



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

April 12, 2013

Mr. Matt Demers  
Dover-Foxcroft Water District  
48 Mortin Avenue, Suite B  
Dover-Foxcroft, Maine 04426  
[superintendent.dfwater@gmail.com](mailto:superintendent.dfwater@gmail.com)

*Transmitted via electronic mail  
Delivery confirmation requested*

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0102229  
Maine Waste Discharge License (WDL) Application #W007330-5S-D-R  
**Final Permit**

Dear Mr. Demers:

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

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

If you have any questions regarding the matter, please feel free to call me at 215-1579.

Sincerely,

Yvette Meunier  
Division of Water Quality Management  
Bureau of Land and Water Quality  
[yvette.meunier@maine.gov](mailto:yvette.meunier@maine.gov)

Enc.

cc: Tanya Hovell, DEP/EMRO  
Sandy Mojica, USEPA



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

|                                    |   |                           |
|------------------------------------|---|---------------------------|
| DOVER-FOXCROFT WATER DISTRICT      | ) | MAINE POLLUTANT DISCHARGE |
| DOVER-FOXCROFT, PISCATAQUIS COUNTY | ) | ELIMINATION SYSTEM PERMIT |
| DRINKING WATER TREATMENT PLANT     | ) | AND                       |
| #ME0102229                         | ) | WASTE DISCHARGE LICENSE   |
| #W007330-5S-D-R                    | ) | RENEWAL                   |
| APPROVAL                           |   |                           |

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

**APPLICATION SUMMARY**

The DFWD has applied to the Department for a renewal of combination Waste Discharge License (WDL) #W007330-5S-C-R / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102229, which was issued on May 21, 2008 and is scheduled to expire on May 21, 2013. The 5/21/08 permit authorized a monthly average discharge of 0.15 million gallons per day (MGD) of filter cleaning (backwash) wastewaters from a quasi-municipal drinking water treatment plant to Piscataquis River, Class B, in Dover-Foxcroft, Maine.

**PERMIT SUMMARY**

This permitting action is carrying forward all the terms and conditions established in the previous permitting action, except that it is;

1. Eliminating the monitoring and reporting requirement for clarifier rinse wastewaters for total aluminum based on the results of facility testing; and
2. Reducing the monitoring frequency for settleable solids based on a statistical analysis in accordance with the methodology established in the U.S. Environmental Protection Agency's *"Interim Guidance for Performance Based Reductions of NPDES Permit Monitoring Frequencies"* (USEPA 1996).

It is noted that reporting estimated values ("J" flags) is no longer acceptable and these values will be rejected by the Department.

## CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated April 12, 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, *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
  - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S.A. § 414-A(1)(D).

**ACTION**

THEREFORE, the Department APPROVES the above noted application of DOVER-FOXCROFT WATER DISTRICT to discharge a monthly average of 0.15 MGD of filter cleaning (clarifier rinse and backwash wastewaters and unspecified quantities of settling tank wastewater, and filter rinse water from a quasi-municipal drinking water treatment plant to Piscataquis River, Class B, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

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

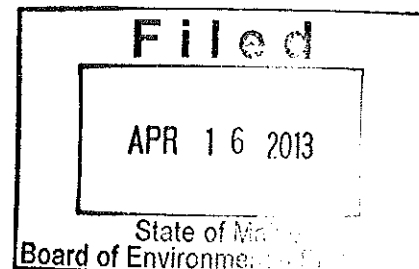
DONE AND DATED AT AUGUSTA, MAINE, THIS 12<sup>th</sup> DAY OF April, 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns  
for PATRICIA W. AHO, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: February 22, 2013  
Date of application acceptance: February 25, 2013



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

This Order prepared by Yvette M. Meunier, BUREAU OF LAND & WATER QUALITY

## SPECIAL CONDITIONS

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge drinking water filter cleaning (clarifier rinse and backwash wastewater) wastewater, settling tank wastewater<sup>(2)</sup>, and filter rinse water from Outfall #001A to the Piscataquis River. Such discharges shall be limited and monitored by the permittee as specified below<sup>(1)</sup>:

| Effluent Characteristic                     | Discharge Limitations |                          |                 | Minimum Monitoring Requirements |                                      |
|---------------------------------------------|-----------------------|--------------------------|-----------------|---------------------------------|--------------------------------------|
|                                             | Monthly Average       | Daily Maximum Report MGD | Monthly Average | Daily Maximum                   | Measurement Frequency Sample Type    |
| Flow <sup>(1)</sup><br>[50050]              | 0.15 MGD<br>[03]      | [03]                     | ---             | ---                             | Daily<br>[01/01]<br>Metered<br>[MT]  |
| TSS <sup>(1)</sup><br>[00530]               | 8.8 lbs/day<br>[26]   | 17.5 lbs/day<br>[26]     | 30 mg/L<br>[19] | 60 mg/L<br>[19]                 | 2/Month<br>[02/30]<br>Grab<br>[GR]   |
| Settleable Solids <sup>(1)</sup><br>[00545] | ---                   | ---                      | ---             | 0.3 ml/L<br>[25]                | 2/Month<br>[02/30]<br>Grab<br>[GR]   |
| Aluminum (Total) <sup>(1)</sup><br>[01150]  | ---                   | 6.3 lbs/day<br>[26]      | ---             | 5.0 mg/L<br>[19]                | 1/Quarter<br>[01/90]<br>Grab<br>[GR] |
| pH <sup>(1)</sup><br>[00400]                | ---                   | ---                      | ---             | 5.5 – 8.5 SU<br>[12]            | 1/Week<br>[01/07]<br>Grab<br>[GR]    |

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

**FOOTNOTES:** See Pages 5 through 6 of this permit for the applicable footnotes.

## SPECIAL CONDITIONS

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

#### FOOTNOTES:

1. **Sampling** – Sampling and analysis must be conducted in accordance with; a) methods approved by 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 Health and Human Services. Samples that are sent to a POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000). 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 this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report.

