



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PATRICIA W. AHO  
COMMISSIONER

August 1, 2012

VIA ELECTRONIC MAIL

Mr. Glen Marquis  
Town of North Haven Drinking Water Treatment Plant  
P.O. Box 400  
North Haven, Maine 04853  
[glenmarquis@yahoo.com](mailto:glenmarquis@yahoo.com)

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit # ME0102482  
Maine Waste Discharge License (WDL) Application # W008142-5S-C-R  
**Final MEPDES Permit/WDL – Town of North Haven**

Dear Mr. Marquis:

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

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

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

Sincerely,

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

Enclosure

Cc: Beth DeHaas, DEP/CMRO   Lori Mitchell, DEP/DMU   Sandy Mojica, EPA

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

BANGOR  
106 HOGAN ROAD, SUITE 6  
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PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
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PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04679-2094  
(207) 764-0477 FAX: (207) 760-3143



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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

TOWN OF NORTH HAVEN	)	MAINE POLLUTANT DISCHARGE
NORTH HAVEN, KNOX COUNTY, MAINE	)	ELIMINATION SYSTEM PERMIT
DRINKING WATER TREATMENT PLANT	)	AND
ME0102482	)	WASTE DISCHARGE LICENSE
W008142-5S-C-R	)	RENEWAL
APPROVAL	)	

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, §1251, et seq. and *Conditions of Licenses*, 38 M.R.S.A. §414-A, et seq., and applicable regulations, the Department of Environmental Protection ("Department") has considered the application of TOWN OF NORTH HAVEN ("permittee"), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

The permittee has submitted an application to the Department for renewal of Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102482/Waste Discharge License (WDL) #W008142-5S-B-R ("permit"). The permit was issued on June 15, 2007 and expired on June 15, 2012. The June 15, 2007 permit authorized the discharge of a monthly average flow of 2,000 gallons per day (GPD) and a daily maximum flow of 16,000 GPD of waste water associated with drinking water treatment and filter cleaning (backwash) from a municipal drinking water treatment plant to a palustrine forested/scrub-shrub wetland, Class B, in North Haven, Maine.

**PERMIT SUMMARY**

This permitting action is similar to the 6/15/07 permitting action in that it is carrying forward all the terms and conditions of the previous permitting action with the following exception. This permitting action is:

1. Correcting an error in the stated classification of the wetland from Class GW-A to Class B in accordance with *Classification of minor drainages*, 38 M.R.S.A., § 468 in order to legally classify the wetland.

## CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated August 1, 2012, 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 MRS Section 464(4)(F), will be met, in that:
  - (a) Existing in-stream and ground 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;
  - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected;  
and
  - (e) Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

**ACTION**

THEREFORE, the Department APPROVES the above noted application of the TOWN OF NORTH HAVEN to discharge a monthly average flow of 2,000 GPD and a daily maximum flow of 16,000 GPD of drinking water treatment plant filter backwash to a palustrine forested/scrub-shrub wetland, Class B, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions applicable To All Permits," revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit and the authorization to discharge become effective upon the date of signature below and expire at midnight five (5) years from the effective date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the authorization to discharge and the terms and conditions of this permit and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [Maine Administrative Procedure Act, 5 M.R.S.A. § 10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (effective April 1, 2003)]

DONE AND DATED AT AUGUSTA, MAINE, THIS 2<sup>ND</sup> DAY OF August 2012.

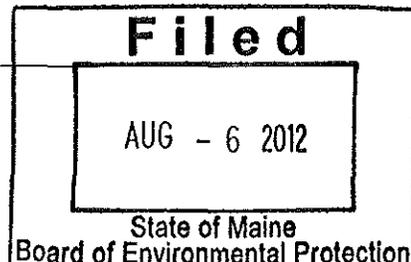
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Keenan  
For Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date filed with Board of Environmental Protection \_\_\_\_\_

Date of initial receipt of application: May 3, 2012  
Date of application acceptance: May 4, 2012



