



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

Mr. Nate Pennell
Town of Whitneyville
42 South Main Street
Whitneyville, ME 04654

August 3, 2015

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit ME0102687
Maine Waste Discharge License (WDL) Application #W008099-6A-D-R
Permit

Dear Mr. Pennell:

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

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

If you have any questions regarding the matter, please feel free to call me at 446-1875.

Sincerely,

Rodney Robert
Division of Water Quality Management
Bureau of Water Quality

Enc.

cc: Matt Young, DEP/EMRO
Lori Mitchell, DEP/CMRO
Sandy Mojica, USEPA
Olga Vergara, USEPA
Marelyn Vega, USEPA
Richard Carvalho, USEPA

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

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

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04679
(207) 764-0477 FAX: (207) 760-3143



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

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF WHITNEYVILLE)	MAINE POLLUTANT DISCHARGE
PUBLICLY OWNED TREATMENT WORKS)	ELIMINATION SYSTEM PERMIT
WHITNEYVILLE, WASHINGTON COUNTY)	
ME0102687)	AND
W008099-6A-D-R)	
SCHOOL STREET FACILITY)	WASTE DISCHARGE LICENSE
APPROVAL)	RENEWAL

In compliance with the provisions of the Federal Water Pollution Control Act, Title 33 U.S.C. § 1251, Conditions of licenses, 38 M.R.S.A. § 414-A, and applicable regulations, the Department of Environmental Protection (Department) has considered the application of the TOWN of WHITNEYVILLE, with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

On March 16, 2015, the Department accepted as complete for processing an application from the TOWN OF WHITNEYVILLE for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0102687/Maine Waste Discharge License (WDL) #W008099-6A-C-R (permit hereinafter), which was issued by the Department on April 21, 2010 for a five year term. The April 21, 2010 permit authorized the monthly average discharge of no more than 6,500 gallons per day (GPD) of secondary treated sanitary wastewater from a publicly owned treatment works (POTW) known as the **School Street** facility to the Machias River, Class B, in Whitneyville, Maine.

PERMIT SUMMARY

This permitting action is carrying forward all the terms and conditions of the April 21, 2010 permitting action.

SPECIAL CONDITIONS

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated August 3, 2015, and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 M.R.S.A. §464(4)(F), will be met, in that:
 - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
 - (c) Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
 - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in Conditions of licenses, 38 M.R.S.A. § 414-A(1)(D) and 414-A(1-B).

SPECIAL CONDITIONS

ACTION

THEREFORE, the Department APPROVES the application of the TOWN OF WHITNEYVILLE to discharge a monthly average of 6,500 GPD of secondary treated sanitary wastewater from the Town's Canal Road facility to the Machias River, Class B, in Whitneyville, Maine, SUBJECT TO ALL APPLICABLE STANDARDS AND REGULATIONS AND THE FOLLOWING CONDITIONS:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits," revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit becomes effective upon the date of signature below and expires at midnight five (5) years after that date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of this permit and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. *Maine Administrative Procedure and Services*, 5 M.R.S.A. § 10002 and Rules Concerning the *Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (amended August 25, 2013).

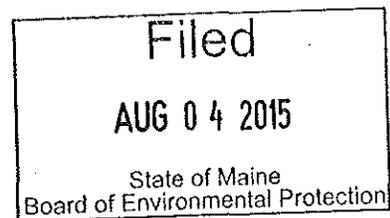
PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 3RD DAY OF August 2015.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kulum
for PATRICIA W. AHO, Commissioner

Date of initial receipt of application March 11, 2015
Date of application acceptance March 16, 2015



Date filed with Board of Environmental Protection _____

This Order prepared by Rod Robert, Bureau of Water Quality

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge secondary treated sanitary wastewater from **Outfall #001A** to the Machias River in Whitneyville. The permittee shall treat the wastewater to meet the discharge limitations for each effluent characteristic specified in the chart below⁽¹⁾:

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
	Mass			Concentration			Measurement Frequency	Sample Type
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum		
Flow [50050]	6,500 GPD [03]	---	---	---	---	---	1/Month [01/30]	Estimate [ES]
BOD ₅ [00310]	1.6 lbs./day [26]	2.3 lbs./day [26]	2.6 lbs./day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Quarter [01/90]	Grab [GR]
BOD ₅ Percent Removal ⁽²⁾ [81010]	---	---	---	85% [23]	---	---	---	---
TSS [00530]	1.6 lbs./day [26]	2.3 lbs./day [26]	2.6 lbs./day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Quarter [01/90]	Grab [GR]
TSS Percent Removal ⁽²⁾ [81011]	---	---	---	85% [23]	---	---	---	---
Settleable Solids [00545]	---	---	---	---	---	0.3 ml/L [25]	1/Quarter [01/90]	Grab [GR]
<i>E. coli</i> Bacteria ⁽³⁾ [31633] (May 15 th – September 30 th)	---	---	---	64/100 ml ⁽⁴⁾ [13]	---	427/100 ml [13]	2/Month [02/30]	Grab [GR]
Total Residual Chlorine ⁽⁵⁾ [00665]	---	---	---	---	---	1.0 mg/L [19]	5/Week [05/07]	Grab [GR]
Mercury ⁽⁶⁾ [71900]	---	---	---	6.7 ng/L [3m]	---	10.1 ng/L [3m]	1/Year [01/365]	Grab [GR]
pH [00400]	---	---	---	---	---	6.0 – 9.0 SU [12]	1/Month [01/30]	Grab [GR]

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

FOOTNOTES: See Page 5 and 6 of this permit for applicable footnotes.

SPECIAL CONDITIONS

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

Footnotes:

1. **Sampling** - All effluent monitoring must be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. Sampling and analysis must be conducted in accordance with;
 - a) methods approved by 40 Code of Federal Regulations (CFR) Part 136,
 - b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or
 - c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services.
2. **BOD₅ and TSS Percent Removal** - The treatment facility shall maintain a minimum of 85 percent removal of both biochemical oxygen demand (BOD₅) and total suspended solids (TSS) for all flows receiving secondary treatment. The percent removal must be based on a monthly average calculation using influent and effluent concentrations. Because primary treatment occurs at multiple individual users sites, the Department assumes the influent concentration to be 290 mg/L (see fact sheet for more specifications on this parameter).
3. ***E. coli* bacteria** - *E. coli* bacteria limits and monitoring requirements are seasonal and apply between May 15 and September 30 of each year. The Department reserves the right to require year-round disinfection to protect the health, safety and welfare of the public.
4. **Bacteria Reporting** - The monthly average *E. coli* bacteria limitation is a geometric mean limitation and sample results shall be reported as such.
5. **Total Residual Chlorine** - Limitations and monitoring requirements are applicable whenever elemental chlorine or chlorine-based compounds are being used to disinfect the discharge. The permittee must utilize approved test methods that are capable of bracketing the TRC limitation in this permit.
6. **Mercury** - All mercury sampling (1/Year) required to determine compliance with interim limitations established pursuant to Interim Effluent Limitations and Controls for the Discharge of Mercury, 06-096 CMR 519 (last amended October 6, 2001) shall be conducted in accordance with EPA's "clean sampling techniques" found in EPA Method 1669, Sampling Ambient Water For Trace Metals At EPA Water Quality Criteria Levels. All mercury analyses shall be conducted in accordance with EPA Method 1631E, Determination of Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Fluorescence Spectrometry. See Attachment A, Effluent Mercury Test Report, of this permit for the Department's form for reporting mercury test results.

SPECIAL CONDITIONS

B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent must not contain a visible oil sheen, foam or floating solids at any time that would impair the uses designated by the classification of the receiving waters.
2. The effluent must not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the uses designated by the classification of the receiving waters.
3. The discharges must not cause visible discoloration or turbidity in the receiving waters that would impair the uses 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.

C. TREATMENT PLANT OPERATOR

The person who has the management responsibility over the treatment facility must hold a **Grade II** certificate (or higher) or must be a Maine Registered 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.

D. NOTIFICATION REQUIREMENT

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

1. Any introduction of pollutants into the wastewater collection and treatment system from an indirect discharger in a primary industrial category discharging process wastewater; and
2. Any substantial change (increase or decrease) in the volume or character of pollutants being introduced into the wastewater collection and treatment system by a source introducing pollutants into the system at the time of permit issuance. For the purposes of this section, notice regarding substantial change shall include information on:
 - (a) the quality and quantity of wastewater introduced to the wastewater collection and treatment system; and
 - (b) any anticipated impact caused by the change in the quantity or quality of the wastewater to be discharged from the treatment system.

E. LIMITATIONS FOR INDUSTRIAL USERS

The permittee cannot allow the introduction of pollutants into the wastewater collection and treatment system by a non-domestic source (user) that would pass through or otherwise interfere with the operation of the treatment system.

SPECIAL CONDITIONS

F. AUTHORIZED DISCHARGES

The Department authorizes the permittee to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on March 16, 2015; 2) the terms and conditions of this permit; and 3) only from Outfall #001A. Discharges of wastewater from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5)(*Bypass*) of this permit.