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

Due to the intermittent nature of the DFWD's wastewater discharge, monitoring for all parameters shall be conducted through a grab sample collected at step 10 of the multimedia filter backwash cycle. All effluent monitoring shall be conducted at the outlet weir of the facility settling tank and in such a manner as to capture conditions representative of wastewater generating processes at the facility. Any change in sampling location must be approved by the Department in writing.

Monitoring for the parameters specified in Special Condition A.1 of this permit is not required for settling tank supernatant or filter rinse water discharges via Outfall #001A.

2. **Settling Tank Discharges** – The permittee is authorized to discharge settling tank supernatant via Outfall #001A subject to the following conditions:
  - a. The permittee shall continuously visually monitor the discharge to Outfall #001A during any dewatering of the settling tank discharge at the open valve(s) within the settling tank to ensure that no settled materials are discharged;

## **SPECIAL CONDITIONS**

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

#### **FOOTNOTES:**

- b. The permittee shall maintain a written record of visual observations of the discharge at the valve(s) within the settling tank during any dewatering event, which must include the date of the event, the time the valves(s) are opened and closed, and visual observations of the discharge such as but not limited to; color, foam, oil sheen, odor and presence of solids;
- c. The permittee shall visually inspect the Piscataquis River at Outfall #001A following each settling tank dewatering event and maintain a written record of each inspection; and
- d. The permittee shall monitor sludge levels in the settling tank on a weekly basis and maintain a written record of each inspection.

### **B. NARRATIVE EFFLUENT LIMITATIONS**

1. The permittee shall not discharge effluent that contains a visible oil sheen, foam or floating solids at any time which would impair the usages designated for the classification of the receiving waters.
2. The permittee shall not discharge effluent that contains materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated for the classification of the receiving waters.
3. The permittee shall not discharge effluent that causes visible discoloration or turbidity in the receiving waters or that impairs the usages designated for the classification of the receiving waters.
4. Notwithstanding specific conditions of this permit, the permittee shall not discharge effluent that lowers the quality of any classified body of water below such classification, or lowers the existing quality of any body of water if the existing quality is higher than the classification.

### **C. AUTHORIZED DISCHARGES**

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on February 25, 2013; 2) the terms and conditions of this permit; and 3) only from Outfall #001A. Discharges of wastewater from any other point source are not authorized under this permit, and must be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit. This permit does not authorize the discharge of chlorinated or dechlorinated compounds.

## **SPECIAL CONDITIONS**

### **D. NOTIFICATION REQUIREMENT**

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

1. Any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system.
2. For the purposes of this section, adequate notice shall include information on:
  - a. The quality and quantity of wastewater introduced to the wastewater collection and treatment system; and
  - b. Any anticipated change in the quality and quantity of the wastewater to be discharged from the treatment system.

### **E. MONITORING AND REPORTING**

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

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

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



## **SPECIAL CONDITIONS**

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

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

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

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

### **G. REOPENING OF PERMIT FOR MODIFICATION**

Upon evaluation of the tests results in the Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at any time and with notice to the permittee, modify this permit to:

- (1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded;
- (2) require additional monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

### **H. SEVERABILITY**

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

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

**FACT SHEET**

DATE: APRIL 12, 2013

MEPDES PERMIT: #ME0102229  
WASTE DISCHARGE LICENSE: #W007330-5S-D-R

NAME AND ADDRESS OF APPLICANT:

**DOVER-FOXCROFT WATER DISTRICT  
48 MORTON AVENUE, SUITE B  
DOVER-FOXCROFT, MAINE 04426**

COUNTY: PISCATAQUIS

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**DOVER-FOXCROFT WATER DISTRICT  
70 FLETCHER ROAD  
DOVER-FOXCROFT, MAINE 04426**

RECEIVING WATER / CLASSIFICATION: PISCATAQUIS RIVER / CLASS B

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: MR. MATT DEMERS  
(207) 564-2310  
[superintendent.dfwater@gmail.com](mailto:superintendent.dfwater@gmail.com)

**1. APPLICATION SUMMARY**

Application: The Dover-Foxcroft Water District (DFWD) has submitted a timely and complete application to the Maine Department of Environmental Protection (Department) for the renewal of combination Waste Discharge License (WDL) #W007330-5S-C-R / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102229, which was issued on May 21, 2008 and is due to expire on May 21, 2013. The 5/21/08 permit authorized a monthly average discharge of 0.15 million gallons per day (MGD) of filter cleaning (backwash) wastewaters from a municipal drinking water treatment plant to Piscataquis River, Class B, in Dover-Foxcroft, Maine.

**2. PERMIT SUMMARY**

- a. Terms and Conditions: This permitting action is carrying forward all the terms and conditions of the previous permitting actions, except that it is;

## 2. PERMIT SUMMARY (cont'd)

1. Eliminating the monitoring and reporting requirement for clarifier rinse wastewaters for total aluminum based on the results of facility testing; and
  2. Reducing the monitoring frequency for settleable solids based on a statistical analysis in accordance with the methodology established in the U.S. Environmental Protection Agency's *"Interim Guidance for Performance Based Reductions of NPDES Permit Monitoring Frequencies"* (USEPA 1996).
- b. History: This section provides a summary of significant licensing/permitting actions and milestones that have been completed for the DFWD.

January 12, 2001 – The Department received authorization from the USEPA to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine, excluding areas of special interest to Maine Indian Tribes. From that point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System program and MEPDES permit #ME0102229 has been utilized as the primary reference number for this facility. On March 26, 2011, the USEPA authorized the Department to administer the MEPDES program in Indian territories of the Penobscot Nation and Passamaquoddy Tribe.

