum Control documentation as approved by EPA on May 29, 1997. Work performed on the Nine Minimum Controls during the year shall be included in the annual CSO Progress Report (see below).

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

The permittee shall conduct block testing or flow monitoring on the swirl concentrator according to an approved *Compliance Monitoring Program* on the CSO, as part of the CSO Master Plan.

SPECIAL CONDITIONS

I. EFFLUENT LIMITATIONS AND CONDITIONS FOR CSO'S (cont'd)

Annual flow volumes for the swirl concentrator location shall be determined by actual flow monitoring or by estimation using a method approved by the Department. The WWD utilizes pump run time along with appropriate pump curve for the high flow pumps to determine estimated discharge volumes from the swirl concentrator to Outfall #001.

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

CSO control projects that have been completed shall be monitored for volume and frequency of overflow to determine the effectiveness of the project toward the CSO abatement.

7. Additions of New Wastewater (see Section 8 of Department rule Chapter 570)

Chapter 570 Section 8 lists requirements relating to any proposed addition of wastewater to the combined sewer system. Documentation of the new wastewater additions to the system and associated mitigating measures shall be included in the annual *CSO Progress Report* (see below). Reports must contain the volumes and characteristics of the wastewater added or authorized for addition and descriptions of the sewer system improvements and estimated effectiveness.

8. Annual CSO Progress Reports (see Section 7 of Department rule Chapter 570)

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

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

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

SPECIAL CONDITIONS

I. EFFLUENT LIMITATIONS AND CONDITIONS FOR CSO'S (cont'd)

9. Signs

If not already installed, the permittee shall install and maintain an identification sign at the CSO location as notification to the public that intermittent discharges of untreated sanitary wastewater occur. The sign must be located at or near the outfall and be easily readable by the public. The sign shall be a minimum of 12" x 18" in size with white lettering against a green background and shall contain the following information:

**WINTERPORT WATER DISTRICT
WET WEATHER
SEWAGE DISCHARGE
CSO # AND NAME OF OUTFALL**

10. Definitions

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

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

J. 06-096 CMR 530(2)(D)(4) STATEMENT FOR REDUCED/WAIVED TOXICS TESTING

By December 31 of each calendar year, the permittee shall provide the Department with a certification describing any of the following that have occurred since the effective date of this permit *[PCS Code 95799]*: See **Attachment C** of the Fact Sheet for an acceptable certification form to satisfy this Special Condition.

- a. Changes in the number or types of non-domestic wastes contributed directly or indirectly to the wastewater treatment works that may increase the toxicity of the discharge;
- b. Changes in the operation of the treatment works that may increase the toxicity of the discharge;
and
- c. Changes in industrial manufacturing processes contributing wastewater to the treatment works that may increase the toxicity of the discharge.

SPECIAL CONDITIONS

J. 06-096 CMR 530(2)(D)(4) STATEMENT FOR REDUCED/WAIVED TOXICS TESTING

In addition, in the comments section of the certification form, the permittee shall provide the Department with statements describing;

(d) Changes in storm water collection or inflow/infiltration affecting the facility that may increase the toxicity of the discharge.

(e) Increases in the type or volume of hauled wastes accepted by the facility.

The Department reserves the right to reinstate annual (surveillance level) testing or other toxicity testing if new information becomes available that indicates the discharge may cause or have a reasonable potential to cause exceedences of ambient water quality criteria/thresholds.

K. MONITORING AND REPORTING

Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report (DMR) forms provided by the Department and postmarked on or before the thirteenth (13th) day of the month or hand-delivered to a Department Regional Office such that the DMR's are received by the Department on or before the fifteenth (15th) day of the month following the completed reporting period. A signed copy of the DMR and all other reports required herein shall be submitted to the Department's compliance inspector (unless otherwise specified) at the following address:

Department of Environmental Protection
Eastern Maine Regional Office
Bureau of Land and Water Quality
Division of Water Quality Management
106 Hogan Road
Bangor, Maine 04401

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

SPECIAL CONDITIONS

L. REOPENING OF PERMIT FOR MODIFICATIONS

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

M. SEVERABILITY

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

ATTACHMENT A

Maine Department of Environmental Protection

Effluent Mercury Test Report

Name of Facility: _____

Federal Permit # ME _____

Pipe # _____

Purpose of this test:

☐

Initial limit determination

☐

Compliance monitoring for: year _____

calendar quarter _____

☐

Supplemental or extra test

SAMPLE COLLECTION INFORMATION

Sampling Date:

mm	dd	yy
----	----	----

Sampling time: _____

AM/PM

Sampling Location:

Weather Conditions: _____

Please describe any unusual conditions with the influent or at the facility during or preceding the time of sample collection:

Optional test - not required but recommended where possible to allow for the most meaningful evaluation of mercury results:

Suspended Solids _____

mg/L

Sample type: _____

Grab (recommended) or

Composite

ANALYTICAL RESULT FOR EFFLUENT MERCURY

Name of Laboratory: _____

Date of analysis: _____

Result: _____ ng/L (PPT)

Please Enter Effluent Limits for your facility

Effluent Limits:

Average = _____

ng/L

Maximum = _____

ng/L

Please attach any remarks or comments from the laboratory that may have a bearing on the results or their interpretation. If duplicate samples were taken at the same time please report the average.

CERTIFICATION

I certify that to the best of my knowledge the foregoing information is correct and representative of conditions at the time of sample collection. The sample for mercury was collected and analyzed using EPA Methods 1669 (clean sampling) and 1631 (trace level analysis) in accordance with instructions from the DEP.

By: _____

Date: _____

Title: _____

PLEASE MAIL THIS FORM TO YOUR ASSIGNED INSPECTOR

ATTACHMENT B

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION CSO ACTIVITY AND VOLUMES

MUNICIPALITY OR DISTRICT		PRECIP. DATA		FLOW DATA (GALLONS PER DAY) OR BLOCK ACTIVITY ("I")				LOCATION:		LOCATION:		LOCATION:		EVENT OVERFLOW		EVENT DURATION	
REPORTING YEAR		INCHES		INCHES				NUMBER:		NUMBER:		NUMBER:		GALLONS		HRS	
CSO EVENT NO.	START DATE OF STORM	TOTAL INCHES	MAX. HR. INCHES	LOCATION:	NUMBER:	LOCATION:	NUMBER:	LOCATION:	NUMBER:	LOCATION:	NUMBER:	LOCATION:	NUMBER:	LOCATION:	NUMBER:	LOCATION:	NUMBER:
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TOTALS																	

Note 1: Flow data should be listed as gallons per day. Storms lasting more than one day should show total flow for each day.
 Note 2: Block activity should be shown as a "I" if the block floated away.

