



STATE OF MAINE  
Department of Environmental Protection

Paul R. LePage  
GOVERNOR

Patricia W. Aho  
COMMISSIONER

April 2, 2013

Mr. Steven Arnold  
Paris Utility District  
1 Paris Hill Road  
P.O. Box 154  
South Paris, ME. 04281

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0100951  
Maine Waste Discharge License (WDL) Application #W000632-6C-K-M  
**Minor Revision**

Dear Mr. Arnold:

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/license and its attached conditions carefully. You must follow the conditions in the permit/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 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: Stuart Rose, DEP/SMRO  
Sandy Mojica, USEPA

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-3901 FAX: (207) 287-3435  
RAY BLDG., HOSPITAL ST.

BANGOR  
106 HOGAN ROAD  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769-2094  
(207) 764-6477 FAX: (207) 764-1507



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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

PARIS UTILITY DISTRICT	)	MAINE POLLUTANT DISCHARGE
PARIS, OXFORD COUNTY, MAINE	)	ELIMINATION SYSTEM PERMIT
PUBLICLY OWNED TREATMENT WORKS	)	AND
ME0100951	)	WASTE DISCHARGE LICENSE
W000632-6C-K-M	)	MINOR REVISION
APPROVAL	)	

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, §1251, *et seq.*, and Maine law, 38 M.R.S.A., §414-A *et seq.*, and applicable regulations, the Maine Department of Environmental Protection (Department hereinafter) has considered a request by the PARIS UTILITY DISTRICT (PUD/permittee hereinafter), to modify combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0100951/Maine Waste Discharge License (WDL)#W000632-5L-G-R (permit hereinafter) issued by the Department on August 21, 2001, for a five-year term and subsequently modified on April 10, 2006. With its supportive data, agency review comments, and other related materials on file, the Department FINDS THE FOLLOWING FACTS:

**MODIFICATION REQUEST**

The PUD has requested a modification of the April 10, 2006, permit modification by revising the surveillance level whole effluent toxicity (WET) and analytical chemistry testing requirements until a permit renewal is issued by the Department.

**PERMIT SUMMARY**

This permitting action is carrying forward all the terms and conditions of the previous permitting action with the following exceptions as this permit;

1. Establishes surveillance level whole effluent toxicity (WET) and analytical chemistry testing pursuant to Department rules, 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, and rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants* based on a statistical evaluation of the most current 60 months of test results.
2. Eliminates the seasonal monthly average water quality based mass and concentration limits for ammonia established in the August 21, 2001 permit as test results for said parameters do not exceed or have a reasonable potential to exceed applicable ambient water quality criteria (AWQC) established in Department rule 06-096 CMR Chapter 584.

**PERMIT SUMMARY (cont'd)**

3. Eliminates the monitoring requirements for cadmium and heptachlor in the April 10, 2006, permit modification permit as test results for said parameters do not exceed or have a reasonable potential to exceed applicable ambient water quality criteria (AWQC) established in Department rule 06-096 CMR Chapter 584.
4. Reduces the monitoring frequency for copper from 1/Month in the April 10, 2006 permit modification to 1/Quarter to be consistent with routine surveillance level monitoring requirement in rule 06-096 CMR Chapter 530.
5. Carries forward the monthly average and or daily maximum mass limits for arsenic, copper, lead and zinc established in the August 21, 2001 permit as test results for said parameters still exceed or have a reasonable potential to exceed applicable ambient water quality criteria (AWQC) established in Department rule 06-096 CMR Chapter 584. Pursuant to Maine law 38 M.R.S.A. §464, ¶¶ K which states, "*Unless otherwise required by an applicable effluent limitation guideline adopted by the department, any limitations for metals in a waste discharge license may be expressed only as mass-based limits.*" Therefore, concentration limits established for pollutants of concern in the August 21, 2001 permit are being eliminated in this minor revision.
6. Incorporating the average and maximum concentration limits for total mercury that were originally established in a waste discharge license modification dated May 23, 2000.

## CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated April 2, 2013, 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 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 request by the PARIS UTILITY DISTRICT to modify combination MEPDES permit #ME0100951/WDL #W000632-5L-G-R issued by the Department on August 21, 2001, for a five-year term and subsequently modified on April 10, 2006, by revising the surveillance level whole effluent toxicity (WET) and analytical chemistry testing requirements until a permit renewal is issued by the Department, 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. All terms and conditions of MEPDES permit #ME0100951/WDL #W000632-5L-G-R, issued by the Department on August 21, 2001, and subsequently revised on April 10, 2006, not modified by this permitting action remain in effect and enforceable.
4. This minor revision becomes effective upon the date of signature below.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 2nd DAY OF April 2013.