April 18, 2003 – The Department issued combination WDL #W007330-5S-B-R / MEPDES permit #ME0102229 to the DFWD for a five-year term. The 4/18/03 WDL/MEPDES permit superseded #W007330-45-A-N issued on July 23, 1997 and a subsequent administrative modification (to revise the pH range limitation to 5.5 – 8.5 SU) on March 2, 2001.

May 21, 2008 – The Department issued WDL # W007330-5S-C-R / MEPDES #ME0102229 for a five-year term. The May 21, 2008 permit superseded previous WDLs issued on April 18, 2003.

February 22, 2013 – The DFWD submitted a timely and complete General Application to the Department for renewal of the 5/21/08 MEPDES permit. The application was accepted for processing on February 25, 2013, and was assigned WDL #W000953-5S-D-R / MEPDES permit #ME0022519.

- c. Source Description: The Dover-Foxcroft Water District (DFWD) operates a drinking water treatment plant on the north shore of the Piscataquis River in Dover-Foxcroft. A map showing the location of the facility and receiving water is included as Attachment A of this fact sheet. The plant was built in 1988 and serves approximately 2,400 customers. The DFWD extracts an average of approximately 0.3 MGD of water (0.8 MGD maximum) from Salmon Stream Pond located in the Town of Guilford. The 12-inch water main intake pipe is located in approximately 8 feet of water during mean low water. Raw water flows to the main treatment plant via gravity flow.

## 2. PERMIT SUMMARY (cont'd)

At the treatment plant, water is passed through fine screens to remove any remaining solid material. Caustic soda (sodium hydroxide) is then added to adjust the pH to approximately 5.6-5.8 standard units (SU) to improve coagulant performance. An alum (aluminum sulfate) based coagulant is added to flocculate suspended solids and for color removal, followed by filtration to trap flocculated particles. The four independent filtration/treatment "trains" each consist of a down-flow clarifier/flocculator and a down-flow multimedia filter.

After filtration, the water is treated with sodium hypochlorite, fluoride, ortho-phosphate, and lime for consumer and distribution system benefit. The finish water is then stored for use in one of two standpipes, an 800,000-gallon capacity standpipe located on Pine Street and a 214,000-gallon capacity standpipe located at the water treatment plant.

The filter units must be periodically cleaned through flushing/backwashing to remove accumulated particulate and maintain treatment efficiency.

- d. Wastewater Treatment: The DFWD treatment process is detailed in Attachment B of this fact sheet. Flushing of the down-flow clarifiers is automatically initiated after approximately every 50,000 gallons of water production at the plant, or approximately four (4) clarifier flushes per day. Only one bed at a time is taken off-line for cleaning. Clarifier flushes and multimedia backwash cycles utilize filtered water from the three filter beds not being cleaned. Thus, wastewater generated from flushes and backwashes does not contain chlorine. Each clarifier flush cycle generates approximately 3,360 gallons of wastewater per backwash per clarifier for a total of approximately 53,760 gallons of wastewater per day, which is conveyed to an underground 86,000-gallon settling tank prior to discharge.

Multimedia backwash cycles are initiated based on filter bed turbidity meter readings and each of the four filter beds is backwashed once per day on average. Each backwash cycle generates approximately 3,360 gallons of wastewater per backwash per clarifier for a total of approximately 13,440 gallons of wastewater per day, which is conveyed to an underground 86,000-gallon settling tank prior to discharge.

A filter rinse (also commonly referred to as filter-to-waste) cycle is initiated on each of the filter beds after the backwash and prior to placing them back into potable water production. Each filter rinse cycle generates approximately 284 gallons of wastewater per cycle per filter bed, or a total of 1,136 gallons per day based on backwashing the filters once per day (8-10 minute cycle). The filter rinse wastewater is discharged directly to the Piscataquis River via Outfall #001A rather than to the settling tank. The previous permitting action established a quarterly monitoring and reporting requirement for one-year, for total aluminum for this waste stream (an internal waste stream identifier of #100 has been assigned) in order to ensure that this discharge does not exceed the aluminum concentration limitation of 5.0 mg/L established for the main outfall (Outfall #001A). A summary of clarifier rinse wastewater effluent total aluminum data reported on the monthly DMRs for the period of June 2008 through March 2009 indicates the effluent total aluminum concentration has ranged from 0.06 mg/L to 0.77 mg/L with an arithmetic mean of 0.28 mg/L.

## 2. PERMIT SUMMARY (cont'd)

Wastewater from the 86,000-gallon settling tank is conveyed for discharge to the Piscataquis River via Outfall #001A. Outfall #001A consists of a 10-inch diameter outfall pipe that is submerged in 2 feet of water during mean low water conditions and extends 10 feet from the north shore of the Piscataquis River.

Approximately once per month, the contents of the settling tank must be pumped to one of two 81,000-gallon capacity sludge lagoons for dewatering and drying. Occasionally, the DFWD drains the wastewater from the upper portions of the settling tank through Outfall #001A prior to pumping to the sludge lagoons. During wastewater withdrawals, DFWD staff continuously monitor the dewatering process to ensure that settled materials are not discharged through Outfall #001A.

Separated water from the sludge drying process infiltrates into the ground beneath the sand and fabric-lined lagoons. The two sludge lagoons enable the DFWD to alternate lagoon use annually, allowing for volume reduction of settled materials through freeze/thaw cycles and lagoon maintenance, while providing continual lagoon treatment.

This permitting action is reinforcing the terms and conditions of a February 6, 2003 Administrative Consent Agreement and Enforcement Order in Special Condition A, Footnote #2 of the permit for visual inspection and record keeping of settling tank dewatering activities.

## 3. CONDITIONS OF PERMIT

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

## 4. RECEIVING WATER QUALITY STANDARDS

*Classification of major river basins*, 38 M.R.S.A. § 467(7)(E)(1)(b) classifies Piscataquis River at the point of discharge as a Class B waterway. *Standards for classification of fresh surface waters*, 38 M.R.S.A. § 465(3) describes the standards for Class B waters.