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

FACT SHEET

Date: October 25, 2011

MEPDES PERMIT: ME0100749
WASTE DISCHARGE LICENSE: W001480-6C-D-R

NAME AND ADDRESS OF APPLICANT:

**WINTERPORT WATER DISTRICT
P.O Box 128
Winterport, Maine 04496**

COUNTY: Waldo County

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**Town of Winterport
34 Sampson Street
Winterport, Maine 04496**

RECEIVING WATER / CLASSIFICATION: Penobscot River/Class SC

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: Mr. Stephen Lane
Superintendent
(207) 223-5028
e-mail: steve.lane@winterportmaine.org

1. APPLICATION SUMMARY

The Winterport Water District (WWD/permittee hereinafter) has submitted a timely and complete application to the U.S. Environmental Protection Agency (EPA hereinafter)) and the Maine Department of Environmental Protection (Department hereinafter) for the renewal of combination National Pollutant Discharge Elimination System (NPDES) permit #ME0100749/Waste Discharge License (WDL) #W001480-5L-C-R which was issued on February 2, 2004, and expired on February 2, 2009. The NPDES permit/WDL authorized the discharge of up to a monthly average flow of 0.11 million gallons per day (MGD) of primary treated wastewaters and an unspecified quantity of primary treated swirl concentrator effluent from a combined sewer overflow (CSO) to a segment of the Penobscot River subject to tidal action, Class SC, in Winterport, Maine. See **Attachment A** of this Fact Sheet for a location map.

1. APPLICATION SUMMARY (cont'd)

- a. Regulatory - On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (EPA) 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 Maine Pollutant Discharge Elimination System (MEPDES) permit program and permit #ME0100749 (same as the NPDES permit number) will be utilized as the primary reference number for this facility.

As noted on the previous page, the previous permitting/licensing action authorized the discharge of primary treated waste water pursuant to Section 301(h) of the Clean Water Act. Section 301(h) [often referred to as a 301(h) waiver] provides a vehicle by which a permittee may request a variance from secondary treatment requirements. Issuance of a permit granting such a variance may only be issued by the EPA as authorization to do so cannot be granted to States. The EPA granted the original variance to the Winterport Sewer District on May, 1985. On March 22, 2012, the EPA issued a letter to the WWD notifying the District the EPA made a final decision to deny a 301(h) waiver from secondary treatment requirements. It is noted the water and wastewater systems within the District's boundaries were combined in 2006 and the Winterport Sewer District changed its name to the Winterport Water District. Therefore, the Department is issuing a combination MEPDES/WDL requiring that the discharge from the WWD's waste water treatment facility receive a secondary level of treatment prior to discharge to the Penobscot River. See Section 2(b) of the Fact Sheet attached to this permitting action for a more detailed explanation for the justification for the requirement for the higher level of treatment. This permitting action also authorizes the discharge of primary treated swirl concentrator effluent from one combined sewer overflow (CSO) point.

- b. Source Description: As of the date of this permitting action, sanitary waste waters received at the treatment facility are generated by about 300 connected residential and commercial users within the boundaries of the WWD. The collection system is approximately 37,000 linear feet with one major pump station that conveys the waste water up to the waste water treatment facility on Sampson Street. The facility does not receive any flows from industrial sources and therefore is not required to implement a formal pretreatment program. The waste water treatment facility is currently not authorized to receive and/or treat transported wastes from local septage haulers.
- c. Waste Water Treatment – The facility provides a primary level of treatment for dry weather flows via trash racks, an in-line grinder, flow measurement, a Pista Grit removal system, primary settling via an Imhoff tank which consists of an upper settling zone and a lower sludge storage and decomposition chamber. The facility also provides chlorination prior to discharge, has a sludge dewatering system and a generator that powers the plant in the event of a power shortage. During high flow events or when the equipment is hydraulically overloaded, excess flow above the dry weather flows are directed to a swirl concentrator. All wastewater treated at the facility (primary treatment) and the primary treated waste ater from the swirl concentrator is discharged to the Penobscot River by way of a twelve (12) inch diameter ductile

1. APPLICATION SUMMARY (cont'd)

iron/high density polyethylene pipe. See **Attachment B** of this Fact Sheet for a schematic of the treatment process. The outfall pipe extends out into the receiving waters approximately 300 feet from the edge of the salt marsh to an area that is subject to tidal action. The outfall discharges at -12 feet according to a plan prepared by James W. Sewall Company, revision dated June 10, 1981, entitled "Winterport Sewerage District, Winterport, Maine, Plant Effluent." The bypass flow discharges preliminary treated wastewater from the swirl separator via a twelve (12) inch diameter PVC pipe that outfalls at the edge of the salt marsh according to a plan prepared by James W. Sewall Company, dated April 1984, entitled "Winterport Sewerage District, Winterport, Maine, Hydraulic Profile."

2. PERMIT SUMMARY

- a. Terms and conditions – This permitting action is similar to the 2/2/04 licensing action in that it is:
1. Carrying forward the seasonal (May 15 – September 30) monthly average and daily maximum concentration limits for fecal coliform bacteria;
 2. Carrying forward the daily maximum water quality based limitation for total residual chlorine;
 3. Carrying forward the NPDES permit number of ME0100749;
 4. Carrying forward the requirement to maintain an up to date Operations and Maintenance (O&M) plan and Wet Weather Management plan.
 5. Carrying forward the authorization to discharge primary treated swirl concentration effluent from a combined sewer overflow (CSO).
 6. Carrying forward the requirement to maintain a CSO Master Plan with a long term goal to minimize discharges from the CSO. The Department understands that the WWD wishes to keep this point open as it has reduced flows upstream of the swirl concentrator to what it feels are the lowest practical levels and has had to operate its swirl concentrator very infrequently.
 7. Carrying forward the pH range limitation to 6.0 – 9.0 standard units.