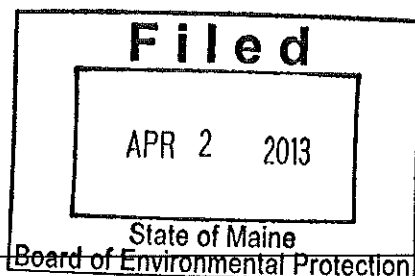
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Patricia W. Aho

For Patricia W. Aho, Commissioner

Date of initial receipt of application April 2, 2013.

Date of application acceptance April 2, 2013.



Date filed with Board of Environmental Protection

This Order prepared by Gregg Wood, BUREAU OF LAND & WATER QUALITY

## SPECIAL CONDITIONS

**SURVEILLANCE LEVEL TESTING** – Beginning upon issuance of this minor revision and lasting through the issuance of a permit renewal, the permittee shall be limited and monitored by the permittee as specified below:

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS – OUTFALL #001A (cont'd)**

Effluent Characteristic	Discharge Limitations				Monitoring Requirements			
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
Arsenic (Total) <sup>(6)</sup> [01002] (Upon permit issuance)	0.004 lbs/Day [26]	---	---	Report ug/L [26]	---	---	1/Quarter [01/90]	Composite [24]
Arsenic (Inorganic) <sup>(7)</sup> [01252] (Upon EPA method approval)	Report lbs/Day [26]	---	---	Report ug/L [26]	---	---	1/Quarter [01/90]	Composite [24]
Copper (Total) [01042]	0.07 lbs/Day [26]	---	0.08 lbs/Day [26]	Report ug/L [26]	---	Report ug/L [26]	1/Quarter [01/90]	Composite [24]
Lead (Total) [01051]	0.010 lbs/Day [26]	---	---	Report ug/L [26]	---	---	1/Quarter [01/90]	Composite [24]
Mercury (Total) <sup>(8)</sup> [1900]	---	---	---	16.5 ng/L [3M]	---	24.8 ng/L [3M]	1/Year [01/YR]	Grab [GR]
Zinc (Total) [01082]	0.64 lbs/Day [26]	---	0.63 lbs/Day [26]	Report ug/L [26]	---	Report ug/L [26]	1/Quarter [01/90]	Composite [24]

**SPECIAL CONDITIONS****A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd) – OUTFALL #001A**

***SURVEILLANCE LEVEL TESTING*** – Beginning upon issuance of this minor revision and lasting through the issuance of a permit renewal, the permittee shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations					Minimum Monitoring Requirements		
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
<u>Whole Effluent Toxicity (WET)</u> <sup>(9)</sup>								
<u>A-NOEL</u>								
<i>Ceriodaphnia dubia</i> [TDA3B]	---	---	---	---	---	Report% [23]	2/Year [02/93]	Composite [24]
<i>Salvelinus fontinalis</i> [TDA6F]	---	---	---	---	---	Report % [23]	1/Year [01/93]	Composite [24]
<u>C-NOEL</u>								
<i>Ceriodaphnia dubia</i> [TBP3B]	---	---	---	---	---	20% [23]	2/Year [02/93]	Composite [24]
<i>Salvelinus fontinalis</i> [TBP6F]	---	---	---	---	---	Report % [23]	1/Year [01/93]	Composite [24]
Analytical chemistry <sup>(10,12)</sup> [51168]	---	---	---	---	---	Report ug/L [28]	1/Quarter [01/90]	Composite/ Grab [24/GR]

## SPECIAL CONDITIONS

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

#### Footnotes:

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

All analytical test results shall be reported to the Department including results which are detected below the respective reporting limits (RLs) specified by the Department or as specified by other approved test methods. See **Attachment A** of this minor revision for a list of the Department's RLs. 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.

6. **Arsenic (Total)** – Beginning upon issuance of this permit and lasting through a date on which the USEPA approves a test method for inorganic arsenic, the permittee shall sample and analyze the discharge from the facility for total arsenic. The Department's most current reporting limit (RL) for total arsenic is 5 ug/L but may be subject to revision during the term of this permit. All detectable analytical test results shall be reported to the Department including results which are detected below the Department's most current RL at the time of sampling and reporting.
7. **Arsenic (Inorganic)** – The monitoring requirements for inorganic arsenic are not in effect until the USEPA approves of a test method for inorganic arsenic.