G. WET WEATHER FLOW MANAGEMENT PLAN

The treatment facility staff shall maintain a current written Wet Weather Flow Management Plan to direct the staff how to operate the facility effectively during periods of high flow. The Department acknowledges 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.

Within 90 days of completion of new and or substantial upgrades of the wastewater treatment facility, the permittee shall submit to the Department for review and approval, a new or revised Wet Weather Management Plan that conforms to Department guidelines for such plans. The revised 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 any necessary changes to keep the plan up to date.

H. OPERATION & MAINTENANCE (O&M) PLAN

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 transport, treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades, the permittee shall evaluate and modify the O&M Plan including site plan(s) and schematic(s) for the wastewater 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 wastewater treatment facility, the permittee shall submit the updated O&M Plan to their Department inspector for review and comment.

SPECIAL CONDITIONS

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

By December 31 of each calendar year, the permittee shall provide the Department with a certification describing any of the following that have occurred since the effective date of this permit [ICIS Code 75305]: See Attachment C of the Fact Sheet for an acceptable certification form to satisfy this Special Condition.

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

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

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

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

J. REOPENING OF PERMIT FOR MODIFICATIONS

Upon evaluation of the tests results or monitoring requirements specified in Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at 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 effluent and/or ambient water quality monitoring if results on file are inconclusive; or
- (3) change monitoring requirements or limitations based on new information.

SPECIAL CONDITIONS

K. MONITORING AND REPORTING

The permittee shall summarize monitoring results obtained during the previous month and report said results on separate Discharge Monitoring Report (DMR) forms provided by the Department. The permittee shall submit the results so that they are postmarked on or before the thirteenth (13th) day of the month or hand-delivered to a Department Regional Office such that the DMRs are received by the Department on or before the fifteenth (15th) day of the month following the completed reporting period. A signed copy of the DMR and all other reports required herein shall be submitted to the following address:

Department of Environmental Protection
Bureau of Water Quality
106 Hogan Road
Bangor, Maine 04401

Alternatively, if you are submitting an electronic DMR (eDMR), the completed eDMR must be electronically submitted to the Department by a facility authorized DMR Signatory no later than the close of business on the 15th day of the month following the completed reporting period. Paper copy documentation submitted in support of the eDMR must be postmarked on or before the thirteenth (13th) day of the month or hand-delivered to the Department's Regional Office such that it is received by the Department on or before the fifteenth (15th) day of the month following the completed reporting period. Electronic documentation in support of the eDMR must be submitted no later than the close of business on the 15th day of the month following the completed reporting period.

L. SEVERABILITY

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

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

Date: **August 3, 2015**

MEPDES PERMIT: **ME0102687**
WASTE DISCHARGE LICENSE: **W008099-6A-D-R**

NAME AND ADDRESS OF APPLICANT:
TOWN OF WHITNEYVILLE
Attn: Nate Pennell
42 South Main Street
Whitneyville, ME 04654

COUNTY: **Washington County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:
School Street
Whitneyville, ME 04692

RECEIVING WATER/CLASSIFICATION: **Machias River/Class B**

COGNIZANT OFFICIAL:
Mr. Nate Pennell
Town of Whitneyville
42 South Main Street
Whitneyville, ME 04654
Telephone: (207) 255-4662

FACILITY CONTRACT OPERATOR: **Jon Carman**
JMC Wastewater Services
46 Fisher Road
Unity, Maine 04988
Telephone: (207) 948-2422
e-mail: joncarman@uninet.net

1. APPLICATION SUMMARY

- a. Application: On March 16, 2015, the Department accepted as complete for processing an application from the TOWN OF WHITNEYVILLE for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0102687/Maine Waste Discharge License (WDL) #W008099-5L-C-R (permit hereinafter), which was issued by the Department on April 21, 2010 for a five year term. The April 21, 2010 permit authorized the monthly average discharge of no more than 6,500 gallons per day (GPD) of secondary treated sanitary wastewater from a publicly owned treatment works (POTW) known as the School Street facility to the Machias River, Class B, in Whitneyville, Maine. See **Attachment A** of this Fact Sheet for a location map of the facility.