## 5. RECEIVING WATER QUALITY CONDITIONS

*The State of Maine 2010 Integrated Water Quality Monitoring and Assessment Report* (Report), prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists 23.29-mile reach of the Piscataquis River, main stem, above its confluence with the Sebec River (ADB Assessment Unit ID ME0102000406\_219R), which includes the receiving water at the point of discharge, as, “*Category 2: Rivers and Streams Attaining Some Designated Uses – Insufficient Information for Other Uses.*” The 2010 Integrated Report indicates that a 13.44-mile reach of the Piscataquis River below Dover-Foxcroft has demonstrated non-attainment of the applicable dissolved oxygen criteria for Class B waters. Previous Integrated Reports listed low dissolved oxygen levels were attributed to municipal point sources, agricultural non-point sources and combined sewer overflows.

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

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Flow: The previous permitting action established, and this permitting action is carrying forward a monthly average discharge flow limitation of 0.15 MGD, which is considered representative of the design flow for the facility, and a daily maximum discharge flow reporting requirement.

A summary of the discharge flow data as reported on the monthly Discharge Monitoring Reports (DMRs) for the period of October 2009 through October 2012 is as follows:

| Discharge Flow  | Minimum  | Maximum  | Arithmetic Mean | # DMRs |
|-----------------|----------|----------|-----------------|--------|
| Monthly Average | 0.05 MGD | 0.15 MGD | 0.1 MGD         | 37     |
| Daily Maximum   | 0.06 MGD | 0.26 MGD | 0.1 MGD         | 37     |

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

- b. Dilution Factors: Dilution factors associated with the permitted discharge flow of 0.15 MGD were derived in accordance with 06-096 CMR 530(4)(A) and were calculated as follows:

$$\text{Mod. Acute: } \frac{1}{4} 1Q10 = 3.13 \text{ cfs} \quad \Rightarrow \frac{(3.13 \text{ cfs})(0.6464) + 0.15 \text{ MGD}}{0.15 \text{ MGD}} = 14.5:1$$

$$\text{Acute: } 1Q10 = 12.5 \text{ cfs} \quad \Rightarrow \frac{(12.5 \text{ cfs})(0.6464) + 0.15 \text{ MGD}}{0.15 \text{ MGD}} = 54.9:1$$

$$\text{Chronic: } 7Q10 = 18.7 \text{ cfs} \quad \Rightarrow \frac{(18.7 \text{ cfs})(0.6464) + 0.15 \text{ MGD}}{0.15 \text{ MGD}} = 81.6:1$$

$$\text{Harmonic Mean} = 56.1 \text{ cfs} \quad \Rightarrow \frac{(56.1 \text{ cfs})(0.6464) + 0.15 \text{ MGD}}{0.15 \text{ MGD}} = 242.8:1$$

06-096 CMR 530(4)(B)(1) states,

*Analyses using numerical acute criteria for aquatic life must be based on 1/4 of the 1Q10 stream design flow to prevent substantial acute toxicity within any mixing zone and to ensure a zone of passage of at least 3/4 of the cross-sectional area of any stream as required by Chapter 581. Where it can be demonstrated that a discharge achieves rapid and complete mixing with the receiving water by way of an efficient diffuser or other effective method, analyses may use a greater proportion of the stream design flow, up to and including all of it, as long as the required zone of passage is maintained.*

The DFWD has not provided information as to the actual mixing characteristics of the effluent with the receiving water. Therefore, the Department is utilizing the default stream flow of 1/4 of the 1Q10 in acute evaluations.

- c. Total Suspended Solids (TSS): The previous permitting action established monthly average and daily maximum concentration limits of 30 mg/L and 60 mg/L, respectively, based on Department best professional judgment (BPJ) of best practicable treatment (BPT) for discharges from drinking water treatment facilities in Maine. The previous permitting action established, and this permitting action is carrying forward, monthly average and daily maximum mass limits of 8.8 lbs/day and 17.5 lbs/day, respectively, for TSS. The mass limits were derived using the concentration limits specified above, the previous discharge flow limit of 0.035 MGD associated with the 7/23/92 WDL, and a conversion factor of 8.34 lbs/gallon of water as follows:

$$\text{Monthly Average Mass: } (30 \text{ mg/L})(8.34 \text{ lbs/gallon})(0.035 \text{ MGD}) = 8.8 \text{ lbs/day}$$

$$\text{Daily Maximum Mass: } (60 \text{ mg/L})(8.34 \text{ lbs/gallon})(0.035 \text{ MGD}) = 17.5 \text{ lbs/day}$$

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

The fact sheet associated with the 4/18/03 permit stated that the basis for using the previous flow limit was to ensure that revisions to the discharge flow limit in the 4/18/03 permit (increasing the monthly average from 0.035 MGD to 0.15 MGD) would not result in additional TSS loading to the impaired segment of the Piscataquis River.

With a monthly average flow limit of 0.15 MGD, concentration limits specified above, and a conversion factor of 8.34 lbs/gallon of water, technology-based monthly average and daily maximum mass thresholds for TSS may be derived as follows:

Monthly Average Mass:  $(30 \text{ mg/L})(8.34 \text{ lbs/gallon})(0.15 \text{ MGD}) = 37.5 \text{ lbs/day}$

Daily Maximum Mass:  $(60 \text{ mg/L})(8.34 \text{ lbs/gallon})(0.15 \text{ MGD}) = 75.1 \text{ lbs/day}$

The Department's Division of Environmental Assessment (DEA) is scheduled to monitor the Piscataquis River in 2013 to evaluate the non-attainment status of the river. Until such time that a river report is available, the DEA recommends not increasing loading limits for TSS for this facility.