2. PERMIT SUMMARY (cont'd)

This permitting action is different from the 2/2/04 licensing action in that it is:

8. Increasing the monthly average flow limit from 0.11 MGD to 0.20 MGD for the existing waste water treatment facility.
9. Establishing monthly average, weekly average and daily maximum technology based concentration limitations for biochemical oxygen demand (BOD₅) and total suspended solids (TSS);
10. Establishing monthly average, weekly average and daily maximum technology based mass limitations for BOD₅ and TSS.
11. Establishing a requirement for a minimum of 85% removal of BOD₅ and TSS across the treatment facility;
12. Establishing a daily maximum technology based concentration limit for settleable solids;
13. Establishing an annual certification requirement for toxics testing.
14. Incorporating previously established average and maximum concentration limits for total mercury.

b. History: The most recent relevant licensing/permitting actions include the following:

August 25, 1982 - The Maine Department of Environmental Protection (DEP) issued Waste Discharge License #1480 that authorized the discharge of untreated municipal waste waters until the construction of a waste water treatment facility was completed.

December 1982 - The Winterport Sewerage District (WSD) submitted an application to the U.S. Environmental Protection Agency (EPA) for a variance from secondary treatment requirements (primary treatment only) pursuant to Section 301(h) of the Clean Water Act (CWA).

September, 1984 - The primary treatment facility became operational.

May 9, 1985 - The EPA tentatively approved the request for a variance from secondary treatment requirements.

December 31, 1985 - The EPA issued NPDES permit #ME0100749 for the WSD's discharge for a five-year term.

September 2, 1987 - The DEP issued WDL renewal #W001480-45-A-R for a five-year term.

2. PERMIT SUMMARY (cont'd)

July 17, 1990 - The WSD submitted an application to the EPA for renewal of NPDES permit #ME0100749. It is noted that the EPA has not acted on the application as of the date of this permitting action.

September 25, 1995 - The Department issued WDL #W001480-5L-C-R for five-year term.

June 12, 2000 - The Department initiated a WDL modification by establishing interim average and maximum concentration limits of 44.8 parts per trillion (ppt) and 67.2 ppt, respectively, for mercury.

January 12, 2001 - The Department received authorization from the Environmental Protection Agency (EPA) to administer the NPDES program in Maine.

February 2, 2004 - The EPA and Department issued a combined NPDES permit (ME0100749) and WDL (W001480-5L-C-R) to the WSD for a five-year term.

April 10, 2006 - The Department initiated a WDL modification by incorporating the terms and conditions of the Department's Chapter 530, *Surface Water Toxics Control Program*, promulgated on October 12, 2005.

September 2, 2008 - The WWD submitted a timely and complete application to the Department and EPA to renew the combination MEPDES permit/WDL.

On August 22, 2007, the EPA issued a draft document to the WWD that indicated the EPA Regional Administrator was not going to be issuing a Tentative Decision to grant the WWD a 301(h) waiver from secondary treatment requirements of the Federal Water Pollution Control Act. As a result, the WWD would need to begin providing a secondary level of treatment upon issuance of a combination MEPDES permit/WDL. This decision by the EPA was based on a provision in the 1987 Clean Water Act (CWA) amendments found at Section 301(h)(9) and 40 Federal Code of Regulation (CFR) Section 125.59 (b)(4) which states in part:

In order for a permit to be issued under this subsection for the discharge of a pollutant to a marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at any time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a casual relationship between such characteristics and the applicant's current or proposed discharge."

2. PERMIT SUMMARY (cont'd)

Section 5, *Receiving Water Conditions*, of this Fact Sheet indicates the Penobscot River, at and below the point of discharge from the permittee's facility is not meeting the standards of its assigned classification for fish and shellfish consumption as a result of elevated levels of mercury, PCB's and dioxin, and not meeting bacteria standards due to discharges from CSOs in a number of communities up-river from the WWD.

Section 301(h)(9) defines marine waters as;

"For the purposes of this subsection, the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial seas or the waters of the contiguous zone or into saline estuarine waters where there is a strong tidal movement and the hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection and section 101(a)(2) of this Act."

40 CFR Section 125.58 (v) defines estuarine waters as;

"Saline estuarine waters means those semi-closed coastal waters which have a free connection to the territorial sea, undergo net seaward exchange with ocean water, and have salinities comparable to those of the ocean. Generally, these waters are near the mouth of estuaries and have cross-sectional annual salinities greater than twenty-five (25) parts per thousand."

The EPA has taken the position that by definition, the WWD discharges to a saline estuarine water.

Given the fact that at the point of discharge from the WWD's waste water treatment facility the receiving water has been determined to be a saline estuarine water and it does not meet *"applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses,"* the EPA has denied issuing a Tentative Decision to grant the WWD a 301(h) waiver from secondary treatment requirements of the Clean Water Act. Being that on 1/12/01, the EPA granted the State of Maine authorization to administer the NPDES permit program in Maine, the Department is responsible for issuing the MEPDES permit/WDL (with secondary treatment requirements) to the WWD.

In a meeting on September 9, 2011, with WWD representatives, the Department provided the WWD with an option regarding the notice from the EPA that the WWD's 301(h) waiver would be rescinded. The Department indicated that a new discharge permit would be issued which will require the WWD to meet secondary treatment standards. Since the WWD presently has only a primary treatment plant, the Department indicated the WWD would likely need to construct a secondary treatment plant and, in the interim period before the secondary treatment plant is built, the WWD will incur violations of the new secondary limits. To address this, the Department

2. PERMIT SUMMARY (cont'd)

offered to include a Department Administrative Consent Agreement (ACA). The WWD agreed to move forward to obtain an engineering firm and subsequent funding to construct a secondary treatment facility and work with the Department within a ACA to establish a schedule of compliance for the construction of the secondary treatment facility to comply with the permit limits. The WWD understands that the Department will issue a ACA to establish said schedule of compliance as a corrective action for violations of the new permit limits. The ACA will likely include language stating;

- The agreement is between the WWD and the State of Maine and negotiated by Department staff.
- The agreement will establish a mutually agreeable schedule for construction of a new secondary treatment facility.
- The agreement will establish language that allows the WWD to request an amendment to the schedule should the WWD be unable to secure adequate funding for construction of the secondary treatment facility.
- Monetary penalties will be suspended.
- Violations of the new secondary treatment limits will appear in the public record but an explanatory statement will be posted with the violations to explain the circumstances and the WWD's plan for resolving them.

March 22, 2012 – The EPA issued a letter to the WWD notifying the District the EPA made a final decision to deny a 301(h) waiver from secondary treatment requirements.

