



STATE OF MAINE  
Department of Environmental Protection

Paul R. Lepage  
GOVERNOR

Patricia W. Aho  
COMMISSIONER

October 16, 2014

Mr. Ed Snook  
Plant Manager  
B&G Foods North America – Burnham & Morrill Division  
One Bean Pot Circle  
Portland, ME. 04103  
[esnook@bgfoods.com](mailto:esnook@bgfoods.com)

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0001741  
Maine Waste Discharge License (WDL) Application #W000980-5R-G-R  
**Final Permit**

Dear Mr. Snook:

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 287-7693.

Sincerely,

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

Enc.

cc: Fred Gallant, DEP/SMRO  
Sandy Mojica, USEPA  
Marelyn Vega, USEPA

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

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

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

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



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

**DEPARTMENT ORDER  
IN THE MATTER OF**

B&G FOODS NORTH AMERICA INC.	)	MAINE POLLUTANT DISCHARGE
BURNHAM & MORRILL DIVISION	)	ELIMINATION SYSTEM PERMIT
PORTLAND, CUMBERLAND COUNTY, ME	)	
NON-COOLING WATER	)	
ME0001741	)	AND
W000980-5R-G-R	)	WASTE DISCHARGE LICENSE
APPROVAL	)	RENEWAL

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, *et seq.* and Maine Law 38 M.R.S.A., Section 414-A *et seq.*, and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of the B&G FOODS NORTH AMERICA, INC. (B&G Foods/permittee hereinafter) with its supportive data, agency review comments, and other related materials on file, and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

B&G Foods has submitted a timely and complete application to the Department for the renewal of Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0001741/Maine Waste Discharge license (WDL) # W000980-5R-F-R/ ("permit" hereinafter), last issued by the Department on August 3, 2009, for a five-year term. The permit approved the discharge of up to a monthly average flow of 460,000 gallons per day (0.46 MGD) of non-contact cooling water from a food processing facility (producing canned baked beans and bread) and stormwater runoff from three outfalls to the tidewaters of Portland, Class SC, in Portland, Maine.

**PERMIT SUMMARY**

This permitting action is carrying forward the terms and conditions of the previous permitting action with the following exception(s):

This permit acknowledges the discharge of stormwater runoff from three separate outfalls but the requirement to maintain a Storm Water Pollution Prevention Plan (SWPPP) is being removed from the permit. The Department is making a finding that storm water runoff from the site does not come into contact with any of the industrial activities at the food processing facility.

## CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated September 16, 2014, and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 MRSA Section 464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
  - (c) Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

**ACTION**

THEREFORE, the Department APPROVES the above noted application of B&G FOODS NORTH AMERICA, INC., to discharge up to a monthly average flow of 0.46 MGD of non-contact cooling water and an unspecified quantity of stormwater runoff to the tidewaters of Portland, Class SC, in Portland, Maine. The discharges shall be subject to the attached conditions and all applicable standards and regulations:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits," revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit becomes effective upon the date of signature below and expires at midnight five (5) years after that date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of 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 17<sup>th</sup> DAY OF October, 2014.

COMMISSIONER OF ENVIRONMENTAL PROTECTION

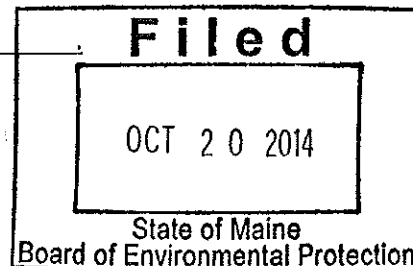
BY:

Michael Kuhns  
for Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application June 24, 2014

Date of application acceptance June 27, 2014



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

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

## SPECIAL CONDITIONS

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

1. Beginning the effective date of this permit, the permittee is authorized to discharge **non-contact cooling waters** from Outfall #002. The discharge shall contain only non-contact cooling waters to which nothing has been added but heat. Such discharges shall be limited and monitored by the permittee as specified below<sup>(1)</sup>:

## OUTFALL #002

Effluent Characteristic	Discharge Limitations			Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Measurement Frequency	Sample Type
Flow <sub>ISO0501</sub>	0.46 MGD <sub>031</sub>	0.50 MGD <sub>031</sub>	---	1/Month <sub>011301</sub>	Calculate <sub>031</sub>
Temperature – Effluent <sub>000117</sub>	--	---	85 °F <sub>1151</sub>	1/Day <sub>011011</sub>	Grab <sub>031</sub>
pH <sub>004001</sub>	---	---	---	1/Year <sub>011111</sub>	Measure <sub>031</sub>
Total Residual Chlorine <sup>(2)</sup> <sub>ISO0601</sub>	---	---	1.0 mg/L <sub>1191</sub>	1/Year <sub>011111</sub>	Grab <sub>031</sub>

\*\*\*\*\*

## STORMWATER RUNOFF

## OUTFALL #001, #003 &amp; #004

2. Beginning the effective date of this permit, the permittee is authorized to discharge **storm water runoff** from Outfalls #001, #003 and #004. This permit does not establish limits or monitoring requirements of the storm water runoff as the Department has made a finding that storm water runoff from the site does not come into contact with any of the industrial activities at the food processing facility. See the Department guidance in **Attachment B** of the Fact Sheet attached to this permit to maintain a “No Exposure” status.

**SPECIAL CONDITIONS**

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

**Footnotes:**

**Sampling Locations:** Samples taken for compliance with this permit shall be collected after the city water and retort waters combine.

Any change in sampling location(s) must be reviewed and approved by the Department in writing.

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

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

2. **Total residual chlorine (TRC)** – Limitations for TRC are applicable whenever elemental chlorine or chlorine based compounds are discharged. The permittee shall utilize approved test methods that are capable of bracketing the limitations in this permit.

## **SPECIAL CONDITIONS**

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

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

### **C. 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 June 27, 2014, and 2) only from Outfall #002 (non-contact cooling water) and Outfalls #001, #003 and #004 (stormwater). Discharges of waste water from any other point source(s) are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5) (Bypass) of this permit.

### **D. NOTIFICATION REQUIREMENT**

In accordance with Standard Condition D, the permittee shall notify the Department of any substantial change in the quality or quantity and any anticipated impact caused by the change in the quantity or quality of non-contact cooling water or stormwater being discharged from the facility.