## SPECIAL CONDITIONS

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

#### Footnotes:

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

Compliance with the monthly average limitation established in Special Condition A of this permit will be based on the cumulative arithmetic mean of all mercury tests results that were conducted utilizing sampling Methods 1669 and analysis Method 1631E on file with the Department for this facility.

9. **Whole effluent toxicity (WET) testing** - Definitive WET testing is a multi-concentration testing event (a minimum of five dilutions bracketing the critical acute and chronic dilutions of 4.0:1 and 5.0:1 respectively), which provides a point 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. 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 after receiving the results 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 25% and 20% respectively.
  - a. **Surveillance level testing** - Beginning upon issuance of this minor revision and lasting through the issuance of a permit renewal, testing on the water flea (*Ceriodaphnia dubia*) shall be conducted at a frequency of 2/Year testing on the brook trout (*Salvelinus fontinalis*) shall be conducted at the frequency of 1/Year. Testing shall be conducted in different calendar quarters such that at least one test is conducted in each calendar quarter of the year for each test species during surveillance level testing.

## SPECIAL CONDITIONS

### 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.

Each time a WET test is performed, the permittee shall sample and analyze for the parameters in the WET Chemistry and the Analytical Chemistry sections of the Department form entitled, *Maine Department of Environmental Protection, WET and Chemical Specific Data Report Form*. See **Attachment A** of this minor revision.

10. **Analytical chemistry** – Refers to a suite of parameters in Attachment A of this minor revision.

- a. **Surveillance level testing** – Beginning upon issuance of this minor revision and lasting through the issuance of a permit renewal, the permittee shall conduct surveillance level testing at a frequency of 1/Quarter. Testing shall be conducted on samples collected at the same time as those collected for whole effluent toxicity tests when applicable. 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. 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 after receiving the results 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.

**SPECIAL CONDITIONS**

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

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

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

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

- (d) Changes in storm water collection or inflow/infiltration affecting the facility that may increase the toxicity of the discharge.
- (e) Increases in the type or volume of hauled wastes accepted by the facility.

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

# ATTACHMENT A

Maine Department of Environmental Protection  
WET and Chemical Specific Data Report Form

This form is for reporting laboratory data and facility information. Official compliance reviews will be done by DEP.

Facility Name \_\_\_\_\_ MEPDES # \_\_\_\_\_ Pipe # \_\_\_\_\_  
 Facility Representative Signature \_\_\_\_\_  
 To the best of my knowledge this information is true, accurate and complete.

Licensed Flow (MGD) \_\_\_\_\_  
 Acute dilution factor \_\_\_\_\_  
 Chronic dilution factor \_\_\_\_\_  
 Human health dilution factor \_\_\_\_\_  
 Criteria type: M (acute) or F (fresh)

Flow for Day (MGD)<sup>(1)</sup> \_\_\_\_\_ Flow Avg. for Month (MGD)<sup>(2)</sup> \_\_\_\_\_  
 Date Sample Collected \_\_\_\_\_ Date Sample Analyzed \_\_\_\_\_

Laboratory Address \_\_\_\_\_ Telephone \_\_\_\_\_

Last Revision - April 25, 2012

Lab Contact \_\_\_\_\_ Lab ID # \_\_\_\_\_

**FRESH WATER VERSION**

**ERROR WARNING !** Essential facility information is missing. Please check required entries in bold above.

Please see the footnotes on the last page.

WHOLE EFFLUENT TOXICITY		Effluent Limits, %		Receiving Water or Ambient	Effluent Concentration (ug/L or as noted)	Possible Exceedence (7)	
		Acute	Chronic			Reporting Limit Check	Chronic
Trout - Acute							
Trout - Chronic							
Water Flea - Acute							
Water Flea - Chronic							
<b>WET CHEMISTRY</b>							
pH (S.U.) (3)				(8)			
Total Organic Carbon (mg/L)				(8)			
Total Solids (mg/L)							
Total Suspended Solids (mg/L)				(8)			
Alkalinity (mg/L)							
Specific Conductance (umhos)							
Total Hardness (mg/L)				(8)			
Total Magnesium (mg/L)				(8)			
Total Calcium (mg/L)				(8)			
<b>ANALYTICAL CHEMISTRY (3)</b>							
Also do these tests on the effluent with WET. Testing on the receiving water is optional							
TOTAL RESIDUAL CHLORINE (mg/L) (3)	Reporting Limit	Effluent Limits, ug/L	Health (6)				
AMMONIA	0.05			NA			
ALUMINUM	NA			(8)			
ARSENIC	5			(8)			
CADMIUM	1			(8)			
CHROMIUM	10			(8)			
COPPER	3			(8)			
CYANIDE	5			(8)			
LEAD	3			(8)			
NICKEL	5			(8)			
SILVER	1			(8)			
ZINC	5			(8)			

