



STATE OF MAINE
Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patricia W. Aho
COMMISSIONER

February 26, 2014

Mr. George Flood
Flood Brothers LLC
839 River Road
Clinton, ME. 04927

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0036986
Maine Waste Discharge License (WDL) Application #W009024-5S-B-R
Final Permit

Dear Mr. Flood:

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: James Crowley, DEP/CMRO
Mark Hedrich, DACF
Sandy Mojica, USEPA

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

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PRESQUE ISLE, MAINE 04769-2094
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER
IN THE MATTER OF

FLOOD BROTHERS LLC)	MAINE POLLUTANT DISCHARGE
CLINTON, KENNEBEC COUNTY, MAINE)	ELIMINATION SYSTEM PERMIT
CONCENTRATED ANIMAL FEEDING OPERATION)	AND
ME0036986)	WASTE DISCHARGE LICENSE
W009024-5S-B-R)	RENEWAL
APPROVAL)	

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et seq. and Maine Laws 38 M.R.S.A. and 7 M.R.S.A. et seq., and applicable regulations, the Maine Department of Environmental Protection (DEP/Department hereinafter) has considered the application of FLOOD BROTHERS LLC (FB LLC hereinafter), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

FB LLC has filed a timely application with the Department to renew combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0036986 and Maine Waste Discharge License (WDL) W009002-5S-A-N, (permit hereinafter) last issued by the Department on October 3, 2008, for a five-year term. The permit authorized FB LLC to manage process waste waters and storm water runoff that is generated by the operation of a concentrated animal feeding operation (CAFO) located in the Town of Clinton. The permittee is required to manage the facility such that there is no discharge of process waste waters to surface waters at precipitation events that are less than a 24-hour, 25-year storm event.

PERMIT SUMMARY

This permitting action is requiring the permittee to implement and maintain Best Management Practices (BMP's) to prevent discharges to waters of the State of Maine, and implement and keep current, an approved Nutrient Management Plan in accordance with Maine Department of Agriculture, Conservation and Forestry (DACF) regulation Chapter 565, *Nutrient Management Rules*, §6. On April 30, 2009, the DACF issued a Livestock Operation Permit (LOP) pursuant to Maine law, 7 M.R.S.A., §4204 and §4205 respectively, for the permittee's facility.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated January 13, 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 M.R.S.A., 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 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 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 the 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 FLOOD BROTHERS LLC to discharge storm water to Jackins Brook, Class B and the Kennebec River, Class C and manage process waste waters generated by the operation of a CAFO located in Clinton such that there are no discharge(s) to surface waters at precipitation events that are less than a 24-hour, 25-year storm event. The CAFO is SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations, including:

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

DONE AND DATED AT AUGUSTA, MAINE, THIS 3RD DAY OF March, 2014.

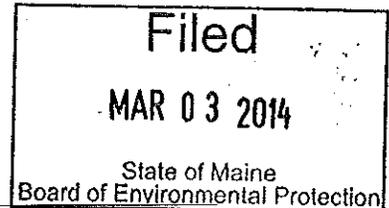
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
for Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: July 19, 2013

Date of application acceptance: August 2, 2013



Date filed with Board of Environmental Protection _____

This order prepared by Gregg Wood, BUREAU OF LAND AND WATER QUALITY

SPECIAL CONDITIONS

A. DEFINITIONS

1. Process-generated waste water or waste water means any waste water directly or indirectly generated or used in the operation of a feedlot for any or all of the following: spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits or other feedlot facilities, feed storage facilities, direct contact swimming, washing or spray cooling of animals; and dust control and any precipitation which comes in contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or direct products (e.g., milk). Waste water also includes any precipitation that comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animal or direct products (e.g., milk).
2. Production area means that part of the facility that includes the animal confinement area. The manure storage area, the raw materials storage area and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins and areas within berms and diversions which separate uncontaminated storm water. The production area also includes the storage, handling, treatment, or disposal of mortalities.
3. Retention facilities or retention structures or waste water facilities means all collection ditches, conduits and swales for the collection of runoff and waste water, and all basins, ponds and lagoons used to store wastes, waste waters and manure.
4. Storm water means storm water runoff or snow melt runoff that does not come into contact or co-mingle with process waste water.

B. DISCHARGE LIMITATIONS/ BEST MANAGEMENT PRACTICES

Each of the following minimum standards is designed to achieve the objective of preventing discharges of pollutants to waters of the State of Maine from CAFOs and from land application activities under the operational control of the CAFO and must be included in the permittee's Nutrient Management Plan (NMP). In addition, the permittees are also required to comply with all applicable technology-based and water quality-based effluent limitations of this permit.

