



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

November 1, 2013

Mr. Michael Bolduc
District Manager
Kennebunk Sewer District
P.O. Box 648, 71 Water Street
Kennebunk, ME. 04043-0648

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0100935
Maine Waste Discharge License (WDL) #W002585-6D-G-M
Minor Revision

Dear Mr. Bolduc:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL **minor revision** which was approved by the Department of Environmental Protection. Please read the permit 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,

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

Enc.

cc: Matt Hight, DEP/SMRO
Sandy Mojica, USEPA

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

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PRESQUE ISLE, MAINE 04769
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

KENNEBUNK SEWER DISTRICT)	MAINE POLLUTANT DISCHARGE
KENNEBUNK, YORK COUNTY, MAINE)	ELIMINATION SYSTEM PERMIT
PUBLICLY OWNED TREATMENT WORKS)		AND
ME0100935)	WASTE DISCHARGE LICENSE
W002585-6D-G-M)	MINOR REVISION
APPROVAL)	

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et seq., and Maine law, 38 M.R.S.A., Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered a request by the KENNEBUNK SEWER DISTRICT (KSD/permittee hereinafter), to modify combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0100935/Maine Waste Discharge License (WDL) #W002585-6D-E-R issued by the Department on September 12, 2011, for a five-year term. More specifically, the permittee has made a request to the Department to have it conduct an up-to-date statistical evaluation on the most current 60-months of whole effluent toxicity (WET) test results to determine if a reduction in the WET test monitoring frequency is appropriate. With its supportive data, agency review comments, and other related materials on file, the Department FINDS THE FOLLOWING FACTS:

MINOR REVISION SUMMARY

Pursuant to Special Condition L, *Reopening of Permit For Modifications* in MEPDES permit #ME0100935/WDL #W002585-6D-E-R issued by the Department on September 12, 2011, on October 24, 2013, the Department conducted a statistical evaluation on the most current 60 months of WET test results on file with the Department in accordance with the statistical approach in 06-096 CMR Chapter 530, Surface Water Toxics Control Program. The statistical evaluation indicates the discharge from the permittee's waste water treatment facility does not have any WET test results for the mysid shrimp that exceed or have a reasonable potential to exceed the critical acute water quality threshold of 12% (mathematical inverse of the acute dilution factor of 8.4:1). The statistical evaluation does indicate the facility has two test results of 11.9% on September 9, 2009, and on December 3, 2012, for the sea urchin that have a reasonable potential to exceed the critical chronic water quality threshold of 8.4 % (mathematical inverse of the chronic dilution factor of 11.9:1). As a result, this minor revision is eliminating the A-NOEL limit of 12% for the mysid shrimp and pursuant to 06-096 CMR Chapter 530 §2(D)(3) reducing the surveillance level monitoring frequency for the mysid shrimp from 2/Year to 1/Year. The C-NOEL limit of 8.4% and the surveillance level monitoring frequency for the sea urchin are being carried forward in this minor revision.

MINOR REVISION SUMMARY (cont'd)

Beginning upon issuance of this minor revision and lasting through 24 months prior to permit expiration and commencing again 12 months prior to permit expiration (Year 5 of the term of the permit), the permittee shall conduct surveillance level WET testing as follows;

Level	WET Testing
I	1/Year for the mysid shrimp 2/Year for the sea urchin

Department rule Chapter 530 (2)(D)(1) specifies that screening level testing is to be established as follows:

Screening tests must be performed during the fourth year of a discharger's license, but at least once every five years, unless otherwise directed by the Department in order to accommodate license renewal schedules. The screening testing period begins 24-months prior to the expiration of a discharger's license and proceeds for four (4) calendar quarters (1 year).

Level	WET Testing
I	4/Year for the mysid shrimp 4/Year for the sea urchin

CONCLUSIONS

BASED on the findings in this minor revision, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 MRSA Section 464(4)(F), will be met, in that:
 - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
 - (c) Where 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 request by the KENNEBUNK SEWER DISTRICT to modify MEPDES permit #ME0100935/WDL #W002585-6D-E-R issued by the Department on September 12, 2011, by eliminating the A-NOEL limitation of 12% and reducing the monitoring frequency testing requirement for the mysid shrimp, 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 to MEPDES permit #ME0100935/WDL #W002585-6D-E-R issued by the Department on September 12, 2011.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit #ME0100935/WDL #W002585-6D-E-R issued by the Department on September 12, 2011, not modified by this minor revision remain in effect and enforceable.
4. This minor revision becomes effective upon the date of signature below and expires at midnight on September 12, 2016. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this minor revision, the terms and conditions of the this minor revision 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)].