This form is for reporting laboratory data and facility information. Official compliance reviews will be done by DEP.

PRIORITY POLLUTANTS <sup>(4)</sup>			Effluent Limits				Reporting Limit		Health <sup>(5)</sup>		Reporting Limit Check		Possible Exceedance <sup>(7)</sup>	
			Acute <sup>(6)</sup>	Chronic <sup>(6)</sup>	Health <sup>(5)</sup>									
M	ANTIMONY		5											
M	BERYLLIUM		2											
M	MERCURY (5)		0.2											
M	SELENIUM		5											
M	THALLIUM		4											
A	2,4,6-TRICHLOROPHENOL		5											
A	2,4-DICHLOROPHENOL		5											
A	2,4-DIMETHYLPHENOL		5											
A	2,4-DINITROPHENOL		45											
A	2-CHLOROPHENOL		5											
A	2-NITROPHENOL		5											
A	4,6-DINITRO-O-CRESOL (2-Methyl-4,6-dinitrophenol)		25											
A	4-NITROPHENOL		20											
A	P-CHLORO-M-CRESOL (3-methyl-4-chlorophenol)+B80		5											
A	PENTACHLOROPHENOL		20											
A	PHENOL		5											
BN	1,2,4-TRICHLOROBENZENE		5											
BN	1,2-DICHLOROBENZENE		5											
BN	1,2-DIPHENYLHYDRAZINE		20											
BN	1,3-MIDICHLOROBENZENE		5											
BN	1,4-P'DICHLOROBENZENE		5											
BN	2,4-DINITROTOLUENE		6											
BN	2,6-DINITROTOLUENE		5											
BN	2-CHLORONAPHTHALENE		5											
BN	3,3'-DICHLOROBENZIDINE		16.5											
BN	3,4-BENZO(B)FLUORANTHENE		5											
BN	4-BROMOPHENYLPHENYL ETHER		5											
BN	4-CHLOROPHENYL PHENYL ETHER		5											
BN	ACENAPHTHENE		5											
BN	ACENAPHTHYLENE		5											
BN	ANTHRACENE		5											
BN	BENZIDINE		45											
BN	BENZO(A)ANTHRACENE		8											
BN	BENZO(A)PYRENE		5											
BN	BENZO(G,H)PERYLENE		5											
BN	BENZO(K)FLUORANTHENE		5											
BN	BIS(2-CHLOROETHOXY)METHANE		5											
BN	BIS(2-CHLOROETHYL)ETHER		6											
BN	BIS(2-CHLOROISOPROPYL)ETHER		6											
BN	BIS(2-ETHYLHEXYL)PHTHALATE		10											
BN	BUTYLBENZYL PHTHALATE		5											
BN	CHRYSENE		5											
BN	D,N-BUTYL PHTHALATE		5											
BN	D,N-OCTYL PHTHALATE		5											
BN	DIBENZO(A,H)ANTHRACENE		5											
BN	DIETHYL PHTHALATE		5											
BN	DIMETHYL PHTHALATE		5											
BN	FLUORANTHENE		5											

**This form is for reporting laboratory data and facility information. Official compliance reviews will be done by DEP.**

[illegible]

V	BROMOFORM						5
V	CARBON TETRACHLORIDE						5
V	CHLOROBENZENE						6
V	CHLORDIBROMOMETHANE						3
V	CHLOROETHANE						5
V	CHLOROFORM						5
V	DICHLORBROMOMETHANE						3
V	ETHYLBENZENE						10
V	METHYL BROMIDE (Bromomethane)						5
V	METHYL CHLORIDE (Chloromethane)						5
V	METHYLENE CHLORIDE						5
	TETRACHLOROETHYLENE						
V	(Perchloroethylene or Tetrachloroethene)						5
V	TOLUENE						5
	TRICHLOROETHYLENE						
V	(Trichloroethene)						3
V	VINYL CHLORIDE						5

(1) Flow average for day pertains to WET/PP composite sample day.