3. CONDITIONS OF PERMITS

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

4. RECEIVING WATER QUALITY STANDARDS

Maine Law, 38 M.R.S.A., Section 469(6)(c), classifies all tidal waters in Searsport as Class SC waters. Maine Law, 38 M.R.S.A., Section 465-B(3) describes the classification standards for Class SC waters as follows;

Class SC waters must be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and other estuarine and marine life.

4. RECEIVING WATER QUALITY STANDARDS (cont'd)

The dissolved oxygen content of Class SC waters must be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration.

Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine, Department of Environmental Protection, 2010 Integrated Water Quality Monitoring and Assessment Report (often referred to as the 305b report), published by the Department lists the segment of the Penobscot River in the vicinity of the WWD discharge in several categories indicating impairment of water quality standards. The categories are as follows:

Category 4-A: Estuarine and Marine Waters With Impaired Use, TMDL Completed. The table lists Waterbody ID #722-25A, DMR Area #35-A, Penobscot River Estuary, 9,743 acres, Class SC, as being prohibited from the harvesting of shellfish due to elevated bacteria levels caused by the discharge of waste water treatment facilities, overboard discharges, boats and non-point sources. A footnote states, "A TMDL is complete but there is insufficient new data to determine if attainment has been achieved. Bacteria may impair either recreational uses (swimming) or shellfish consumption use or both. Shellfish consumption impairments only apply to waters naturally capable of supporting the shellfish harvesting use (i.e. waters of high enough salinity for propagation of shellfish).

The Maine Department of Marine Resources (DMR) assesses information on shellfish growing areas to ensure that shellfish harvested are safe for consumption. The Maine Department of Marine Resources has authority to close shellfish harvesting areas wherever there is a pollution source, a potential pollution threat, or poor water quality. The DMR traditionally closes shellfish harvesting areas if there are known sources of discharges with unacceptable bacteria levels (in-stream thresholds established in the National Shellfish Sanitation Program) or maintains shellfish harvesting closure areas due to lack of updated information regarding ambient water quality conditions. In addition, the DMR prohibits shellfish harvesting in the immediate vicinity of all wastewater treatment outfall pipes as a precautionary measure in the event of a failure in the treatment plant's disinfection system. Thus, shellfish harvesting area #35 is closed to the harvesting of shellfish due to insufficient or limited ambient water quality data to determine that the area meets the standards in the National Shellfish Sanitation Program.

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

Category 4-A: Estuarine and Marine Waters With Impaired Use, TMDL Completed. The table lists Waterbody ID #722-43, DMR Area #35-A, Winterport, Class SC, as being impaired due to elevated bacteria levels caused by the discharge of waste water from combined sewer overflows (CSOs). The table indicates sewer separation projects to be completed on or before 2016 as being the long term control plan to bring the waterbody into attainment.

Category 4-B-1: Estuarine and Marine Waters Impaired by Pollutants – Pollution Control Requirements Reasonably Expected to Result in Attainment. The table lists the Penobscot River Estuary, Winterport, Reeds Brook to Marsh River (250 acres) with fish consumption as being impaired due to the presence of toxins including dioxin, PCBs and bacteria from industrial point sources and CSOs.

Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants, indicating all estuarine and marine waters capable of supporting American lobster are listed in Category 5-D, partially supporting fishing (fish consumption) due to elevated levels of PCBs and other pertinent, bioaccumulating substances in lobster tomalley.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

Secondary Treated Discharges Outfall 001

- a. Flow: The previous permitting action established a monthly average discharge flow limitation of 0.11 MGD based on the design flow of the existing primary wastewater treatment system. A CSO Master Plan Update submitted to the Department on February 26, 2009, indicates a future wastewater treatment plant upgrade or plant replacement project should be designed at or about the same flow of 0.11 MGD.

A review of the monthly Discharge Monitoring Report (DMR) data for the period January 2008 – July 2011 indicates the permittee has reported values as follows:

Flow (DMRs = 43)

Value	Limit (MGD)	Range (MGD)	Mean (MGD)
Monthly Average	0.11	0.03 – 0.24	0.13

A more in-depth review of the flow data above indicates the permittee has been in violation of the monthly average flow limit of 0.11 MGD 19 out of the 43 months evaluated. At the request of the permittee, the monthly average flow limit is being increased to 0.20 MGD to eliminate unnecessary violations that have no impact on water quality. Once the facility is upgraded or a new wastewater treatment facility is constructed, the Department will establish a monthly average flow limit based on the dry weather design capacity of the upgraded or new facility. The increase in the flow limit should in no way be construed to indicate there has been increase in the dry weather design capacity of the existing wastewater treatment facility.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

Secondary Treated Discharges Outfall 001

- b. Dilution Factors: Dilution factors associated with the permitted discharge flow of 0.11 MGD from the permittee's facility were derived in accordance with Department rule, 06-096 CMR, Chapter 530 *Surface Water Toxics Control Program*, Section 4(A)(2) of the rule states;
- (a) For discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model.
 - (b) For discharges to estuaries, dilution must be calculated using a method such as MERGE, CORMIX or another predictive model determined by the Department to be appropriate for the site conditions.
 - (c) In the case of discharges to estuaries where tidal flow is dominant and marine waters, the human health criteria must be analyzed using a dilution equal to three times the chronic dilution factor.

Based on available information, the Department has made a best professional judgment that the CORMIX model is an appropriate predictive model to calculate dilution factors associated with the discharge. Using plan and profile information provided by the permittee and the CORMIX model, the Department has determined that the dilution factors for the discharge of 0.11 MGD from the wastewater treatment facility are as follows:

Acute: 66:1

Chronic: 717:1

Harmonic Mean: 2,151:1⁽¹⁾

Footnotes:

- (1) The harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by three (3). This methodology is consistent with Department rule Chapter 530, §4(A)(2)(c). This multiplying factor is based on guidelines for estimation of human health dilution presented in the USEPA publication *"Technical Support Document for Water Quality-based Toxics Control"* (Office of Water; EPA/505/2-90-001, page 88), and represents an estimation of harmonic mean flow on which human health dilutions are based in a riverine 7Q10 flow situation.