A summary of TSS data as reported on the monthly DMRs for the period of October 2009 through October 2012 is as follows:

| TSS             | Minimum     | Maximum      | Arithmetic Mean | # DMRs | Permit Limits |
|-----------------|-------------|--------------|-----------------|--------|---------------|
| Monthly Average | 2.0 lbs/day | 9.0 lbs/day  | 4.5 lbs/day     | 37     | 8.8 lbs/day   |
|                 | 3.2 mg/L    | 9.7 mg/L     | 6.2 mg/L        | 37     | 30 mg/L       |
| Daily Maximum   | 2.5 lbs/day | 12.2 lbs/day | 5.5 lbs/day     | 37     | 17.5 lbs/day  |
|                 | 3.7 mg/L    | 12.2 mg/L    | 7.3 mg/L        | 37     | 60 mg/L       |

The monthly average maximum effluent mass values were higher than the proposed and previous limit of 8.8 lbs/day, on one occasion during the specified monitoring period (August 2012) indicating compliance with these limitations is achievable through proper operation and maintenance of the treatment facility.

On April 19, 1996, the USEPA issued a guidance document entitled, "*Interim Guidance for Performance Based Reductions of NPDES Permit Monitoring Frequencies*" (USEPA 1996) as the basis for determining reduced monitoring frequencies. The guidance document was issued to reduce unnecessary reporting while at the same time maintaining a high level of environmental protection for facilities that have a good compliance record and pollutant discharges at levels below permit requirements. Monitoring requirements are not considered effluent limitations under section 402(o) of the Clean Water Act and therefore, anti-backsliding prohibitions would not be triggered by reductions in monitoring frequencies



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

The USEPA guidance states “...the basic premise underlying a performance-based reduction approach is that maintaining a low average discharge relative to the permit limits results in a low probability of the occurrence of a violation for a wide range of sampling frequencies.” The monitoring frequency reductions in USEPA’s guidance were designed to maintain approximately the same level of reported violations as that experienced with the existing baseline sampling frequency in the permit. To establish baseline performance the long term average (LTA) discharge rate for each parameter is calculated using the most recent two-year data set of monthly average effluent data representative of current operating conditions. The LTA/permit limit ratio is calculated and then compared to the matrix in Table I of USEPA’s guidance to determine the potential monitoring frequency reduction. It is noted Table I of USEPA’s guidance was derived from a probability table that used an 80% effluent variability or coefficient of variation (cv). The permitting authority can take into consideration further reductions in the monitoring frequencies if the actual cv for the facility is significantly lower than the default 80% utilized by the USEPA in Table I.

In addition to the parameter-by-parameter performance history via the statistical evaluation cited above, the USEPA recommends the permitting authority take into consideration the facility enforcement history and the parameter-by-parameter compliance history and factors specific to the State or facility. If the facility has already been given monitoring reductions due to superior performance, the baseline may be a previous permit.

Although USEPA’s 1996 guidance recommends evaluation of the most current two-years of effluent data for a parameter, the Department is considering 36 months of data (October 2009 through October 2012).

A review of the monitoring data for TSS indicates the ratios (expressed in percent) of the long term effluent average to the monthly average limits can be calculated as follows:

Long term average = 4.5 lbs/day  
Monthly maximum limit = 8.8 lbs/day  
Current monitoring frequency = 2/Week

Ratio =  $\frac{4.5 \text{ lbs/day}}{8.8 \text{ lbs/day}} = 51\%$

According to Table I of the USEPA guidance, a 2/Month monitoring requirement cannot be further reduced. Therefore, the monitoring frequency requirement for TSS remains at twice per month based on best professional judgment.

- d. Settleable Solids: The previous permitting action established a daily maximum concentration limit of 0.3 ml/L for settleable solids, which is considered a BPT for discharges from drinking water treatment facilities in Maine.

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

A summary of settleable solids data as reported on the monthly DMRs for the period of October 2009 through October 2012 (#DMRs = 37) indicates the daily maximum settleable solids concentration discharge has been 0.1 ml/L or less 100% of the time and in 100% compliance with the 0.3 ml/L limit during the specified monitoring period.

A review of the monitoring data for settleable solids indicates the ratios (expressed in percent) of the long term effluent average to the monthly average limits can be calculated as follows:

Long term average = 0.1 ml/L  
Daily maximum limit = 0.3 ml/L  
Current monitoring frequency = 1/Week

$$\text{Ratio} = \frac{0.1 \text{ ml/L}}{0.3 \text{ ml/L}} = 33\%$$

According to Table I of the USEPA guidance, a 1/Week monitoring requirement can be reduced to 2/Month. Therefore, the monitoring frequency for settleable solids has been reduced to 2/Month in this permitting action.

- e. pH: The previous permitting action established a pH range limit of 5.5 – 8.5 standard units (SU). Typically, the Department establishes a pH range of 6.0 – 9.0 SU for discharges from publicly owned treatment works, which is considered by the Department as BPT. On March 2, 2001, the Department administratively modified the 7/23/87 WDL to expand the pH range limitation to 5.5 SU “in response to the properties of a coagulant being used in the DFW’s treatment process.” The 3/2/01 administrative modification stated that *“the Department has determined that the change in the license limit [from 6.0 – 8.5 SU to 5.5 – 8.5 SU] will not cause or contribute to the failure of the waterbody to attain its assigned classification and that the existing and designated uses in the receiving water will be maintained and protected.”*

A summary of effluent pH data as reported on the monthly DMRs for the period of October 2009 through October 2012 (#DMRs = 37) indicates the pH value has ranged from 5.5 SU to 11.0 SU with twelve (12) values reported below 6.0 SU. The facility has been in compliance with the 5.5 – 8.5 SU pH range limitation 95% of the time during the specified monitoring period, except on July 31, 2010 the maximum pH was measured at 11.0 SU and on April 30, 2012 the maximum pH was measured at 10.4 SU. In consideration of the site-specific conditions and prior determination that the pH range of 5.5 -8.5 SU will not violate the requirements of the State’s antidegradation policy, this permitting action is carrying forward the pH range limitation.