SPECIAL CONDITIONS

B. DISCHARGE LIMITATIONS/BEST MANGEMENT PRACTICES (cont'd)

1. Technology based effluent limitations - Production Area

The permittee must implement the terms of the most current NMP approved by a certified nutrient management plan specialist including but not limited to:

- a. There may be no discharge of manure, litter, or process wastewater pollutants into waters of the State from the production area except as provide below;

Whenever precipitation causes an overflow of manure, litter or process waste waters, pollutants in the overflow may be discharged into waters of the State provided;

- b. The production area is properly designed, constructed, operated and maintained to contain all manure, litter, process wastewaters and the runoff and direct precipitation from the 24-hour, 25-year storm event that equates to 4.2 inches of rainfall. Discharges of process waste water are prohibited unless they the discharge is associated with a precipitation event that exceeds a 24-hour, 25-year storm event.
- c. The design storage volume is adequate to contain all manure, litter, and process waste water accumulated during the storage period including, at a minimum, the following;
 1. The volume of manure, litter and process wastewater, and other wastes accumulated during the storage period.
 2. Normal precipitation less evaporation during the storage period.
 3. Normal runoff during the storage period.
 4. The direct precipitation from the 24-hour, 25-year storm event.
 5. The runoff from the 24-hour, 25-year storm event from the production area.
 6. Residuals solids after liquid has been removed.
 7. Necessary freeboard to maintain structural integrity.
 8. A minimum treatment volume, in the case of treatment lagoons.
 9. Installation of a depth marker in all open surface liquid impoundments. The depth marker must clearly indicate the minimum capacity necessary to contain the runoff and direct precipitation of the 24-hour, 25-year storm event. The marker shall be visible from the top of the levee.

SPECIAL CONDITIONS

B. DISCHARGE LIMITATIONS/BEST MANGEMENT PRACTICES (cont'd)

10. Weekly visible inspections of the manure, event and process wastewater impoundments noting the level as indicated by the depth marker installed in accordance with Section B(1)(c)(9) above.
 11. Daily inspections of all water lines, including drinking water and cooling lines.
 12. Timely correction of any deficiencies that are identified in daily and weekly inspections.
2. Additional measures applicable to the production area.
- a. Ensure adequate storage of manure, litter, and process wastewaters, including procedures to ensure proper operation and maintenance of the storage facilities. - Store dry manure in production buildings or in storage facilities or otherwise store or modify the site (e.g. berms buffers) in such a way as to prevent polluted runoff (e.g., located on relatively flat land, away from water bodies, wetlands, and wells, and/or surrounded by a berm or buffer). Provide adequate storage capacity for the typical quantity of manure generated over a 180-day period of time beginning December 1st of each year. Implement an operation and maintenance program that involves periodic visual inspection and maintenance of all manure storage and handling equipment and structures and all runoff management devices (e.g., cleaning separators, barnyards, catch basins, screens, annual calibration of land application equipment, maintenance of filter strips). These activities will minimize the possibility of discharges of pollutants to surface waters of the State of Maine.
 - b. Handle and dispose of dead animals in a manner that prevents contamination of surface waters and ground waters of the State of Maine and complies with DACF Chapter 211 rules for the disposal of animal carcasses.
 - c. Ensure that clean water is diverted, as appropriate and the fullest extent practicable, from the production area. Clean water includes, but is not limited to, rain falling on the roofs of facilities and runoff from adjacent land. Any clean water that is not diverted and comes into contact with raw materials, products or by-products including manure, litter, process waste water, feed, milk or bedding materials is subject to effluent limitations in Section B(1) of this permit. Where clean water is not diverted, the permittee must document that it has been accounted for in meeting the requirement to ensure adequate storage capacity as a condition of this permit.

SPECIAL CONDITIONS

B. DISCHARGE LIMITATIONS/BEST MANAGEMENT PRACTICES (cont'd)

- d. Prevent direct contact of confined animals with waters of the State.
- e. Prevent direct introduction of chemicals into manure and waste water storage structures for purposes of disposal. Examples include pesticides, hazardous and toxic chemicals, and petroleum products/by-products.

3. Technology based limits – Land application areas

- a. Permittees that apply manure, litter or process wastewater to land under the permitted CAFO's ownership or operational control must implement the terms and conditions of the NMP as specified below. The NMP must be developed in accordance with the following requirements.
 - 1. Determination of application rates – Application rates for manure, litter or process wastewater must minimize phosphorus and nitrogen transport from the fields to surface waters in compliance with technical standards for nutrient management established by DACF in Chapter 565, Nutrient Management Rules.
 - 2. Manure and soil sampling – Manure must be analyzed at least once annually for nitrogen and phosphorus content. Soil must be analyzed at least once every five years. The results of the analyses must be used in the determining application rates for manure, litter and process waste water.
 - 3. Inspection of land application equipment – Equipment used for land application of manure, litter or process wastewater must be periodically inspected for leaks. Any identified leaks must be repaired prior to the next use of the equipment.
 - 4. Land application setback requirements - Provide and maintain buffer strips or other equivalent practices around feedlots, manure storage areas, and land application areas that are sufficient to minimize discharge of pollutants to surface waters of the State of Maine (e.g., soil erosion and manure and waste water). These practices may include, but are not limited to, residue management, conservation crop rotation, grassed waterways, strip cropping, vegetative buffers, forested riparian buffers, terracing, and diversion.
 - 5. Record Keeping Requirements – Complete on-site records including the site specific NMP requirements must be maintained to document implementation of all required land application practices.