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

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

**SPECIAL CONDITIONS**

**F. 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 shall be postmarked by the thirteenth (13<sup>th</sup>) day of the month or hand-delivered to a Department Regional Office such that the DMR's are received by the Department by 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, unless otherwise specified, to the Department's facility inspector at:

Department of Environmental Protection  
Southern Maine Regional Office  
Bureau of Land and Water Quality  
Division of Water Quality Management  
312 Canco Road  
Portland, Maine 04103

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

**G. 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  
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

CONTENTS

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

### A. GENERAL PROVISIONS

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

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

(a) They are not

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

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

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

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

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

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

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

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

### B. OPERATION AND MAINTENANCE OF FACILITIES

#### 1. General facility requirements.

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

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

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

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

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

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

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

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

##### **(a) Definitions.**

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

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

##### **(c) Notice.**

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

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

---

- (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

---

**C. MONITORING AND RECORDS**

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

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

**3. Monitoring and records.**

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

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

---

**D. REPORTING REQUIREMENTS**

**1. Reporting requirements.**

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

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

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

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

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

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

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

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

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

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

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



## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

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

#### 5. Publicly owned treatment works.

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

#### E. OTHER REQUIREMENTS

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

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

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

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

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

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

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

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

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

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

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

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

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

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

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

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

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

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

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

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

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

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

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

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

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

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

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

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



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

### SUMMARY

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

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

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

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### LEGAL REFERENCES

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

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

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

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

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

#### WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

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

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

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

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

## **II. JUDICIAL APPEALS**

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

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

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

### **ADDITIONAL INFORMATION**

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

---

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

---

## Draft FACT SHEET

- a. Application – B&G Foods North America Inc. (B&G Foods hereinafter) has submitted a timely and complete application to the Department for the renewal of combination of Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0001741/Maine Waste Discharge license (WDL) # W000980-5R-F-R/ (“permit” hereinafter), last issued by the Department on August 3, 2009, for a five-year term. The permit approved the discharge of up to a monthly average flow of 460,000 gallons per day (0.46 MGD) of non-contact cooling water from a food processing facility (producing canned baked beans and bread) and stormwater runoff from three outfalls to the tidewaters of Portland, Class SC, in Portland, Maine. See **Attachment A** of this Fact Sheet for a site location map depicting the outfall locations.



## 1. APPLICATION SUMMARY (cont'd)

- b. Source Description - The B&G Foods facility in Portland is a food processing plant producing canned baked beans, brown bread and other food products. The discharge from Outfall #002 consists of intermittent discharges up to a daily maximum of 500,000 gpd (monthly average of 0.46 MGD) of non-contact cooling water associated with cooling production retort (sterilization) units. Sanitary waste water and industrial waste water generated at the facility is conveyed to the City of Portland's waste water treatment facility and is subject to the City of Portland's requirements under the Industrial Pretreatment Program.

Based on past inspections of the B&G Foods facility, Department personnel determined raw materials stored outside had the potential to contaminate storm water flows discharged from three separate outfalls at the facility. Special Condition E, *Storm Water Pollution Prevention Plan (SWPPP)* of the April 3, 2009 permitting action required B&G Foods to develop and maintain a SWPPP in order to address the ongoing issues related to the storage and handling of raw materials. Subsequent to the issuance of the April 3, 2009 MEPDES permit, inspections by the Department have concluded the site qualifies for a No Exposure status meaning storm water generated on the site no longer comes in contact with materials that are stored and handled on a day to day basis. Therefore, the Department is eliminating Special Condition E, *Storm Water Pollution Prevention Plan (SWPPP)* from the permit. See **Attachment B** of this Fact Sheet for Department guidance on maintaining the No Exposure status. Written certification of No Exposure is not required to maintain the No Exposure status provided storm water generated on-site does not come into contact with materials stored and handled at the facility

- d. Waste Water Treatment - There is no formal treatment of the cooling water prior to discharge to the tidewaters. B&G Foods adds city water to the cooling water as needed in order to control the temperature of the discharge.

## 2. PERMIT SUMMARY

- a. Terms and conditions - This permitting action is carrying forward the terms and conditions of the previous permitting action with the following exception(s):

This permit acknowledges the discharge of stormwater runoff from three separate outfalls but the requirement to maintain a Storm Water Pollution Prevention Plan (SWPPP) is being removed from the permit. The Department is making a finding that storm water runoff from the site does not come into contact with any of the industrial activities at the food processing facility.

- b. History - The most current regulatory actions include the following:

*August 19, 1987* - The Department issued WDL #W000980-57-A-R for five-year term.

*August 31, 1987* - The EPA issued NPDES permit #ME0001741 for a five-year term.

## 2. PERMIT SUMMARY

*December 17, 1993* - The EPA issued a letter to the Burnham & Morrill Company (former owner) indicating that the application submitted on August 21, 1993 for the renewal of the NPDES permit was complete for processing. The EPA never acted on the application.

*February 14, 1994* - The Department issued License by Rule Order #W000980-57-B-R for a five-year term.

*December 7, 1998* - The Department issued WDL #W000980-5R-C-R for a five-year term.

*April 14, 1999* - The Department issued WDL #W000980-5R-D-T that transferred the WDL from the Burnham and Morrill Company to the Heritage Acquisition Corporation (HAC).

*January 12, 2001* - The Department received authorization from EPA to administer the NPDES Program in Maine.

*February 6, 2004* - The Department issued combination WDL#W000908-5R-E-R /MEPDES #ME0001741 to HAC for a five-year term.

*February 4, 2009* - The HAC submitted a timely application to the Department for the renewal of combination WDL/ MEPDES permit # W000980-5R-E-R/ ME0001741.

*April 3, 2009* - The Department issued combination WDL#W000908-5R-F-R /MEPDES #ME0001741 to HAC for a five-year term.

*June 11, 2009* - The HAC submitted a timetable for the HAC Retort Discharge Project which will relocate Outfall #002.

*June 24, 2014* - B&G Foods submitted a timely and complete application to the Department for the renewal of the April 3, 2009 MEPDES permit.