This permitting action is carrying forward a minimum monitoring frequency requirement of once per week for pH based on Department BPJ.

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

- f. Aluminum (Total): The previous permitting action established technology-based daily maximum concentration and mass limits of 5.0 mg/L and 6.3 lbs/day, respectively, and a minimum monitoring frequency requirement of once per calendar quarter for total aluminum. The basis for establishing aluminum limits is the presence of this metal in the final effluent resulting from the use of an aluminum sulfate coagulant for flocculation of suspended solids in the raw water. The USEPA's General Permit for drinking water treatment facilities in Maine, which was issued to several Maine facilities on or after January 9, 1995, contained a daily maximum concentration limit for aluminum of 5.0 mg/L. This limit was considered a BPT standard for drinking water treatment facility discharges in Maine and has been established in several MEPDES permits, including DFW's, since the State received authorization to administer the NPDES permit program.

Department licensing/permitting actions impose the more stringent of either a water quality-based or BPT-based limit. 06-096 CMR 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 no information on the background levels of metals in the water column in the Piscataquis River. Therefore, a default background concentration of 10% of applicable water quality criteria is being used in the calculations of this permitting action. 06-096 CMR 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.*" Therefore, the Department is reserving 15% of applicable water quality criteria used in the calculations of this permitting action.

Thus, end-of-pipe (EOP) aluminum concentration limits may be calculated using the following formula:

$$\text{EOP Concentration Limit} = (\text{Dilution Factor})[(0.75)(\text{criterion})] + (0.25)(\text{criterion})$$

With modified acute ( $\frac{1}{4}$  1Q10) and chronic dilution factors associated with the discharge and ambient water quality criteria for aluminum, water quality-based concentration thresholds for aluminum may be calculated as follows:

$$\begin{aligned} \text{Acute Daily Maximum Concentration Threshold} = \\ (14.5)[(0.75)(0.75 \text{ mg/L})] + (0.25)(0.75 \text{ mg/L}) = 8.3 \text{ mg/L} \end{aligned}$$

$$\begin{aligned} \text{Chronic Monthly Average Concentration Threshold} = \\ (81.6)[(0.75)(0.087 \text{ mg/L})] + (0.25)(0.087 \text{ mg/L}) = 5.3 \text{ mg/L} \end{aligned}$$

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

The daily maximum BPT-based limit of 5.0 mg/L is more stringent than either calculated water quality-based threshold above and is therefore being carried forward in this permitting action.

A summary of effluent total aluminum data as reported on the monthly DMRs for the period of October 2009 through October 2012 indicates the effluent total aluminum concentration has ranged from 0.32 mg/L to 1.18 mg/L with an arithmetic mean of 0.79 mg/L. The total aluminum loading has ranged from 0.22 lbs/day to 0.84 lbs/day with an arithmetic mean of 0.55 lbs/day (#DMRs = 12).

This permitting action is carrying forward the minimum monitoring frequency requirement of once per calendar quarter based on Department BPJ in consideration of the test results on file.

The previous permitting action established a one-year monitoring and reporting requirement for clarifier rinse wastewaters to characterize this waste stream (internal waste stream #100 in this permitting action). A summary of clarifier rinse wastewater effluent total aluminum data reported on the monthly DMRs for the period of June 2008 through March 2009 indicates the effluent total aluminum concentration has ranged from 0.06 mg/L to 0.77 mg/L with an arithmetic mean of 0.28 mg/L.

Based on a review of the clarifier rinse wastewater effluent total aluminum data for this facility, the Department believes there is no reasonable potential for this wastewater to exceed the 5.0 mg/L limit for total aluminum and is eliminating the monitoring and reporting requirement for total aluminum from clarifier rinse wastewater effluent from internal waste stream #100 from the permit.

## 7. PUBLIC COMMENTS

Public notice of this application was made in the *Eastern Gazette* newspaper on or about February 22, 2013. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

