



STATE OF MAINE

Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patricia W. Aho
COMMISSIONER

June 27, 2014

Mr. Joseph Stone
Town Administrator
P.O. Box 400
16 Town Office Square
North Haven, ME. 03907

RE: National Pollutant Discharge Elimination System (NPDES) Permit #ME0101907
Maine Waste Discharge License (WDL) Application #W001671-6B-F-R
Final Permit

Dear Mr. Stone:

Enclosed please find a copy of your **final** NPDES permit and Maine WDL **renewal** which was approved by the U.S. Environmental Protection Agency and 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 federal and state law and is subject to enforcement action.

Your NPDES permit will become effective on the date specified in the permit unless you file a timely petition for review with EPA's Environmental Appeals Board (EAB) pursuant to 40 CFR §124.19. See 40 CFR §124.15 (issuance and effective date of permit).

The current regulations governing NPDES permit appeals are found at 40 CFR §124.19 and took effect on March 26, 2013. A copy of the regulations and more specific information about appeals are enclosed for your convenience. If you do wish to appeal this permit to the EAB, please refer to these regulations and to materials on the website of the EAB (<http://www.epa.gov/eab>) for information concerning procedural and substantive requirements applicable to NPDES permit appeals. Please note in particular the new provisions related to filing and service requirements set forth at 40 CFR §124.19(a) and (i), and to the extent and form of briefs set forth at 40 CFR §124.19(a) and (d).

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.*"

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

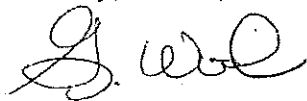
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106 HOGAN ROAD
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1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-6477 FAX: (207) 764-1507

If you have any questions regarding the matter, please feel free to call me at 287-7693.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Wood". The signature is fluid and cursive, with the first name "G." and the last name "Wood" clearly distinguishable.

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

Enc.

cc: Beth DeHaas, DEP/CMRO
Sandy Mojica, USEPA

TOWN OF NORTH HAVEN, MAINE	)	FINAL DECISION
PUBLICLY OWNED TREATMENT WORKS,	)	OF THE REGIONAL
APPLICATION FOR SECTION 301(h)	)	ADMINISTRATOR PURSUANT
VARIANCE FROM THE SECONDARY	)	40 CFR PART 125, SUBPART G
TREATMENT REQUIREMENTS OF THE)	
CLEAN WATER ACT)	

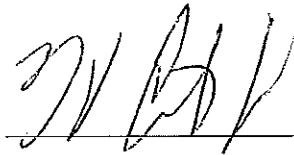
The Town of North Haven operates a 40,000 gallon per day publicly owned treatment works located in the Town of North Haven, Maine. The Town has submitted a waiver (from secondary treatment requirements) application pursuant to Section 301(h) of the Clean Water Act, as amended by the Water Quality Act of 1987 (the Act). It is my final decision to grant the request by the Town of North Haven for renewal of a National Pollutant Discharge Elimination System (NPDES) permit as modified under Section 301(h) of the Clean Water Act.

The basis for this decision is described in the draft 301(h) modified permit fact sheet for the Town's Wastewater Treatment Plant and Ocean Outfall and the 301(h) Tentative Decision Document public noticed by USEPA on December 12, 2013.

The USEPA received the Town of North Haven's renewal application on September 26, 2008. A tentative decision to approve the application was public noticed on December 12, 2013. Concurrently, the USEPA and the State of Maine jointly proposed reissuance of a draft 301(h) modified NPDES permit incorporating both federal NPDES and State Waste Discharge Requirements. The USEPA and Maine DEP revised the draft permit based, in part, on public comments.

This Final Decision and the waiver to which it pertains, will become effective and expire concurrently with NPDES permit unless an appeal is filed with Environmental Appeals Board within 30 days of the final issuance of the permit.

Date: 6/13/14



H. Curtis Spalding

Regional Administrator

Environmental Protection Agency

Region I



STATE OF MAINE
Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patricia W. Aho
COMMISSIONER

Mr. Doug Corb
U.S. Environmental Protection Agency
Mail Code – OEP06-4
5 Post Office Square – Suite 100
Boston, MA 02109-3912

January 31, 2014

RE: Section 401 Water Quality Certification; NPDES Permit #ME0101907
Town of North Haven

Dear Mr. Corb:

Enclosed is a State of Maine Water Quality Certification pursuant to Section 401 of the Federal Water Pollution Control Act for the above referenced draft permit dated December 17, 2013.

The State of Maine's Department of Environmental Protection has taken into consideration all the relevant facts and information from a number of sources, including but not limited to, ambient water quality data, information collected by the permittee, the State of Maine Department of Marine Resources and others, information provided by the permittee in application materials submitted for a waste discharge license renewal, correspondence with other state regulatory authorities, and industry experts, and the Department's own desktop water quality modeling efforts.

Based on this information, the Department has made the determination that as limited in the draft permit, the discharge will not cause or contribute to the failure of the waterbody to attain the standards of its assigned classification. If you have any further questions regarding this matter, please contact me at (207) 287-7693.

Sincerely,

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

Enc.

cc: Beth DeHaas, DEP/CMRO
Joseph Stone, Town of North Haven

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

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF NORTH HAVEN	)	CERTIFICATION
NORTH HAVEN, KNOX COUNTY	)	PURSUANT TO THE FEDERAL
ME0101907	)	WATER POLLUTION
W001671-6B-H-N	)	CONTROL ACT
	APPROVAL	

Pursuant to section 401(a) of the Federal Water Pollution Control Act, as amended, I hereby certify that the discharge described in the above captioned proposed National Pollutant Discharge Elimination System (NPDES) permit dated December 17, 2013, will comply with the applicable provisions of section 208(e), 301, 302, 303, 306 and 307 of said Act. In addition, the discharge described will not lower the quality of the receiving waters below the minimum requirements of their classification and will satisfy the appropriate requirements of Maine Law.

Any change in the terms or conditions of the draft permit is not certified by this document, and will require a case-by-case determination by the State that the changed conditions will continue to satisfy the appropriate requirement of Maine Law.

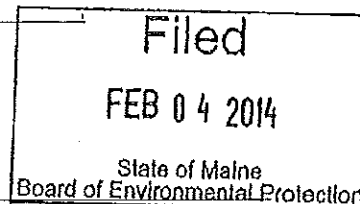
DONE AND DATED AT AUGUSTA, MAINE, THIS 3RD DAY OF February, 2014.

COMMISSIONER OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
for Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application December 19, 2013
Date of application acceptance December 20, 2013



Date filed with Board of Environmental Protection _____

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

ME0101907 WQ Cert 2014

1/31/14

AUTHORIZATION TO DISCHARGE UNDER CLEAN WATER ACT SECTION 301 (h)
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. §1251 et seq.; the "CWA"), and Title 38 Maine Revised Statutes § 414-A et seq.,

Town of North Haven – ME0101907

is authorized to discharge from a facility located at

**Waste Water Treatment Facility
Waterman's Lane
North Haven, Maine 04853**

to receiving water named **Fox Island Thorofare - Class SB**

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

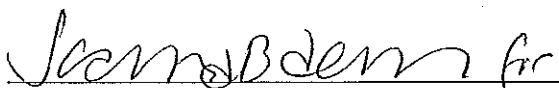
This NPDES permit shall become effective on the first day of the calendar month following 60 days after signature by both the EPA Director and the Commissioner of the Maine Department of Environmental Protection. This Waste Discharge License (WDL) shall become effective immediately upon signature by the Commissioner of the Maine Department of Environmental Protection.

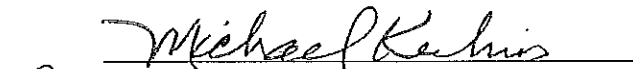
Both the NPDES permit and WDL shall expire concurrently at midnight, five (5) years from the date of signature by the Commissioner of the Maine Department of Environmental Protection.

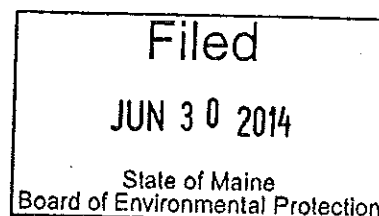
This permit supersedes the NPDES permit/WDL issued on November 21, 2003. This permit consists of the *Maine Pollutant Discharge Elimination System Permit and Standard Conditions Applicable To All Permits* (last revised July 1, 2002), and *EPA NPDES Part II Standard Conditions (January 2007)* copies attached, and the attached Special Conditions, including effluent limitations and monitoring requirements.

Signed this 5th day of June

Signed this 30th day of June


Ken Moraff, Director
Office of Ecosystems Protection
Environmental Protection Agency
Boston, Massachusetts


Patricia W. Aho, Commissioner
Maine Department of Environmental
Protection
Augusta, Maine



IN THE MATTER OF

TOWN OF NORTH HAVEN	)	NATIONAL POLLUTANT
NORTH HAVEN, KNOX COUNTY, MAINE	)	DISCHARGE ELIMINATION SYSTEM
PUBLICLY OWNED TREATMENT)	
WORKS	)	WASTE DISCHARGE LICENSE
ME0101907	)	RENEWAL
W001671-6B-F-R		
APPROVAL		

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et seq., and 38 M.R.S.A., Section 414-A et seq., and applicable regulations, the U.S. Environmental Protection Agency (EPA hereinafter) and the Maine Department of Environmental Protection (Department hereinafter) have considered the application of the TOWN OF NORTH HAVEN (Town hereinafter), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

The Town has applied for renewal of a combined National Pollutant Discharge Elimination System (NPDES) permit #ME0101907 and Maine Waste Discharge License (WDL) #W001671-5L-D-R that was issued on November 21, 2003 and expired on November 21, 2008. The permit/license (permit hereinafter) authorizes the discharge of up to a monthly average flow of 0.040 million gallons per day (MGD) of primary treated sanitary waste water to the Fox Island Thorofare, Class SB, in North Haven, Maine.

PERMIT SUMMARY

This permitting action is similar to the previous permitting action in that it carries forward;

1. The monthly average flow limitation of 0.040 MGD (but is being expressed in gallons per day (gpd)).
2. The monthly average technology-based requirements to achieve a minimum of 30% removal of biochemical oxygen demand (BOD) and a minimum of 50% removal for total suspended solids (TSS).
3. The monthly average technology-based mass limitations for BOD and TSS.
4. The daily maximum concentration reporting requirement for settleable solids.

This permitting action is different than the previous permitting action in that it;

5. Reduces the monitoring frequency of the daily maximum technology-based concentration limit of 0.3 mg/L for total residual chlorine from 5/Week to 3/Week. The draft permit includes a new average monthly 0.1 mg/L limit.
6. Reduces the monitoring frequency of the technology-based pH range limitation of 6.0 - 9.0 standard units from 5/Week to 1/Week.
7. Reduces the frequency of reporting requirement for settleable solids from 5/week to 1/Week.

8. Requires the permittee to take influent samples for BOD and TSS and use the data to calculate the monthly average percent removal for both parameters.
9. Requires sludge reporting.
10. EPA requirements for operations and maintenance of the treatment plant and the permittee must have a Wet Weather Flow Management Plan.

CONCLUSIONS

BASED on the findings in the Fact Sheet dated, November 27, 2013 and subject to the Conditions listed below, the USEPA and the Department make 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 its classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 MRSA Section 464(4)(F), will be met, in that:
 - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
 - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
 - (e) Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

ACTION

THEREFORE, the USEPA and the Department APPROVE the above noted application of the TOWN OF NORTH HAVEN, to discharge up to a monthly average flow of 40,000 gpd of primary treated waste waters to the Fox Island Thorofare, Class SB, in North Haven, Maine, 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, and EPA NPDES Part II, Standard Conditions, January 2007) copies attached.
2. The Special Conditions on the following pages.
3. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of this permit and all subsequent modifications and minor revisions thereto shall remain in effect until a final decision on the renewal application becomes effective (See 40 CFR §122.6). [*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)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: September 26, 2008
Date of application acceptance: September 26, 2008

Date filed with Maine Board of Environmental Protection _____
This order prepared by jointly GREGG WOOD, Bureau of Land & Water Quality and DOUG CORB, EPA Region I.
North Haven 2014 11/27/2013

SPECIAL CONDITIONS

A. REGULATORY AUTHORITY

1. This authorization to discharge includes two separate and independent permit authorizations. The two permit authorizations are (i) a federal National Pollutant Discharge Elimination System permit issued by the U.S. Environmental Protection Agency (EPA) pursuant to the Federal Clean Water Act, 33 U.S.C. §§1251 et seq.; and (ii) an identical state Waste Discharge License (WDL) issued by the Commissioner of the Maine Department of Environmental Protection (MDEP) pursuant to the Maine law, 38 M.R.S.A., Section 414-A et seq., and applicable regulations. All of the requirements contained in this authorization, as well as the standard conditions contained in 314 CMR 3.19, are hereby incorporated by reference into this surface water discharge permit/license (permit hereinafter).
2. This authorization also incorporates the state water quality certification issued by MDEP under § 401(a) of the Federal Clean Water Act, 40 C.F.R. 124.53, M.G.L. c. 21, § 27. All of the requirements (if any) contained in MDEP's water quality certification for the permit are hereby incorporated by reference into this state permit.
3. Each agency shall have the independent right to enforce the terms and conditions of this permit. Any modification, suspension or revocation of this permit shall be effective only with respect to the agency taking such action, and shall not affect the validity or status of this permit/license as issued by the other agency, unless and until each agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this permit is declared invalid, illegal or otherwise issued in violation of state law such permit shall remain in full force and effect under federal law as a NPDES Permit issued by the U.S. Environmental Protection Agency. In the event this permit/license is declared invalid, illegal or otherwise issued in violation of federal law, this permit shall remain in full force and effect under state law as a WDL issued by the State of Maine.