### 3. CONDITIONS OF PERMITS

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

### 4. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A., §469(1)(E)(2) states that at the point of discharge, the tidewaters in Portland are classified as Class SC waters. Maine law, 38 M.R.S.A., §465-A(3) contains the classification standards for Class SC waters as follows;

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

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

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

The most relevant Department regulation associated with regulating the discharges from the B & G Foods facility is 06-096 CMR Chapter 582, *Regulations Relating to Temperature*. For discharges to marine waters the regulation states that, "no discharge of pollutants shall cause the monthly mean of the daily maximum ambient temperatures in any tidal body of water, as measured outside the mixing zone, to be raised more than 4 degrees Fahrenheit,

#### 4. RECEIVING WATER QUALITY STANDARDS (cont'd)

*nor more than 1.5 degrees Fahrenheit from June 1 to September 30. In no event shall any discharge cause the temperature of any tidal waters to exceed 85 degrees Fahrenheit at any point outside a mixing zone established by the Board."*

See supporting thermal impact calculations in Section 6(c) of this Fact Sheet.

#### 5. RECEIVING WATER QUALITY CONDITIONS

The 2012 *Maine Integrated Water Quality Report* published by the Department pursuant to Section 305(b) of the Federal Water Pollution Control Act indicates Maine Department of Marine Resources' (MDMR) Area #13, *Western Casco Bay and Islands (Cape Elizabeth to Falmouth)* Waterbody ID #804-1, Class SB/SC, is listed in the table entitled, *Category 5-B-1, Estuarine and Marine Waters Impaired Only by Bacteria (TMDL Required)*. The TMDL in the case of MDMR Area #13 is the continued implementation of the City of Portland's and the Portland Water District's CSO Master Plans.

Currently, MeDMR Area #13 is closed to the harvesting of shellfish. See **Attachment C** of this Fact Sheet for a map of Area #13. This segment is listed as impaired due to the presence of four sewage treatment plant outfalls, stormwater, elevated fecal coliform bacteria and nonpoint source pollution. The MDMR closed or restricted Area #13 on August 27, 2008, based on ambient water quality data that at that time indicated the area did not meet or marginally met the standards in the National Shellfish Sanitation Program. In addition, MeDMR closes areas by default in the vicinity of outfall pipes associated with treated sanitary waste water discharges in the event of a failure of the disinfection system. Therefore, Area #13 remains closed as of the date of this permitting action.

Because the sanitary waste water generated at the B&G Foods facility is conveyed to a publicly owned treatment works and because there are no pollutants or chemicals added to the cooling water effluent except for heat, the Department has no information at this time that the discharge from the B&G Foods is causing or contributing to the impairment status of the receiving waterbody.

The 2012 305(b) report also lists all estuarine and marine waters in a category entitled, *Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants*. The waters are listed as partially supporting fishing ("shellfish consumption") due to elevated levels of PCBs and other persistent, bioaccumulating substances in lobster tomalley.

## 6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

**OUTFALL #002** - Discharges of city water associated with cooling production retort (sterilization) units.

- a. Flow – This permitting action is carrying forward the monthly average and daily maximum flow limitations of 0.46 MGD and 0.50 MGD respectively, from the previous permitting action.

A review of the DMR's submitted by the permittee for the period of June 2009 – May 2014 (n = 60) indicate the following:

**Flow**

Value	Limit (MGD)	Range (MGD)	Mean (MGD)
Monthly Average	0.46	0.011 – 0.412	0.22
Daily Maximum	0.50	0.105 – 0.44	0.28

- b. Temperature – This permitting action is carrying forward the monthly average and daily maximum temperature limitations of 85°F and 100°F, respectively, from the previous permitting action. The following thermal calculations indicate discharging at the maximum flow and temperature at mean low tide (acute conditions) will comply with 06-096 CMR Chapter 582 water quality criteria.

Given:

Acute dilution factor 77:1

Effluent flow 500,000 gpd or 0.50 MGD

Effluent temperature 100°F

Receiving water volume available for dilution: (0.50 MGD)(76) = 38 MGD

Monthly mean of the daily maximum ambient temperatures–Winter 35°F, Summer 63°F

Chapter 582 water quality criteria – Winter  $\leq 4$  °F, Summer  $\leq 1.5$  °F

Find

Temperature increase during winter and summer

Solution

Winter: (0.50 MGD)(100°F) + (38 MGD)(35°F) = 38.5 MGD(X °F)

X = 35.8°F for a temperature increase of 0.8°F < 4°F

Summer: (0.50 MGD)(100°F) + (38 MGD)(63°F) = 38.5 MGD(X °F)

X = 63.4°F for a temperature increase of 0.34°F < 1.5°F

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

A review of the DMR's submitted by the permittee for the period of June 2009 – May 2014 (n = 60) indicate the following:

**Temperature**

Value	Limit (Deg. F)	Range (Deg. F)	Mean (Deg. F)
Monthly Average	85	46 – 82	70
Daily Maximum	100	53 - 112	87

- c. pH – The pH range limit of 6.0 - 8.5 standard units (su) in the previous permit is being carried forward in this permitting action and is considered best practicable treatment (BPT) by the Department. The April 3, 2009, permit was in error in that it did not establish a monitoring requirement for pH. 06-096 CMR Chapter 523 §5(i)(2) states in part “...requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.” Therefore, this permitting action is requiring the permittee to monitor the pH at a minimum frequency of 1/Year.
- d. Total residual chlorine (TRC): The previous permitting action established a daily maximum water quality based concentration limit of 1.0 mg/L.

06-096 CMR, Chapter 530, *Surface Water Toxics Control Program*, §D(3)(b) states that for discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE or CORMIX. With a monthly average permitted flow of 0.46 MGD and the location and configuration of the proposed outfall structure, the Department has established dilution factors as follow:

Acute = 77:1

Chronic = 173:1

Harmonic mean <sup>(1)</sup> = 519:1

Footnote:

- (1) The harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by three (3). This multiplying factor is based on guidelines for estimation of human health dilution presented in the USEPA publication “*Technical Support Document for Water Quality-based Toxics Control*” (Office of Water; EPA/505/2-90-001, page 88).