SPECIAL CONDITIONS

B. DISCHARGE LIMITATIONS/BEST MANAGEMENT PRACTICES (cont'd)

6. Prohibitions – There shall be no direct discharge of manure, litter or process wastewater to waters of the State as a result of manure, litter or process wastewater application to land areas under the control of the permittee, except where it is agricultural storm water runoff. Where manure, litter or process wastewater has been applied in accordance with the terms and conditions of the NMP, a precipitation related discharge of manure, litter or process wastewater from land areas under the control of the permittee is considered to be an agricultural storm water discharge.
7. Discharge(s) of storm water shall;
 - a. Not result in a visible oil sheen, foam or floating solids in the receiving waters at any time which would impair the usages designated for the classification of the receiving waters.
 - b. 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.
 - c. Not cause visible discoloration or turbidity in the receiving waters which would impair the usages designated for the classification of the receiving waters.
 - d. Notwithstanding specific conditions of this permit, 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.
4. Additional measures applicable to all CAFO's
 - a. Records – Identify specific records that will be maintained to document the implementation and management of Section B(1)(c)(1-12) of this permit.
 - b. Transfer of manure – In cases where CAFO-generated manure, litter or process wastewater is sold or given away, the permittee must comply with the following conditions:
 1. Maintain records showing the date and amount of manure, litter or process wastewater that leaves the facility.
 2. Record the name and address of the recipient.

SPECIAL CONDITIONS

B. DISCHARGE LIMITATIONS/BEST MANAGEMENT PRACTICES (cont'd)

3. Document that the recipient's was provided with representative information on the nutrient content of the manure, litter or process wastewater.
4. The records must be retained on-site for a period of five-years and be submitted to the DEP or EPA upon request.
5. Notification of discharge(s):

If, for any reason, there is a discharge of process waste water from the facility to surface waters, non-compliance with this permit or a discharge that may endanger human health or the environment, the permittee is required to make verbal notification (within 24 hours) and written notification (within 5 days) to the DEP and the DACF entities listed in paragraph B(5)(e) below. In addition, the permittee shall keep a copy of the notification submitted to the Maine DEP and DACF together with the Nutrient Management Plan required by Special Condition C of this permit. The discharge notification shall contain the following information:

- a. Description of the discharge: A description and cause of the discharge, including a description of the flow path to the receiving water body and an estimation of the flow and volume discharged.
- b. Time of the discharge: The period of discharge, including exact dates and times, and the anticipated time the discharge is expected to continue.
- c. Cause of the discharge: If caused by precipitation event(s), information from the onsite rain gauge required by Special Condition D(6) of this permit concerning the size of the precipitation event must be provided.
- d. Steps being taken to reduce, eliminate and prevent recurrence of the non-complying circumstances or discharges.
- e. Verbal notification must be made to the Maine DEP and DACF (contacts below) within 24-hours of the facility discharge. Written notification including the information required above must be received by the Maine DEP and DACF within five (5) calendar days of the discharge.

Maine Department of Agriculture, Conservation and Forestry
Division of Animal & Plant Health
Attn: Nutrient Management Program Manager
28 State House Station
Augusta, Maine 04333-0028 Telephone: (207)-287-7608

SPECIAL CONDITIONS

B. DISCHARGE LIMITATIONS/BEST MANAGEMENT PRACTICES (cont'd)

Maine Department of Environmental Protection
Attn: CAFO Compliance Inspector
Bureau of Land & Water Quality
Division of Water Quality Management
17 State House Station
Augusta, Maine 04333 Telephone: (207) 287-3901

6. Monitoring requirements for process water discharges: In the event of an overflow (or pre-planned emergency discharge) or any other discharge from storage tanks, storage bunkers, retention structures and other waste water storage structures or feed storage operations, the following actions shall be taken:

a. Analysis of the discharge: All discharges shall be sampled and analyzed. Samples must, at a minimum, be analyzed for the following parameters:

Fecal coliform bacteria	Five-day biochemical oxygen demand (BOD ₅)
Total suspended solids (TSS)	Total phosphorus as phosphorus
Ortho-phosphorus	Ammonia-nitrogen as nitrogen
Total kjeldahl nitrogen (TKN) as nitrogen	Nitrate & Nitrite as nitrogen
pH	

b. Sampling procedures: Samples shall consist of grab samples collected from the overflow or discharges from the retention structure. A minimum of one sample shall be collected from the initial discharge (within 30 minutes or upon discovery). The sample shall be collected and analyzed in accordance with EPA approved methods for water analysis listed in 40 CFR 136. Samples collected for the purpose of monitoring shall be representative of the monitored discharge. If more than one sample is collected during the discharge, the samples may be composited (with the exception of pH and fecal coliform bacteria) when analyzed for the parameters in Special Condition B(6)(a) above. Monitoring results must be submitted to the DACF and DEP at the addresses in Special Condition B(5)(e) of this permit within 30 days of the discharge event.

C. NUTRIENT MANAGEMENT PLAN

Upon issuance of this permit, the permittee is required to maintain and implement a Nutrient Management Plan prepared in accordance with the standards in Maine's DACF regulation, Chapter 565, §6 and federal regulation 40 CFR, §122.42(e) and 40 CFR §412.4. The Nutrient Management Plan must be updated at least once each year and must be approved by a certified nutrient management plan specialist at least every five years. The Nutrient Management Plans must be kept on-site and current at all times.