This Order prepared by Phyllis Arnold Rand, BUREAU OF LAND & WATER QUALITY

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge **drinking water filter backwash from Outfall #001A<sup>(1,2)</sup>** to a palustrine forested/scrub-shrub wetland. Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow <i>[51500]</i>	2,000 GPD <i>[03]</i>	16,000 GPD <i>[03]</i>	---	---	Daily <sup>(3)</sup> <i>[01/01]</i>	Calculated <i>[CA]</i>
TSS <i>[00530]</i>	0.5 lb/day <i>[26]</i>	1.0 lb/day <i>[26]</i>	30 mg/l <i>[19]</i>	60 mg/l <i>[19]</i>	1/Month <i>[01/30]</i>	Composite <sup>(4)</sup> <i>[CP]</i>
Settleable Solids <i>[00545]</i>	---	---	---	0.3 ml/L <i>[25]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
Sludge Depth <sup>(5)</sup> <i>[95499]</i>	---	Report, inches <i>[61]</i>	---	---	1/Year <i>[01/YR]</i>	Measure <i>[MS]</i>
pH <i>[00400]</i>	---	---	---	6.0-9.0 S.U. <i>[12]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>

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

**FOOTNOTES:** See page 5 of this permit for applicable footnotes.

## SPECIAL CONDITIONS

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

#### FOOTNOTES:

1. All effluent monitoring shall be conducted at a location following the last treatment unit in the treatment process.
2. **Sampling** – Sampling and analysis must be conducted in accordance with; a) methods approved by Title 40 Code of Federal Regulations (40 CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services. Samples that are sent to a POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. §413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended 2/13/00). Laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of the *Maine Comprehensive and Limited 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.

3. Monitoring of effluent flow shall be required on a daily basis but only when discharges occur.
4. The permittee shall composite four equally spaced grab samples collected during the discharge event.
5. Sludge depth shall be measured in the month of **November** of each year. See Special Condition G of this permit.

### 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.

## **SPECIAL CONDITIONS**

### **B. NARRATIVE EFFLUENT LIMITATIONS (cont'd)**

3. The discharge 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. 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 (13<sup>th</sup>) day of the month or hand-delivered to the Department's Regional Office such that the DMRs are received by the Department on or before the fifteenth (15<sup>th</sup>) day of the month following the completed reporting period. A signed copy of the DMR and all other reports required herein shall be submitted to the following address:

Maine Department of Environmental Protection  
Division of Water Quality Management  
Bureau of Land and Water Quality  
17 State House Station  
Augusta, Maine 04333-0017

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

### **D. NOTIFICATION REQUIREMENT**

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

1. Any substantial change in the volume or character of pollutants being introduced into the waste water collection system.

## SPECIAL CONDITIONS

### D. NOTIFICATION REQUIREMENT (cont'd)

2. For the purposes of this section, adequate notice shall include information on:
  - (a) the quality and quantity of waste water introduced to the waste water collection and treatment system; and
  - (b) any anticipated impact of the change in the quantity or quality of the waste water to be discharged from the treatment system.

### E. UNAUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on May 4, 2012; 2) the terms and conditions of this permit; and 3) only from Outfall #001A. Discharges of waste water from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5)(*Bypass*) of this permit.

### F. OPERATION & MAINTENANCE (O&M) PLAN

This facility 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.

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

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

### G. SETTLING LAGOON SLUDGE DEPTH MONITORING

**The permittee shall monitor and report to the Department by December 31 each year,** the amount of sludge in the settling lagoon. The permittee shall remove and properly dispose of accumulated sludge when the average depth reaches 18 inches, or when accumulated sludge interferes with the lagoon function, or contributes to degraded effluent quality. Further, the permittee shall under no circumstances allow sludge to be discharged to the receiving wetland.

## **SPECIAL CONDITIONS**

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

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

### **I. 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 respects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.

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

**FACT SHEET**

**August 1, 2012**

MEPDES PERMIT NUMBER: **ME0102482**  
WASTE DISCHARGE LICENSE: **W008142-5S-C-R**

NAME AND ADDRESS OF APPLICANT:

**Town of North Haven  
P.O. Box 400  
North Haven, Maine 04853**

COUNTY: **Knox County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**North Haven Drinking Water Treatment Plant  
94 Pumping Station Road  
North Haven, Maine**

RECEIVING WATER / CLASSIFICATION: **Palustrine forested/scrub-shrub wetland,  
Class B**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Glen Marquis  
(207) 867-2333  
[glenmarquis@yahoo.com](mailto:glenmarquis@yahoo.com)**

**1. APPLICATION SUMMARY**

- a. Application: The Town of North Haven Drinking ("permittee") has submitted an application to the Department for renewal of Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102482/Waste Discharge License (WDL) #W008142-5S-B-R ("permit"). The permit was issued on June 15, 2007 and is due to expire on June 15, 2012. The June 15, 2007 permit authorized the discharge of a monthly average flow of 2,000 gallons per day (GPD) and a daily maximum flow of 16,000 GPD of waste water associated with drinking water treatment and filter cleaning (backwash) from a municipal drinking water treatment plant to a palustrine forested/scrub-shrub wetland, Class B, in North Haven, Maine.