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

The Department limits the discharge of total residual chlorine to ensure attainment of the in-stream water quality criteria for chlorine and that BPT technology is utilized to abate the discharge of chlorine. Permits issued by this Department impose the more stringent of the calculated water quality based or BPT based limits. End-of-pipe water quality based thresholds for TRC may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A&C Dil. Factors	Calculated	
			Acute Limit	Chronic Limit
13 ug/L	7.5 ug/L	77:1, 173:1	1.0 mg/L	1.30 mg/L

Example calculation: Acute  $(0.013 \text{ mg/L})(77) = 1.0 \text{ mg/L}$

The Department establishes a daily maximum BPT limitation of 1.0 mg/L for facilities that discharge elemental chlorine or chlorine-based compounds. For facilities that need to dechlorinate the discharge in order to meet water quality based thresholds, the Department has established daily maximum and monthly average BPT limits of 0.3 mg/L and 0.1 mg/L, respectively unless the water quality based thresholds calculated are lower than the BPT limits. The permittee does not need to dechlorinate the effluent prior to discharge in order to consistently achieve compliance with the calculated acute water quality-based threshold. Therefore, this permitting action is carrying forward a daily maximum water quality based concentration limit of 1.0 mg/L that is applicable on a year-round basis as chlorine is toxic year-round and not seasonally.

A review of the DMR's submitted by the permittee for the period of September 2009 – August 2013 (n = 16) indicate the following:

### Total residual chlorine

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Daily Maximum	1.0	0.24 – 1.5	0.67

## 7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has made a determination based on a best professional judgment that the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the waterbody to meet standards for Class SC classification.

## 8. PUBLIC COMMENTS

Public notice of this application was made in the *Portland Press Herald* on or about June 21, 2014. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

## 9. DEPARTMENT CONTACTS

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

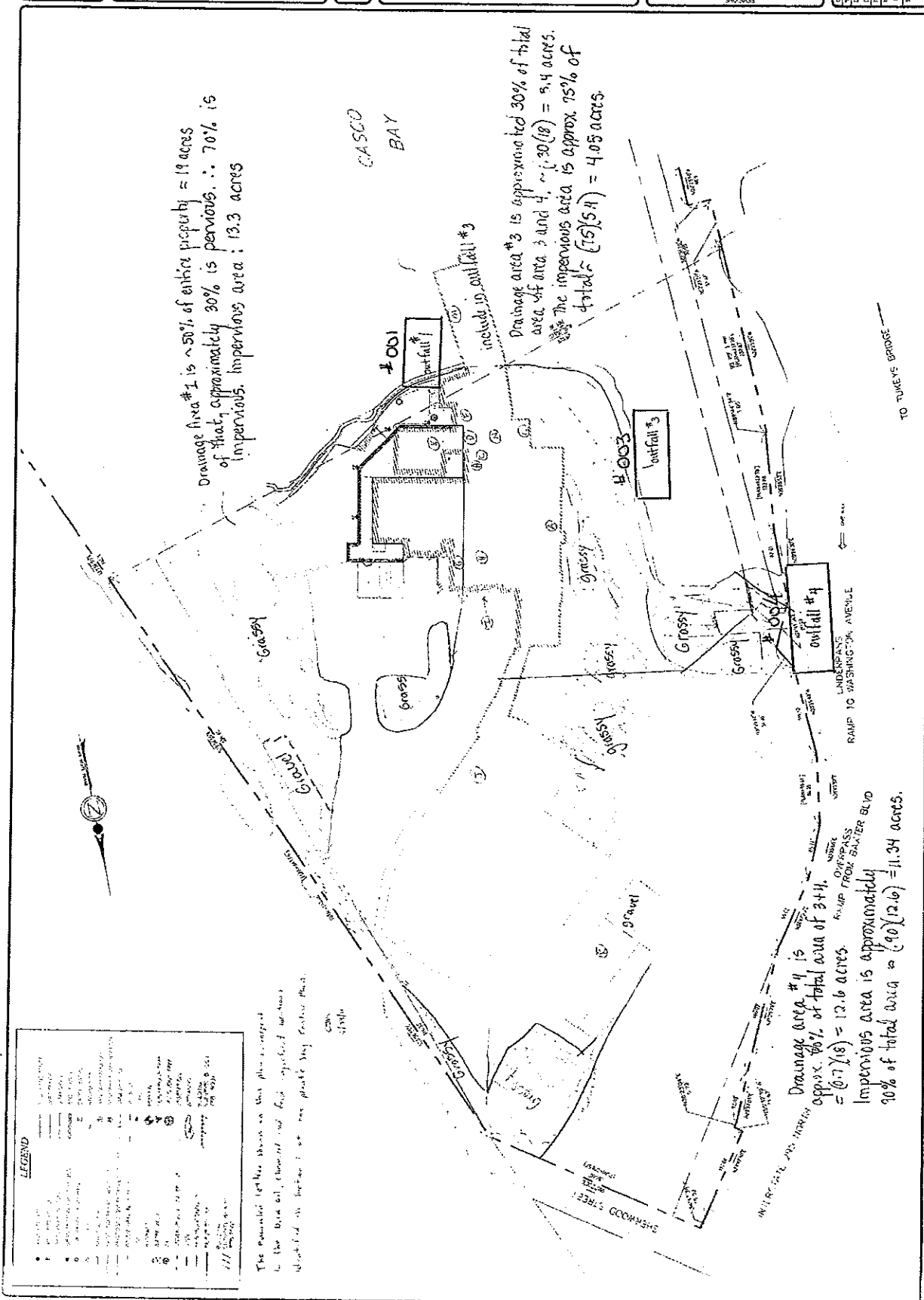
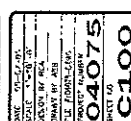
Gregg Wood  
Division of Water Quality  
Bureau of Land and Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 287-7693  
[gregg.wood@maine.gov](mailto:gregg.wood@maine.gov)