SPECIAL CONDITIONS

C. NUTRIENT MANAGEMENT PLAN (cont'd)

- 1) **Terms of the nutrient management plan** - The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined to be necessary to meet the requirements of this section. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater must include the fields available for land application; field-specific rates of application properly developed to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms must address rates of application using one of the following two approaches:
 - (a) **Linear approach.** An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:
 - (1) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms must include: The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.
 - (2) Large CAFOs that use this approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; or

SPECIAL CONDITIONS

C. NUTRIENT MANAGEMENT PLAN (cont'd)

- (b) **Narrative rate approach.** An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:
- (1) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms must include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields, the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.
 - (2) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan must include realistic crop yield goals and the nitrogen and phosphorus recommendations for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied must be determined in accordance with the methodology described in paragraph C(1)(b)(1) of this section.

SPECIAL CONDITIONS

C. NUTRIENT MANAGEMENT PLAN (cont'd)

- (3) For CAFOs using this approach, the following projections must be included in the nutrient management plan submitted to the Department and DACE, but are not terms of the nutrient management plan: The CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.
- (4) CAFOs that use this approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in paragraph C(1)(b)(1) of this section before land applying manure, litter, and process wastewater and must rely on the following data:
- (a) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by paragraph C(1)(b)(1) of this section, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements; and
 - (b) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

Any changes to the NMP made after the date of signature of this permit must be submitted to the Maine DEP and DACE contacts in Special Condition B(5)(e) of this permit for review to determine whether the changes are substantial and whether the changes necessitate revisions to terms and or conditions of this permit. If revisions to the permit are necessary, this permit will be re-opened pursuant to Special Condition G, *Reopening of Permit For Modifications*, to incorporate applicable terms and conditions.

SPECIAL CONDITIONS

D. GENERAL FACILITY INSPECTIONS AND MONITORING

Inspection, monitoring and record keeping activities shall be conducted in accordance with the following:

1. Employee Training: Where employees are responsible for work activities that relate to permit compliance, those employees must be regularly trained or informed of any information regarding the proper operation and maintenance of the facility and waste disposal. Training shall include topics as appropriate such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary record keeping requirements, and spill response and clean up. The permittee is responsible for determining and providing the appropriate training frequency for different levels of personnel and maintain records of the training provided.
2. Record Keeping and Internal Reporting Procedures. Incidents such as spills or overflows, along with information describing the pollution potential and quantity of the discharge shall be described in writing.
3. Visual Inspections. The permittee shall inspect equipment and facility areas daily and during and subsequent to any rain event. Material handling areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. At a minimum of once every two weeks, visual inspections of all retention structures, manure and runoff storage structures, handling and distribution systems, feed storage operations other process systems or controls, and buffer strips shall be undertaken to ensure that all are in good condition and functioning properly.
4. Site Inspection. A complete inspection of the facility shall be conducted by the farm manager and a report made documenting the findings of the inspection made at least once/year. The report shall be kept on-site and made available to DACF, DEP and EPA staff upon request.
5. Reports/Records. All inspection and maintenance activities shall be documented and all inspection reports, maintenance records and other record keeping required by this permit must be kept current at all times and maintained at the facility for at least three (3) years.
6. Precipitation - The permittee shall maintain a precipitation gauge at the facility and record the rainfall for each 24-hour period between April 1 and May 30 and October 1 through October 30 of each year or obtain daily precipitation records for said periods from other entities within a 25 miles radius of the farm.

SPECIAL CONDITIONS

D. GENERAL FACILITY INSPECTIONS AND MONITORING (cont'd)

7. Additional Monitoring Requirements

Additional analysis: Upon request by the Maine DEP and or DACF, the permittee may be required to conduct, collect and analyze samples including but not limited to soils, surface water, ground water, and/or stored waste in a manner and frequency specified by Maine DEP and or DACF.

E. ANNUAL REPORTING REQUIREMENTS

1. On or before December 31st of each year (*ICIS code PR003*) the permittee must submit [to the addresses in Section B(5)(e)] an annual report to the DEP and DACF that at a minimum, includes the following information:
 - a. The number and type of animals, whether in open confinement or housed under roof.
 - b. Estimated amount of total manure, litter and process waste water generated by the CAFO in the previous 12 months (tons/gallons).
 - c. Estimated amount of total manure, litter and process waste water transferred to others persons by the CAFO in the previous 12 months (tons/gallons).
 - d. Total number of acres of land application covered by the NMP.
 - e. Total number of acres under the control of the permittee that were used for land application of manure, litter and process wastewater in the previous 12 months.
 - f. Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months including date, time, and approximate volume.
 - g. A statement indicating whether the current version of the CAFO NMP was developed by a certified nutrient management planner.
 - h. Actual crops planted and actual yields of each field for the preceding 12 months.
 - i. Results of all samples of manure, litter and process wastewater for nitrogen and phosphorus content for manure, litter and process wastewater that was land applied.

SPECIAL CONDITIONS

E. ANNUAL REPORTING REQUIREMENTS (cont'd)

- j. Results of calculations conducted in accordance with Linear Approach or Narrative Rate Approach.
- k. Amount of manure, litter and process wastewater applied to each field during the preceding 12 months.