## 1. APPLICATION SUMMARY (cont'd)

- b. Terms and Conditions: This permitting action is similar to the 6/15/07 permitting action in that it is carrying forward all of the terms and conditions of the previous permitting action with the following exception. This permitting action is:

1. Correcting the stated classification of the wetland from Class GW-A to Class B in accordance with *Classification of minor drainages*, 38 M.R.S.A., § 468 in order to legally classify the wetland.

- c. History: The most recent licensing/permitting actions include the following:

March 21, 2002 – The Department's Division of Land Resource Regulation approved the permittee's Permit by Rule application (#29334) for replacement of an existing facility intake pipe in Fresh Pond with a new intake pipe as part of the facility upgrade.

June 18, 2002 – The Department issued a new WDL (W008142-5S-A-N) and MEPDES permit (ME0102482) authorizing the discharge from the permittee to the wetland.

June 15, 2007 – The Department issued WDL/MEPDES Permit #W008142/ME0102482 for a five-year term.

May 3, 2012 – The permittee submitted a complete and timely application for renewal of WDL#W008142-5S-B-R. The application was accepted as complete on May 4, 2012 and assigned WDL#W008142-5S-C-R.

## 2. PERMIT SUMMARY

- a. Source Description/ Drinking Water Treatment Process:

The permittee operates a drinking water treatment plant on the shore of Fresh Pond in North Haven. The existing operation extracts pond water through two intake pipes, a four-inch diameter poly-vinyl chloride pipe and a six-inch diameter cast iron pipe, from Fresh Pond at depths of eight feet. Raw water is ozonated, passed through a carbon roughing filter, slow sand filter and limestone contactor as described below. The water is then treated with soda ash, ammonium sulfate and sodium hypochlorite and delivered through a distribution system to approximately 128 year round and 170 summer services. Reportedly, in December 1996, the Maine Department of Human Services' Drinking Water Program revoked permittee's waiver of filtration requirements under the surface water treatment rule. As a result, the permittee constructed a new filtration building and filter backwash treatment lagoon on the site occupied by the previous pump station. This project was completed in calendar year 2002. The permittee discharges filter backwash supernatant from the settling lagoon to an adjacent palustrine forested/scrub-shrub wetland.

## 2. PERMIT SUMMARY (cont'd)

The slow sand process is contained in four aluminum vessels, each containing three distinct treatment elements: roughing filtration, slow sand filtration, and limestone contact. The roughing filtration and slow sand filtration equipment must be periodically cleaned to remove accumulated particulates and maintain treatment efficiency.

Roughing Filtration - The roughing filter is a multi-media filter containing two layers of silica sand (300 mm in thickness) and one layer of granular activated carbon (GAC) (450 mm in thickness) designed for up-flow filtration. It is designed to remove large particles, debris, algae, and protozoans from the source water. The GAC serves to protect against any inadvertent over feed of ozone and to remove chlorine during the backwash cycle. The ozone must be completely consumed prior to the slow sand process to assure that the biological treatment activity in the subsequent sand bed is not destroyed. An ozone detector provides continuous monitoring of ozone residual in the slow sand influent to assure that the ozone is not overfed and present in the waste stream. The roughing filter is periodically cleaned using a high rate upflow backwash with potable water from the clearwell. Waste water is discharged to the facility treatment lagoon.