SPECIAL CONDITIONS

B. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge treated primary treated sanitary waste waters from **Outfall 001** to the Fox Island Thorofare and must monitor and limit discharges as follows:

Effluent Characteristic	Discharge Limitations			Monitoring Requirement			
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type	
Flow [50050]	40,000 gpd [07]	---	---	---	Continuous [99/99]	Recorder [RC]	
BOD ⁽¹⁾ [00310]	68 lbs/day [26]	Report lbs/day [26]	203 mg/L [19]	Report, mg/L [19]	2/Month [02/30]	Composite [24]	
BOD % Removal ⁽²⁾ [50076]	---	---	30 % [23]	---	1/Month [01/30]	Calculate [CA]	
TSS ⁽¹⁾ [00530]	48 lbs/day [26]	Report lbs/day [26]	145 mg/L [19]	Report, mg/L [19]	2/Month [02/30]	Composite [24]	
TSS % Removal ⁽²⁾ [81011]	---	---	50 % [23]	---	1/Month [01/30]	Calculate [CA]	
Settleable Solids [00545]	---	Report (ml/L) [25]	---	Report (ml/L) [25]	1/Week [01/07]	Grab [GR]	
Fecal Coliform Bacteria ⁽³⁾ , ⁽⁴⁾ [31615] (May 15 – September 30 each year)	---	---	15/100 ml	50/100ml [30]	2/Month [02/30]	Grab [GR]	
Total Residual Chlorine [50060] ⁽⁴⁾	---	---	0.1 mg/L [19]	0.3 mg/L [19]	3/Week [03/07]	Grab [GR]	
pH (Std. Units) [00400]	The pH shall not be less than 6.0 or greater than 9.0 at any time.					1/Week [01/07]	Grab [GR]

The italicized numeric values bracketed in the table above are code numbers that Department personnel use to code the monthly Discharge Monitoring Reports (DMR's).

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

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

All detectable analytical test results shall be reported to the Department and EPA including results which are detected below the respective reporting limits (RLs) specified by the Department or as specified by other approved test methods. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the detection limit achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL is not acceptable and will be rejected by the Department and EPA. For mass, if the analytical result is reported as <Y or if a detectable result is less than a RL, report a <X lbs/day, where X is the parameter specific limitation established in the permit.

Footnotes

1. **BOD and TSS sampling** – Sampling of both influent and effluent required.
2. **Percent removal** - The permittee shall achieve at least 30% removal for BOD and 50% removal for TSS. For the purposes of calculating a monthly average percent removal, the permittee shall use the measured monthly average influent and effluent concentrations.
3. **Fecal coliform bacteria** – Limitations and monitoring requirements are in effect from May 15 through September 30 of each year. The Department and EPA reserve the right to impose year-round disinfection to protect the health, safety and welfare of the public, by letter notification to the permittee. The monthly average limitation is a geometric mean limitation and results shall be reported as such.
4. **Total residual chlorine (TRC)** – Limitations and monitoring requirements for TRC are in effect whenever elemental chlorine or chlorine-based compounds are utilized for disinfection or cleaning. The permittee shall utilize approved test methods that are capable of bracketing the limitations in this permit.

C. NARRATIVE EFFLUENT LIMITATIONS

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

D. TREATMENT PLANT OPERATOR (specific to Maine DEP)

The treatment facility must be operated by a person holding a minimum of a **Grade I** certificate or higher (or Registered Maine Professional Engineer) pursuant to *Sewerage Treatment Operators*, Title 32 M.R.S.A., Sections 4171-4182 and *Regulations for Wastewater Operator Certification*, 06-096 CMR 531 (effective May 8, 2006). All proposed contracts for facility operation by any person must be approved by the Department before the permittee may engage the services of the contract operator.

E. UNAUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on September 26, 2008, 2) the terms and conditions of this permit; and 3) only from Outfall #001A. Discharges of waste water from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

F. NOTIFICATION REQUIREMENT

In accordance with EPA Part II Standard Condition D, the permittee shall notify the Department and the EPA of the following:

1. Any substantial change in the volume or character of pollutants being introduced into the waste water collection and treatment system by a source introducing pollutants to the system at the time of permit issuance.
2. For the purposes of this section, adequate notice shall include information on:
 - a. The quality or quantity of waste water introduced to the waste water collection and treatment system; and

- b Any anticipated impact of the change in the quality or quantity of the waste water to be discharged from the treatment system.

G. OPERATIONS AND MAINTENANCE FOR THE TREATMENT PLANT

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

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

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

Within ninety (90) days of the effective date of this permit, [PCS Code 00701], the permittee shall submit to the Maine Department of Environmental Protection for review and approval, a public education program designed to minimize the entrance of non-industrial toxic pollutants and pesticides into the collection system and waste water treatment facility.

Within one hundred and twenty (120) days of the effective date of this permit, [PCS Code 53399], the permittee shall provide written notice to the Maine Department of Environmental Protection, that the approved public education program has been implemented.

H. WET WEATHER FLOW MANAGEMENT PLAN

The treatment facility staff shall maintain a Wet Weather Management Plan to direct the staff on how to operate the facility effectively during periods of high flow. The Department and EPA acknowledge that the existing collection system may deliver flows in excess of the monthly average design capacity of the treatment plant during periods of high infiltration and rainfall.

The plan shall include operating procedures for a range of intensities, address solids handling procedures (including septic waste and other high strength wastes if applicable) and provide written operating and maintenance procedures during the events.

The permittee shall review their plan annually and record necessary changes to keep the plan up to date.

I. SLUDGE USE/DISPOSAL

1. The permittee shall comply with all existing federal and state laws and regulations that apply to sewage sludge use and disposal practices, including EPA regulations promulgated at 40 CFR Part 503, which prescribe "Standards for the Use or Disposal of Sewage Sludge" pursuant to Section 405(d) of the CWA, 33 U.S.C. § 1345(d).
2. If both state and federal requirements apply to the permittee's sludge use and/or disposal practices, the permittee shall comply with the more stringent of the applicable requirements.
3. The requirements and technical standards of 40 CFR Part 503 apply to the following sludge use or disposal practices.
 - a. Land application - the use of sewage sludge to condition or fertilize the soil
 - b. Surface disposal - the placement of sewage sludge in a sludge only landfill
 - c. Sewage sludge incineration in a sludge only incinerator
4. The requirements of 40 CFR Part 503 do not apply to facilities which dispose of sludge in a municipal solid waste landfill. 40 CFR § 503.4. These requirements also do not apply to facilities which do not use or dispose of sewage sludge during the life of the permit but rather treat the sludge (e.g. lagoons, reed beds), or are otherwise excluded under 40 CFR § 503.6.
5. The 40 CFR. Part 503 requirements including the following elements:
 - a. General requirements
 - b. Pollutant limitations
 - c. Operational Standards (pathogen reduction requirements and vector attraction reduction requirements)
 - d. Management practices
 - e. Record keeping
 - f. Monitoring
 - g. Reporting

The 40 C.F.R. Part 503 requirements that apply to the permittee will depend upon the use or disposal practice followed and upon the quality of material produced by a facility. The EPA Region 1 Guidance document, "EPA Region 1 - NPDES Permit Sludge Compliance Guidance" (November 4, 1999), may be used by the permittee to assist it in determining the applicable requirements.¹

¹ This guidance document is available upon request from EPA Region 1 and may also be found at:
<http://www.epa.gov/region1/npdes/permits/generic/sludgeguidance.pdf>

6. The sludge shall be monitored for pollutant concentrations (all Part 503 methods) and pathogen vector attraction reduction (land application and surface disposal) at the following frequency. This frequency is based upon the volume of sewage sludge generated at the facility in dry metric tons per year

less than 290	1/ year
290 to less than 1,500	1 /quarter
1,500 to less than 15,000	6 /year
15,000 +	1 /month

Sampling of the sewage sludge shall use the procedures detailed in 40 CFR 503.8.

7. Under 40 CFR § 503.9(r), the permittee is a "person who prepares sewage sludge" because it "is ... the person who generates sewage sludge during the treatment of domestic sewage in a treatment works" If the permittee contracts with *another* "person who prepares sewage sludge" under 40 CFR § 503.9(r) – i.e., with "a person who derives a material from sewage sludge" – for use or disposal of the sludge, then compliance with Part 503 requirements is the responsibility of the contractor engaged for that purpose. If the permittee does not engage a "person who prepares sewage sludge," as defined in 40 CFR § 503.9(r), for use or disposal, then the permittee remains responsible to ensure that the applicable requirements in Part 503 are met. 40 CFR § 503.7. If the ultimate use or disposal method is land application, the permittee is responsible for providing the person receiving the sludge with notice and necessary information to comply with the requirements of 40 CFR Part 503 Subpart B.
8. The permittee shall submit an annual report containing the information specified in the 40 CFR Part 503 requirements (§ 503.18 (land application), § 503.28 (surface disposal), or § 503.48 (incineration)) by **February 19** (*see also* "EPA Region 1 - NPDES Permit Sludge Compliance Guidance"). Reports shall be submitted to the address contained in the reporting section of the permit. If the permittee engages a contractor or contractors for sludge preparation and ultimate use or disposal, the annual report need contain only the following information:
 - a. Name and address of contractor(s) responsible for sludge preparation, use or disposal.
 - b. Quantity of sludge (in dry metric tons) from the POTW that is transferred to the sludge contractor(s), and the method(s) by which the contractor will prepare and use or dispose of the sewage sludge.

J. MONITORING AND REPORTING

1. **For a period of one year from the effective date of the permit**, the permittee may submit monitoring data to EPA and the Maine Department of Environmental Protection ("MDEPMDEP") either in hard copy form or report electronically using Maine's electronic Discharge Monitoring Report ("eDMR") System, a web-based tool that allows permittees to electronically record and report discharge monitoring reports (DMRs) via a secure internet connection.

Beginning no later than one year after the effective date of the permit, the permittee shall begin reporting using eDMR, unless the facility is able to demonstrate a reasonable basis that precludes the use of eDMR for submitting DMRs. Specific requirements regarding submittal of data and reports in hard copy form and for submittal using eDMR are described below:

a. Submittal of DMRs Using eDMR

eDMR can be accessed from the Maine Department of Environmental Protection website: <http://www.maine.gov/dep/water/wwtreatment/#edmr>. Within one year of the effective date of this permit, the permittee shall begin submitting DMRs required under this permit electronically to EPA and the MDEP using eDMR, unless the facility is able to demonstrate a reasonable basis, such as technical or administrative infeasibility, that precludes the use of eDMR for submitting DMRs ("opt-out request").

DMRs shall be submitted electronically to EPA and the MDEP using eDMR no later than the 15th day of the month following the completed reporting period. Once a permittee begins submitting DMRs using eDMR, it will no longer be required to submit hard copies of DMRs to EPA and the MDEP. However, permittees shall continue to send hard copies of all other permit-required reports to EPA and the MDEP until further notice from the EPA.

b. Submittal of eDMR Opt-Out Requests

Opt-out requests must be submitted in writing to EPA for written approval at least sixty (60) days prior to the date a facility would be required under this permit to begin using eDMR.