F. FACILITY CLOSURE

The following conditions shall apply to the closure of lagoons and other earthen or synthetic lined basins and manure, litter and process wastewater storage and handling structures:

- a. Closure of Lagoons and Other Surface Impoundments
 - 1. No lagoon or other earthen or synthetic lined basin shall be permanently abandoned.
 - 2. Lagoons or other earthen or synthetic lined basins shall be maintained at all times until closed in compliance with this section.
 - 3. All lagoons or other earthen or synthetic lined basins must be properly closed if the permittee ceases operation. In addition, any lagoon or other earthen or synthetic lined basin that is not in use for a period of 12 consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either 1) maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or 2) removes manure and wastewater to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic or earthen liner. In either case, the permittee shall notify the DEP and DACF of the action taken and shall conduct routine inspections, maintenance and record keeping as though the structure were in use. Before restoration or use of the structure, the permittee shall notify the DEP and DACF and provide the opportunity for inspection.
 - 4. All closures of lagoons and other earthen or synthetic basins must be consistent 06-096 CMR Chapter 550, Discontinuance of Wastewater Treatment Lagoons. Consistent with that standard, the permittee shall remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittee's NMP, unless otherwise authorized by the DEP and DACF

SPECIAL CONDITIONS

F. FACILITY CLOSURE (cont'd)

5. Unless otherwise authorized by the DEP or USEPA, completion of the closure of the lagoon(s) and other earthen or synthetic lined basins shall occur as promptly as practicable after the permittee ceases to operate or, if the permittee has not ceased operations, 12 months from the date on which the use of the structure ceased, unless the lagoons or basins are being maintained for possible future use in accordance with the requirements above.
- b. Closure Procedures for Other Manure, Litter or Process Wastewater Storage and Handling Structures
 1. No other manure, litter or process wastewater storage and handling structure shall be abandoned. Closure of all such structures shall occur as promptly as practicable after the permittee has ceased to operate, or, if the permittee has not ceased to operate, with 12 months after the date on which the use of the structure ceased. To close a manure, litter or process wastewater storage and handling structure, the permittee shall remove all manure, litter, or process wastewater and dispose of it in accordance with the permittee's NMP, or document its transfer from the permittee's facility in accordance with off-site transfer requirements specified in this permit, unless otherwise authorized by the DEP and DACF.

G. REOPENING OF PERMIT FOR MODIFICATIONS

Upon evaluation of any pertinent information obtained during the term of this permit indicating that the discharge(s) are causing, contributing or have a reasonable potential to cause or contribute to the surface waters or ground waters not to attain the standards of their assigned classifications, this permit may be modified, after notice to the permittee to: 1) establish effluent limits necessary to control specific pollutants; (2) require monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

H. SEVERABILITY

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

AND

MAINE WASTE DISCHARGE LICENSE

FACT SHEET

Date: January 13, 2014

PERMIT NUMBER: **ME0036986**
LICENSE NUMBER: **W009024-5S-B-R**

NAME AND ADDRESS OF APPLICANT:

**FLOOD BROTHERS LLC
839 River Road
Clinton, Maine 04927**

COUNTY: **Kennebec County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**839 River Road
Clinton, Maine**

RECEIVING WATER/CLASSIFICATION: **Jackins Brook, Class B
Kennebec River, Class C**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. George B. Flood Jr.
(207) 453-7038**

1. APPLICATION SUMMARY

- a. Application: Flood Brothers LLC (FB LLC/permittee hereinafter) has submitted a timely application to the Maine DEP for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0036986 and Maine Waste Discharge License (WDL) WDL #W009024-5S-A-N to discharge storm water to Jackins Brook, Class B and the Kennebec River, Class C in the Town of Clinton, Maine. The permittee is required to manage the facility such that there is no discharge of process waste waters to surface waters at precipitation events that are less than a 24-hour, 25-year storm event.

1. APPLICATION SUMMARY (cont'd)

- b. Source Description – The FB LLC has been identified as a large CAFO as the facility has greater than 700 mature dairy cattle (approximately 1,400) and pollutants are discharged into waters of the State that originate outside of and pass over, across, or through or otherwise come into direct contact with the animals confined in the operation. The animals are confined on a year-round basis in numerous large barns with open-air side walls and fully covered with roofs. All storm water runoff and waste waters generated in the vicinity of the barns and milking parlor are directed to three Natural Resource Conservation Service (NRCS) designed manure storage pits. Pit #1 has a working capacity of approximately 560,000 cubic feet (cf) for 210 days of storage, pit #2 has a working capacity of approximately 270,000 cf for 210 days of storage and pit #3 has a working capacity of approximately 1,230,000 cf for 210 days of storage.

Inspections by Maine Department of Agriculture, Conservation and Forestry, (DACF) DEP and the USEPA indicated that the nearest surface water (Jackin Brook) is approximately 500 feet northwest of pit #3. See **Attachment A** of this Fact Sheet for aerial photographs by the Department for the configuration of the barns, storage pits and the location of Jackin Brook. The DACF has made a determination that the three storage lagoons are designed and capable of capturing a 25 year, 24-hour rainfall event. Manure is spread on various fields owned and or leased by FB LLC as permitted by the Nutrient Management Law.