Slow Sand Filtration – Following the roughing filters, water flows to the slow sand filters. This stage involves filtration at a very slow rate down through a sand filter utilizing biological treatment to remove any microbial contamination from the surface water supply. The sand bed consists of 4 layers of filter sand and supporting gravel. After an initial filter ripening period, an organic layer forms on the filter surface serving as both a biological and physical layer for removing microbial contaminants. The organic layer or “schmutzdecke” is removed approximately bi-monthly using a surface wash system. The surface wash system consists of flowing small amounts of water over the filter surface while the sand surface is manually cleaned with high pressure flow from a handheld garden hose. The deposits are primarily organic in nature and washwater consists of water that has passed from the backwashing activity on the rough filter unit. Filtered water during the initial ripening period (filter to waste), as well as filter wash water, is discharged to the facility treatment lagoon. Disposal of the “filter to waste” water is designed to eliminate the potential for carryover of particulate material to the storage and distribution system.

Limestone Contactor – After filtration, water flows up through a limestone contactor where pH is adjusted from 5.5 S.U. to approximately 8.0 S.U. to provide for corrosion control within the distribution system. The limestone contactor is a vessel containing a height of 1,100 mm of limestone chips ranging in size from 8-12 mm. Treated water then flows by gravity to a 50,000 gallon clearwell, located beneath the floor of the filtration building, where sodium hypochlorite is added for disinfection resulting in a free chlorine concentration of 1-1.5 mg/L. An emergency overflow pipe from the clearwell outlets to the treatment lagoon. Finished water is pumped from the clearwell to a 285,000 gallon storage tank on Mount Nebo and to the distribution system to the permittee’s customers.

## 2. PERMIT SUMMARY (cont'd)

### c. Waste Water Treatment:

Filter backwashing is done manually by the permittee based on observed loss of head pressure in the filtering system components. Process waste waters from the roughing filtration and slow sand filtration processes are routed to a 120,000 gallon earthen lagoon for settling and flow equalization. The frequency and interval of waste water discharges to the lagoon from the treatment processes are estimated as follows:

- i. Roughing Filter Backwash Flow – 12,000 gallons at a 6-month interval
- ii. Slow Sand Washwater – 33,000 gallons per 4 filters at a two month interval
- iii. Filter-to-Waste (slow sand) – 60,000 gallons per 4 filters at two month interval.

The flow is metered from the lagoon to the downgradient palustrine forested/scrub-shrub wetland area using a decant stop log gate. The lowest 18 inches of the gate consists of a fixed plate to prevent the inadvertent discharge of settled materials. The plate shall only be removed if necessary for maintenance of the lagoon. From the outlet gate, flows are discharged through a 12-inch diameter ductile iron pipe to a riprap apron/level spreader, which is located upland immediately adjacent to Wetland "A". The riprap/level spreader is 10 feet long by 3 feet wide at the top and 10 feet wide at the base and ensures that flows are introduced to the wetland as sheet flow to prevent channel erosion.

Settled materials in the lagoon system are disposed of at an approved solid waste disposal facility or through spreading on agricultural fields, subject to approval by the Department's Bureau of Remediation and Waste Management.

Pursuant to Special Condition G, *Settling Lagoon Sludge Depth Monitoring*, of this permit, the permittee shall monitor and report the amount of sludge in the settling lagoon to the Department by December 31 each year. The permittee shall remove and properly dispose of accumulated sludge when the average depth reaches 18 inches. Further, the permittee shall under no circumstances allow sludge to be discharged to the receiving wetland.

## 3. CONDITIONS OF PERMITS

*Conditions of Licenses*, 38 M.R.S.A. §414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, *Certain Deposits and Discharges Prohibited*, 38 M.R.S.A. § 420 and *Surface Water Toxics Control Program*, 06-096 CMR 530 (effective October 9, 2005), require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective October 9, 2005), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

#### 4. RECEIVING WATER QUALITY STANDARDS

The permittee discharges waste water to a palustrine forested/scrub-shrub wetland. Analysis of the wetland indicates that its hydrology is provided through a combination of groundwater discharge to the surface and groundwater recharge from surface flows expressed seasonally through saturation of soils as well as periodic inundation. Based on the wetland's hydrologic relationship with groundwater, the Department has determined that the palustrine forested/scrub-shrub wetland at the point of discharge is best classified as a Class B water pursuant to *Classification of minor drainages*, 38 M.R.S.A., § 468. *Standards for classification of fresh surface waters*, 38 M.R.S.A., § 465 (3) describes the standards for Class B waters.