This demonstration shall be valid for twelve (12) months from the date of EPA approval and shall thereupon expire. At such time, DMRs shall be submitted electronically to EPA and the MDEP unless the permittee submits a renewed opt-out request and such request is approved by EPA. All opt-out requests should be sent to the following addresses:

Attn: NetDMR Coordinator
U.S. Environmental Protection Agency, Water Technical Unit
5 Post Office Square, Suite 100 (OES04-4)
Boston, MA 02109-3912

And

Maine Department of Environmental Protection
Division of Water Quality Management, Compliance & Technical Assistance Unit
17 State House Station, 28 Tyson Drive
Augusta, Maine 04333

c. Submittal of Reports in Hard Copy Form

Monitoring results shall be summarized for each calendar month and reported on separate hard copy Discharge Monitoring Report Form(s) (DMRs) postmarked no later than the 15th day of the month following the completed reporting period. All reports required under this permit, shall be submitted as an attachment to the DMRs prior to a facility using eDMR. Once a facility begins using eDMR, the completed eDMR must be electronically submitted to the Department by a facility authorized DMR Signatory not later than close of business on the 15th day of the month following the completed reporting period. All other reports required under this permit shall be submitted as separate hard copies to EPA and the MDEP. Signed and dated originals of hard copies of the DMRs, and all other reports or notifications required herein or in Part II shall be submitted to the Director at the following address:

U.S. Environmental Protection Agency
Water Technical Unit (OES04-SMR)
5 Post Office Square - Suite 100
Boston, MA 02109-3912

All sludge monitoring reports required herein shall be submitted to:

U.S. Environmental Protection Agency, Region 7
Biosolids Center
Water Enforcement Branch
11201 Renner Boulevard
Lenexa, Kansas 66219

Duplicate signed copies of all reports or notifications required above shall be submitted to the State at the following addresses:

Department of Environmental Protection
Central Maine Regional Office
Bureau of Land and Water Quality
Division of Compliance, Engineering & Technical Assistance
17 State House Station
Augusta, Maine 04333

K. RE-OPENING OF PERMIT FOR MODIFICATIONS

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

L. SEVERABILITY

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

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PART II. A. GENERAL REQUIREMENTS

1. Duty to Comply

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

- a. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the sludge use or disposal established under Section 405(d) of the CWA 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 requirements.
- b. The CWA provides that any person who violates Section 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any of such sections in a permit issued under Section 402, or any requirement imposed in a pretreatment program approved under Section 402 (a)(3) or 402 (b)(8) of the CWA is subject to a civil penalty not to exceed \$25,000 per day for each violation. Any person who negligently violates such requirements is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both. Any person who knowingly violates such requirements is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both.
- c. Any person may be assessed an administrative penalty by the Administrator for violating Section 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the CWA. Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000. Penalties for Class II violations are not to exceed \$10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000.

Note: See 40 CFR §122.41(a)(2) for complete "Duty to Comply" regulations.

2. 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 notifications of planned changes or anticipated noncompliance does not stay any permit condition.

3. Duty to Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator 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 Regional Administrator, upon request, copies of records required to be kept by this permit.

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4. Reopener Clause

The Regional Administrator reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the CWA in order to bring all discharges into compliance with the CWA.

For any permit issued to a treatment works treating domestic sewage (including "sludge-only facilities"), the Regional Administrator or Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under Section 405 (d) of the CWA. The Regional Administrator or Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or contains a pollutant or practice not limited in the permit.

Federal regulations pertaining to permit modification, revocation and reissuance, and termination are found at 40 CFR §122.62, 122.63, 122.64, and 124.5.

5. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from responsibilities, liabilities or penalties to which the permittee is or may be subject under Section 311 of the CWA, or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

6. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges.

7. Confidentiality of Information

- a. In accordance with 40 CFR Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR Part 2 (Public Information).
- b. Claims of confidentiality for the following information will be denied:
 - (1) The name and address of any permit applicant or permittee;
 - (2) Permit applications, permits, and effluent data as defined in 40 CFR §2.302(a)(2).
- c. Information required by NPDES application forms provided by the Regional Administrator under 40 CFR §122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

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8. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain a new permit. The permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Regional Administrator. (The Regional Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

9. State Authorities

Nothing in Part 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

10. Other Laws

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

PART II. B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. 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 and with the requirements of storm water pollution prevention plans. 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 only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce 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.

3. 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.

4. Bypass

a. Definitions

- (1) *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.

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- (2) *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 be reasonably 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 provision of Paragraphs B.4.c. and 4.d. of this section.

c. Notice

- (1) 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.
- (2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e. of this part (Twenty-four hour reporting).

d. Prohibition of bypass

Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

- (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- (2) 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 preventative maintenance; and
- (3) i) The permittee submitted notices as required under Paragraph 4.c. of this section.
- ii) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in paragraph 4.d. of this section.

5. Upset

- a. Definition. *Upset* means an exceptional incident in which there is an 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 B.5.c. of this section are met. No determination made during

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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:
 - (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
 - (2) The permitted facility was at the time being properly operated;
 - (3) The permittee submitted notice of the upset as required in paragraphs D.1.a. and 1.e. (Twenty-four hour notice); and
 - (4) The permittee complied with any remedial measures required under B.3. above.
- d. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

PART II. C. MONITORING REQUIREMENTS

1. Monitoring and Records

- a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- b. Except for records for 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 (or longer as required by 40 CFR Part 503), 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 except for the information concerning storm water discharges which must be retained for a total of 6 years. This retention period may be extended by request of the Regional Administrator at any time.
- c. Records of monitoring information shall include:
 - (1) The date, exact place, and time of sampling or measurements;
 - (2) The individual(s) who performed the sampling or measurements;
 - (3) The date(s) analyses were performed;
 - (4) The individual(s) who performed the analyses;
 - (5) The analytical techniques or methods used; and
 - (6) The results of such analyses.
- d. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, unless other test procedures have been specified in the permit.
- e. The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by

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imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The permittee shall allow the Regional Administrator or an authorized representative (including an authorized contractor acting as a representative of the 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 CWA, any substances or parameters at any location.

PART II. D. REPORTING REQUIREMENTS

1. Reporting Requirements

- a. **Planned Changes.** The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is only required when:
 - (1) 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
 - (2) The alteration or addition could significantly change the nature or increase the quantities of the pollutants discharged. This notification applies to pollutants which are subject neither to the effluent limitations in the permit, nor to the notification requirements at 40 CFR§122.42(a)(1).
 - (3) 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 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 Regional Administrator 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 after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and

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incorporate such other requirements as may be necessary under the CWA. (See 40 CFR Part 122.61; in some cases, modification or revocation and reissuance is mandatory.)

- d. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
- (1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.
 - (2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in the permit, the results of the monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
 - (3) Calculations for all limitations which require averaging or measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.
- e. Twenty-four hour reporting.

- (1) 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 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.

- (2) 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. (See 40 CFR §122.41(g).)
 - (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 Regional Administrator in the permit to be reported within 24 hours. (See 40 CFR §122.44(g).)
- (3) The Regional Administrator may waive the written report on a case-by-case basis for reports under Paragraph D.1.e. if the oral report has been received within 24 hours.

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- f. Compliance Schedules. Reports of compliance or noncompliance with, 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.
- g. Other noncompliance. The permittee shall report all instances of noncompliance not reported under Paragraphs D.1.d., D.1.e., and D.1.f. of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph D.1.e. 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 Regional Administrator, it shall promptly submit such facts or information.

2. Signatory Requirement

- a. All applications, reports, or information submitted to the Regional Administrator shall be signed and certified. (See 40 CFR §122.22)
- b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both.

3. Availability of Reports.

Except for data determined to be confidential under Paragraph A.8. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Regional Administrator. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statements on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA.

PART II. E. DEFINITIONS AND ABBREVIATIONS

1. Definitions for Individual NPDES Permits including Storm Water Requirements

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all, State, interstate, and Federal standards and limitations to which a "discharge", a "sewage sludge use or disposal practice", or a related activity is subject to, including "effluent limitations", water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices", pretreatment standards, and "standards for sewage sludge use and disposal" under Sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of the CWA.

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Application means the EPA standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by EPA for use in "approved States", including any approved modifications or revisions.

Average means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For total and/or fecal coliforms and Escherichia coli, 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.

Average weekly discharge limitation means the highest allowable average of "daily discharges" measured during the calendar week divided by the number of "daily discharges" measured during the 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 United States." 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.

Best Professional Judgment (BPJ) means a case-by-case determination of Best Practicable Treatment (BPT), Best Available Treatment (BAT), or other appropriate technology-based standard based on an evaluation of the available technology to achieve a particular pollutant reduction and other factors set forth in 40 CFR §125.3 (d).

Coal Pile Runoff means the rainfall runoff from or through any coal storage pile.

Composite Sample means a sample consisting of a minimum of eight grab samples of equal volume collected at equal intervals during a 24-hour period (or lesser period as specified in the section on Monitoring and Reporting) and combined proportional to flow, or a sample consisting of the same number of grab samples, or greater, collected proportionally to flow over that same time period.

Construction Activities - The following definitions apply to construction activities:

- (a) Commencement of Construction is the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.
- (b) Dedicated portable asphalt plant is a portable asphalt plant located on or contiguous to a construction site and that provides asphalt only to the construction site that the plant is located on or adjacent to. The term dedicated portable asphalt plant does not include facilities that are subject to the asphalt emulsion effluent limitation guideline at 40 CFR Part 443.
- (c) Dedicated portable concrete plant is a portable concrete plant located on or contiguous to a construction site and that provides concrete only to the construction site that the plant is located on or adjacent to.

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- (d) Final Stabilization means that all soil disturbing activities at the site have been complete, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
- (e) Runoff coefficient means the fraction of total rainfall that will appear at the conveyance as runoff.

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

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 similar activities.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, and Pub. L. 97-117; 33 USC §§1251 et seq.

Daily Discharge means the discharge of a pollutant measured during the calendar day or any other 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 measurements, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

Director normally means the person authorized to sign NPDES permits by EPA or the State or an authorized representative. Conversely, it also could mean the Regional Administrator or the State Director as the context requires.

Discharge Monitoring Report Form (DMR) means the EPA standard 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.

Discharge of a pollutant means:

- (a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source", or
- (b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation (See "Point Source" definition).

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead

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to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

This term does not include an addition of pollutants by any "indirect discharger."

Effluent limitation means any restriction imposed by the Regional Administrator on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States", the waters of the "contiguous zone", or the ocean.

Effluent limitation guidelines means a regulation published by the Administrator under Section 304(b) of CWA to adopt or revise "effluent limitations".

EPA means the United States "Environmental Protection Agency".

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots where the volume of each aliquot is proportional to the flow rate of the discharge.

Grab Sample – An individual sample collected in a period of less than 15 minutes.

Hazardous Substance means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the CWA.

Indirect Discharger means a non-domestic discharger introducing pollutants to a publicly owned treatment works.

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

- (a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (b) 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 (CWA), the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resources Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SDWA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection Research and Sanctuaries Act.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

Large and Medium municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and 40 CFR Part 122); or (ii) located in the counties with unincorporated urbanized

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populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships, or towns within such counties (these counties are listed in Appendices H and I of 40 CFR 122); or (iii) owned or operated by a municipality other than those described in Paragraph (i) or (ii) and that are designated by the Regional Administrator as part of the large or medium municipal separate storm sewer system.

Maximum daily discharge limitation means the highest allowable "daily discharge" concentration that occurs only during a normal day (24-hour duration).

Maximum daily discharge limitation (as defined for the Steam Electric Power Plants only) when applied to Total Residual Chlorine (TRC) or Total Residual Oxidant (TRO) is defined as "maximum concentration" or "Instantaneous Maximum Concentration" during the two hours of a chlorination cycle (or fraction thereof) prescribed in the Steam Electric Guidelines, 40 CFR Part 423. These three synonymous terms all mean "a value that shall not be exceeded" during the two-hour chlorination cycle. This interpretation differs from the specified NPDES Permit requirement, 40 CFR § 122.2, where the two terms of "Maximum Daily Discharge" and "Average Daily Discharge" concentrations are specifically limited to the daily (24-hour duration) values.

Municipality means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management agency under Section 208 of the CWA.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the CWA. The term includes an "approved program".

New Discharger means any building, structure, facility, or installation:

- (a) From which there is or may be a "discharge of pollutants";
- (b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;
- (c) Which is not a "new source"; and
- (d) Which has never received a finally effective NPDES permit for discharges at that "site".

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore rig or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be in an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR §§125.122 (a) (1) through (10).

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An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

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.

NPDES means "National Pollutant Discharge Elimination System".

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES programs.

Pass through means a Discharge which exits the POTW into waters of the United States 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.

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

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, landfill leachate collection system, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff (see 40 CFR §122.2).

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. §§2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

- (a) Sewage from vessels; or
- (b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes is approved by the authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

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Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D. D.C. 1979)); also listed in Appendix A of 40 CFR Part 122.

Privately owned treatment works means any device or system which is (a) used to treat wastes from any facility whose operation is not the operator of the treatment works or (b) not a "POTW".

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 or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality".

This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

Secondary Industry Category means any industry which is not a "primary industry category".

Section 313 water priority chemical means a chemical or chemical category which:

- (1) is listed at 40 CFR §372.65 pursuant to Section 313 of the Emergency Planning and Community Right-To-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986);
- (2) is present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and
- (3) satisfies at least one of the following criteria:
 - (i) are listed in Appendix D of 40 CFR Part 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols), or Table V (certain toxic pollutants and hazardous substances);
 - (ii) are listed as a hazardous substance pursuant to Section 311(b)(2)(A) of the CWA at 40 CFR §116.4; or
 - (iii) are pollutants for which EPA has published acute or chronic water quality criteria.

Septage means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

Sewage Sludge means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, Type III Marine Sanitation Device pumpings (33 CFR Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

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Sewage sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

Significant materials includes, but is not limited to: raw materials, fuels, materials such as solvents, detergents, and plastic pellets, raw materials used in food processing or production, hazardous substance designated under section 101(14) of CERCLA, any chemical the facility is required to report pursuant to EPCRA Section 313, fertilizers, pesticides, and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

Significant spills includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the CWA (see 40 CFR §110.10 and §117.21) or Section 102 of CERCLA (see 40 CFR § 302.4).