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

Secondary Treated Discharges Outfall #001

- c. Biochemical Oxygen Demand (BOD₅) and Total Suspended Solids (TSS): The previous permitting action established monthly average technology based mass limitations for BOD and TSS of 186 lbs/day and 133 lbs/day respectively, based on an assumed influent value of 290 mg/L and a 30% removal for BOD and 50% removal for TSS. The 30% removal rate for BOD is defined in federal regulation found at 40 CFR §125.58(r) and the 50% removal rate for TSS is based on the State of Maine's Section 401 Water Quality certification condition requiring said removal rate based on a Department best professional judgment (BPJ) of best practicable treatment (BPT). The monthly average limits were calculated as follows:

$$\begin{aligned}\text{BOD} \quad & (290 \text{ mg/L}) - [290 \text{ mg/L}(30\%)] = 203 \text{ mg/L} \\ & (203 \text{ mg/L})(8.34 \text{ lbs/gal})(0.11 \text{ MGD}) = 186 \text{ lbs/day}\end{aligned}$$

$$\begin{aligned}\text{TSS} \quad & (290 \text{ mg/L}) - [290 \text{ mg/L}(50\%)] = 145 \text{ mg/L} \\ & (145 \text{ mg/L})(8.34 \text{ lbs/gal})(0.11 \text{ MGD}) = 133 \text{ lbs/day}\end{aligned}$$

In addition to establishing numeric monthly average mass limits for BOD and TSS, the previous permitting action established the aforementioned removal rates as numeric limitations and established daily maximum mass reporting requirements as well as monthly average and daily maximum concentration reporting requirements for BOD and TSS.

As a result of EPA's final denial of the 301(h) waiver, this permitting action is establishing technology based secondary treatment requirements for BOD and TSS as defined in Department rule, 06-096 CMR Chapter 525(3)(III). For concentration limitations, Chapter 523 establishes monthly average and weekly average BPT limitations of 30 mg/L and 45 mg/L. The daily maximum limit is a long standing Department BPJ of BPT.

As for mass, Department rule Chapter 523, *Waste Discharge License Conditions*, Section 6, *Calculating NPDES permit conditions*, sub-section f(1) states that, "all pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass...." Therefore, this permitting action is establishing monthly average, weekly average and daily maximum BOD₅ and TSS mass limitations based on calculations using the proposed design flow of 0.11 MGD and the applicable concentration limits as follows:

$$\begin{aligned}\text{Monthly Average Mass Limit: } & (30 \text{ mg/L})(8.34 \text{ lbs./gal.})(0.11 \text{ MGD}) = 28 \text{ lbs./day} \\ \text{Weekly Average Mass Limit: } & (45 \text{ mg/L})(8.34 \text{ lbs./gal})(0.11 \text{ MGD}) = 41 \text{ lbs./day} \\ \text{Daily Maximum Mass Limit: } & (50 \text{ mg/L})(8.34 \text{ lbs./gal})(0.11 \text{ MGD}) = 46 \text{ lbs./day}\end{aligned}$$

This permitting action is also establishing a new requirement for a minimum of 85% removal of BOD₅ and TSS pursuant to Chapter 525(3)(III)(a)(3) and (b)(3) of the Department's rules.

This permitting action is carrying forward the 1/Week monitoring requirement for BOD and TSS based on a long standing Department guidance regarding monitoring frequencies for facilities with a discharge flow limitation ranging from 0.10 MGD to 0.50 MGD.

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

Secondary Treated Discharges Outfall #001

A review of the monthly DMR data submitted to the Department for the period January 2008 – July 2011 indicates values have been reported as follows:

BOD mass (DMRs = 43)

Value	Limit (lbs/day)	Range (lbs/day)	Mean (lbs/day)
Monthly Average	186	38 - 161	81
Daily Maximum	Report	43 - 297	111

BOD concentration (DMRs = 43)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Monthly Average	Report	48 - 231	115

TSS mass (DMRs = 43)

Value	Limit (lbs/day)	Range (lbs/day)	Mean (lbs/day)
Monthly Average	133	11 - 67	26
Daily Maximum	Report	14 - 184	47

TSS concentration (DMRs = 43)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Monthly Average	Report	21 - 105	37
Daily Maximum	Report	33 - 125	50

- e. Settleable Solids: The previous permitting action established a daily maximum technology-based concentration limit of 0.3 ml/L for settleable solids. This permitting action is carrying forward the daily maximum limitation in this permitting action but is modifying the minimum monitoring frequency requirement of 1/Day in the previous permitting action to 1/Week in this permitting action to be consistent with Department guidance for POTWs permitted to discharge between 0.10 MGD and 0.50 MGD.

A review of the monthly Discharge Monitoring Report (DMR) data for the period January 2008 – July 2011 indicates the permittee has reported values as follows:

SS (DMRs = 43)

Value	Limit (ml/L)	Range (ml/L)	Mean (ml/L)
Daily maximum	0.3	<0.1 - <0.1	<0.1

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

Secondary Treated Discharges Outfall #001

- f. Fecal coliform bacteria: The previous permitting action established monthly average and daily maximum technology based limits of 15 colonies/100 ml and 50 colonies/100 ml respectively, that are consistent with the National Shellfish Sanitation Program. The limits are in effect seasonally from May 15th to September 30th. The Department reserves the right to require year-round disinfection to protect the health and welfare of the public. The limits and the monitoring frequency of 1/Week in the previous permitting action are being carried forward in this permitting action.

A review of the monthly Discharge Monitoring Report (DMR) data for the period January 2008 – July 2011 indicates the permittee has reported values as follows:

Fecal coliform bacteria (DMRs = 18)

Value	Limit (col/100 ml)	Range (col/100 ml)	Mean (col/100 ml)
Monthly average	15	2 - 11	5
Daily maximum	50	3 - 52	20

- g. Total Residual Chlorine (TRC): The previous permitting action established a daily maximum water quality based concentration limit of 0.85 mg/L for TRC. Limitations on TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either a water quality-based or BPT-based limit. With dilution factors as determined above, end-of-pipe (EOP) water quality-based concentration thresholds for TRC may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A & C Dilution Factors	Acute Threshold	Chronic Threshold
0.013 mg/L	0.0075 mg/L	66:1 (A) 717:1 (C)	0.86 mg/L	5.4 mg/L

The Department has established a daily maximum BPT limitation of 1.0 mg/L for facilities that disinfect their effluent with elemental chlorine or chlorine-based compounds. For facilities that dechlorinate the discharge in order to meet water quality based thresholds, the Department has established daily maximum and monthly average BPT limits of 0.3 mg/L and 0.1 mg/L, respectively. The permittee does not have to dechlorinate the effluent to achieve compliance with water quality-based limitation.