#### 5. RECEIVING WATER QUALITY CONDITIONS

Wetlands on and adjacent to the project site were delineated by S.W. Cole Inc. according to methods established in the US Army Corps of Engineers' 1987 Wetland Delineation Manual. S.W. Cole submitted a wetland delineation report dated October 6, 1999 and supplemented October 9, 2001, as well as delineation sample plot logs to document their analyses. Two wetlands exist in proximity to the facility. Wetland "A" is located south of the facility and receives treated waste water through Outfall #001A. Wetland "B" is located east of the facility and will not be impacted by the effluent discharge.

Wetland "A" consists of an approximately 0.43 acre (18,916 square feet) palustrine forested, needle-leaved coniferous wetland that transitions into a scrub-shrub wetland moving away from the facility. Dominant vegetation consists of red spruce, red maple, balsam fir, speckled alder, winterberry, bunchberry, jewelweed, and sensitive fern. S.W. Cole observed very poorly drained soils within most of the wetland, with poorly drained soils near the upland/wetland boundary. S.W. Cole noted the existence of a headwater stream originating in Wetland "A" and traversing across the wetland northward to Fresh Pond.

Wetland "B" consists of an approximately 0.08 acre (3,292 square feet) palustrine forested, needle-leaved coniferous wetland. Dominant vegetation consists of balsam fir, black spruce, winterberry, mountain holly, witherod, and cinnamon fern. S.W. Cole noted very poorly drained soils within Wetland "B".

The 2002 permitting action established an annual wetland monitoring program with a five-year duration. The monitoring program was based on the premise that the discharge of treated effluent may alter the wetland system in an adverse manner. The permittee conducted five years of monitoring with the last monitoring report submitted to the Department on December 28, 2006 entitled, "*Final Monitoring Report, North Haven Water Treatment Facility, North Haven, Maine,*" prepared by Phillips EcoServices, and dated December 27, 2006. The 2006 monitoring program report indicated no significant changes to the wetland hydrology, biology, or soils between the time the outfall pipe was installed and little if any documented changes to the environment as a result of the discharge. The permit effluent limitation and monitoring requirements provided ample provisions to reduce or eliminate discharges that may alter the wetland ecosystem.

## 5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

In the 2007 permitting action, the Department discontinued the requirement for the permittee to conduct annual monitoring of the wetland area adjacent to the waste water discharge outfall pipe. The Department may re-establish the requirement to monitor or mitigate impacts to the wetland in the future in the event that wetland impacts are observed as being caused by the discharge or if the Department determines that discharges from the outfall are causing or contributing to the degradation of water quality or for any other reason if the Department determines that discharges from the outfall are causing or contributing to the degradation of water quality in the palustrine wetland or Fresh Pond water bodies.

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Flow: This permitting action is carrying forward the monthly average flow limitation of 2,000 gallons per day (GPD) and the daily maximum flow limitation of 16,000 GPD for Outfall #001A, both of which are considered representative of the design flows for the permittee.

A review of the monthly average flow data as reported on the Discharge Monitoring Reports submitted to the Department for the period December 22, 2008 through December 22, 2011 (#DMRS = 34) indicates the monthly average flow has ranged from 720 GPD to 1,834 GPD with an arithmetic mean of 980 GPD. The highest daily maximum flow value reported for said time period was 14,642 GPD.

This permitting action is carrying forward the requirement to monitor flow on a daily basis, but only when discharges occur.

- b. TSS: The monthly average (30 mg/L) and daily maximum concentration limits (60 mg/L) for total suspended solids (TSS) are based on limits established in discharge licenses for other drinking water treatment plant discharges in Maine and are considered by the Department as a best professional judgment (BPJ) of best practicable treatment (BPT). This permitting action is carrying forward the monthly average and daily maximum TSS concentration limits.

*Waste Discharge License Conditions, 06-096 CMR 523(6)(f) [effective January 12, 2001], states that all pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass. This permitting action is carrying forward the daily maximum and monthly average TSS mass limits based on calculations using the monthly average discharge flow of 2,000 GPD (0.002 MGD). The limits are calculated as follows:*

*Monthly average mass limit = (30 mg/L) (8.34 lbs/gallon) (0.002 MGD) = 0.5 lbs/Day  
Daily maximum mass limit = (60 mg/L) (8.34 lbs/gallon) (0.002 MGD) = 1.0 lbs/Day*

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

A review of the discharge data as reported on the permittee's Discharge Monitoring Reports (DMRs) submitted to the Department for the period December 22, 2008 – December 22, 2011 indicate the following:

**TSS concentration (#DMRs = 34)**

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Compliance
Monthly Average	30	<1 – <5	3	100%
Daily Maximum	60	<1 – <5	3	100%

**TSS mass (#DMRs = 34)**

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)	Compliance
Monthly Average	0.5	0 – 0.03	0.002	100%
Daily Maximum	1.0	0.01 – 0.6	0.09	100%

Result reported as "less than" (<) were considered present at detection levels for calculation purposes.