- (2) Flow average for month is for month in which WET/PP sample was taken.
- (3) Analytical chemistry parameters must be done as part of the WET test chemistry.
- (4) Priority Pollutants should be reported in micrograms per liter (ug/L).
- (5) Mercury is often reported in nanograms per liter (ng/L) by the contract laboratory, so be sure to convert to micrograms per liter on this spreadsheet.
- (6) Effluent Limits are calculated based on dilution factor, background allocation (10%) and water quality reserves (15% - to allow for new or changed discharges or non-point sources).
- (7) Possible Exceedence determinations are done for a single sample only on a mass basis using the actual pounds discharged. This analysis does not consider watershed wide allocations for fresh water discharges.
- (8) These tests are optional for the receiving water. However, where possible samples of the receiving water should be preserved and saved for the duration of the WET test. In the event of questions about the receiving water's possible effect on the WET results, chemistry tests should then be conducted.
- (9) pH and Total Residual Chlorine must be conducted at the time of sample collection. Tests for Total Residual Chlorine need be conducted only when an effluent has been chlorinated or residual chlorine is believed to be present for any other reason.

**Comments:**



**MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT**

**AND**

**MAINE WASTE DISCHARGE LICENSE**

**FACT SHEET**

Date: April 2, 2013

PERMIT NUMBER: ME0100951

LICENSE NUMBER: W00632-6C-K-M

NAME AND ADDRESS OF APPLICANT:

**PARIS UTILITY DISTRICT  
P.O. Box 154  
South Paris, ME. 04281**

COUNTY: **Oxford County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**PARIS UTILITY DISTRICT  
C.N. Brown Way  
Paris, ME. 04281**

RECEIVING WATER/CLASSIFICATION: Little Androscoggin River/Class C

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Steven Arnold, Supt.  
(207) 743-6251**  
e-mail: [parisutility1@myfairpoint.net](mailto:parisutility1@myfairpoint.net)

**1. MODIFICATION REQUEST**

The PUD has requested a modification of the April 10, 2006, permit modification by revising the surveillance level whole effluent toxicity (WET) and analytical chemistry testing requirements until a permit renewal is issued by the Department.

## 2. PERMIT SUMMARY

This permitting action is carrying forward all the terms and conditions of the previous permitting action with the following exceptions as this permit;

- a. Establishes surveillance level whole effluent toxicity (WET) and analytical chemistry testing pursuant to Department rules, 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, and rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants* based on a statistical evaluation of the most current 60 months of test results.
- b. Eliminates the seasonal monthly average water quality based mass and concentration limits for ammonia established in the August 21, 2001 permit as test results for said parameters do not exceed or have a reasonable potential to exceed applicable ambient water quality criteria (AWQC) established in Department rule 06-096 CMR Chapter 584.
- c. Eliminates the monitoring requirements for cadmium and heptachlor in the April 10, 2006, permit modification permit as test results for said parameters do not exceed or have a reasonable potential to exceed applicable ambient water quality criteria (AWQC) established in Department rule 06-096 CMR Chapter 584.
- d. Reduces the monitoring frequency for copper from 1/Month in the April 10, 2006 permit modification to 1/Quarter to be consistent with routine surveillance level monitoring requirement in rule 06-096 CMR Chapter 530.
- e. Carries forward the monthly average and or daily maximum mass limits for arsenic, copper, lead and zinc established in the August 21, 2001 permit as test results for said parameters still exceeded or have a reasonable potential to exceed applicable ambient water quality criteria (AWQC) established in Department rule 06-096 CMR Chapter 584. Pursuant to Maine law 38 M.R.S.A. §464, ¶¶ K was enacted which states, "*Unless otherwise required by an applicable effluent limitation guideline adopted by the department, any limitations for metals in a waste discharge license may be expressed only as mass-based limits.*" Therefore, concentration limits established for pollutants of concern in the August 21, 2001 permit are being eliminated in this minor revision.
- f. Incorporating the average and maximum concentration limits for total mercury that were originally established in a waste discharge license modification dated May 23, 2000.