## 8. DEPARTMENT CONTACTS

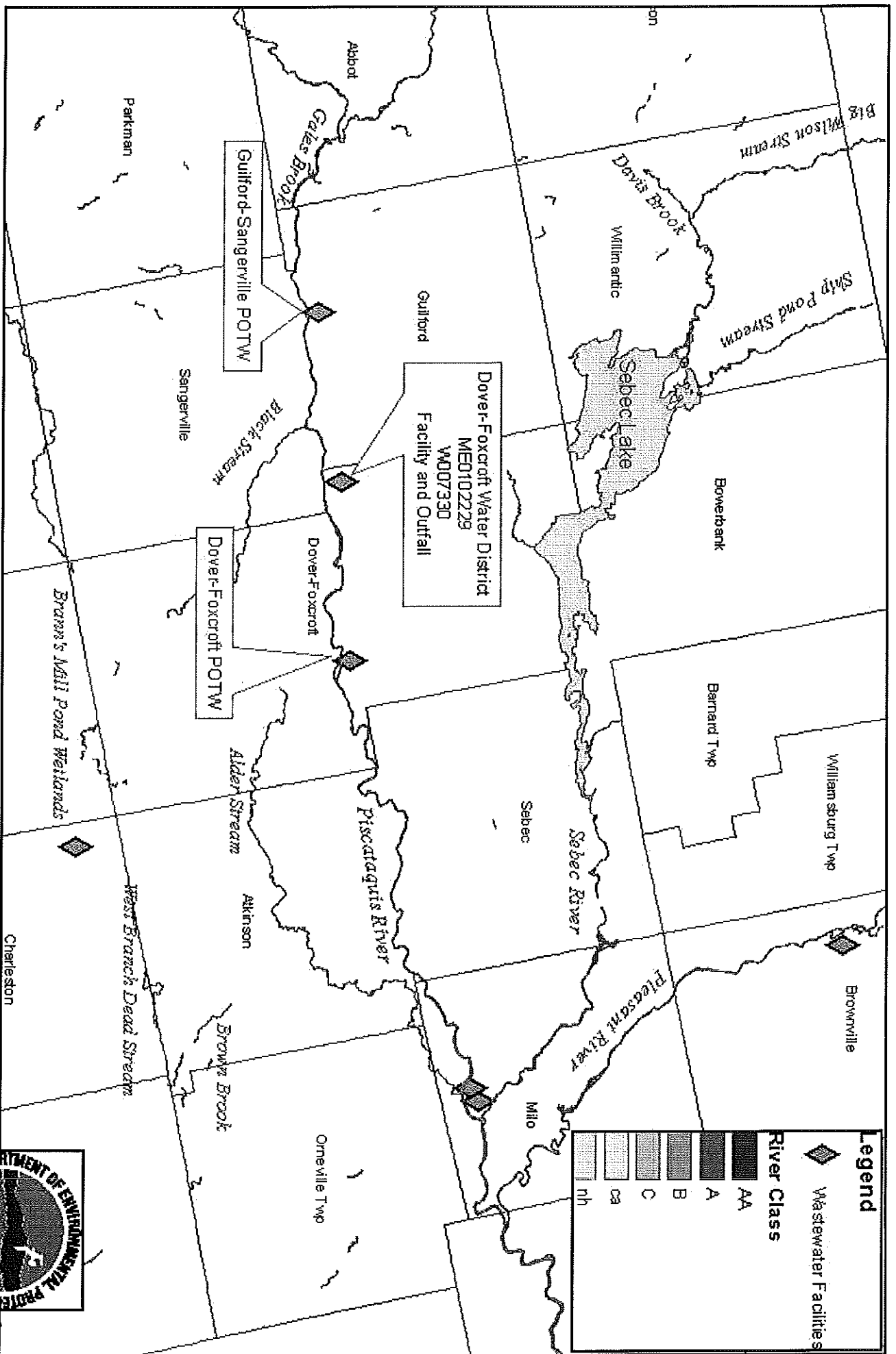
Additional information concerning this permitting action may be obtained from, and written comments sent to:

Yvette M. Meunier  
Division of Water Quality Management  
Bureau of Land & Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 215-1579 Fax: (207) 287-3435  
e-mail: [yvette.meunier@maine.gov](mailto:yvette.meunier@maine.gov)

## **9. RESPONSE TO COMMENTS**

During the period of March 11, 2013 through April 11, 2013, the Department solicited comments on the proposed draft Maine Pollutant Discharge Elimination System Permit to be issued to the Dover-Foxcroft Water District for the proposed discharge. The Department did not receive significant comments on the draft permit; therefore, a response to comments was not prepared.

# **ATTACHMENT A**



**Legend**

Wastewater Facilities

**River Class**

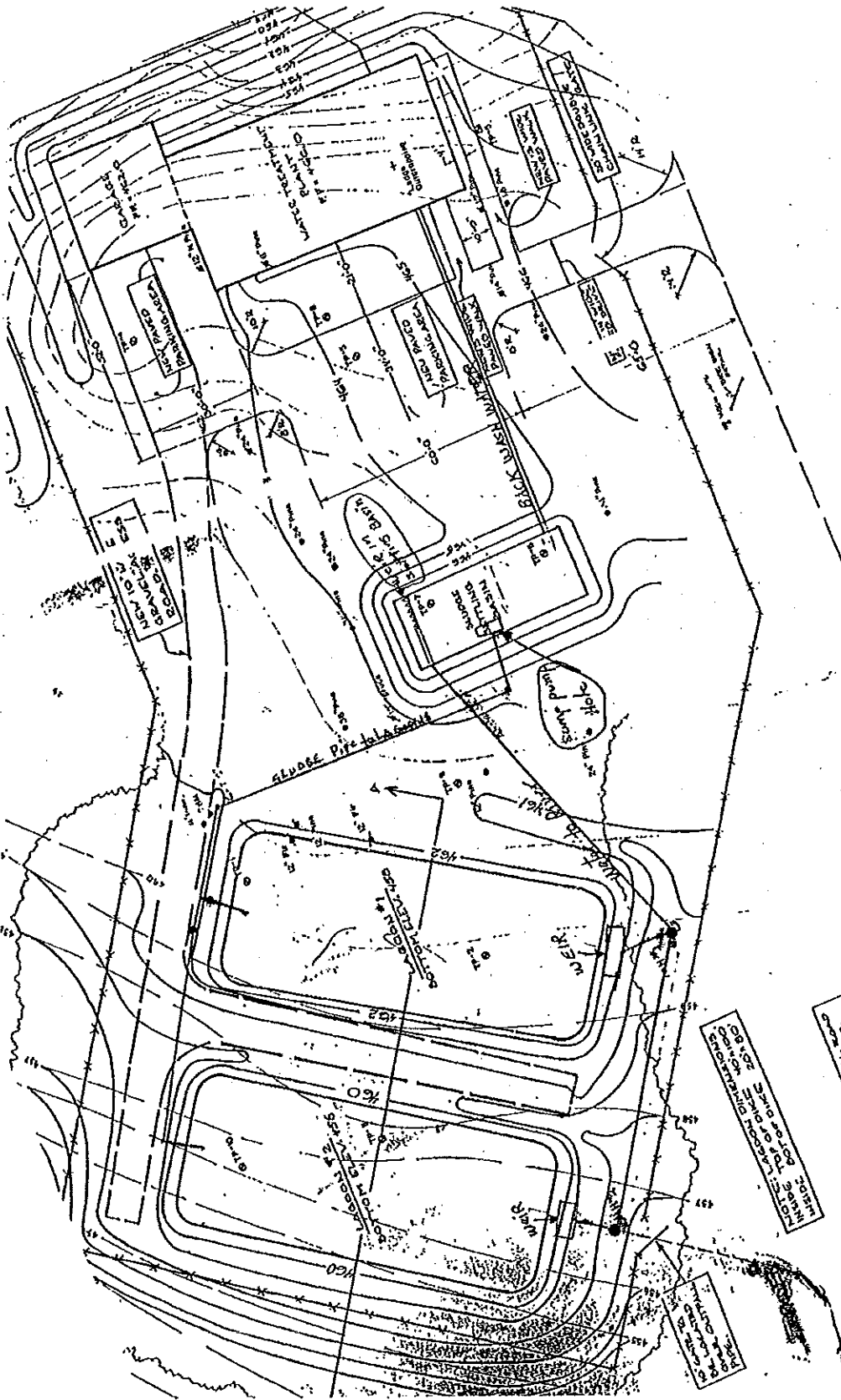
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# Dover-Foxcroft Water District, Piscataquis County, Maine