This permitting action is carrying forward the TSS minimum monitoring frequency of 1/Month from the previous permitting action.

- c. Settleable Solids: This permitting action is carrying forward the daily maximum settleable solids limit of 0.3 mL/L as a BPT requirement and the minimum monitoring frequency of 1/Month. A review of the discharge data as reported on the permittee's Discharge Monitoring Reports submitted to the Department for the period December 22, 2008 through December 22, 2011 (#DMRs = 34) indicate the permittee has been in compliance with the settleable solids limitation 100% of the time during said reporting period with an average daily maximum settleable solids of < 0.1 mL/L.
- d. pH – This permitting action is carrying forward the daily maximum pH limit of 6.0 to 9.0 standard units (SU) to be consistent with *Effluent Guidelines and Standards*, 06-096 CMR 525 (3)(III)(c) [effective January 12, 2001]. Review of the pH monitoring data submitted to the Department over the past five years (#DMRs = 34) indicates the daily maximum pH has ranged between 7.2 and 8.5 SU. This permitting action is carrying forward the pH minimum monitoring frequency of 1/Month.
- e. Total Residual Chlorine: Limits on total residual chlorine (TRC) are typically specified in Department permits to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. However, in the case of the permittee, chlorine may only enter the waste stream through use of finished water for backwashing of the filters and if the GAC filter material fails to perform or through an overflow of the clearwell to the lagoon. In these unlikely events, any chlorine that passes through the system is anticipated to be diluted and dissipate in the settling lagoon prior to discharge. The Department considers there to be virtually no risk of chlorine at

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

detectable levels (0.05 mg/L) in the discharge effluent and therefore establishes no TRC effluent limits or monitoring requirements in this permitting action.

- f. Sludge Depth: This permitting action is carrying forward the settling lagoon daily maximum sludge depth "report" only limit and the minimum monitoring frequency requirement of 1/Year (November of each year). A review of monitoring data for the reporting period of December 22, 2008 through December 22, 2011 (#DMRs = 2) indicates the daily maximum sludge depth in the lagoon was 1.0 inch.

## 7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the palustrine forested/scrub-shrub wetland to meet standards for Class GWA classification.

## 8. PUBLIC COMMENTS

Public notice of this application was made in the *Courier Gazette* newspaper on or about April 26, 2012. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

## 9. DEPARTMENT CONTACTS

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

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

## 10. RESPONSE TO COMMENTS

During the period of May 31, 2012, through the issuance date of the permit, the Department solicited comments on the proposed draft permit to be issued for the discharge(s) from the permittee. Comments were received from Department Biological Monitoring staff ("Biomonitoring"), Compliance staff ("Compliance"), Maine CDC Drinking Water Program staff ("CDC") and EPA staff ("EPA"). Department responses to comments are as follows:

**Comment (Biomonitoring):** Wetland monitoring was discontinued in 2006 based on no findings of adverse effects to wetland hydrology or ecology. [Is the Department] aware of any evidence of changes to the site since then? [Biomonitoring staff] would be concerned about erosion or channelization, dead or dying vegetation due to prolonged water level increases, or other changes in the plant community including an increase in opportunistic or invasive species. Sometimes these effects may take a long time to show up, and [Biomonitoring staff are] interested in more recent site conditions. If [the Department is] confident that there are no apparent changes to the wetlands on site since the monitoring requirement was removed, [Biomonitoring Staff] would concur with not requiring additional monitoring at this time providing the provision to reinstate monitoring if needed is kept in the permit.

**Response:** Compliance staff stated there are no apparent changes to the wetlands; therefore the Department is not requiring wetland monitoring. With regard to the reinstatement of monitoring should changes occur, permit Special Condition H, *Reopening of Permit for Modifications*, states that the Department may change monitoring requirements or limitations based on new information obtained during the term of this permit.