Sludge-only facility means any "treatment works treating domestic sewage" whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to Section 405(d) of the CWA, and is required to obtain a permit under 40 CFR §122.1(b)(3).

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands.

Storm Water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm water discharge associated with industrial activity means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. (See 40 CFR §122.26 (b)(14) for specifics of this definition.

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

Toxic pollutants means 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.

Treatment works treating domestic sewage means a POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

For purposes of this definition, "domestic sewage" includes waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under Section 405(f) of the CWA, the Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal in 40 CFR Part 503 as a "treatment works treating domestic sewage", where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 CFR Part 503.

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Waste Pile means any non-containerized accumulation of solid, non-flowing waste that is used for treatment or storage.

Waters of the United States means:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of tide;
- (b) All interstate waters, including interstate "wetlands";
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands", sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (1) Which are or could be used by interstate or foreign travelers for recreational or other purpose;
 - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in Paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in Paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds as defined in 40 CFR §423.11(m) which also meet the criteria of this definition) are not waters of the United States.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration 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 (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test. (See Abbreviations Section, following, for additional information.)

2. Definitions for NPDES Permit Sludge Use and Disposal Requirements.

Active sewage sludge unit is a sewage sludge unit that has not closed.

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Aerobic Digestion is the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

Agricultural Land is land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

Agronomic rate is the whole sludge application rate (dry weight basis) designed:

- (1) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land; and
- (2) To minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the ground water.

Air pollution control device is one or more processes used to treat the exit gas from a sewage sludge incinerator stack.

Anaerobic digestion is the biochemical decomposition of organic matter in sewage sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

Annual pollutant loading rate is the maximum amount of a pollutant that can be applied to a unit area of land during a 365 day period.

Annual whole sludge application rate is the maximum amount of sewage sludge (dry weight basis) that can be applied to a unit area of land during a 365 day period.

Apply sewage sludge or sewage sludge applied to the land means land application of sewage sludge.

Aquifer is a geologic formation, group of geologic formations, or a portion of a geologic formation capable of yielding ground water to wells or springs.

Auxiliary fuel is fuel used to augment the fuel value of sewage sludge. This includes, but is not limited to, natural gas, fuel oil, coal, gas generated during anaerobic digestion of sewage sludge, and municipal solid waste (not to exceed 30 percent of the dry weight of the sewage sludge and auxiliary fuel together). Hazardous wastes are not auxiliary fuel.

Base flood is a flood that has a one percent chance of occurring in any given year (i.e. a flood with a magnitude equaled once in 100 years).

Bulk sewage sludge is sewage sludge that is not sold or given away in a bag or other container for application to the land.

Contaminate an aquifer means to introduce a substance that causes the maximum contaminant level for nitrate in 40 CFR §141.11 to be exceeded in ground water or that causes the existing concentration of nitrate in the ground water to increase when the existing concentration of nitrate in the ground water exceeds the maximum contaminant level for nitrate in 40 CFR §141.11.

Class I sludge management facility is any publicly owned treatment works (POTW), as defined in 40 CFR §501.2, required to have an approved pretreatment program under 40 CFR §403.8 (a) (including any POTW located in a state that has elected to assume local program responsibilities pursuant to 40 CFR §403.10 (e) and any treatment works treating domestic sewage, as defined in 40 CFR § 122.2,

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classified as a Class I sludge management facility by the EPA Regional Administrator, or, in the case of approved state programs, the Regional Administrator in conjunction with the State Director, because of the potential for sewage sludge use or disposal practice to affect public health and the environment adversely.

Control efficiency is the mass of a pollutant in the sewage sludge fed to an incinerator minus the mass of that pollutant in the exit gas from the incinerator stack divided by the mass of the pollutant in the sewage sludge fed to the incinerator.

Cover is soil or other material used to cover sewage sludge placed on an active sewage sludge unit.

Cover crop is a small grain crop, such as oats, wheat, or barley, not grown for harvest.

Cumulative pollutant loading rate is the maximum amount of inorganic pollutant that can be applied to an area of land.

Density of microorganisms is the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

Dispersion factor is the ratio of the increase in the ground level ambient air concentration for a pollutant at or beyond the property line of the site where the sewage sludge incinerator is located to the mass emission rate for the pollutant from the incinerator stack.

Displacement is the relative movement of any two sides of a fault measured in any direction.

Domestic septage is either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

Domestic sewage is waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

Dry weight basis means calculated on the basis of having been dried at 105 degrees Celsius (°C) until reaching a constant mass (i.e. essentially 100 percent solids content).

Fault is a fracture or zone of fractures in any materials along which strata on one side are displaced with respect to the strata on the other side.

Feed crops are crops produced primarily for consumption by animals.

Fiber crops are crops such as flax and cotton.

Final cover is the last layer of soil or other material placed on a sewage sludge unit at closure.

Fluidized bed incinerator is an enclosed device in which organic matter and inorganic matter in sewage sludge are combusted in a bed of particles suspended in the combustion chamber gas.

Food crops are crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

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Forest is a tract of land thick with trees and underbrush.

Ground water is water below the land surface in the saturated zone.

Holocene time is the most recent epoch of the Quaternary period, extending from the end of the Pleistocene epoch to the present.

Hourly average is the arithmetic mean of all the measurements taken during an hour. At least two measurements must be taken during the hour.

Incineration is the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

Industrial wastewater is wastewater generated in a commercial or industrial process.

Land application is the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

Land with a high potential for public exposure is land that the public uses frequently. This includes, but is not limited to, a public contact site and reclamation site located in a populated area (e.g., a construction site located in a city).

Land with low potential for public exposure is land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

Leachate collection system is a system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sewage sludge unit.

Liner is soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less.

Lower explosive limit for methane gas is the lowest percentage of methane gas in air, by volume, that propagates a flame at 25 degrees Celsius and atmospheric pressure.

Monthly average (Incineration) is the arithmetic mean of the hourly averages for the hours a sewage sludge incinerator operates during the month.

Monthly average (Land Application) is the arithmetic mean of all measurements taken during the month.

Municipality means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under State law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management agency under section 208 of the CWA, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in section 201 (c) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use or disposal of sewage sludge.

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Other container is either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

Pasture is land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

Pathogenic organisms are disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

Permitting authority is either EPA or a State with an EPA-approved sludge management program.

Person is an individual, association, partnership, corporation, municipality, State or Federal Agency, or an agent or employee thereof.

Person who prepares sewage sludge is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

pH means the logarithm of the reciprocal of the hydrogen ion concentration; a measure of the acidity or alkalinity of a liquid or solid material.

Place sewage sludge or sewage sludge placed means disposal of sewage sludge on a surface disposal site.

Pollutant (as defined in sludge disposal requirements) is an organic substance, an inorganic substance, a combination of organic and inorganic substances, or pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could on the basis on information available to the Administrator of EPA, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction) or physical deformations in either organisms or offspring of the organisms.

Pollutant limit (for sludge disposal requirements) is a numerical value that describes the amount of a pollutant allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of pollutant that can be applied to a unit of land (e.g., kilograms per hectare); or the volume of the material that can be applied to the land (e.g., gallons per acre).

Public contact site is a land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

Qualified ground water scientist is an individual with a baccalaureate or post-graduate degree in the natural sciences or engineering who has sufficient training and experience in ground water hydrology and related fields, as may be demonstrated by State registration, professional certification, or completion of accredited university programs, to make sound professional judgments regarding ground water monitoring, pollutant fate and transport, and corrective action.

Range land is open land with indigenous vegetation.

Reclamation site is drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and construction sites.

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Risk specific concentration is the allowable increase in the average daily ground level ambient air concentration for a pollutant from the incineration of sewage sludge at or beyond the property line of a site where the sewage sludge incinerator is located.

Runoff is rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off the land surface.

Seismic impact zone is an area that has 10 percent or greater probability that the horizontal ground level acceleration to the rock in the area exceeds 0.10 gravity once in 250 years.

Sewage sludge is a solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to: domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screening generated during preliminary treatment of domestic sewage in treatment works.

Sewage sludge feed rate is either the average daily amount of sewage sludge fired in all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located for the number of days in a 365 day period that each sewage sludge incinerator operates, or the average daily design capacity for all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located.

Sewage sludge incinerator is an enclosed device in which only sewage sludge and auxiliary fuel are fired.

Sewage sludge unit is land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include waters of the United States, as defined in 40 CFR §122.2.

Sewage sludge unit boundary is the outermost perimeter of an active sewage sludge unit.

Specific oxygen uptake rate (SOUR) is the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in sewage sludge.

Stack height is the difference between the elevation of the top of a sewage sludge incinerator stack and the elevation of the ground at the base of the stack when the difference is equal to or less than 65 meters. When the difference is greater than 65 meters, stack height is the creditable stack height determined in accordance with 40 CFR §51.100 (ii).

State is one of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and an Indian tribe eligible for treatment as a State pursuant to regulations promulgated under the authority of section 518(e) of the CWA.

Store or storage of sewage sludge is the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

Surface disposal site is an area of land that contains one or more active sewage sludge units.

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Total hydrocarbons means the organic compounds in the exit gas from a sewage sludge incinerator stack measured using a flame ionization detection instrument referenced to propane.

Total solids are the materials in sewage sludge that remain as residue when the sewage sludge is dried at 103 to 105 degrees Celsius.

Treat or treatment of sewage sludge is the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

Treatment works is either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

Unstable area is land subject to natural or human-induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is not limited to, land on which the soils are subject to mass movement.

Unstabilized solids are organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

Vector attraction is the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

Volatile solids is the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550 degrees Celsius in the presence of excess air.

Wet electrostatic precipitator is an air pollution control device that uses both electrical forces and water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

Wet scrubber is an air pollution control device that uses water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

3. Commonly Used Abbreviations

BOD	Five-day biochemical oxygen demand unless otherwise specified
CBOD	Carbonaceous BOD
CFS	Cubic feet per second
COD	Chemical oxygen demand
Chlorine	
Cl ₂	Total residual chlorine
TRC	Total residual chlorine which is a combination of free available chlorine (FAC, see below) and combined chlorine (chloramines, etc.)

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TRO	Total residual chlorine in marine waters where halogen compounds are present
FAC	Free available chlorine (aqueous molecular chlorine, hypochlorous acid, and hypochlorite ion)
Coliform	
Coliform, Fecal	Total fecal coliform bacteria
Coliform, Total	Total coliform bacteria
Cont. (Continuous)	Continuous recording of the parameter being monitored, i.e. flow, temperature, pH, etc.
Cu. M/day or M ³ /day	Cubic meters per day
DO	Dissolved oxygen
kg/day	Kilograms per day
lbs/day	Pounds per day
mg/l	Milligram(s) per liter
ml/l	Milliliters per liter
MGD	Million gallons per day
Nitrogen	
Total N	Total nitrogen
NH ₃ -N	Ammonia nitrogen as nitrogen
NO ₃ -N	Nitrate as nitrogen
NO ₂ -N	Nitrite as nitrogen
NO ₃ -NO ₂	Combined nitrate and nitrite nitrogen as nitrogen
TKN	Total Kjeldahl nitrogen as nitrogen
Oil & Grease	Freon extractable material
PCB	Polychlorinated biphenyl
pH	A measure of the hydrogen ion concentration. A measure of the acidity or alkalinity of a liquid or material
Surfactant	Surface-active agent

NPDES PART II STANDARD CONDITIONS
(January, 2007)

Temp. °C	Temperature in degrees Centigrade
Temp. °F	Temperature in degrees Fahrenheit
TOC	Total organic carbon
Total P	Total phosphorus
TSS or NFR	Total suspended solids or total nonfilterable residue
Turb. or Turbidity	Turbidity measured by the Nephelometric Method (NTU)
ug/l	Microgram(s) per liter
WET	"Whole effluent toxicity" is the total effect of an effluent measured directly with a toxicity test.
C-NOEC	"Chronic (Long-term Exposure Test) – No Observed Effect Concentration". The highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organisms at a specified time of observation.
A-NOEC	"Acute (Short-term Exposure Test) – No Observed Effect Concentration" (see C-NOEC definition).
LC ₅₀	LC ₅₀ is the concentration of a sample that causes mortality of 50% of the test population at a specific time of observation. The LC ₅₀ = 100% is defined as a sample of undiluted effluent.
ZID	Zone of Initial Dilution means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports.

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A. GENERAL PROVISIONS

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

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

(a) They are not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

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

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

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

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

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

5. Bypasses.

(a) Definitions.

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

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

(c) Notice.