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

Secondary Treated Discharges Outfall #001

A review of the monthly Discharge Monitoring Report (DMR) data for the period January 2008 – July 2011 indicates the permittee has reported values as follows:

TRC (DMRs = 18)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Daily maximum	0.86	0.16 – 0.84	0.67

The daily maximum water quality-based effluent TRC concentration limitation of 0.86 mg/L is more stringent than the Department's BPT limit of 1.0 mg/L and is therefore being carried forward in this permitting action. This permitting action is carrying forward the monitoring frequency of 1/Day whenever elemental chlorine or chlorine based compounds are being utilized to disinfect the discharge.

- h. pH: The previous permitting action established a pH range limitation of 6.0 – 9.0 standard units pursuant to Department rule found at Chapter 525(3)(III)(c). The pH range limitation is considered BPT for secondary treated wastewater. This permitting action is modifying the minimum monitoring frequency from 1/Day in the previous permitting action to 5/Week in this permitting action to be consistent with Department guidance for POTWs permitted to discharge between 0.10 MGD and 0.50 MGD.

A review of the monthly Discharge Monitoring Report (DMR) data for the period January 2008 – July 2011 indicates the permittee has reported values as follows:

pH (DMRs = 43)

Value	Limit (su)	Range (su)	Mean (su)
Daily maximum	6.0 – 9.0	6.2 – 7.3	N/A

- i. Mercury: Pursuant to Maine law, 38 M.R.S.A. §420 and Department rule, 06-096 CMR Chapter 519, *Interim Effluent Limitations and Controls for the Discharge of Mercury*, the Department issued a *Notice of Interim Limits for the Discharge of Mercury* to the permittee on July 12, 2000, thereby administratively modifying WDL # W001480-5L-C-R by establishing interim average and maximum effluent concentration limits of 44.8 parts per trillion (ppt) and 67.2 ppt, respectively, and a minimum monitoring frequency requirement of two tests per year for mercury. The interim mercury limits were scheduled to expire on October 1, 2001. However, effective June 15, 2001, the Maine Legislature enacted Maine law, 38 M.R.S.A. §413, sub-§11 specifying that interim mercury limits and monitoring requirements remain in effect. Therefore, the limitations are being carried forward in this permitting action.

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

Secondary Treated Discharges Outfall #001

Maine law 38 M.R.S.A., §420 1-B,(B)(1) states that a facility is not in violation of the AWQC for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to section 413, subsection 11. A review of the Department's data base for the most current 60 months (n=9) indicates the permittee has been in compliance with the interim limits for mercury as the results have ranged from 9.6 ppt to 18 ppt with an arithmetic mean of 14 ppt.

On February 6, 2012, the Department issued a minor revision of the WDL that reduced the monitoring frequency for mercury from 2/Year to 1/Year pursuant to Maine law, 38M.R.S.A., sub-§1-B¶F. The 1/Year monitoring frequency is being carried forward in this permitting action.

- j. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing: Maine law, 38 M.R.S.A., §414-A and §420, prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. Department rule, 06-096 CMR Chapter 530, *Surface Water Toxics Control Program* (toxics rule) sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected and narrative and numeric water quality criteria are met. Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, sets forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

WET, priority pollutant and analytical chemistry testing, as required by Chapter 530, is included in this permit in order to fully characterize the effluent. This permit also provides for reconsideration of effluent limits and monitoring schedules after evaluation of toxicity testing results. The monitoring schedule includes consideration of results currently on file, the nature of the wastewater, existing treatment and receiving water characteristics.

WET monitoring is required to assess and protect against impacts upon water quality and designated uses caused by the aggregate effect of the discharge on specific aquatic organisms. Acute and chronic WET tests are performed on invertebrate and vertebrate species. Priority pollutant and analytical chemistry testing is required to assess the levels of individual toxic pollutants in the discharge, comparing each pollutant to acute, chronic, and human health AWQC as established in Chapter 584.

Chapter 530 establishes four categories of testing requirements based predominately on the chronic dilution factor. The categories are as follows:

Level I – chronic dilution factor of <20:1.

Level II – chronic dilution factor of $\geq 20:1$ but <100:1.

Level III – chronic dilution factor $\geq 100:1$ but <500:1 or >500:1 and $Q \geq 1.0$ MGD

Level IV – chronic dilution >500:1 and $Q \leq 1.0$ MGD

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

Secondary Treated Discharges Outfall #001

Department rule Chapter 530 (2)(D) specifies the criteria to be used in determining the minimum monitoring frequency requirements for WET, priority pollutant and analytical chemistry testing. Based on the Chapter 530 criteria, on April 10, 2006, the Department initiated a permit modification that determined the permittee's facility fell into the Level IV frequency category as the facility has a chronic dilution factor >500:1 and has a flow limit less than 1.0 MGD. Chapter 530(2)(D)(1) specifies that surveillance and screening level testing requirements are as follows:

Screening level testing

Level	WET Testing	Priority pollutant testing	Analytical chemistry
IV	1 per year *	1 per year *	4 per year *

Surveillance level testing

Level	WET Testing	Priority pollutant testing	Analytical chemistry
IV	1 per year *	None required *	1 per year *

*These routine testing requirements for Level IV are waived, except that the Department shall require an individual discharger to conduct testing under the following conditions.

- (a) The discharger's permit application or information available to the Department indicate that toxic compounds may be present in toxic amounts; or
- (b) Previous testing conducted by the discharger or similar dischargers indicates that toxic compounds may be present in toxic amounts.

Additionally, new or substantially changed dischargers assigned to Level IV must conduct testing during the first two years of the discharge. Further testing is waived provided the testing done does not indicate any reasonable potential for exceedence as calculated pursuant to section 3(E).

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

Secondary Treated Discharges Outfall #001

In the April 10, 2006, permit modification, the Department made the determination the permittee's facility qualified for the waiver from testing. This permitting action maintains the position on the waiver as upgrading the treatment facility to a secondary level of treatment does not constitute a new or substantially changed discharge.

Chapter 530 (2)(D) states:

(4) All dischargers having waived or reduced testing must file statements with the Department on or before December 31 of each year describing the following.

(a) Changes in the number or types of non-domestic wastes contributed directly or indirectly to the wastewater treatment works that may increase the toxicity of the discharge;

(b) Changes in the operation of the treatment works that may increase the toxicity of the discharge; and

(c) Changes in industrial manufacturing processes contributing wastewater to the treatment works that may increase the toxicity of the discharge.