2. PERMIT SUMMARY

- a. Terms and conditions: This permitting action is requiring the permittee to develop and implement a Nutrient Management Plan and obtain a Livestock Operations Permit (LOP) pursuant to Maine law, 7 M.R.S.A., §4204 and §4205 respectively, and in accordance with DACF regulation Chapter 565, *Nutrient Management Rules*, §6 and §8 respectively. It is noted the DACF issued a Livestock Operation Permit (LOP) pursuant to Maine law, 7 M.R.S.A., §4204 and §4205 respectively, on April 30, 2009.
- b. History: The most recent relevant permitting/license and regulatory events include:

April, 1997 – Maine law, 7 M.R.S.A., Chapter 747, *Nutrient Management Act* was enacted.

December 1998 – The Maine DACF adopted regulation Chapter 565, *Nutrient Management Rules*. It is noted the regulation was last amended on February 17, 2001.

1. PERMIT SUMMARY (cont'd)

June 8, 2000 – The Maine DEP and DACF entered into a Memorandum of Agreement entitled, Coordination of the Maine Livestock Operating Permit Program and the Maine Pollutant Discharge Elimination System Permit Program in Regards to Concentrated Animal Feeding Operations. The purpose of the agreement is intended to 1) establish a collaborative process between the DEP and DACF so as to better coordinate review of CAFOs, and 2) clarify the roles and responsibilities of the two agencies in regard to the permitting of CAFOs under DACF Livestock Operations Permit (LOP) program and DEP's MEPDES permit program.

January 12, 2001 - The State of Maine received authorization from the U.S. Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) permitting program in Maine. From that date forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) permitting program.

November 29, 2005 – Personnel from Maine DACF, Maine DEP and the EPA conducted an on-site inspection at the Flood Brothers Farm. The primary objective of the site inspection was to determine whether the farm is considered a CAFO pursuant to Department rule Chapter 521, *Applications For Waste Discharge Licenses*, §6. The inspection determined that the farm was a large CAFO that required a MEPDES permit.

July 24, 2008 – The EPA, their consultant and DACF personnel conducted a CAFO inspection at the Flood Brothers Farm.

July 28, 2008 – The FBI submitted an application to the DEP and DACF for a new MEPDES permit and LOP. The application materials contained a Nutrient Management Plan (NMP) prepared by a certified specialist. The NMP was reviewed and approved by the DAFRR and is due to expire on December 31, 2016.

October 3, 2008 – The DEP issued combination MEPDES permit ME0036986/WDL W009024-5S-A-N for a five-year term.

July 19, 2013 – FB LLC submitted a timely application to the Department to renew the October 3, 2008, permit/license.

2. 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.

3. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A. §467(4)(I) states that Jackins Brook, a minor tributary to the Kennebec River, is classified as a Class B waterbody. Maine law, 38 M.R.S.A., §465-B(3) establishes the classification standards for Class B waters as follows:

Class B waters must be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; agriculture; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; navigation; and as habitat for fish and other aquatic life. The habitat must be characterized as unimpaired.

The dissolved oxygen content of Class B waters may not be less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration may not be less than 9.5 parts per million and the 1-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas. Between May 15th and September 30th, the number of

Escherichia coli bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 64 per 100 milliliters or an instantaneous level of 236 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures.

Discharges to Class B waters may not cause adverse impact to aquatic life in that the receiving waters must be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

Maine law, 38 M.R.S.A. §467(4)(A)(10) states that the Kennebec River from the Fairfield-Skowhegan boundary to its confluence with Messalonskee Stream, including all impoundments is classified as a Class C waterbody. Maine law, 38 M.R.S.A., §465(4) describes the classification standards for Class C waters as follows;

3. RECEIVING WATER QUALITY STANDARDS (cont'd)

A. *Class C waters must be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; agriculture; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; navigation; and as a habitat for fish and other aquatic life.*

B. *The dissolved oxygen content of Class C water may be not less than 5 parts per million or 60% of saturation, whichever is higher, except that in identified salmonid spawning areas where water quality is sufficient to ensure spawning, egg incubation and survival of early life stages, that water quality sufficient for these purposes must be maintained. In order to provide additional protection for the growth of indigenous fish, the following standards apply.*

(1) *The 30-day average dissolved oxygen criterion of a Class C water is 6.5 parts per million using a temperature of 22 degrees centigrade or the ambient temperature of the water body, whichever is less, if:*

(a) *A license or water quality certificate other than a general permit was issued prior to March 16, 2004 for the Class C water and was not based on a 6.5 parts per million 30-day average dissolved oxygen criterion; or*

(b) *A discharge or a hydropower project was in existence on March 16, 2005 and required but did not have a license or water quality certificate other than a general permit for the Class C water. This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004.*

(2) *In Class C waters not governed by subparagraph (1), dissolved oxygen may not be less than 6.5 parts per million as a 30-day average based upon a temperature of 24 degrees centigrade or the ambient temperature of the water body, whichever is less. This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004. The department may negotiate and enter into agreements with licensees and water quality certificate holders in order to provide further protection for the growth of indigenous fish. Agreements entered into under this paragraph are enforceable as department orders according to the provisions of sections 347-A to 349.*