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

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

6. Upsets.

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

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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.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

AND

MAINE WASTE DISCHARGE LICENSE

FACT SHEET

**Prepared Jointly by the Maine Department of Environmental Protection and
the U.S. Environmental Protection Agency – New England Office**

Date : January 5, 2011

PERMIT NUMBER: ME0101907

LICENSE NUMBER: W001671-6B-F-R

NAME AND ADDRESS OF APPLICANT:

**TOWN OF NORTH HAVEN
Publicly Owned Treatment Works
P.O. Box 400
North Haven, ME. 04853**

COUNTY: Knox County

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**Waste Water Treatment Facility
Waterman's Lane
North Haven, Maine 04853**

**RECEIVING WATER Fox Island Thorofare
CLASSIFICATION: Class SB**

**COGNIZANT OFFICIAL AND TELEPHONE NUMBER: Mr. Joseph Stone
Town Administrator
(207) 867 – 4433
e-mail: nhadmin@midcoast.com**

1. APPLICATION SUMMARY

- a. Application - The Town of North Haven has applied for renewal of a combined Section 301(h) Modified National Pollutant Discharge Elimination System (NPDES) permit #ME0101907 and Maine Waste Discharge License (WDL) #W001671-5L-D-R, that was issued on November 21, 2003 and expired on November 21, 2008. The permit/license (permit hereinafter) approved the discharge of up to a monthly average flow of 0.040 million gallons per day (MGD) of primary treated sanitary waste water to the Fox Island Thorofare, Class SB, in North Haven, Maine. See **Attachment A** of this Fact Sheet for a location map.
- b. Source Description: The Town of North Haven waste water treatment facility serves a population of 332 people in the winter and approximately 1,200 people in the summer months. The facility does not receive any flows from industrial sources or septage from individual septic systems. Septage and primary clarifier sludge are applied to a Department approved land spreading site on the island.
- c. Waste Water Treatment: The facility provides a primary level of treatment via flow measurement, screening, primary settling, chlorination and dechlorination. See **Attachment B** of this Fact Sheet for a schematic of the treatment process. The treated effluent is discharged to the Fox Island Thorofare via an eight inch (8") diameter polyethylene pipe with a two port diffuser outfall. The outfall extends into the receiving waters approximately 600 feet and is at 9.5 feet below mean sea level.

2. PERMIT SUMMARY

- a. Regulatory - On January 12, 2001, the State of Maine received authorization from the U. S. Environmental Protection Agency (EPA) to administer the NPDES permit program in Maine. Section 301(h) of the Clean Water Act (CWA) provides a vehicle by which a permittee may request a variance from secondary treatment requirements. Issuance of a permit granting such a variance may only be issued by the EPA as authorization to do so was not granted to the State of Maine on January 12, 2001. See section 2(c) of this Fact Sheet. In addition, pursuant to Maine law, anyone discharging pollutants to waters of the State must obtain a license to do so. Therefore, this document serves as a combination modified NPDES permit and a Maine WDL to satisfy both federal and State requirements. The EPA has authorized the Maine Department of Environmental Protection (Department) to take the lead role in drafting the permit/license.
- b. Terms and conditions - This permitting action is similar to the previous permitting action in that it carries forward;
 1. The monthly average flow limitation of 0.040 MGD but is being expressed in gallons per day (gpd).
 2. The monthly average technology based requirements to achieve a minimum of 30% removal of biochemical oxygen demand (BOD) and a minimum of 50% removal for total suspended solids (TSS).

2. PERMIT SUMMARY (cont'd)

3. The monthly average technology based mass limitations for BOD and TSS.
4. The daily maximum concentration reporting requirement for settleable solids.
5. The seasonal (May 15 – September 30) monthly average (geometric mean) and daily maximum water quality based concentration limits of 15 colonies/100 ml and 50 colonies/100 ml respectively, for fecal coliform bacteria while increasing the monitoring frequency to 3/Week given the historic non-compliance.
6. The daily maximum technology based concentration limit of 0.3 mg/L for total residual chlorine but reducing the monitoring frequency from 5/Week to 3/Week.
7. The technology based pH range limitation of 6.0 -9.0 standard units but reducing the monitoring frequency from 5/Week to 1/Week.

This permitting action is different than the previous permitting action in that it is;

8. Eliminating the monthly average concentration reporting requirement for settleable solids and reducing the monitoring frequency to 1/Week.
 9. Eliminating the requirement to report influent BOD and TSS data on the monthly Discharge Monitoring Report (DMR). Influent values for both parameters shall continue to be reported on the monthly "49-Form" submitted to the Department.
 10. Establishing technology based monthly average concentration limits for BOD and TSS.
- c. History: The most recent permitting/licensing actions include the following:

January 2, 1986 – The EPA issued a conditional NPDES permit that authorized untreated sanitary waste water discharge until construction of a primary waste water treatment facility was completed (scheduled for October 30, 1986).

July 9, 1986 – The Department issued waste discharge license (WDL)#W001671-45-A-R with conditions similar to those specified in the January 1986 EPA NPDES permit.

September 1988 – Operation of the primary waste water treatment facility commenced.

February 13, 1995 – The Department issued WDL #W001671-58-C-R for a five (5) year term.

December 6, 1995 – The Department issued WDL #W001671-58-D-M which modified the fecal coliform bacteria daily maximum limit to 50 colonies/100 ml to be consistent with water quality criteria.

2. PERMIT SUMMARY (cont'd)

January 12, 2001— The Department received authorization from the EPA to administer the NPDES program in Maine. Because this permit is being issued under a variance from secondary treatment requirements under the CWA, this modified 301(h) permit must be issued by EPA and, herein, the permit is being proposed for joint issuance with the Maine Department of Environmental Protection and EPA.

November 21, 2003 – The EPA and Department issued combination Section 301(h) Modified NPDES permit #ME0101907 and Maine WDL #W001671-5L-D-R for a five-year term.

April 10, 2006 – The Department modified the 7/3/03 WDL by incorporating the testing requirements of the newly promulgated (10/12/05) Department rule, Chapter 530, *Surface Water Ambient Toxics Program*.

September 26, 2008 - The Town of North Haven submitted a complete application to the EPA and the Department for the renewal of combination NPDES permit #ME0101907 and WDL W001671-5L-D-R.

3. CONDITIONS OF PERMITS

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

4. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A., Section 469 classifies the receiving waters at the point of discharge as Class SB waters. Maine law, 38 M.R.S.A., Section 465-B(2) contains the classification standards for Class SB waters. Federal regulation 40 CFR, Part 125, Subpart G, more specifically Part 125.57(a)(2), states that discharge of pollutants in accordance with such modified requirements [301(h)] will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, and allows recreational activities in and on the water.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2008 Integrated Water Quality Monitoring and Assessment Report, prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, indicates that the Maine Department of Marine Resources (DMR) shellfish Area 30-I, *North Haven Island*, sub Area G, *Vinalhaven and North Haven*, is closed to the harvesting of shellfish. See **Attachment C** of this Fact Sheet for the delineation of Area 30-I and Sub-Area G. The DMR has traditionally closed shellfish harvesting areas in the vicinity of outfall pipes when lack of field data on bacteria counts in the immediate area is insufficient, inconclusive or exceeds standards set in the National Shellfish Sanitation Program of the U.S. Department of Health and Human Services. DMR issued the closure notice on December 22, 2007, based on ambient water quality sampling indicated elevated levels of bacteria. Compliance with the monthly average and daily maximum limitations for fecal coliform bacteria in this permit will ensure the discharge from the North Haven facility will not cause or contribute to the closure of the shellfish harvesting area.

In the summer of 1995, the DEP and the EPA conducted a portion of the Biological Monitoring requirements (TVS sampling) and Water Quality Monitoring contained in the previous State waste discharge license and federal NPDES permit at certain 301(h) facilities. The Department and EPA agreed that the SCUBA inspection was too dangerous as a result of the swift current in the receiving waters. The Department has made the determination that, based on the sampling to date and past effluent monitoring data, the discharge complies with 40 CFR, §125.57(a)(2). According to a document entitled "301(h) Facilities in Maine, Report of 1995 Monitoring Activities," prepared by the Department, dated July 1996 and submitted to EPA, "Water quality, sediment, and photographic information indicates that these [301(h)-type] discharges are not causing any significant impact to the receiving waters". That document concluded that no further ambient monitoring be conducted, and recommended that effluent monitoring be continued. By letter dated February 17, 1995 from EPA Regional Administrator, the EPA found there would be little risk of adverse impacts to the receiving waters from these discharges provided that the permittee perform effluent monitoring as part of the regular permit conditions.

6. WAIVER OF SECONDARY TREATMENT REQUIREMENTS

Under Section 301(b)(1)(B) of the Clean Water Act (CWA), publicly owned treatment works (POTWs) in existence on July 1, 1977 were required to meet effluent limitations based on secondary treatment, which is defined in terms of the parameters BOD, TSS and pH. National effluent limitations for these pollutants were promulgated and included in POTW permits issued under Section 402 of the CWA.

Congress subsequently amended the CWA, adding Section 301(h), which authorizes the EPA Administrator, with State concurrence, to issue NPDES permits which modify the secondary treatment requirements with respect to the discharge of pollutants from a POTW into marine waters, provided that the applicant meet several conditions.

6. WAIVER OF SECONDARY TREATMENT REQUIREMENTS (cont'd)

EPA issued a 301(h) waiver to the Town of North Haven on May 9, 1985, based upon the following findings:

- That the discharge will comply with the State of Maine water quality standards for dissolved oxygen and suspended solids.
- That the proposed discharge will not adversely impact public water supplies or interfere with the protection and propagation of a balanced indigenous population of marine life and will allow for recreational activities.
- That no industrial wastes are discharged into the collection system.
- That the discharge will not result in an additional treatment requirements on other point and non-point sources.
- That the State of Maine concurs with the approval of the 301(h) waiver.

Federal regulation 40 CFR, Part 125, Subpart G, more specifically Part 125.57(a)(3), states that the applicant must establish a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge. EPA has made a BPJ determination that the scope of effluent limitations and monitoring requirements in Special Condition A(1) of this permit are sufficient to provide the necessary information to study the effects of the discharge on the receiving waters.

Because all of the prior 301(h) conditions have been maintained and because there has been no new or substantially increased discharge from the permittee's facility, EPA proposes, through the re-issuance of the Town of North Haven's permit, to carry forward the original 301(h) waiver decision.

7. ENDANGERED SPECIES ACT

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) requires federal agencies to ensure, in consultation with the Services, that actions an agency authorizes, funds or carries out are not likely to jeopardize the continued existence of federally listed endangered and threatened species, or result in the destruction or adverse modification of listed species' designated critical habitat. EPA believes that Section 7(a)(2) of the Endangered Species Act applies when EPA carries out actions approving State or Tribal water quality standards and NPDES permitting programs under the CWA. The United States Fish and Wildlife Service (USFWS) typically has regulatory authority for freshwater species, and the National Marine Fisheries Service (NMFS) has authority for marine species. USFWS and NMFS share federal regulatory authority for the protection of anadromous Atlantic salmon (*Salmo salar*) in Maine waters.

7. ENDANGERED SPECIES ACT (cont'd)

The North Haven discharges through a single-port diffuser to receiving waters located within a narrow passage between the islands of North Haven and Vinalhaven, in Penobscot Bay. The outfall, located at N 44° 7.5', W 68° 53.0', is approximately 600 feet from mean high water, at a depth of 10 feet, mean low water. The area has a high tidal range (approximately 15 feet) and strong tidal currents. While the potential exists for federally-listed marine species to be present, the likelihood of whale species to inhabit or even transit this narrow passage appears remote. Similarly, it appears unlikely that other federally-listed species would routinely inhabit this area, although their presence is possible. A shortnose sturgeon (*Acipenser brevirostrum*), which is listed as endangered, was captured on June 30, 1978, at Northport. Northport is located about 18 miles northwest of North Haven. The North Haven discharge is not located within designated shortnose sturgeon habitat, nor is it an area where shortnose sturgeon are expected to routinely inhabit. Atlantic salmon, also listed as endangered, may transit this general area as smolts or adults, but the habitat within the Fox Island Thorofare, or the discharge itself, is not likely to attract Atlantic salmon, or delay their migration.

Due to the extremely low flow volume of the discharge (40,000 gpd/28 gpm), and monitoring results that have demonstrated that the effluent does not contain pollutants at concentrations which could be toxic to aquatic life, it is EPA's opinion that the renewal of this NPDES permit for the discharge of treated domestic waste water is not likely to adversely affect listed species, or their critical habitat under NMFS jurisdiction. EPA will seek concurrence from NMFS and USFWS on this assessment through consultation prior to permit issuance.

8. EFH (ESSENTIAL FISH HABITAT)

Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq. (1998)), EPA is required to consult with the National Marine Fisheries Services (NMFS) if EPA's action or proposed actions that it funds, permits, or undertakes, "may adversely impact any essential fish habitat." 16 U.S.C. § 1855(b). The Amendments broadly define "essential fish habitat" as: "waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. 16 U.S.C. § 1802 (10). Adversely impact means any impact which reduces the quality and/or quantity of EFH. 50 C.F.R. § 600.910 (a). Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. Essential fish habitat is only designated for species for which federal fisheries management plans exist. 16 U.S.C. § 1855(b) (1) (A). EFH designations for New England were approved by the U.S. Department of Commerce on March 3, 1999.