**Comment (CDC, Compliance):** [T]he wetland that receives the discharge appears to [the CDC], based on both a map review and previous experience at the site, to be functionally a part of Fresh Pond, rather than a tributary to coastal waters. If that is a valid interpretation, then the wetland would inherit the classification of the pond, or 'A' whether GW or GP. Since most of Fresh Pond is the creation of its outlet height, consider what it would look like with another foot of height.

[F]rom a drinking water protection point of view, a 'B' classification of the wetland is functionally as protective as a GW-A classification, based on the quantity and quality of the filter backwash and meter bleed that is discharged under the permit. This might not be true for a different type or quantity of discharge, and we'd rather not set a precedent of lowering a classification without a good reason. That the Legislature classified all minor Knox County drainages as 'B' might or might not be a good reason.

We do not object to (and in fact support) the renewal of the permit. [CDC] would prefer that the stated classification in the old permit be retained, if only to prevent the appearance of backsliding in water quality in a drinking water source. [CDC would] be happy to talk about how we can find an appropriate way to describe the state of the waters that receive the discharge.

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

**Comment (Biomonitoring):** All great ponds as defined in section 480-B( 5) of the NRPA [Natural Resources Protection Act], and natural lakes and ponds less than 10 acres in size are classified as GPA waters under the Maine Water Classification Program statute, (see Section 465-A). Under the NRPA, "Great ponds" means any inland bodies of water which in a natural state have a surface area in excess of 10 acres and any inland bodies of water artificially formed or increased which have a surface area in excess of 30 acres. Since Fresh Pond is 101 acres, it easily qualifies as a great pond, so its class is GPA.

Although the wetlands in question drain to Fresh Pond, if they are above the normal high water line they are not considered part of the pond and are therefore not GPA waters. All fresh surface waters that are not GPA are classified using the riverine classification (see Sections 467 and 468) of associated waters in the same drainage basin (i.e. watershed). Streams and associated wetlands in this watershed are all class B according to Section 468 (Classification of minor drainages), paragraph 3:

*3. Knox County. Those waters draining directly or indirectly into tidal waters of Knox County, with the exception of the St. George River basin – Class B unless otherwise specified.*

**Response:** The previous permitting action erroneously classified Fresh Pond and the forested wetland as Class GW-A. The Department concurs with the assessment of the Biological Monitoring Program staff and will correct an error in the stated classification of the wetland from Class GPA (erroneously classified as Class GW-A) to Class B, per 38 MRSA § 468.

**Comment (EPA):** Could you please send the priority pollutant analysis from the permit application for this facility?

**Response:** The Department made a BPJ (Best Professional Judgment) determination that this drinking water treatment facility was not required to test for priority pollutants.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

CONTENTS

SECTION	TOPIC	PAGE
A	GENERAL PROVISIONS	
1	General compliance	2
2	Other materials	2
3	Duty to Comply	2
4	Duty to provide information	2
5	Permit actions	2
6	Reopener clause	2
7	Oil and hazardous substances	2
8	Property rights	3
9	Confidentiality	3
10	Duty to reapply	3
11	Other laws	3
12	Inspection and entry	3
B	OPERATION AND MAINTENANCE OF FACILITIES	
1	General facility requirements	3
2	Proper operation and maintenance	4
3	Need to halt reduce not a defense	4
4	Duty to mitigate	4
5	Bypasses	4
6	Upsets	5
C	MONITORING AND RECORDS	
1	General requirements	6
2	Representative sampling	6
3	Monitoring and records	6
D	REPORTING REQUIREMENTS	
1	Reporting requirements	7
2	Signatory requirement	8
3	Availability of reports	8
4	Existing manufacturing, commercial, mining, and silvicultural dischargers	8
5	Publicly owned treatment works	9
E	OTHER PROVISIONS	
1	Emergency action - power failure	9
2	Spill prevention	10
3	Removed substances	10
4	Connection to municipal sewer	10
F	DEFINITIONS	10

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

**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).

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

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

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

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

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

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

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

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

**B. OPERATION AND MAINTENANCE OF FACILITIES**

**1. General facility requirements.**

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**C. MONITORING AND RECORDS**

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

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

**3. Monitoring and records.**

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

**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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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.

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

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