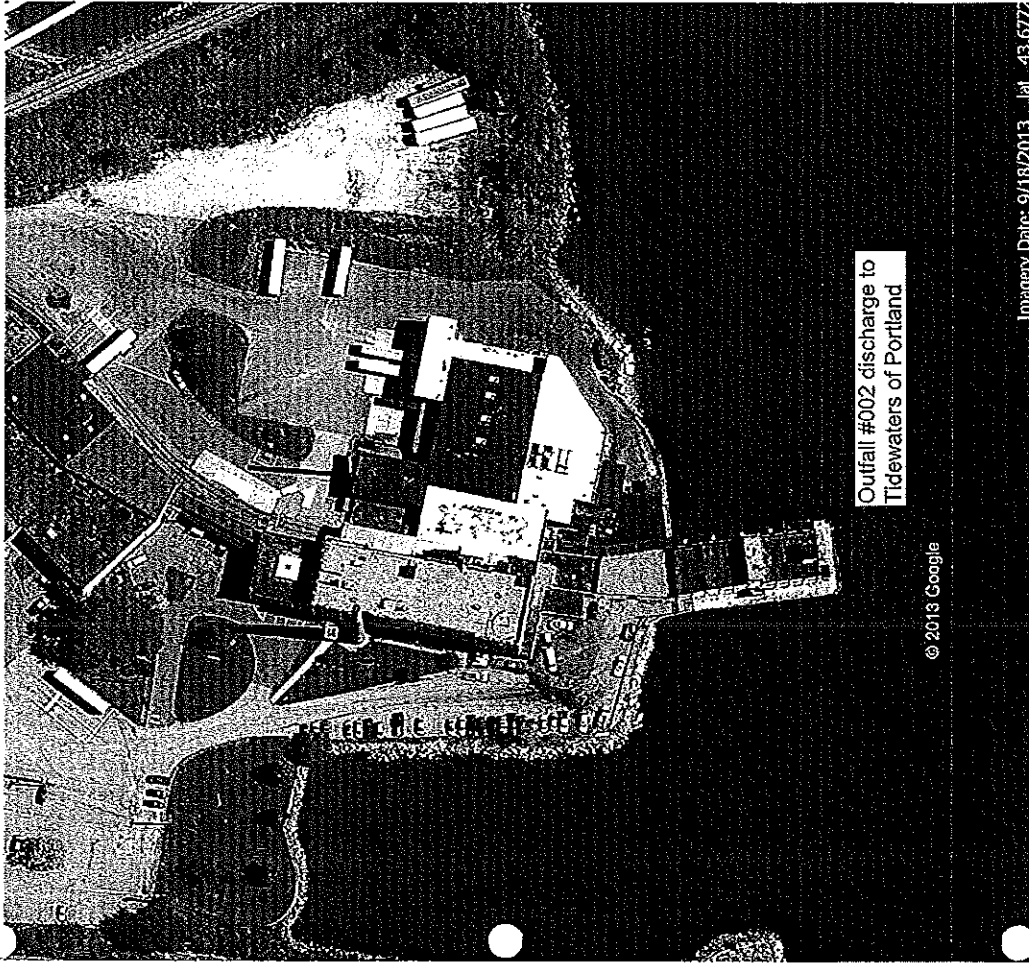
## 10. RESPONSE TO COMMENTS

During the period of September 16, 2014, through the issuance date of the permit/license, the Department solicited comments on the proposed draft permit/license to be issued for the discharge(s) from the permittee's facility. The Department did not receive comments from the permittee, state or federal agencies or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.



# **ATTACHMENT A**





Outfall #002 discharge to  
Tidewaters of Portland

© 2013 Google

Imagery Date: 9/18/2013 lat - 43.6772

## **ATTACHMENT B**

**Appendix AE**  
**No Exposure Certification Exclusion Guidance**

**Maine Pollutant Discharge Elimination System  
Multi-Sector General Permit  
Stormwater Discharge Associated  
With Industrial Activity**

## Table of Contents

	Page
<b>Disclaimer .....</b>	<b>1</b>
<b>Introduction.....</b>	<b>1</b>
<b>No Exposure Definition .....</b>	<b>2</b>
<b>Industrial Materials or Activities which Do Not Require a Storm Resistant Shelter .....</b>	<b>2</b>
Drums, barrels, Tanks, and Similar Containers .....	2
Above Ground Storage Tanks (ASTs).....	3
Lidded Dumpsters .....	4
Adequately Maintained Vehicles.....	4
Final Products .....	4
<b>Other Potential Pollutant Sources which Do Not Qualify for No Exposure .....</b>	<b>4</b>
Particulate Emissions from Roof Stacks or Vents .....	4
Acid Rain Leachate.....	5
Potential Pollutants Mobilized by Wind .....	5
<b>Certifying a Condition of No Exposure .....</b>	<b>5</b>
<b>Concerns Related to Water Quality Standards.....</b>	<b>6</b>
<b>Obtaining the No Exposure Exclusion .....</b>	<b>7</b>
<b>Maintaining a Condition of No Exposure.....</b>	<b>8</b>
<b>Notice of Termination.....</b>	<b>8</b>
<b>Who is Eligible to Qualify for the Conditional No Exposure Certification?.....</b>	<b>9</b>
<b>Limitations on Eligibility.....</b>	<b>9</b>

**Appendix AE**  
**No Exposure Certification Exclusion Guidance**

**Maine Pollutant Discharge Elimination System  
Multi-Sector General Permit  
Stormwater Discharge Associated  
With Industrial Activity**

**Disclaimer**

The statements made in this document are intended solely as guidance. This document is not intended, nor can it be relied on, to create any rights enforceable by any party in litigation with the State of Maine. The Department and state officials may decide to follow the guidance provided in this document, or to act in variance with the guidance, based upon an analysis of site-specific circumstances. This guidance may be revised without public notice to reflect subsequent changes in the Department's policy.

**Introduction**

The intent of the No Exposure Certification Exclusion is to provide all industrial facilities regulated under the 2011 Multi-Sector General Permit (MSGP), here after described as the General Permit, whose industrial activities and materials are completely sheltered from precipitation, as method for complying with the Clean Water Act. (Note: stormwater runoff from separate office buildings and their associated parking lots do not need to be considered when determining No Exposure Exclusion for an industrial facility.)

The MSGP provides permitting exclusion if a condition of No Exposure exists at industrial facilities regulated under the sectors of the General Permit. A permit is not required for stormwater discharges from the facility if they meet the requirements set forth in the No Exposure Exclusion. Facilities wishing to take advantage of the permitting exclusion must submit a certification to the Department attesting to the condition of No Exposure on Department form DEPLW0968. The discharge(s) must satisfy the conditions under 40 CFR 122.26(g). Facilities must maintain their condition of No Exposure, or, if conditions change, obtain coverage under this General Permit, an individual permit or alternative General Permit. If conditions change at a facility and permit coverage is required, the owner or operator must terminate coverage under the conditional No Exposure Exclusion. A Notice of Termination form (DEPLW0967) must be submitted to the Department.

### **No Exposure Definition**

No Exposure means all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to stormwater including rain, snow, snowmelt, icemelt, run-on and runoff.

Industrial materials and activities include, but are not limited to, material handling equipment or activities; industrial machinery; raw materials, intermediate products, by-products, and final products; or waste products.