8. EFH (ESSENTIAL FISH HABITAT) (cont'd)**a. Description of Proposed Action**

This proposed action is the reissuance of an existing NPDES permit authorizing the discharge of primary treated waste water to the marine waters located between the islands of North Haven and Vinalhaven. Please see the description of outfall location in Section 7 of this document (ESA). The maximum discharge (monthly average) is 40,000 gallons per day. Dechlorination of the effluent is required prior to discharge. Please review earlier sections of this Fact Sheet for additional information related to the discharge.

b. EFH Species

The discharge location (N 44° 8', W 68° 52') falls within the EFH designation for the following 10 minute square:

10' x 10' Square Ordinates:

Boundary	North	East	South	West
Ordinate	44° 10.0' N	68° 50.0' W	44° 00.0' N	69° 00.0' W

Species and Life Stage Designation

Species	Eggs	Larvae	Juveniles	Adults
Atlantic Salmon (<i>Salmo salar</i>)			X	X
Atlantic cod (<i>Gadus morhua</i>)		X	X	X
haddock (<i>Melanogrammus aeglefinus</i>)				X
pollock (<i>Pollachius virens</i>)			X	
whiting (<i>Merluccius bilinearis</i>)			X	X
offshore hake (<i>Merluccius albidus</i>)				
Red hake (<i>Urophycis chuss</i>)			X	X
white hake (<i>Urophycis tenuis</i>)			X	X
redfish (<i>Sebastes fasciatus</i>)	n/a			
witch flounder (<i>Glyptocephalus cynoglossus</i>)				
winter flounder (<i>Pleuronectes americanus</i>)	X	X	X	X
yellowtail flounder (<i>Pleuronectes ferruginea</i>)	X	X		
windowpane flounder (<i>Scophthalmus aquosus</i>)	X	X	X	X
American plaice (<i>Hippoglossoides platessoides</i>)	X	X	X	X
ocean pout (<i>Macrozoarces americanus</i>)	X	X	X	X
Atlantic halibut (<i>Hippoglossus hippoglossus</i>)	X	X	X	X
Atlantic sea scallop (<i>Placopecten magellanicus</i>)	X	X	X	X

8. EFH (ESSENTIAL FISH HABITAT) (cont'd)

Species and Life Stage Designation

Atlantic sea herring (<i>Clupea harengus</i>)		X	X	X
monkfish (<i>Lophius americanus</i>)				
bluefish (<i>Pomatomus saltatrix</i>)			X	X
long finned squid (<i>Loligo pealei</i>)	n/a	n/a		
short finned squid (<i>Illex illecebrosus</i>)	n/a	n/a		
Atlantic butterfish (<i>Peprillus triacanthus</i>)				
Atlantic mackerel (<i>Scomber scombrus</i>)			X	X
summer flounder (<i>Paralichthys dentatus</i>)				
scup (<i>Stenotomus chrysops</i>)	n/a	n/a		
Black sea bass (<i>Centropristus striata</i>)	n/a			
surf clam (<i>Spisula solidissima</i>)	n/a	n/a		
ocean quahog (<i>Artica islandica</i>)	n/a	n/a		
spiny dogfish (<i>Squalus acanthias</i>)	n/a	n/a		
tilefish (<i>Lopholatilus chamaeleonticeps</i>)				
bluefin tuna (<i>Thunnus thynnus</i>)				X

c. EPA's Analysis of Effects and Opinion on Probable Impacts

Due to the low volume of the discharge, the relatively high dilution and strong currents in the receiving waters, and the low toxicity potential of the waste water being discharged, EPA believes that impacts to EFH from this discharge are minimal, and that compensatory mitigation is not warranted. Should new information become available that changes the basis for this opinion, EPA will re-initiate consultation with NMFS.

9. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Flow – The previous permit contained a monthly average flow limitation of 0.040 million gallons per day (MGD). The limitation is being carried forward in this permitting action but is being expressed as 40,000 gallons per day (gpd) rather than MGD. The limit was proposed by the permittee in 1982 when it submitted the application to the EPA for a variance from secondary treatment requirements. A review of the DMR data for the period January 2007 – May 2010 inclusively, indicates values have been reported as following:

Flow (DMRs=40)

Value	Limit (gpd)	Range (gpd)	Mean (gpd)
Monthly Average	40,000	19,600 – 60,700	37,621

9. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

- b. Dilution Factors: Department Regulation Chapter 530 Surface Water Toxics Control Program, §4(a)(2) states:

(1) *For estuaries where tidal flow is dominant and marine discharges, dilution factors are calculated as follows. These methods may be supplemented with additional information such as current studies or dye studies.*

(a) *For discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model.*

(b) *For discharges to estuaries, dilution must be calculated using a method such as MERGE, CORMIX or another predictive model determined by the Department to be appropriate for the site conditions.*

(c) *In the case of discharges to estuaries where tidal flow is dominant and marine waters, the human health criteria must be analyzed using a dilution equal to three times the chronic dilution factor.*

Based on the location and configuration of the outfall pipe, the Department determined in the 3/13/95 licensing action that at the full permitted flow of 40,000 gpd, the discharge from the North Haven waste water treatment facility will be diluted by the following factors:

Acute = 56:1

Chronic = 340:1

Harmonic mean ⁽¹⁾ = 1,320:1

Footnote:

(1) The harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by three (3). This multiplying factor is based on guidelines for estimation of human health dilution presented in the USEPA publication "*Technical Support Document for Water Quality-Based Toxics Control*" (Office of Water; EPA/505/2-90-001, page 88), and represents an estimation of harmonic mean flow on which human health dilutions are based in a riverine 7Q10 flow situation.

- c. Biochemical oxygen demand (BOD) and total suspended solids (TSS) - Federal regulations state that primary or equivalent treatment means treatment by screening, sedimentation, and skimming adequate to remove at least thirty percent (30%) of the BOD and 30% of the TSS material in the treatment works influent. The Department considers a thirty percent (30%) removal of BOD and a fifty percent (50%) removal of TSS from the influent loading as a best professional judgment (BPJ) determination of best practicable treatment (BPT) for primary facilities. These percent removal

9. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

requirements were established in the previous permitting action and are being carried forward in this permitting action as the percent removal is the foundation for the permitting of 301h facilities.

The previous permit established monthly average technology based mass and concentration limits for BOD and TSS with a monitoring frequency of 2/Month. The limitations were calculated based on an assumed influent concentration of 290 mg/L for each parameter and a 30% removal for BOD and a 50% removal for TSS. This assumed value is based on the EPA Design Manual, Onsite Wastewater Treatment and Disposal Systems, dated October 1980, table 4-3 entitled "Characteristics of Typical Residential Wastewater" high range of values for BOD5 and TSS. Derivation of the limits is as follows:

$$\begin{aligned} \text{BOD: } & 290 \text{ mg/L} - [(290 \text{ mg/L})(0.30)] = 203 \text{ mg/L} \\ & (203 \text{ mg/L})(8.34)(0.040 \text{ MGD}) = 68 \text{ lbs/day} \end{aligned}$$

$$\begin{aligned} \text{TSS: } & 290 \text{ mg/L} - [(290 \text{ mg/L})(0.50)] = 145 \text{ mg/L} \\ & (145 \text{ mg/L})(8.34)(0.040 \text{ MGD}) = 45 \text{ lbs/day} \end{aligned}$$

A review of the DMR data for the period January 2007 – May 2010 inclusively, indicates the values have been reported as follows:

BOD Mass (DMRs=39)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	68	6 - 51	25
Daily Maximum	Report	10 - 66	31

BOD Concentration (DMRs=39)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	203	29 - 200	92
Daily Maximum	Report	32 - 240	114

BOD % removal (DMRs=38)

Value	Limit (%)	Range (%)	Average (%)
Monthly Average	30	19 - 94	68

TSS Mass (DMRs=39)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	45	1.7 - 13	9
Daily Maximum	Report	5 - 21	10

TSS Concentration (DMRs=39)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	145	9.1 - 45.5	29
Daily Maximum	Report	12 - 64	35

9. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

TSS % removal (DMRs=37)

Value	Limit (%)	Range (%)	Average (%)
Monthly Average	50	66 – 99	94

The technology based mass, concentration and percent removal limitations for BOD & TSS are being carried forward in this permitting action and the monitoring requirements are based on a BPJ determination by the Department and EPA given the size and type of treatment facility.

- d. Settleable solids – The previous permitting action established a daily maximum concentration reporting requirements for settleable solids with a 1/Week monitoring frequency. Both are being carried forward in this permitting action. A review of the DMR data for the period January 2007 – May 2010 indicates values have been reported as follows:

SS Concentration (DMRs=40)

Value	Limit (ml/L)	Range (ml/L)	Average (ml/L)
Daily Maximum	Report	0.0 – 0.4	0.1

- e. Fecal coliform bacteria – The previous permitting action established seasonal (May 15 – September 30) monthly average (geometric mean) and daily maximum limits of 15 colonies/100 ml and 50 colonies/100 ml respectively, that are consistent with limitations in the National Shellfish Sanitation Program. The previous permit established a monitoring frequency of 2/Month.

A review of the DMR data for the period calendar years May 2007 – September 2008 indicates the following:

Fecal coliform bacteria (DMRs=10)

Value	Limit (col/100 ml)	Range (col/100 ml)	Mean (col/100 ml)
Monthly Average	15	0 – 82	26
Daily Maximum	50	0 – 600	ND

The DMR data indicates there are a number of excursions of both the monthly average limit and the daily maximum limit established in the permit. To remedy the situation, the Town of North Haven has prepared a written document entitled, North Haven Wastewater Treatment Facility, Standard Operating Procedure for Pathogen Removal During the Disinfection Process, dated January 2011. The Department has reviewed the SOP and finds it acceptable. As a result, the Department is increasing the monitoring frequency for fecal coliform bacteria from 2/Month to 1/Week during the disinfection season for the summer of 2011 to determine the effectiveness of implementing the SOP. If the monitoring results for the 2011 season demonstrate compliance with the both the monthly average and daily maximum limitations in the permit, the Department will issue

9. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

a letter to the permittee stating the monitoring frequency for calendar year 2012 and each season thereafter can be reduced to 2/Month. If the test results indicate compliance with permit limitations are not being attained, the permittee shall continue to sample at a frequency of 1/Week until compliance is achieved.

- f. **Total residual chlorine(TRC)** – The previous permitting action established a technology based daily maximum limitation of 1.0 mg/L with monitoring frequency of 1/Day. Limits on total residual chlorine are specified to ensure attainment of the in-stream water quality criteria for chlorine and that BPT technology is utilized to abate the discharge of chlorine. Permits issued by this Department impose the more stringent of the calculated water quality based or BPT based limits. The Department has established a daily maximum BPT limitation of 1.0 mg/L for facilities that disinfect their effluent with elemental chlorine or chlorine based compounds unless the calculated acute water quality based threshold is lower than 1.0 mg/L. For facilities that need to de-chlorinate the discharge to meet water quality based thresholds, the Department has established daily maximum and monthly average BPT limits of 0.3 mg/L and 0.1 mg/L respectively.

End-of-pipe water quality based concentration thresholds may be calculated as follows:

Parameter	Acute Criteria	Chronic Criteria	Acute Dilution	Chronic Dilution	Acute Limit	Chronic Limit
Chlorine	13 ug/L	7.5 ug/L	56:1	340:1	0.7 mg/L	2.5 mg/L

Example calculation: Acute – $0.013 \text{ mg/L} (56) = 0.73 \text{ mg/L}$

To meet the water quality based limits calculated above, the permittee must dechlorinate the effluent prior to discharge. The Department has established a daily maximum BPT limitation of 0.3 mg/L for facilities that need to dechlorinate their effluent unless calculated water quality based limits are lower than 0.3 mg/L. In the case of North Haven, the calculated acute water quality based limit is higher than 0.3 mg/L, therefore the BPT based limit of 0.3 mg/L is imposed.

A review of the seasonal DMR data for the period May 2007 – September 2009 indicates the daily maximum TRC discharged is as follows:

Total residual chlorine (DMRs=16)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Daily Maximum	0.3	0 – 0.64	0.19

9. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

- g. pH – The previous permitting action establishing a BPT pH range limit of 6.0 –9.0 standard units pursuant to Department rule, Chapter 525(3)(III)(c), along with a monitoring frequency of 1/Day. A review of the DMR data for the period January 2007 –May 2010 indicates the pH range limitation has never been exceeded. This permitting action is carrying forward the monitoring frequency to 1/Week based on the historical data and compliance record.
- h. Whole Effluent Toxicity (WET) & Chemical-Specific Testing: Maine law, 38 M.R.S.A., Sections 414-A and 420, prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. Department Rules, 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, and Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants* set forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

Chapter 530 §2(A)(1) states in part;

The following dischargers are exempt from testing requirements of this rule unless the Department determines that there is a need for testing based on the nature, location or circumstances of an individual discharge.