### 3. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- a. Whole Effluent Toxicity (WET) & Chemical-Specific Testing: Maine law, 38 M.R.S.A., Sections 414-A and 420, prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. Department Rules, 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, and Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants* set forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

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

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

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

- 1) Level I – chronic dilution factor of  $<20:1$ .
- 2) Level II – chronic dilution factor of  $\geq 20:1$  but  $<100:1$ .
- 3) Level III – chronic dilution factor  $\geq 100:1$  but  $<500:1$  or  $>500:1$  and  $Q \geq 1.0$  MGD
- 4) Level IV – chronic dilution  $>500:1$  and  $Q \leq 1.0$  MGD

Department rule Chapter 530 (1)(D) specifies the criteria to be used in determining the minimum monitoring frequency requirements for WET, priority pollutant and analytical chemistry testing. Based on the Chapter 530 criteria, the PUD facility falls into the Level I frequency category as the facility has a chronic dilution factor of  $<20:1$ . Chapter 530(1)(D)(1) specifies that routine screening and surveillance level testing requirements are as follows:

**Screening level testing** – 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.

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

### 3. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

**Surveillance level testing** – Beginning upon permit issuance and lasting through 24 months prior to permit expiration (Years 1, 2 & 3 of the term of the permit) and commencing again 12 months prior to permit expiration (Year 5 of the term of the permit),

Level	WET Testing	Priority pollutant testing	Analytical chemistry
I	2 per year	None required	4 per year

Department rule Chapter 530(D)(3)(c) states in part *“Dischargers in Level I may reduce surveillance testing to one WET or specific chemical series per year provided that testing in the preceding 60 months does not indicate any reasonable potential for exceedence as calculated pursuant to section 3(E).”*

Chapter 530 §(3)(E) states *“For effluent monitoring data and the variability of the pollutant in the effluent, the Department shall apply the statistical approach in Section 3.3.2 and Table 3-2 of USEPA's "Technical Support Document for Water Quality-Based Toxics Control" (USEPA Publication 505/2-90-001, March, 1991, EPA, Office of Water, Washington, D.C.) to data to determine whether water-quality based effluent limits must be included in a waste discharge license. Where it is determined through this approach that a discharge contains pollutants or WET at levels that have a reasonable potential to cause or contribute to an exceedence of water quality criteria, appropriate water quality-based limits must be established in any licensing action.”*

Chapter 530 §3 states, *“In determining if effluent limits are required, the Department shall consider all information on file and effluent testing conducted during the preceding 60 months. However, testing done in the performance of a Toxicity Reduction Evaluation (TRE) approved by the Department may be excluded from such evaluations.”*

#### WET Evaluation

On December 20, 2012, the Department conducted a statistical evaluation on the four WET test results conducted after the completion of the upgrade at the treatment facility (June 2011). The statistical evaluation indicates the discharge from the PUD waste water treatment facility has only one C-NOEL test result for the water flea that has a reasonable potential to exceed the critical chronic water quality threshold of 20%. As a result, this permitting action is establishing a C-NOEL limit of 20% for the water flea along with routine surveillance level testing frequency of 2/Year. As for the brook trout, the permittee qualifies for reduced testing pursuant to 06-096 CMR Chapter 530. Therefore, this permit establishes a reduced surveillance level testing frequency of 1/Year. Testing shall be conducted in different calendar quarters such that at least one test is conducted in each calendar quarter of the year for each test species during surveillance level testing.

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

#### Analytical chemistry & priority pollutant testing evaluation

The previous permitting action established water quality based monthly average and or daily maximum mass and concentration limits for ammonia (seasonal), arsenic, copper, lead and zinc. The justification for the water quality based limitations was based on a statistical evaluation of the tests results for the 60-month period prior to the 8/21/01 permitting action. It is noted the 4/10/06 permit modification issued by the Department deleted monitoring requirements for arsenic and added monitoring requirements for cadmium and heptachlor based on an updated statistical evaluation on that date.

Chapter 530 §4(C), states *"The background concentration of specific chemicals must be included in all calculations using the following procedures. The Department may publish and periodically update a list of default background concentrations for specific pollutants on a regional, watershed or statewide basis. In doing so, the Department shall use data collected from reference sites that are measured at points not significantly affected by point and non-point discharges and best calculated to accurately represent ambient water quality conditions. The Department shall use the same general methods as those in section 4(D) to determine background concentrations. For pollutants not listed by the Department, an assumed concentration of 10% of the applicable water quality criteria must be used in calculations."* The Department has limited information on the background levels of metals in the water column in the Little Androscoggin River in the vicinity of the permittee's outfall. Therefore, a default background concentration of 10% of the applicable water quality criteria is being used in the calculations of this permitting action.