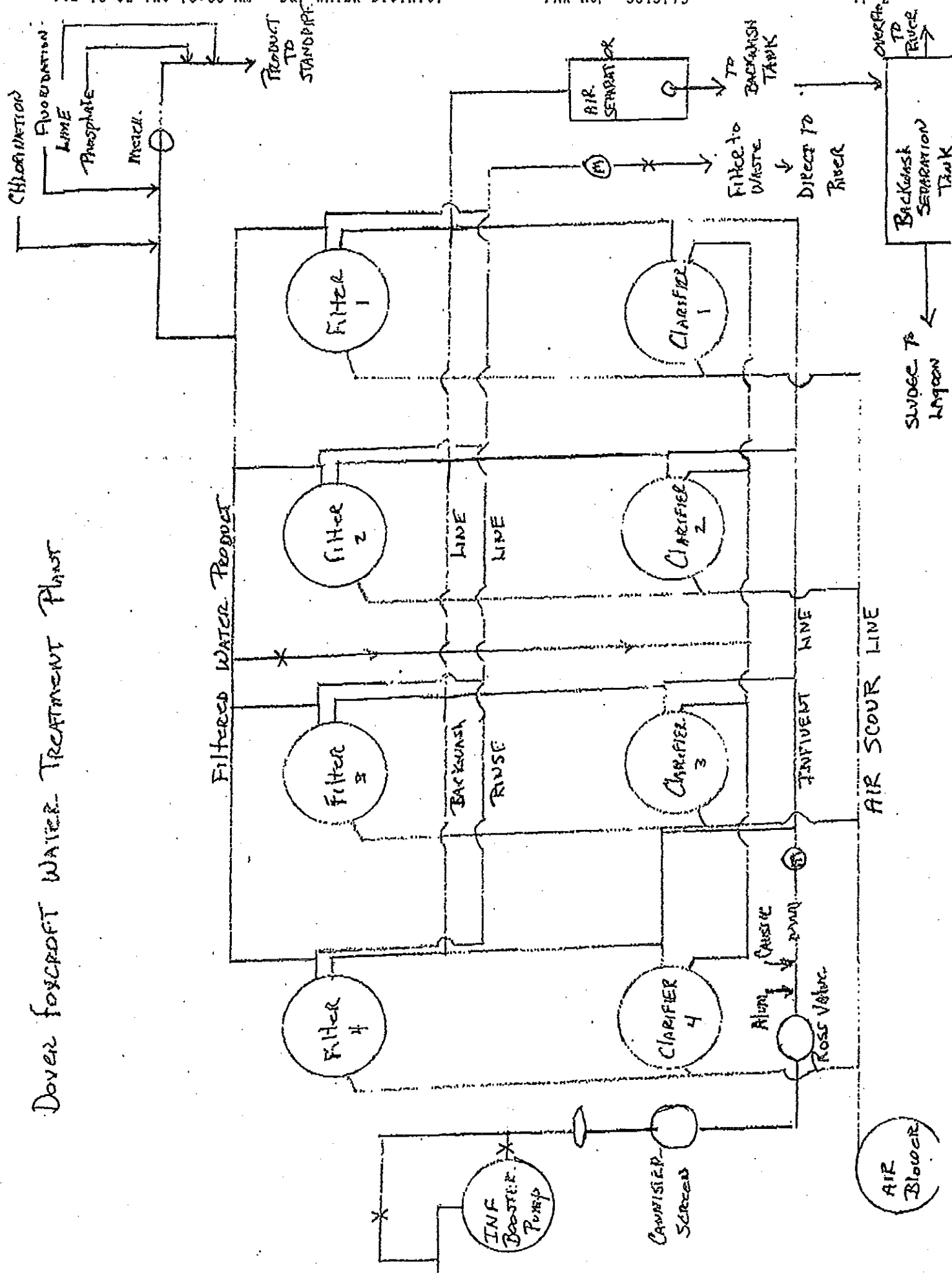


## **ATTACHMENT B**





# Dover Foxcroft Water Treatment Plant



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

6. Upsets.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**C. MONITORING AND RECORDS**

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

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

**3. Monitoring and records.**

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



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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**D. REPORTING REQUIREMENTS**

**1. Reporting requirements.**

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

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

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

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

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

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

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

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

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

- (a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - (i) One hundred micrograms per liter (100 ug/l);
  - (ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
  - (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
  - (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

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

**5. Publicly owned treatment works.**

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

**E. OTHER REQUIREMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

### SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

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

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

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### **LEGAL REFERENCES**

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

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

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

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

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

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

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

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

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

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

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

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.



## **II. JUDICIAL APPEALS**

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

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

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

### **ADDITIONAL INFORMATION**

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

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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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