DONE AND DATED AT AUGUSTA, MAINE, THIS 4th DAY OF November, 2013.

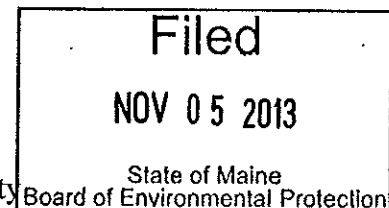
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhn
For Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application October 24, 2013.

Date of application acceptance October 24, 2013.



This order prepared by Gregg Wood, Bureau of Land and Water Quality

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

SURVEILLANCE LEVEL TESTING -- Beginning upon issuance of this minor revision and lasting through 24 months prior to permit expiration and commencing again 12 months prior to permit expiration (Year 5 of the term of the permit), the permittee shall be limited and monitoring as specified below.

Effluent Characteristic	Discharge Limitations			Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Measurement Frequency	Sample Type
Whole Effluent Toxicity⁽⁷⁾ <u>Acute – NOEL</u> <i>Mysidopsis bahia</i> [TDM3E] (Mysid Shrimp)	---	---	---	1/Year [01/YY]	Composite [24]
<u>Chronic – NOEL</u> <i>Arbacia punctulata</i> [TBH3A] (Sea urchin)	---	---	---	2/Year [02/YY]	Composite [24]
Analytical chemistry ^(8,9) [51168]	---	---	---	1/Year [01/YY]	Composite/Grab [24]
Ammonia (as N) [61574] (June 1 st – October 15 th)	---	76 #/Day [26]	---	1/Month [01/30]	Composite [24]

SPECIAL CONDITIONS**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

SCREENING LEVEL TESTING - During the period beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (Year 4 of the term of the permit) and every five years thereafter if a timely request for renewal has been made and the permit continues in force, or is replaced by a permit renewal containing this requirement, the permittee shall be limited and monitoring as specified below

Effluent Characteristic	Discharge Limitations			Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency Sample Type
Whole Effluent Toxicity⁽⁷⁾ Acute – NOEL <i>Mysidopsis bahia</i> [TDM3E] (Mysid Shrimp)	---	---	---	Report % [23]	1/Quarter [01/90] Composite [24]
Chronic – NOEL <i>Arbacia punctulata</i> [TBH3A] (Sea urchin)	---	---	---	Report % [23]	1/Quarter [01/90] Composite [24]
Analytical chemistry ^(8,9) [51168]	---	---	---	Report ug/L [28]	1/Quarter [01/90] Composite/Grab [24]
Priority pollutant ⁽⁹⁾ [50008]	---	---	---	Report ug/L [28]	1/Year [01/7R] Composite/Grab [24]
Ammonia (as N) [01574] (June 1 st – October 15 th)	---	76 #/Day [26]	---	7.0 mg/L [19]	1/Month [01/30] Composite [24]

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

(7) **Whole Effluent Toxicity (WET)** - Definitive WET testing is a multi-concentration testing event (a minimum of five dilutions set at levels to bracket the acute and chronic critical water quality thresholds of 12% and 8.4%), which provides an estimate of toxicity in terms of No Observed Effect Level, commonly referred to as NOEL or NOEC.

A-NOEL is defined as the acute no observed effect level with survival as the end point. C-NOEL is defined as the chronic no observed effect level with survival, reproduction and growth as the end points. The critical modified acute and chronic thresholds were derived as the mathematical inverse of the applicable acute and chronic dilution factors of 10.2:1 and 11.9:1 respectively.

- a. **Surveillance level testing** - Beginning upon issuance of this minor revision and lasting through 24 months prior to permit expiration and commencing again 12 months prior to permit expiration (Year 5 of the term of the permit), the permittee shall conduct surveillance level WET testing at a minimum frequency of once per year (1/Year) on the mysid shrimp (Mysidopsis bahia) and twice per year (2/Year) on the sea urchin (Arbacia punctulata). Acute tests shall be conducted on the mysid shrimp (Mysidopsis bahia) and chronic tests shall be conducted on the sea urchin (Arbacia punctulata). Testing shall be conducted in a different calendar quarter of each year such that a test is conducted in all four quarters of the year during the first four years of the term of this permit.
- b. **Screening level testing** - During the period beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (Year 4 of the term of the permit) and every five years thereafter if a timely request for renewal has been made and the permit continues in force, or is replaced by a permit renewal containing this requirement, the permittee shall conduct screening level WET testing at a minimum frequency of once per quarter (1/Quarter) for both species. As with surveillance level testing, acute tests shall be conducted on the mysid shrimp (Mysidopsis bahia) and chronic tests shall be conducted on the sea urchin (Arbacia punctulata).