Between May 15th and September 30th, the number of Escherichia coli bacteria of human and domestic animal origin in Class C waters may not exceed a geometric mean of 126 per 100 milliliters or an instantaneous level of 236 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. The board shall adopt rules governing the procedure for designation of spawning areas. Those rules must include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

3. RECEIVING WATER QUALITY STANDARDS (cont'd)

C. *Discharges to Class C waters may cause some changes to aquatic life, except that the receiving waters must be 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. This paragraph does not apply to aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species.*

4. RECEIVING WATER QUALITY CONDITIONS

The Kennebec River main stem immediately below the discharge from the S.D. Warren pulp and paper mill (approximately two miles above any discharge from the Flood Brothers Farm) and extending downstream to Merrymeeting Bay is listed in a table entitled, *Category 4-B, Rivers and Streams Impaired By Pollutants, Pollution Control Requirements Reasonably Expected to Result in Attainment* of a document entitled, The State of Maine, Department of Environmental Protection, 2010 Integrated Water Quality Monitoring and Assessment Report, (305b report) published by the Department. Impairment in this context refers to the designated use of fish consumption due to dioxin. Compliance is measured by (1) no detection of dioxin in any internal waste stream (at 10 pg/L detection limit) (2) no detection in fish tissue sampled below a mill's outfall greater than upstream reference." A review of the Department's data base for the period January 2007 through the present indicates the S.D. Warren pulp and paper mill has been in compliance with the dioxin and furan limitations as well as fish tissue samples. The Department is not aware of any information nor does the Department have reason to believe that storm water discharges from the Flood Brothers Farm contains dioxin, dioxin like compounds that are causing or contributing to the fish consumption advisory.

The 2010 305(b) report also lists the main stem of the Kennebec River at Skowhegan (approximately 5 miles above the Flood Brothers Farm) in a table entitled, *Category 4-A: Rivers and Streams With Impaired Use Other Than Mercury, TMDL Completed*. This listing is a result of discharge of untreated storm water/sanitary waste waters from combined sewer overflows (CSOs) in the Town of Skowhegan's waste water collection system. Special Condition K, *Combined Sewer Overflows (CSOs)* of the MEPDES permit for the Town of Skowhegan (last issued on June 2, 2008) requires the Town to continue work on mitigating the discharges of untreated waste waters via CSOs.

The 2010 305(b) report lists the main stem of the Kennebec River in *Category 4-A: Rivers and Streams With Impaired Use, TMDL Completed, Waters Impaired by Atmospheric Deposition of Mercury*. This applies to all freshwaters in Maine. Impairment in this context refers to a statewide fish consumption advisory due to elevated levels of mercury in some fish tissues. The Report states, "*Impairment caused by atmospheric deposition of mercury; a regional scale TMDL has been approved. Maine has a fish consumption advisory for fish*

4. RECEIVING WATER QUALITY CONDITIONS (cont'd)

taken from all freshwaters due to mercury. Many waters, and many fish from any given water, do not exceed the action level for mercury. However, because it is impossible for someone consuming a fish to know whether the mercury level exceeds the action level, the Maine Department of Human Services decided to establish a statewide advisory for all freshwater fish that recommends limits on consumption. Maine has already instituted statewide programs for removal and reduction of mercury sources."

Maine law 38 M.R.S.A., §420 and Department Rule, Chapter 519, *Interim Effluent Limitations and Controls For the Discharge of Mercury*, establishes controls of mercury to surface waters of the State and United States through interim effluent limitations and implementation of pollution prevention plans. Maine law 38 M.R.S.A., §420 1-B,(B)(1) states that a facility is not in violation of the AWQC for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to Section 413, subsection 11. The Department is not aware of any information nor does the Department have reason to believe that storm water discharges from the Flood Brothers Farm contains mercury that are causing or contributing to the fish consumption advisory.

The 2010 305(b) report lists 37.5 miles of the main stem of the Kennebec River in *Category 5-D: Rivers and Streams Impaired by Legacy Pollutants*, applies to 37.5 miles of the Kennebec River designated as a Class C waterbody. Impairment in this context refers to the designated use of fish consumption due to the presence of polychlorinated biphenyls (PCBs) in fish tissue. The presence of PCBs is not typically associated with any identifiable source but is rather a legacy of practices that predate the national ban on the use of PCB in 1979. The Department is not aware of any information nor does the Department have reason to believe that storm water discharges from the Flood Brothers Farm contains PCBs that are causing or contributing to the fish consumption advisory.

As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the ground water or surface water bodies to meet standards for Class GWA, Class B or Class C classification. As a result, no water quality based limitations are being established in this permit.

5. APPLICABLE LAWS, RULES AND/OR REGULATIONS

- a. Pursuant to Section 502(14) of the federal Water Pollution Control Act (Clean Water Act), CAFOs are defined as point source dischargers.
- b. Maine law 38 M.R.S.A. §413 states that "No person may directly or indirectly discharge or have cause to be discharged any pollutant without first obtaining a license therefor from the Department."