- (1) *"Discharges from individual discharge points licensed to discharge less than 50,000 gallons per day of solely domestic wastewater and with a chronic dilution factor of at least 50 to 1, provided no holding tank wastes containing chemicals are accepted by the facility;"* The North Haven facility qualifies for the exemption from toxics testing.

10. DISCHARGE IMPACT ON RECEIVING WATERS

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

11. PUBLIC COMMENTS

Notice of the application being filed with the Department and EPA for renewal of the permit was placed in the Rockland Courier Gazette newspaper by the permittee on or about September 25, 2008. Notice of the draft permit has been placed in a regional Maine newspaper. The draft permit is subject to a minimum 30-day comment period during which time, written comments may be directed to either the Department or EPA at the addresses given in Section 12 below. Upon review of the public comments and receipt of the Section 401 Water Quality Certification from the MEDEP, EPA will make a final decision whether to issue this permit.

12. CONTACTS

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

Gregg Wood
Department of Environmental Protection
Bureau of Land & Water Quality
Division of Water Quality Management
State House Station #17
Augusta, ME. 04333-0017
Phone: 207-287-7693
Email: gregg.wood@maine.gov

Brian Pitt
U.S. Environmental Protection Agency
Mail Code – OEP06-4
5 Post Office Square – Suite 100
Boston, MA 02109-3912
Phone: 617-918-1621
Email: pitt.brian@epa.gov

RESPONSE TO PUBLIC COMMENTS
North Haven Wastewater Treatment Facility
National Pollutant Discharge Elimination System (NPDES) No. ME0101907
Maine Waste Discharge License No. W001671-51-E-R

The U.S. Environmental Protection Agency (EPA) and the Maine Department of Environmental Protection (DEP) are issuing a final National Pollutant Discharge Elimination System (NPDES) permit for the North Haven Wastewater Treatment Facility in North Haven, Maine. The Final Permit authorizes North Haven to discharge wastewater to Fox Island Thorofare in accordance with the requirements of the Federal Clean Water Act (CWA), 33 U.S.C. §§ 1251 *et. seq.*, and Title 38 Maine Revised Statutes § 414-A *et seq.*

Section 301(h) of the Clean Water Act provides a vehicle by which a permittee may request a variance from secondary treatment requirements. On January 12, 2001, the State of Maine received authorization from EPA to administer the NPDES program in Maine. However, authorization to issue 301(h) waivers may not be delegated to a State, so a permit granting such a variance must be issued by EPA.

Pursuant to Maine law, anyone discharging pollutants to waters of the State must obtain a license to do so. Therefore, this document serves as a combination NPDES permit and a Maine Waste Discharge License (WDL) to satisfy both Federal and State requirements. This permit supersedes the NPDES permit/WDL issued on November 21, 2003.

A Draft Permit/License and Tentative 301(h) Tentative Waiver Decision Document for North Haven was placed on public notice on January 5, 2011 (the 2011 Draft Permit). However, EPA subsequently made changes to the Draft Permit/License, Fact Sheet, and Tentative 301(h) Tentative Waiver Decision Document and re-noticed the permit for a second public comment period from December 23, 2013 through January 21, 2014 (the 2013 Draft Permit.)

EPA received comments from the permittee on the 2011 Draft Permit and from MEDEP's Compliance Program on the 2013 Draft Permit.

This document presents EPA's responses to the comments received on the 2011 Draft Permit, in accordance with the provisions of 40 CFR 124.17, and also describes any changes made to the permit as a result of those comments.

Comment #1 – The permittee requested the agencies consider reducing the monitoring frequency for fecal coliform bacteria from 3/Week to 3/Month.

Response #1:

EPA and MEDEP reduced the monitoring frequency for fecal coliform bacteria in the 2013 Draft from 3/week to 2/month, consistent with EPA's Interim Guidance for Performance - Based Reductions of NPDES Permit Monitoring Frequencies Memo (Robert Perciasepe, April, 19, 1996), which states in part; "NPDES authorities can grant relief to regulated facilities that

have a record of good compliance and pollutant discharges at levels below permit requirements.”

In response to past violations, the Town of North Haven prepared a written document entitled, North Haven Wastewater Treatment Facility, Standard Operating Procedure for Pathogen Removal during the Disinfection Process, dated January 2011. The Department reviewed the SOP and found it acceptable. The permittee has reported one violation of the maximum daily limit since June 2011. All other recorded effluent coliform values since that date have been within the permitted limits. See the following fecal coliform effluent data.

Fecal Coliform

MP Date	15 #/100mL	50 #/100mL	MP Date	15 #/100mL	50 #/100mL
05/31/2010	1	1	05/31/2012	10	10
06/30/2010	10	10	06/30/2012	10	10
07/31/2010	18.2	21	07/31/2012	0.1	0.1
08/31/2010	10	10	08/31/2012	10	10
09/30/2010	27.6	84	09/30/2012	10	10
05/31/2011	2	2	05/31/2013	1	1
06/30/2011	8.5	120	06/30/2013	3.2	10
07/31/2011	10	10	07/31/2013	10	10
08/31/2011	10	10	08/31/2013	10	10
09/30/2011	10	10	09/30/2013	10	10

Comment # 2 – The permittee requested the agencies consider carrying forward the monitoring frequency of 2/Month for BOD and TSS from the previous permitting action. The draft permit indicated the monitoring frequency had been increased to 1/Week.

Response #2: EPA and the Department mistakenly established the monitoring frequency in the 2011 draft permit at 1/Week. The intention was to carry forward the monitoring frequency of 2/Month from the previous permit. The correction was made in the 2013 draft permit, and the frequency remains 2/month in the final permit.

Comments were received from the Maine DEP on January 14, 2014 following the close of the public comment period. These comments may be found in the Administrative Record. EPA, after consultation with Maine DEP Division of Water Quality Management, neither modified the final permit to reflect these comments nor prepared a response to them.

APPEALING NPDES PERMITS

If you wish to contest any of the provisions of this permit, you must petition the Environmental Appeals Board, (EAB), within thirty (30) days. The Environmental Appeals Board (EAB) of the U.S. Environmental Protection Agency is the final Agency decisionmaker on administrative appeals of NPDES permits. If you received notice of this permit via certified mail, the 30-day period begins on the day after the date of receipt. If you were served by regular mail, the 30-day period begins on the day after the date of receipt, and an additional three days are added to the period within which to appeal in order to compensate for mail delay.

In order to be eligible to file a petition for review, you must have filed comments on the draft permit or participated in any public hearing that may have been held pertaining to this permit. In addition, the issues raised in the appeal must have been raised during the public comment period so long as they were reasonably ascertainable. Any person who failed to file comments or failed to participate in any public hearing on the draft permit may file a petition for review of permit conditions, but only to the extent that such permit conditions reflect changes from the draft permit.

Procedures for appealing permits can be found at 40 C.F.R. § 124.19. Related provisions can be found at 40 C.F.R. § 124.16 (stays of permit conditions), 40 C.F.R. § 124.20 (computation of time), and 40 C.F.R. § 124.60 (issuance and effective date and stays of NPDES permits).

Please note: Section 124.19 has been revised, and the changes took effect on March 26, 2013. (See 17 Fed. Reg. 5281, 5285-5288 (Jan. 25, 2013)). All permit appeals filed after that date must conform to the revised regulation. Set forth on the following pages is the revised version of § 124.19. More information on the appeals process and the EAB can be found on the Internet at <http://www.epa.gov/eab>.

ENVIRONMENTAL APPEALS BOARD (EAB) CONTACT INFORMATION

The EAB's telephone number is (202) 233-0122. The EAB's fax number is (202) 233-0121. The EAB website is at <http://www.epa.gov/eab>.

The EAB's mailing address is

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, N.W.
(Mail Code 1103M)
Washington, D.C. 20460-0001

40 CFR Part 124, Section 124.19(a) - (p) is revised, effective March 26, 2013, as set forth on the following pages:

issues a subsequent "final permit decision" under section 124.19 after administrative review proceedings are exhausted. This revised text now appears in section 124.19(l)(2).

B. What is the Agency's authority for taking this action?

EPA is issuing this document under its general rulemaking authority, Reorganization Plan No. 3 of 1970 (5 U.S.C. app.).

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. § 553(b)(3)(A), provides that "rules of agency organization, procedure, or practice" are exempt from notice and comment requirements. The action the Agency is taking today involves revisions to the Environmental Appeals Board's procedural rules to clarify existing practices and procedures that are applicable in permit appeals filed with the Environmental Appeals Board. These revisions fall under the exemption provided in APA § 553(b)(3)(A). Accordingly, EPA is not taking comment on this action.

III. Statutory and Executive Order Reviews

This action involves revisions to the Environmental Appeals Board's procedural rules to clarify existing practices and procedures that are applicable in permit appeals filed with the Environmental Appeals Board. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Because this action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," (62 FR 19885, April 23, 1997), because it is not economically significant. This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (68 FR 28355, May

22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus the requirements of § 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects

40 CFR Part 124

Administrative Practice and Procedures.

40 CFR Part 270

Environmental Protection, Hazardous Waste.

Dated: January 14, 2013.

Lisa P. Jackson,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends title 40 parts 124 and 270 of the Code of Federal Regulations as follows:

PART 124—PROCEDURES FOR DECISIONMAKING

■ 1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

■ 2. Section 124.10 is amended by removing paragraph (a)(1)(iv) and redesignating paragraphs (a)(1)(v) through (a)(1)(vi) as paragraphs (a)(1)(iv)

through paragraphs (a)(1)(v), respectively.

■ 3. Paragraph (b)(1) of § 124.16 is revised to read as follows:

§ 124.16 Stays of contested permit conditions.

(b) *Stays based on cross effects.* (1) A stay may be granted based on the grounds that an appeal to the Administrator under § 124.19 of one permit may result in changes to another EPA-issued permit only when each of the permits involved has been appealed to the Administrator.

■ 4. Section 124.19 is revised to read as follows:

§ 124.19 Appeal of RCRA, UIC, NPDES and PSD Permits.

(a) *Petitioning for review of a permit decision.* (1) *Initiating an appeal.* Appeal from a RCRA, UIC, NPDES, or PSD final permit decision issued under § 124.15 of this part, or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 of this chapter, is commenced by filing a petition for review with the Clerk of the Environmental Appeals Board within the time prescribed in paragraph (a)(3) of this section.

(2) *Who may file?* Any person who filed comments on the draft permit or participated in a public hearing on the draft permit may file a petition for review as provided in this section. Additionally, any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review of any permit conditions set forth in the final permit decision, but only to the extent that those final permit conditions reflect changes from the proposed draft permit.

(3) *Filing deadline.* A petition for review must be filed with the Clerk of the Environmental Appeals Board within 30 days after the Regional Administrator serves notice of the issuance of a RCRA, UIC, NPDES, or PSD final permit decision under § 124.15 or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 of this chapter. A petition is filed when it is received by the Clerk of the Environmental Appeals Board at the address specified for the appropriate method of delivery as provided in paragraph (i)(2) of this section.

(4) *Petition contents.* (i) In addition to meeting the requirements in paragraph (d), a petition for review must identify the contested permit condition or other

specific challenge to the permit decision and clearly set forth, with legal and factual support, petitioner's contentions for why the permit decision should be reviewed. The petition must demonstrate that each challenge to the permit decision is based on:

(A) A finding of fact or conclusion of law that is clearly erroneous, or

(B) An exercise of discretion or an important policy consideration that the Environmental Appeals Board should, in its discretion, review.

(ii) Petitioners must demonstrate, by providing specific citation to the administrative record, including the document name and page number, that each issue being raised in the petition was raised during the public comment period (including any public hearing) to the extent required by § 124.13. For each issue raised that was not raised previously, the petition must explain why such issues were not required to be raised during the public comment period as provided in § 124.13. Additionally, if the petition raises an issue that the Regional Administrator addressed in the response to comments document issued pursuant to § 124.17, then petitioner must provide a citation to the relevant comment and response and explain why the Regional Administrator's response to the comment was clearly erroneous or otherwise warrants review.

(b) *Response(s) to a petition for review.* (1) In a PSD or other new source permit appeal, the Regional Administrator must file a response to the petition for review, a certified index of the administrative record, and the relevant portions of the administrative record within 21 days after the filing of the petition.

(2) In all other permit appeals under this section, the Regional Administrator must file a response to the petition, a certified index of the administrative record, and the relevant portions of the administrative record within 30 days after the filing of a petition.

(3) A permit applicant who did not file a petition but who wishes to participate in the appeal process must file a notice of appearance and a response to the petition. Such documents must be filed by the deadlines provided in paragraph (b)(1) or (2) of this section, as appropriate.

(4) The State or Tribal authority where the permitted facility or site is or is proposed to be located (if that authority is not the permit issuer) must also file a notice of appearance and a response if it wishes to participate in the appeal. Such response must be filed by the deadlines provided in paragraph

(b)(1) or (2) of this section, as appropriate.