Material handling activities include storage, loading and unloading, transportation or conveyance, of any raw material, intermediate product, by-product, final product or waste product.

Many final products such as automobiles, which are meant to be used outdoors, pose little risk of stormwater contamination, (e.g., the products cannot be mobilized by precipitation or runoff), and are thus exempt from sheltering requirements to qualify for No Exposure. Similarly, the containers, racks and other transport platforms such as wooden pallets used for the storage or conveyance of these final products can also be stored outside, providing the containers, racks and platforms are pollutant-free.

Storm-resistant shelters include completely roofed and walled buildings or structures with only a top cover but no side coverings, such as awnings, or roof-overhangs, provided material under the structure is not otherwise subject to any run-on and subsequent runoff of stormwater.

DEP acknowledges there are circumstances where permanent, uninterrupted sheltering of industrial activities or materials is not possible. Under such conditions:

- Materials and activities may be sheltered with temporary covers (e.g., tarpaulins) until permanent enclosure can be achieved.
- The No Exposure Exclusion does not specify every such situation, but the Department can address this issue on a case-by-case basis, (e.g., determine if the temporary covers will meet the requirements of this section).
- In general, DEP recommends that temporary sheltering of industrial materials and activities only be allowed during facility renovation or construction.

### **Industrial Materials or Activities Which Do Not Require a Storm Resistant Shelter**

While the intent of the No Exposure Exclusion is to promote a condition of permanent No Exposure, a storm-resistant shelter is not required for the following industrial materials and activities:

#### **Drums, Barrels, Tanks and Similar Containers**

Drums, barrels, tanks and similar containers that are sealed are not considered exposed provided those containers are not deteriorated, do not leak and do not have residual materials on the container. *Sealed* means banded or otherwise secured and without



operational taps or valves. If drums, barrels, or containers are not open while outdoors, or are not deteriorated, leaking or contain residual materials on the container, they will most likely not constitute a risk of contaminating stormwater runoff. Consider the following when making your No Exposure determination:

- If the transfer of material occurs to and from containers stored outside, this activity does not qualify for No Exposure Exclusion. Only properly sealed containers may be stored outdoors and no transfer of product can occur.
- Simply moving properly sealed containers while outdoors does not create exposure. These activities may still qualify for No Exposure Exclusion.
- Inspect all outdoor containers to ensure they are not open, deteriorated or leaking and that they are residue free. DEP recommends that a designated individual regularly conduct these inspections.
- Any time outdoor containers are open, deteriorated or leaking, they must immediately be closed, replaced or sheltered.
- Containers, racks and other transport platforms including wooden pallets used with the drums, barrels, or other containers, may be stored outside provided they are contaminant free.
- All drums, barrels and other containers should be placed on pallets or platforms to reduce the risk of container deterioration.

#### **Above Ground Storage Tanks (ASTs)**

ASTs may be exempt from the prohibition against adding or withdrawing material to and from outdoor containers. ASTs typically utilize transfer valves to dispense materials which support facility operations (e.g., heating oil, propane, butane, chemical feedstocks) or fuel for delivery vehicles (gasoline, diesel, compressed natural gas). For ASTs to qualify for No Exposure:

- They must be physically separated from and not associated with vehicle maintenance operations, including fleet refueling.
- All piping, pumping or other dispensing equipment must be properly maintained and in working order. Routine inspections for evidence of leaks or discharges of potential pollutants that could come in contact with stormwater shall be conducted.
- DEP recommends, wherever practicable, that ASTs be surrounded by some type of physical containment. This containment may include an impervious dike, berm or concrete retaining structure to prevent runoff in the event of a structural failure, malfunctioning valve or improper product transfer. (Note: any resulting unpermitted discharge would violate the Clean Water Act.)

### **Lidded Dumpsters**

Waste materials that are contained in lidded dumpsters which completely shelter the container from stormwater, qualify for the No Exposure Exclusion. Material must not be lost in the transfer or loading process. Free product or scrap material must be contained within the dumpster and leachate must not drain out of the dumpster or roll-off container. However, industrial refuse and trash that is stored uncovered is considered exposed to stormwater.

### **Adequately Maintained Vehicles**

Adequately maintained vehicles, such as trucks, automobiles, forklifts, trailers or other general purpose vehicles found on site—but not industrial machinery—which are not leaking or are otherwise a potential source of contaminants are permitted as a condition of the No Exposure Exclusion. Vehicles passing between buildings will likely come into contact with precipitation at some time, but so long as they are adequately maintained they will not cause a condition of exposure. Similarly, non-leaking vehicles awaiting maintenance at vehicle maintenance facilities are not considered exposed. The mere conveyance between buildings of materials or products that would otherwise not be allowed to be stored outdoors, does not create a condition of exposure, provided the materials or products are adequately protected from precipitation and could not be released as a result of a leak or spill.

### **Final Products**

Final products built and intended for use outdoors such as new cars, are permitted under the No Exposure Exclusion, provided the final products have not deteriorated or are otherwise a potential source of contaminants. Final Products that do not qualifying for No Exposure Certification:

- Products that would be mobilized in stormwater discharges (e.g., rock salt).
- Products which may, when exposed, oxidize, deteriorate, leak or otherwise be a potential source of contaminants (e.g., junk cars, stockpiled railroad ties).
- "*Final*" products which are, in actuality, "intermediate" products. Intermediate products are those used in the composition of yet another product (e.g., sheet metal, tubing and paint used in making tractors). If a final product made by one manufacturer is destined for incorporation into another company's product, and these products are intended for outdoor use, they do not qualify for No Exposure Exclusion. These products may be chemically treated or insufficiently impervious to weathering.

### **Other Potential Pollutant Sources Which Do Not Qualify for No Exposure**

#### **Particulate Emissions from Roof Stacks or Vents**

Particulate emissions from roof stacks or vents do not necessarily cause a condition of exposure, provided they are in compliance with other applicable environmental

protection programs (e.g., air quality control program) and do not cause stormwater contamination. Deposits of particles or residuals from roof stacks or vents not otherwise regulated and which could be mobilized by stormwater runoff, are considered exposed. This includes sources from roof stacks or vents that can be tracked or carried offsite on the tires of vehicles.