5. APPLICABLE LAWS, RULES AND/OR REGULATIONS (cont'd)

- c. 06-096 CMR DEP rule, Chapter 521, *Applications For Waste Discharge Licenses*, §6(a) states "Permit requirement. Concentrated animal feeding operations are point sources subject to the NPDES permit program. The Department will consult with the Department of Agriculture and all applications for concentrated animal feeding operations in order to consolidate permitting requirements where feasible." It is noted the rule references federal regulations found at 40 CFR Part 122.23 requiring CAFOs to obtain a federal NPDES permit. However, given that the USEPA has authorized the State of Maine to administer the NPDES permit program in Maine, MEPDES permits will be issued to CAFOs.

Maine DEP Chapter 521, §6(b)(3)-Appendix B establishes the criteria for determining a CAFO. The Flood Farm is categorically considered a large CAFO as the facility has at least 700 mature dairy cattle and pollutants are discharged into waters of the State which originate outside of and pass over, across, or through or otherwise come into direct contact with the animals confined in the operation.

- d. Federal regulation 40 CFR Part 412 – *Feedlots Point Source Category*, establishes effluent limitations and guidelines representing best practicable control technology currently available (BPT) and best available technology economically achievable (BAT). BPT and BAT for CAFO's is no discharge of process waste water pollutants to navigable waters where process waste waters are defined as any process generated waste and any precipitation (rain or snow) which comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g. milk, eggs).
- e. Maine law, 7 M.R.S.A, §4204(H)(2) establishes the criteria for who must develop and implement a Nutrient Management Plan. CAFOs meet applicable criteria under this section. Maine DACF regulation Chapter 565, *Nutrient Management Rules*, §6(1) establishes the standards for Nutrient Management Plans required under Maine law, 7 M.R.S.A, §4204. Chapter 565, §6(2) requires Nutrient Management Plans to be updated at least once each year and must be approved by a certified nutrient management plan specialist at least every five years.
- f. Maine law, 7 M.R.S.A, §4205(A) requires CAFOs to obtain a Livestock Operations Permit (LOP). Maine DACF regulation Chapter 565, *Nutrient Management Rules*, §8(1)(a) requires the owner or operator of a CAFO to obtain a LOP or provisional LOP from the DACF.

6. GENERAL FACILITY INSPECTIONS AND MONITORING

The inspections, monitoring and recordkeeping and annual reporting required by this permitting action were developed based on guidance provided by the USEPA to promote consistency with nationwide permitting of CAFOs. In addition, the DEP consulted with the Maine DACF to develop inspections, monitoring and recordkeeping that would serve both agencies program requirements.

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the ground water or surface water bodies to meet standards for Class B or Class C classification.

8. PUBLIC COMMENTS

Public notice of this application was made in the Morning Sentinel newspaper on or about July 15, 2013. 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:

Maine Department of Agriculture, Conservation and Forestry
Division of Animal and Plant Health
Attn: Nutrient Management Program Manager
28 State House Station
Augusta, Maine 04333-0028 Telephone: (207)-287-7608

Maine Department of Environmental Protection
Attn: MEPDES Permitting Coordinator
Bureau of Land & Water Quality
Division of Water Quality Management
17 State House Station
Augusta, Maine 04333 Telephone: (207) 287-3901

10. RESPONSE TO COMMENTS

During the period of January 13, 2014, through the issuance date of this permit, the Department solicited comments on the proposed draft permit to be issued for the permittee's facility. The Department received written comments from the U.S. Environmental Protection Agency (USEPA) in an electronic mail message dated February 13, 2014. Responses to comments received are as follows:

Comment #1: The USEPA commented " While the fact sheet does provide a discussion on how this permit will not contribute to water quality standards violations for mercury, dioxin and PCB's in the receiving waters (Jackins Brooks and the Kennebec River), it does not describe if the permit will or will not be protective of other water quality standard requirements of the receiving water. The fact sheet should address this issue. The fact sheet needs to reference the need (or lack thereof) WQBELs and if WQBELs are needed, the permit should include them.

Response #1: A paragraph has been added to Section 4, *Receiving Water Quality Conditions*, on page 7 of the fact sheet to address USEPA's comment.

Comment #2: The USEPA recommends site specific terms of the Nutrient Management Plan (NMP) need to be incorporated into the permit as specific, detailed identification of each of the terms of the NMP in the text of the permit.

Response #2: The only specific terms of the NMP not incorporated into the draft permit are found at 40 CFR §122.42(e)(5). To address USEPA's concern, the requirements of 40 CFR §122.42(e)(5) have been incorporated into Special Condition C, *Nutrient Management Plan*, of the final permit.

ATTACHMENT A



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Imagery Date: 9/17/2013 44°38'35.01"N 69°34'54.81"W elev: 182 ft eye alt: 4692 ft

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

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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.

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(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D(1)(f), below. (24-hour notice).

(d) Prohibition of bypass.

(i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (c) of this section.

(ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (d)(i) of this section.

6. Upsets.

(a) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph D(1)(f), below. (24 hour notice).

(iv) The permittee complied with any remedial measures required under paragraph B(4).

(d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

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C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

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

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D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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.