Special Condition J, 06-096 CMR 530(2)(D)(4) *Statement For Reduced/Waived Toxics Testing* of this permitting action requires the permittee to file an annual certification with the Department.

It is noted however, that if future WET testing results indicates the discharge exceeds critical water quality thresholds this permit will be reopened pursuant to Special Condition L, *Reopening of Permit For Modification*, of this permit to establish applicable limitations and monitoring requirements and require the permittee to submit a toxicity reduction evaluation (TRE) pursuant to Department rule, Chapter 530(3)(c).

7. CSO ABATEMENT

The Winterport Sewer District submitted their original CSO Master Plan entitled Winterport Sewer District Master Plan, An Action Plan to Address Stormwater Management and Inflow and Infiltration and to Abate Combined Sewer Overflow/Bypasses July 29, 2004, amended December 28, 2004. The Department approved said plan by letter dated December 28, 2004. The WWD successfully completed a number of sewer separation projects prior to 2007. The CSO abatement efforts were curtailed at the end of 2007 due to the unexpected announcement by the USEPA that it would not be renewing WWD's 301(h) waiver once it expired in 2009. On April 16, 2008, the Department issued a letter to the WWD stating "The Department agrees and hereby gives approval for the District not to continue with the CSO abatement projects as scheduled in your current approved Master Plan dated December 10, 2004."

The CSO Master Plan was updated by the submission of a document entitled, *Updated Sewer System Master Plan For CSO Abatement, Winterport Water District, January 2009* and was revised as a final document in July 2010. The July 2010 CSO Master Plan Update listed additional projects to continue the District's efforts regarding minimization of the use of the swirl concentrator. Due to the availability of funding, the District moved forward with its efforts to complete sewer abatement projects. The 2010 CSO Master Plan Update prioritized projects for completion. The District has since completed all of the abatement projects within the CSO Master Plan and an additional project which was funded during follow-up flow analysis. The projects consisted of:

- North Main Street Sewer Remediation
- Oak/Dean/Ferry/Whig Streets Sewer Remediation
- Parl/Willow Street Sewer Remediation
- Kaler Street Sewer Remediation (added project not in the CSO Master Plan.

Special Condition I, *Effluent Limitations and Conditions for CSO's*, of this permit requires the permittee to submit an updated CSO Master Plan on or before November 1, 2016, with the goal of continuing to evaluate and take specific actions to minimize CSO discharges.

8. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has determined the existing water uses will be maintained and protected. The Department is not aware of any information that the discharge from the WWD contains measurable quantities of dioxin, PCBs or any other legacy pollutant(s) that cause or contribute to non-attainment of the Penobscot River. In addition, given the WWD has maintained compliance with the monthly average and daily maximum fecal coliform bacteria limitations established in the previous permitting action, the WWD is not causing or contributing to the non-attainment of the designated use of fishing or the closure of shellfish harvesting in the Penobscot River. While the WWD is not considered to be adversely impact the receiving waters, its primary treatment plant will not likely meet secondary permit standards and as a result, the plant will likely need to be upgraded or replaced to meet secondary treatment standards. The Department acknowledges that total elimination of the CSO is a costly long term project. With the implementation of the CSO Master Plan, and the Nine Minimum Controls, the Department anticipates a significant reduction in CSO discharge events and improvements in the water quality in the Penobscot River.

9. PUBLIC COMMENTS

Public notice of this application was made in Bangor Daily News newspaper on or about April 18, 2008. 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 Chapter 522 of the Department's rules.

10. DEPARTMENT CONTACTS

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

Gregg Wood
Division of Water Quality Management
Bureau of Land & Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone: (207) 287-7693
e-mail: gregg.wood@maine.gov

11. RESPONSE TO COMMENTS

During the period of October 25, 2011, through the issuance date of the permit/license, the Department solicited comments on the proposed draft permit/license to be issued for the discharge(s) from the permittee's facility. The Department received written comments from the Conservation Law Foundation (CLF) in a letter dated October 28, 2011, and the permittee's consulting engineer Olver Associates Inc. in a letter dated December 6, 2011. Therefore, the Department has prepared a Response to Comments as follows:

Comment #1: The CLF commented "We recognize that coming into compliance with the requirements of the new permit will put a substantial burden on these towns, and we do not object to a limited grace period to allow them to come into compliance with these requirements. However, the open-ended compliance schedule contemplated by the draft permits will unreasonably delay improvement of water quality in the Penobscot River and is inconsistent with the purposes of the Clean Water Act." CLF stated "Accordingly, we encourage DEP to identify a date by which the towns must come into compliance with the terms of the revised permits."