(c) *Replies.* (1) In PSD and other new source permit appeals, the Environmental Appeals Board will apply a presumption against the filing of a reply brief. By motion, petitioner may seek leave of the Environmental Appeals Board to file a reply to the response, which the Environmental Appeals Board, in its discretion, may grant. The motion must be filed simultaneously with the proposed reply within 10 days after service of the response. In its motion, petitioner must specify those arguments in the response to which petitioner seeks to reply and the reasons petitioner believes it is necessary to file a reply to those arguments. Petitioner may not raise new issues or arguments in the motion or in the reply.

(2) In all other permit appeals under this section, petitioner may file a reply within 15 days after service of the response. Petitioner may not raise new issues or arguments in the reply.

(d) *Content and form of briefs.* (1) *Content requirements.* All briefs filed under this section must contain, under appropriate headings:

(i) A table of contents, with page references;

(ii) A table of authorities with references to the pages of the brief where they are cited;

(iii) A table of attachments, if required under paragraph (d)(2) of this section; and

(iv) A statement of compliance with the word limitation.

(2) *Attachments.* Parts of the record to which the parties wish to direct the Environmental Appeals Board's attention may be appended to the brief submitted. If the brief includes attachments, a table must be included that provides the title of each appended document and assigns a label identifying where it may be found (e.g., Excerpts from the Response to Comments Document * * * Attachment 1).

(3) *Length.* Unless otherwise ordered by the Environmental Appeals Board, petitions and response briefs may not exceed 14,000 words, and all other briefs may not exceed 7,000 words. Filers may rely on the word-processing system used to determine the word count. In lieu of a word limitation, filers may comply with a 30-page limit for petitions and response briefs, or a 15-page limit for replies. Headings, footnotes, and quotations count toward the word limitation. The table of contents, table of authorities, table of attachments (if any), statement requesting oral argument (if any),

statement of compliance with the word limitation, and any attachments do not count toward the word limitation. The Environmental Appeals Board may exclude any petition, response, or other brief that does not meet word limitations. Where a party can demonstrate a compelling and documented need to exceed such limitations, such party must seek advance leave of the Environmental Appeals Board to file a longer brief. Such requests are discouraged and will be granted only in unusual circumstances.

(e) *Participation by amicus curiae.*

Any interested person may file an amicus brief in any appeal pending before the Environmental Appeals Board under this section. The deadline for filing such brief is 15 days after the filing of the response brief, except that amicus briefs in PSD or other new source permit appeals must be filed within 21 days after the filing of the petition. Amicus briefs must comply with all procedural requirements of this section.

(f) *Motions.* (1) *In general.* A request for an order or other relief must be made by written motion unless these rules prescribe another form.

(2) *Contents of a motion.* A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support the motion. In advance of filing a motion, parties must attempt to ascertain whether the other party(ies) concur(s) or object(s) to the motion and must indicate in the motion the attempt made and the response obtained.

(3) *Response to motion.* Any party may file a response to a motion. Responses must state with particularity the grounds for opposition and the legal argument necessary to support the motion. The response must be filed within 15 days after service of the motion unless the Environmental Appeals Board shortens or extends the time for response.

(4) *Reply.* Any reply to a response filed under paragraph (f)(3) of this section must be filed within 10 days after service of the response. A reply must not introduce any new issues or arguments and may respond only to matters presented in the response.

(5) *Disposition of a motion for a procedural order.* The Environmental Appeals Board may act on a motion for a procedural order at any time without awaiting a response.

(g) *Timing of motions for extension of time.* Parties must file motions for extensions of time sufficiently in advance of the due date to allow other

(m) *Motions for reconsideration or clarification.* Motions to reconsider or clarify any final disposition of the Environmental Appeals Board must be filed within 10 days after service of that order. Motions for reconsideration must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for clarification must set forth with specificity the portion of the decision for which clarification is being sought and the reason clarification is necessary. Motions for reconsideration or clarification under this provision must be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration or clarification directed to the Administrator, rather than the Environmental Appeals Board, will not be considered, unless such motion relates to a matter that the Environmental Appeals Board has referred to the Administrator pursuant to § 124.2 and for which the Administrator has issued the final order. A motion for reconsideration or clarification does not stay the effective date of the final order unless the Environmental Appeals Board specifically so orders.

(n) *Board authority.* In exercising its duties and responsibilities under this part, the Environmental Appeals Board may do all acts and take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal under this part including, but not limited to, imposing procedural sanctions against a party who, without adequate justification, fails or refuses to comply with this part or an order of the Environmental Appeals Board. Such sanctions may include drawing adverse inferences against a party, striking a party's pleadings or other submissions from the record, and denying any or all relief sought by the party in the proceeding. Additionally, for good cause, the Board may relax or suspend the filing requirements prescribed by these rules or Board order.

(o) *General NPDES permits.* (1) Persons affected by an NPDES general permit may not file a petition under this section or otherwise challenge the conditions of a general permit in further Agency proceedings. Instead, they may do either of the following:

(i) Challenge the general permit by filing an action in court; or
(ii) Apply for an individual NPDES permit under § 122.21 as authorized in § 122.28 of this chapter and may then petition the Environmental Appeals Board to review the individual permit as provided by this section.

(2) As provided in § 122.28(b)(3) of this chapter, any interested person may

also petition the Director to require an individual NPDES permit for any discharger eligible for authorization to discharge under an NPDES general permit.

(p) The Environmental Appeals Board also may decide on its own initiative to review any condition of any RCRA, UIC, NPDES, or PSD permit decision issued under this part for which review is available under paragraph (a) of this section. The Environmental Appeals Board must act under this paragraph within 30 days of the service date of notice of the Regional Administrator's action.

■ 5. Paragraph (b)(1) of § 124.60 is amended by removing the reference to "§ 124.19(f)" in the first sentence and adding in its place "§ 124.19(k)(2)".

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

■ 6. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

■ 7. Paragraph (f)(3) of § 270.42 is revised to read as follows:

§ 270.42 Permit modification at the request of permittee.

* * * * *

(f) * * *
(3) An automatic authorization that goes into effect under paragraph (b)(6)(iii) or (v) of this section may be appealed under the permit appeal procedures of 40 CFR 124.19; however, the permittee may continue to conduct the activities pursuant to the automatic authorization unless and until a final determination is made by the Environmental Appeals Board to grant review and remand the permit decision.

* * * * *

■ 8. Paragraph (a) of 270.155 is revised to read as follows:

§ 270.155 May the decision to approve or deny my RAP application be administratively appealed?

(a) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Director's decision to approve or deny your RAP application to EPA's Environmental Appeals Board under § 124.19 of this chapter. Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent

as for final permit decisions under § 124.15 of this chapter (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit).

* * * * *

[FR Doc. 2013-01318 Filed 1-24-13; 8:45 am]

BILLING CODE 6550-60-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA-R01-RCRA-2012-0944; FRL-9771-7]

Adequacy of Massachusetts Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves a modification to Massachusetts's approved municipal solid waste landfill (MSWLF) program. The approved modification allows the State to issue Research, Development, and Demonstration (RD&D) Permits to owners and operators of MSWLF in accordance with its State law. On March 22, 2004, EPA issued final regulations allowing research, development, and demonstration (RD&D) permits to be issued to certain municipal solid waste landfills by approved states. On December 7, 2012 Massachusetts submitted an application to EPA Region 1 seeking Federal approval of its RD&D requirements. After thorough review EPA Region 1 is determining that Massachusetts's RD&D permit requirements are adequate through this direct final action.

DATES: This determination of RD&D program adequacy for Massachusetts will become effective April 25, 2013 without further notice unless EPA receives adverse comments on or before March 26, 2013. If adverse comments are received, EPA will review the comments and publish another Federal Register document responding to the comments and either affirming or revising the initial decision.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-RCRA-2012-0944, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: hsieh.juiyu@epa.gov.
- Fax: (617) 918-0646, to the attention of Juiyu Hsieh.
- Mail: Juiyu Hsieh, RCRA Waste Management and UST Section, Office of

parties to have a reasonable opportunity to respond to the request for more time and to provide the Environmental Appeals Board with a reasonable opportunity to issue an order.

(h) *Oral argument.* The Environmental Appeals Board may hold oral argument on its own initiative or at its discretion in response to a request by one or more of the parties. To request oral argument, a party must include in its substantive brief a statement explaining why oral argument should be permitted. The Environmental Appeals Board will apply a presumption against oral argument in PSD or other new source permit appeals. The Environmental Appeals Board may, by order, establish additional procedures governing any oral argument before the Environmental Appeals Board.

(i) *Filing and service requirements.* Documents filed under this section, including the petition for review, must be filed with the Clerk of the Environmental Appeals Board. A document is filed when it is received by the Clerk of the Environmental Appeals Board at the address specified for the appropriate method of delivery as provided in paragraph (i)(2) of this section.

(1) *Caption and other filing requirements.* Every document filed with the Environmental Appeals Board must specifically identify in the caption the permit applicant, the permitted facility, and the permit number. All documents that are filed must be signed by the person filing the documents or the representative of the person filing the documents. Each filing must also indicate the signer's name, address, and telephone number, as well as an email address, and facsimile number, if any.

(2) *Method of filing.* Unless otherwise permitted under these rules, documents must be filed either electronically, by mail, or by hand delivery. In addition, a motion or a response to a motion may be submitted by facsimile if the submission contains no attachments. Upon filing a motion or response to a motion by facsimile, the sender must, within one business day, submit the original copy to the Clerk of the Environmental Appeals Board either electronically, by mail, or by hand-delivery.

(i) *Electronic filing.* Documents that are filed electronically must be submitted using the Environmental Appeals Board's electronic filing system, subject to any appropriate conditions and limitations imposed by order of the Environmental Appeals Board. All documents filed electronically must include the full name of the person filing below the

signature line. Compliance with Environmental Appeals Board electronic filing requirements constitutes compliance with applicable signature requirements.

(ii) *Filing by U.S. Mail.* Documents that are sent by U.S. Postal Service (except by U.S. Express Mail) must be sent to the official mailing address of the Clerk of the Environmental Appeals Board at: U.S. Environmental Protection Agency, Environmental Appeals Board, 1200 Pennsylvania Avenue NW., Mail Code 1103M, Washington, DC 20460-0001. The original and two copies of each document must be filed. The person filing the documents must include a cover letter to the Clerk of the Environmental Appeals Board clearly identifying the documents that are being submitted, the name of the party on whose behalf the documents are being submitted, as well as the name of the person filing the documents, his or her address, telephone number and, if available, fax number and email address.

(iii) *Filing by hand delivery.* Documents delivered by hand or courier (including deliveries by U.S. Express Mail) must be delivered to the Clerk of the Environmental Appeals Board at: U.S. Environmental Protection Agency, Environmental Appeals Board, EPA East Building, 1201 Constitution Avenue NW., Room 3334, Washington, DC 20004. The original and two copies of each document must be filed. The person filing the documents must include a cover letter to the Clerk of the Environmental Appeals Board clearly identifying the documents being submitted, the name of the party on whose behalf the documents are being submitted, as well as the name of the person filing the documents, his or her address, telephone number and, if available, fax number and email address.

(3) *Service requirements.* Petitioner must serve the petition for review on the Regional Administrator and the permit applicant (if the applicant is not the petitioner). Once an appeal is docketed, every document filed with the Environmental Appeals Board must be served on all other parties. Service must be by first class mail, or by any reliable commercial delivery service. Upon agreement by the parties, service may be made by facsimile or electronic means.

(4) *Proof of service.* A certificate of service must be appended to each document filed stating the names of persons served, the date and manner of service, as well as the electronic, mailing, or hand delivery address, or facsimile number, as appropriate.

(j) *Withdrawal of permit or portions of permit by Regional Administrator.* The Regional Administrator, at any time prior to 30 days after the Regional Administrator files its response to the petition for review under paragraph (b) of this section, may, upon notification to the Environmental Appeals Board and any interested parties, withdraw the permit and prepare a new draft permit under § 124.6 addressing the portions so withdrawn. The new draft permit must proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part. Any portions of the permit that are not withdrawn and that are not stayed under § 124.16(a) continue to apply. If the Environmental Appeals Board has held oral argument, the Regional Administrator may not unilaterally withdraw the permit, but instead must request that the Environmental Appeals Board grant a voluntary remand of the permit or any portion thereof.

(k) *Petitioner request for dismissal of petition.* Petitioner, by motion, may request to have the Environmental Appeals Board dismiss its appeal. The motion must briefly state the reason for its request.

(l) *Final disposition and judicial review.* (1) A petition to the Environmental Appeals Board under paragraph (a) of this section is, under 5 U.S.C. 704, a prerequisite to seeking judicial review of the final agency action.

(2) For purposes of judicial review under the appropriate Act, final agency action on a RCRA, UIC, NPDES, or PSD permit occurs when agency review procedures under this section are exhausted and the Regional Administrator subsequently issues a final permit decision under this paragraph. A final permit decision must be issued by the Regional Administrator:

(i) When the Environmental Appeals Board issues notice to the parties that the petition for review has been denied;

(ii) When the Environmental Appeals Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Environmental Appeals Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(3) The Regional Administrator must promptly publish notice of any final agency action regarding a PSD permit in the Federal Register.



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.