Chapter 530 4(E), states *"In allocating assimilative capacity for toxic pollutants, the Department shall hold a portion of the total capacity in an unallocated reserve to allow for new or changed discharges and non-point source contributions. The unallocated reserve must be reviewed and restored as necessary at intervals of not more than five years. The water quality reserve must be not less than 15% of the total assimilative quantity."* However, in May 2012, Maine law 38 M.R.S.A. §464, ¶¶ J was enacted which reads as follows, *"For the purpose of calculating waste discharge license limits for toxic substances, the department may use any unallocated assimilative capacity that the department has set aside for future growth if the use of that unallocated assimilative capacity would avoid an exceedance of applicable ambient water quality criteria or a determination by the department of a reasonable potential to exceed ambient water quality criteria.."*

On July 24, 2012, the Department conducted statistical evaluations based on 15% of the ambient water quality criteria reserve being withheld (Report ID 457) and 0% of the reserve of the criteria being withheld (Report ID 458) to determine if the unallocated assimilative capacity would avoid an exceedance or avoid a reasonable potential to exceed applicable ambient water quality criteria for toxic pollutants. Report ID 458 indicates Mechanic Falls no longer has a reasonable potential to exceed the chronic ambient water quality criteria for aluminum or zinc

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

and North Jay no longer has a reasonable potential to exceed the chronic ambient water quality criteria for lead. Therefore, the department is utilizing the full 15% of the unallocated assimilative capacity in the statistical evaluation when establishing limits for toxic pollutants in waste discharge licenses for facilities in the Androscoggin River watershed.

Chapter 530 §(3)(E) states "... that a discharge contains pollutants or WET at levels that have a reasonable potential to cause or contribute to an exceedence of water quality criteria, appropriate water quality-based limits must be established in any licensing action."

Chapter 530 §(3)(D) states "Expression of effluent limits. Where the need for effluent limits has been determined, limits derived from acute water quality criteria must be expressed as daily maximum values. Limits derived from chronic or human health criteria must be expressed as monthly average values."

Chapter 530 §4(F) states in part "Where there is more than one discharge into the same fresh or estuarine receiving water or watershed, the Department shall consider the cumulative effects of those discharges when determining the need for and establishment of the level of effluent limits. The Department shall calculate the total allowable discharge quantity for specific pollutants, less the water quality reserve and background concentration, necessary to achieve or maintain water quality criteria at all points of discharge, and in the entire watershed. The total allowable discharge quantity for pollutants must be allocated consistent with the following principles.

*Evaluations must be done for individual pollutants of concern in each watershed or segment to assure that water quality criteria are met at all points in the watershed and, if appropriate, within tributaries of a larger river.*

*The total assimilative capacity, less the water quality reserve and background concentration, may be allocated among the discharges according to the past discharge quantities for each as a percentage of the total quantity of discharges, or another comparable method appropriate for a specific situation and pollutant. Past discharges of pollutants must be determined using the average concentration discharged during the past five years and the facility's licensed flow.*

*The amount of allowable discharge quantity may be no more than the past discharge quantity calculated using the statistical approach referred to in section 3(E) [Section 3.3.2 and Table 3-2 of USEPA's "Technical Support Document for Water Quality-Based Toxics Control"] of the rule, but in no event may allocations cause the water quality reserve amount to fall below the minimum referred to in 4(E) [15% of the total assimilative capacity]. Any difference between the total allowable discharge quantity and that allocated to existing dischargers must be added to the reserve.*

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

The Little Androscoggin River is a tributary to the Androscoggin River. Three municipal waste water treatment facilities that are subject to the Department's Chapter 530 testing requirements discharge to the Little Androscoggin River. The waste water treatment facilities are the Paris Utility District, Town of Norway and the Mechanic Falls Sewer District. The Paris Utility District facility is the most upstream facility and the Mechanic Falls facility is the most downstream facility. As previously cited, Chapter 530 requires that AWQC must be met at the confluence of the Little Androscoggin River and the Androscoggin River as well as at the individual discharge points on the Little Androscoggin River after taking into consideration historic discharge levels for all three facilities as well as an allocation dedicated to background (10% of AWQC) and a reserve (0% of AWQC).