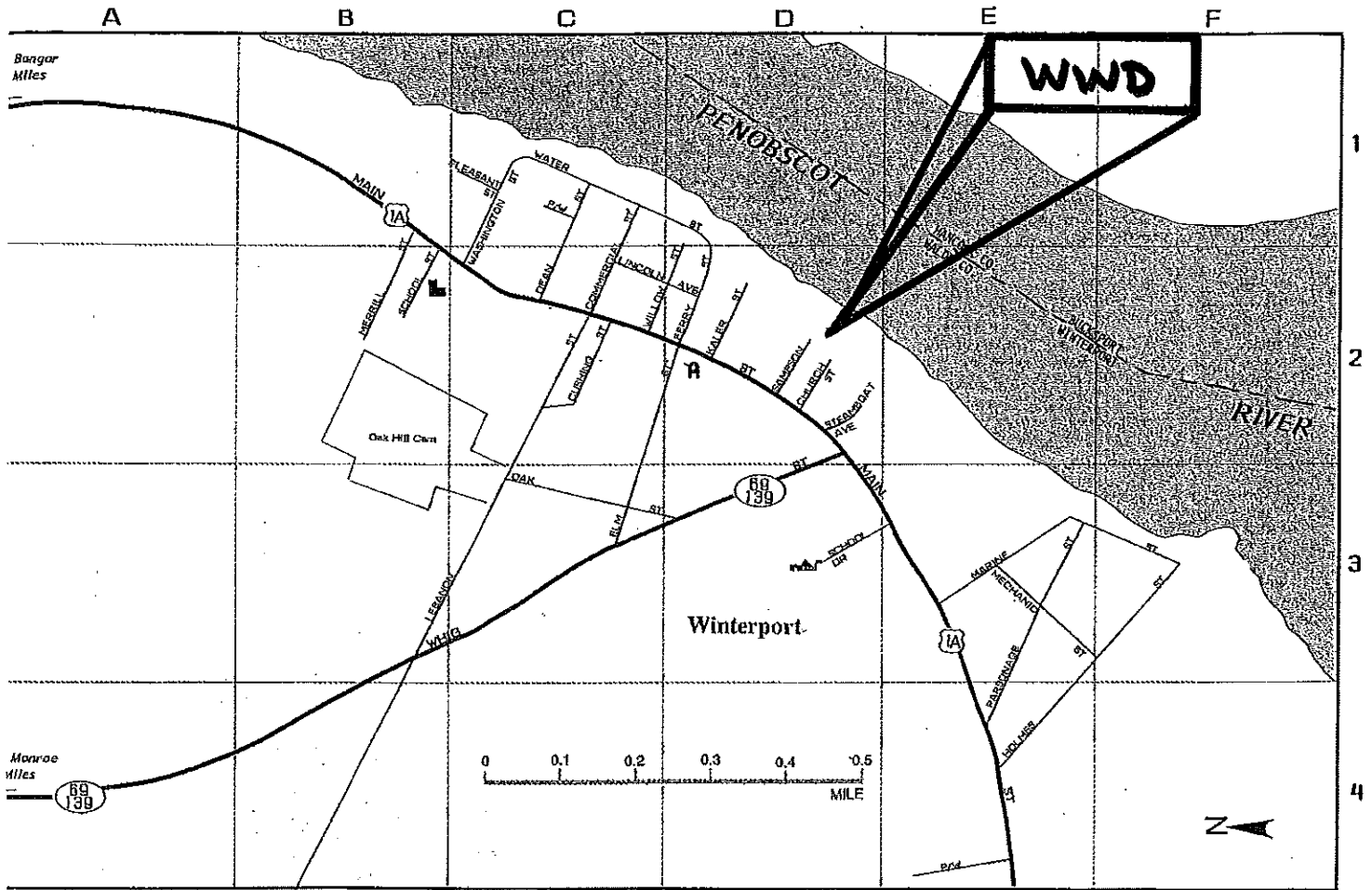
Response #1: The Department and permittee anticipate there may be excursions of permit limits shortly after issuance of the permit. To address said excursions, the Department is prepared to issue an Administrative Consent Agreement (ACA) to establish an appropriate schedule of compliance. Based on discussions with the permittee to date, a seven-year schedule of compliance has been drafted that includes milestones for submission of a preliminary design report, submission of final design plans, a date for commencement of construction and a final completion date. The draft schedule does include a provision for possible amendment of the ACA if the permittee can not secure adequate funding for the construction of a new or upgraded waste water treatment facility. The ACA and any amendments thereof are subject to public participation requirements of Maine law 38 M.R.S.A. §347-A(1)(A).

11. RESPONSE TO COMMENTS (cont'd)

Comment #2: The permittee has requested the Department increase the flow limitation from 0.11 MGD to 0.20 MGD for the time period between issuance of the permit and completion of the treatment plant upgrade to avoid unnecessary flow violations.

Response #2: The Department is receptive to the increase in the flow limit to avoid flow violations but in no way should the increase in the limit be construed to indicate there has been an increase in the dry weather design capacity of the existing waste water treatment facility. The mass limitations for BOD and TSS and the dilution factors continue to be derived based on the 0.11 MGD design capacity. The monthly average flow limit is being increased to 0.20 MGD until the upgrade of the existing treatment facility or the construction of a new treatment facility.

ATTACHMENT A



ATTACHMENT B

ATTACHMENT C

CHAPTER 530(2)(D)(4) CERTIFICATION

MEPDES# _____

Facility Name _____

Since the effective date of your permit have there been:	NO	YES (Describe in Comments)
1. changes in the number or types of non-domestic wastes contributed directly or indirectly to the wastewater treatment works that may increase the toxicity of the discharge?		
2. changes in the operation of the treatment works that may increase the toxicity of the discharge?		
3. changes in industrial manufacturing processes contributing wastewater to the treatment works that may increase the toxicity of the discharge?		

COMMENTS:

Name(print) _____

Signature _____ Date _____

This document must be signed by the permittee or their legal representative.

This form may be used to meet the requirements of Chap 530(2)(D)(4). This Chapter requires all dischargers having waived or reduced Toxic testing to file a statement with the Department describing changes to the waste being contributed to their system as outlined above. As an alternative the discharger may submit a signed letter containing the same information.

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A. GENERAL PROVISIONS

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

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

(a) They are not

- (i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
- (ii) Known to be hazardous or toxic by the licensee.

(b) The discharge of such materials will not violate applicable water quality standards.

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

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

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

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

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

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

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maximize removal of pollutants unless authorization to the contrary is obtained from the Department.

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

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

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

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

5. Bypasses.

(a) Definitions.

- (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- (b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.

(c) Notice.

- (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

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

6. Upsets.

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

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C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

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

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D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) Five hundred micrograms per liter (500 ug/l);
- (ii) One milligram per liter (1 mg/l) for antimony;
- (iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
- (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

5. Publicly owned treatment works.

(a) All POTWs must provide adequate notice to the Department of the following:

- (i) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA or Chapter 528 if it were directly discharging those pollutants.
- (ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
- (iii) For purposes of this paragraph, adequate notice shall include information on (A) the quality and quantity of effluent introduced into the POTW, and (B) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(b) When the effluent discharged by a POTW for a period of three consecutive months exceeds 80 percent of the permitted flow, the permittee shall submit to the Department a projection of loadings up to the time when the design capacity of the treatment facility will be reached, and a program for maintaining satisfactory treatment levels consistent with approved water quality management plans.

E. OTHER REQUIREMENTS

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

(a) For municipal sources. During power failure, all wastewaters which are normally treated shall receive a minimum of primary treatment and disinfection. Unless otherwise approved, alternate power supplies shall be provided for pumping stations and treatment facilities. Alternate power supplies shall be on-site generating units or an outside power source which is separate and independent from sources used for normal operation of the wastewater facilities.

(b) For industrial and commercial sources. The permittee shall either maintain an alternative power source sufficient to operate the wastewater pumping and treatment facilities or halt, reduce or otherwise control production and or all discharges upon reduction or loss of power to the wastewater pumping or treatment facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

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. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board 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 the Board's 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 a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of 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

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of 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 on the appeal 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, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that 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 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.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, 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.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder 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 receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the 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 or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P. 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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.