### **Acid Rain Leachate**

As affirmed by a recent Environmental Appeals Board decision against the General Motors Corporation, CPC-Pontiac Fiero Plant (CWA Appeal No. 96-5), industrial facilities are also responsible for stormwater discharges which contain pollutants resulting from the leaching effect of acidic precipitation on metal building structures. Therefore, operators must be aware when they attempt to certify a condition of No Exposure of the existence of structural elements that could be soluble as a result of contact with precipitation (e.g., uncoated copper roofs). If the dissolved metals or other contaminants could cause or contribute to a water quality violation, a condition of No Exposure cannot be certified.

### **Potential Pollutants Mobilized by Wind**

Windblown raw materials cause a condition of exposure. Operators must be aware of situations where materials sheltered from precipitation may still be deemed exposed, if the materials can be mobilized by wind.

### **Certifying a Condition of No Exposure**

To obtain the conditional No Exposure Certification, you must submit a certification form attesting your facility meets the definition of "*No Exposure*." DEP's certification form uses a series of yes and no questions regarding the nature of the industrial activities and conditions at your facility. You may only qualify for the No Exposure Certification if you answer *no* to all of the eleven questions.

The purpose of the certification form is twofold: 1) to aid you in determining whether you have a condition of No Exposure at your facility or site; and 2) to furnish the necessary written certification that allows you to be relieved of permit obligations. You must answer *no* to all of the eleven questions in order to qualify for the No Exposure Certification Exclusion.

- If you answer *yes* to any of the questions about possible exposure, you must make the appropriate changes at the facility before you apply for the conditional No Exposure Exclusion. These changes must remove the material, process or activity from exposure to stormwater.
- If you answered *no* to every question, you qualify for the No Exposure Certification Exclusion. To complete the process, you must sign and submit the form to the Department.

### **Certification Facts**

- The Certification must be completed and submitted to the Department once during the effective dates of the permit. The 2011 permit is effective from April 4, 2011 to April 3, 2016. Upon subsequent reissuance of the permit, you will be required to submit another No Exposure Certification form.
- A Certification must be submitted for each separate facility or site qualifying for the No Exposure Exclusion.

The No Exposure Certification form is non-transferable. If a new owner or operator takes over the facility, the new owner or operator must immediately complete and submit a new form to qualify for the No Exposure Exclusion. If a facility has a corporate name change but no change in owner, operator or activity, the facility must notify the Department of the name change but is not required to file a Notice of Termination (NOT).

### **Concerns Related to Water Quality Standards**

Operators who certified that their facilities qualify for the conditional No Exposure Certification Exclusion may, nonetheless, be required by the Department to obtain permit coverage, based on a determination that stormwater discharges are likely to have an adverse impact on water quality.

No Exposure Exclusion may employ simple good housekeeping practices and operation best management practices such as moving materials and activities into existing buildings or structures. In some cases, industrial operators may make major changes at a site to achieve No Exposure such as erecting new buildings, storm resistant shelters. However, significant changes undertaken to achieve No Exposure Exclusion can increase the impervious area of the site. This occurs when a building is placed in a formerly vegetated area. An increase in impervious area often leads to an increase in the volume and velocity of runoff, which, in turn, can result in a higher concentration of pollutants in the discharge, since fewer pollutants are naturally filtered out. Prior to covering pervious areas it may be best to contact the Department for further guidance related to impervious coverage.

The concern over increased imperviousness prompted the following question on the No Exposure Certification Form: "Have you paved or roofed over a formerly exposed, pervious area in order to qualify for the No Exposure Exclusion? If yes, please indicate approximately how much area was paved or roofed over." This will aid the Department in assessing the likelihood of such actions impacting water quality standards. Where this is a concern, the facility operator along with the Department should take appropriate actions to ensure that water quality standards are achieved.

### **Obtaining the No Exposure Exclusion**

This section walks you through the process of obtaining the No Exposure Certification Exclusion.

Repeat the steps for each individual facility or site.

Step 1: Determine if your industrial activity meets the definition of a "stormwater discharge associated with industrial activity," as defined in Maine's MSGP. If so, proceed to Step 2. If no, stop here.

- If your facility conducts an industrial activity as defined under Maine's MSGP, you need to either apply for coverage under the MSGP or submit a No Exposure Certification form, in order to be in compliance with the MEPDES stormwater regulation.
- Construction activities are not covered under the No Exposure Exclusion.

Step 2: Determine if your regulated industrial activity meets the definition of No Exposure and qualifies for the exclusion from permitting. If it does, proceed to Step 3. If not, stop here and obtain industrial stormwater permit coverage.

- Using personnel familiar with the site and operations, inspect all appropriate areas of the site to determine the site's exposure condition as per this guidance.

Step 3: Complete and submit the No Exposure Certification form to the Department.

- Be aware that even if you certify a No Exposure Certification Exclusion, the Department can still require you to apply for an individual or General Permit if it has determined that your discharge is contributing to the violation of, or interfering with the attainment or maintenance of, water quality standards, including designated uses.
- To maintain your exclusion from permitting, a certification must be completed and submitted to the Department once during the effective dates of the permit cycle. The 2011 permit is effective from April 4, 2011 to April 3, 2016. Upon subsequent reissuance of the general permit, you will be required to submit another No Exposure Certification form. This can only be done if the condition for No Exposure continues to exist at the facility.

Step 4: Upon request, submit a copy of the No Exposure Certification form to the municipality in which your facility is located.

- You must submit a copy of your completed certification form to the operator of your Municipal Separate Storm Sewer System (MS4) if they so request or require. An MS4 operator could be the Department of Public Works, Sewer Commission, Municipal Engineering Department, etc.

- If you need to contact your local MS4 operator (e.g., if you are unsure about certification submittal requirements) and they are unknown to you, it may be useful to contact the town or city municipal office in which the discharge occurs to find out which department operates the MS4.

Step 5: When requested, the Department or, the MS4 operator, may inspect your facility. The Department may make any inspection reports publicly available upon request.

#### **Maintaining A Condition of No Exposure**

- The No Exposure Certification Exclusion is conditional and not a blanket exemption. Therefore, if onsite changes occur which cause exposure of industrial activities or material to stormwater, you must then immediately comply with all the requirements of the MEPDES Stormwater Program, including obtaining a stormwater discharge permit.
- Failure to maintain the condition of No Exposure or to obtain coverage under a MEPDES permit can lead to the unauthorized discharge of pollutants to waters of the United States, resulting in penalties under 38 M.R.S.A. § 416 and the CWA.