WET test results must be submitted to the Department not later than the next Discharge Monitoring Report (DMR) required by the permit, provided, however, that the permittee may review the toxicity reports for up to 10 business days of their receipt from the laboratory conducting the testing before submitting them. The permittee shall evaluate test results being submitted and identify to the Department possible exceedences of the critical acute and chronic water quality thresholds of 12% and 8.4% respectively.

SPECIAL CONDITION

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

Footnotes:

Toxicity tests must be conducted by an experienced laboratory approved by the Department. The laboratory must follow procedures as described in the following U.S.E.P.A. methods manuals.

- a. Short Term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Water to Freshwater Organisms, Fourth Edition, October 2002, EPA-821-R-02-013.
- b. Methods for Measuring the Acute Toxicity of Effluent and Receiving Waters to Freshwater and Marine Organisms, Fifth Edition, October 2002, EPA-821-R-02-012.

Results of WET tests shall be reported on the "Whole Effluent Toxicity Report – Fresh Waters" form included as **Attachment B** of the September 12, 2011, permit each time a WET test is performed. The permittee is required to analyze the effluent for the analytical chemistry parameters specified on the "WET and Chemical Specific Data Report Form" form included as **Attachment A** of the September 12, 2011, permit each time a WET test is performed.

- (8) **Analytical chemistry** – Refers to a suite of chemicals in **Attachment A** of the September 12, 2011, permit.
 - a. **Surveillance level testing** – Beginning upon issuance of this minor revision and lasting through 24 months prior to permit expiration and commencing again 12 months prior to permit expiration (Year 5 of the term of the permit), the permittee shall conduct analytical chemistry testing at a minimum frequency of once per year (1/Year). As with WET testing, testing shall be conducted in a different calendar quarter of each year such that tests are conducted in all four quarters of the year during the first four years of the term of this permit.
 - b. **Screening level testing** – During the period beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (Year 4 of the term of the permit) and every five years thereafter if a timely request for renewal has been made and the permit continues in force, or is replaced by a permit renewal containing this requirement, the permittee shall conduct analytical chemistry testing at a minimum frequency of once per calendar quarter (1/Quarter) for four consecutive calendar quarters.

SPECIAL CONDITION

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

Outfall #001

Footnotes:

- (9) **Priority pollutant testing** – Refers to a suite of chemicals in **Attachment A** of the September 12, 2011, permit.
- a. **Surveillance level testing** - Department rule Chapter 530, *Surface Water Toxics Control Program*, does not establish routine surveillance level testing priority pollutant testing.
 - b. **Screening level testing** - During the period beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (Year 4 of the term of the permit) and every five years thereafter if a timely request for renewal has been made and the permit continues in force, or is replaced by a permit renewal containing this requirement, the permittee shall conduct screening level priority pollutant testing at a minimum frequency of once per year (1/Year).

Priority pollutant and analytical chemistry testing shall be conducted on samples collected at the same time as those collected for whole effluent toxicity tests when applicable. Priority pollutant and analytical chemistry testing shall be conducted using methods that permit detection of a pollutant at existing levels in the effluent or that achieve minimum reporting levels of detection as specified by the Department. See **Attachment A** of the September 12, 2011, permit for a list of the Department's reporting levels (RLs) of detection. All test results, even those detected below the Department's reporting limit shall be reported to the Department. Test results must be submitted to the Department not later than the next Discharge Monitoring Report (DMR) required by the permit, provided, however, that the permittee may review the toxicity reports for up to 10 business days of their receipt from the laboratory conducting the testing before submitting them. The permittee shall evaluate test results being submitted and identify to the Department, possible exceedences of the acute, chronic or human health AWQC as established in Department rule Chapter 584 *Surface Water Quality Criteria for Toxic Pollutants*. For the purposes of DMR reporting, enter a "1" for yes, testing done this monitoring period or "NODI-9" monitoring not required this period.



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.