As with WET test results, the Department conducted a statistical evaluation on January 14, 2013 (report ID #512) on the most recent 60-months of analytical chemistry and priority pollutant data on file at the Department. The statistical evaluation indicates the PUD facility has test results that exceed or have a reasonable potential to exceed the acute and or chronic AWQC for arsenic, copper, lead, and zinc. Therefore, until the pending permit renewal is issued with revised permit limits for the four parameters of concern, this minor revision is carrying forward the water quality based mass limits for arsenic, copper, lead and zinc established in the August 21, 2001 permit.

Based on the timing, severity and frequency of occurrences of the exceedences or reasonable potential to exceed applicable critical water quality thresholds, this permitting action is making a best professional judgment to establish the monitoring frequencies for the parameters of concern at the routine surveillance level frequency of 1/Quarter specified in Chapter 530.

As for the remaining parameters, monitoring frequencies for priority pollutant and analytical chemistry testing established in this permitting action are based on the Chapter 530 rule. Chapter 530(2)(D)(3)(d) states in part that for Level I facilities "... *may reduce surveillance testing to one WET or specific chemical series per year provided that testing in the preceding 60 months does not indicate any reasonable potential for exceedence as calculated pursuant to section 3(E)*". Due to the history of past and current concerns with the discharge of toxic pollutants at toxic levels and the facility's low dilution factors, the Department has made a best professional judgment to establish routine surveillance level analytical chemistry at a frequency of 1/Quarter.

### 4. 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 waterbody to meet standards for Class C classification.

## 5. DEPARTMENT CONTACTS

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

Gregg Wood  
Division of Water Quality Management  
Bureau of Land and Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017  
e-mail: [gregg.wood@maine.gov](mailto:gregg.wood@maine.gov)

Telephone (207) 287-7693



# ATTACHMENT A



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHAPTER 530.2(D)(4) CERTIFICATION

PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
Commissioner

MEPDES# \_\_\_\_\_ Facility Name \_\_\_\_\_

Since the effective date of your permit, have there been;		NO	YES Describe in comments section
1	Increases in the number, types, and flows of industrial, commercial, or domestic discharges to the facility that in the judgment of the Department may cause the receiving water to become toxic?	<input type="checkbox"/>	<input type="checkbox"/>
2	Changes in the condition or operations of the facility that may increase the toxicity of the discharge?	<input type="checkbox"/>	<input type="checkbox"/>
3	Changes in storm water collection or inflow/infiltration affecting the facility that may increase the toxicity of the discharge?	<input type="checkbox"/>	<input type="checkbox"/>
4	Increases in the type or volume of hauled wastes accepted by the facility?	<input type="checkbox"/>	<input type="checkbox"/>

COMMENTS:

Name (printed): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

This form may be used to meet the requirements of Chapter 530.2(D)(4). This Chapter requires all dischargers having waived or reduced toxic testing to file a statement with the Department describing changes to the waste being contributed to their system as outlined above. As an alternative, the discharger may submit a signed letter containing the same information.

**Scheduled Toxicity Testing for the next calendar year**

Test Conducted	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter
WET Testing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Priority Pollutant Testing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Analytical Chemistry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other toxic parameters <sup>1</sup>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Please place an "X" in each of the boxes that apply to when you will be conducting any one of the three test types during the next calendar year.*

<sup>1</sup> This only applies to parameters where testing is required at a rate less frequently than quarterly.

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  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769-2094  
(207) 764-0477 FAX: (207) 760-3143

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

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# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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### A. GENERAL PROVISIONS

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

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

(a) They are not

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

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

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

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

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

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

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

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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

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

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

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

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

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

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

### **B. OPERATION AND MAINTENANCE OF FACILITIES**

#### **1. General facility requirements.**

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

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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

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

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

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

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

#### **5. Bypasses.**

##### (a) Definitions.

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

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

##### (c) Notice.

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

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

6. Upsets.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
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**C. MONITORING AND RECORDS**

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

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

**3. Monitoring and records.**

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



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
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**D. REPORTING REQUIREMENTS**

**1. Reporting requirements.**

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

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

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

- (A) Any unanticipated bypass which exceeds any effluent limitation in the permit.
- (B) Any upset which exceeds any effluent limitation in the permit.
- (C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

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

- (g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this section.
- (h) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

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

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

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

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

- (i) One hundred micrograms per liter (100 ug/l);
- (ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
- (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

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### 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.

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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

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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

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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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