If an owner or operator of a facility closes the operation or facility that is currently covered under a No Exposure Exemption, the owner or operator must file a Notice of Termination (NOT form # **DEPLW0967**) and submit it to the Department. If a facility has a corporate name change but no change in ownership, operator or activity, the facility must notify the Department of the name change, but is not required to file a Notice of Termination (NOT).

#### **Notice of Termination**

An owner or operator of a facility shall notify the Department on Department form **DEPLW0967** to terminate coverage under the conditional No Exposure Certification for any of the following:

- Change of owner or operator.
- Business is closed or operations terminated or ceased.
- Title, Right or Interest has changed.
- Facility requires permit coverage for the stormwater discharge under the General Permit.

If a facility has a corporate name change but no change in ownership, operator or activity, the facility must notify the Department of the name change but is not required to file a Notice of Termination (NOT)

### **Who is Eligible for the Conditional No Exposure Certification**

Any one of the 30 Sectors of industrial activity covered by this General Permit, except for construction, are eligible to apply for the No Exposure Certification Exclusion.

### **Limitations on Eligibility**

The following situations limit the applicability of the No Exposure Exclusion. Construction projects are not eligible for the No Exposure Certification Exclusion.

- The exclusion from permitting is available on a facility wide basis, and not for individual outfalls. If any exposed industrial materials or activities are found on any portion of a facility, the No Exposure Certification Exclusion does not apply.
- If the Department determines that a facility's stormwater discharges have a reasonable potential to cause or contribute to a violation of applicable water quality standards, the Department can deny the No Exposure Certification Exclusion.
- If changes at a facility result in industrial activities or materials becoming exposed, the No Exposure Certification Exclusion ceases to apply. You should apply for coverage under an applicable MEPDES permit for stormwater discharges at least two days before the changes occur that cause the exposure of industrial processes or materials to stormwater. Please note that past sources of stormwater contamination that remain on site constitute a condition of industrial stormwater exposure and do not qualify for the No Exposure Certification Exclusion.



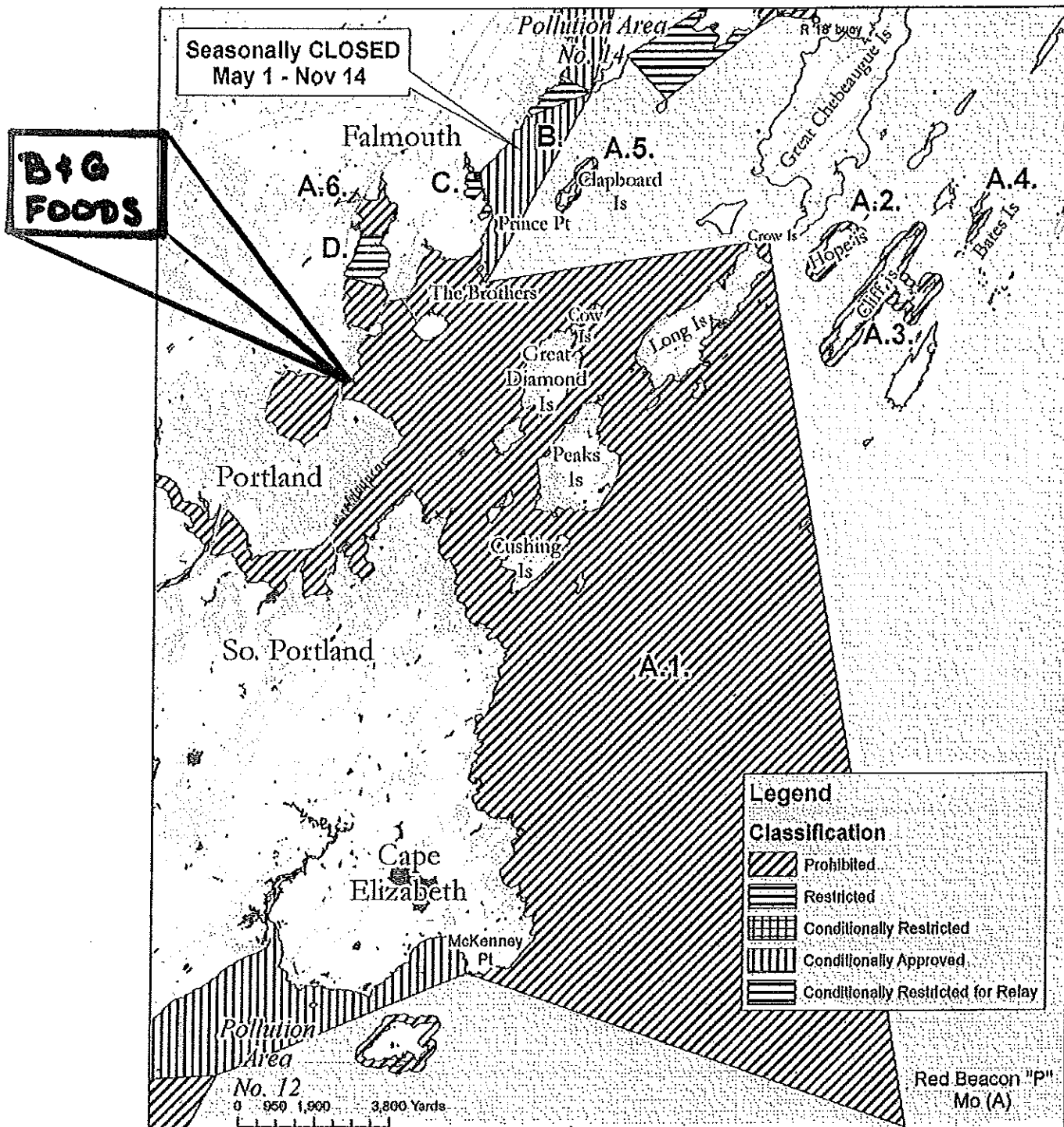
# Maine Department of Marine Resources

## Pollution Area No. 13

Western Casco Bay and Islands (Cape Elizabeth to Falmouth)



August 8, 2014



OFFICES AT 2 BEECH ST., BAKER BUILDING, HALLOWELL, MAINE  
<http://www.Maine.gov/dmr>

PHONE: (207) 624-6550

FAX: (207) 624-6024