1. APPLICATION SUMMARY (cont'd)

- b. Source Description: The School Street municipal waste water treatment facility, one of two treatment facilities owned by the town, provides secondary treatment and disinfection for sanitary waste water generated by 19 residential and two commercial users in the town. A contract operator operates the School Street facility. There are no significant industrial users contributing flows to the treatment works, the facility is not required to implement a pretreatment program, and there are no combined sewer overflow (CSO) points associated with the collection system. The Town is not authorized to accept septage at the School Street Facility.
- c. Waste Water Treatment: The waste water treatment facility owned by the Town provides secondary level of treatment via individual sand filter systems. Waste water generated by the residential users passes through individual septic tanks that provide primary treatment via settling and floatation of the heavier, and lighter-than water waste water components and secondary treatment through individual sand filters. The secondary treated wastewater from the clustered sand filter flows by pump and gravity to the central disinfection system whereby the wastewater is seasonally disinfected with chlorine compounds. The disinfected wastewater is then discharged by gravity flow to the Machias River via a six-inch diameter polyvinyl chloride (PVC) pipe that extends approximately ten feet out into the river from the riverbank. The outfall pipe has approximately two feet of water over the top of the pipe at (7Q10) low-river flow conditions. The outfall pipe is not fitted with diffusers or other mechanisms that would enhance mixing of the effluent with the receiving waters. See **Attachment B** of this Fact Sheet for a schematic of the system.

2. PERMIT SUMMARY

- a. Terms and Conditions: This permitting action is carrying forward all the terms and conditions of the 4/21/10 permitting action.
- b. Facility History: This section provides a summary of significant licensing/permitting actions and milestones that have been completed for the Canal Road Facility.

June 30, 1986 – The USEPA issued NPDES permit #ME0102181 to the Town of Whitneyville for the discharge of equivalent-to-secondary treated wastewater from two separate wastewater treatment facilities owned and operated by the Town to the Machias River in Whitneyville. In addition to authorizing the discharge from the Canal Road Facility, the permit authorized discharges from the School Street Facility.

October 21, 1986 – The Department issued WDL #W006551-45-A-N that authorized wastewater discharges from the Town's School Street and Canal Road facilities with a total maximum discharge of 8,350 gallons per day (0.00835 MGD).

June 8, 1987 – The USEPA issued permit modification #ME0102181 to the Town to revise the minimum monitoring frequency requirements for Total Residual Chlorine from once per month to five sample events per week in order to be consistent with the Maine WDL.

Summer 1987 – The Town's School Street Facility commenced operation.

2. PERMIT SUMMARY (continued)

November 30, 1999 – The Town submitted a complete application to the Department for renewal of the WDL. The WDL issued in 1986 authorized separate limits and monitoring requirements for the School Street and Canal Road facilities. In the 1999 WDL licensing action, the Department separated the authorizations for each of the two facilities because they are “stand-alone” facilities with separate outfall pipes and separate monitoring requirements.

February 03, 2000 – The Department issued separate distinct WDL #W008099-5L-A-N to the Town for the monthly average discharge of up to 6,250 gpd of equivalent-to-secondary treated wastewater to the Machias River from the School St. facility in Whitneyville.

February 22, 2005 – The Department issued MEPDES permit ME0102687/WDL #W008099-5L-B-R for a five-year term.

February 17, 2010 – The Town submitted a timely and complete application to the Department for the renewal of ME0102687/WDL #W008099-6A-C-R for the Towns’ School Street facility.

April 21, 2010 – The Department issued MEPDES permit ME0102687/WDL #W008099-6A-C-R for a five-year term.

March 11, 2015 – The Town submitted a timely and complete application to the Department for the renewal of ME0102687/WDL #W008099-6A-C-R for the Towns’ School Street facility

3. CONDITIONS OF PERMIT

Conditions of licenses, 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, *Certain deposits and discharges prohibited* 38 M.R.S.A., Section 420 and *Surface Water Toxics Control Program*, 06-096 CMR Chapter 530 require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR Chapter 584, and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

4. RECEIVING WATER QUALITY STANDARDS

Classification of Major River Basins, 38 M.R.S.A. §467(5)(A)(2) classifies the Machias River at the point of discharge as a Class B water. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained. The *Standards for the Classification of Fresh Surface Waters*, Maine law, 38 M.R.S.A. §465(3) describes the standards for Class B waters.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2012 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, lists the Machias River at the point of discharge (Water ID ME0105000205_510R) as, “Category 2: Rivers and Streams Attaining Some Designated Uses – Insufficient Information for Other Uses”.

The Report lists all of Maine’s fresh waters as, “Category 4-A: Waters Impaired by Atmospheric Deposition of Mercury.” Impairment in this context refers to a statewide fish consumption advisory due to elevated levels of mercury in some fish tissues. The Report states, “All freshwaters are listed in Category 4A (TMDL Completed) due to USEPA approval of a Regional Mercury TMDL. Maine has a fish consumption advisory for fish taken from all freshwaters due to mercury. Many waters and many fish from any given water do not exceed the action level for mercury. However, because it is impossible for someone consuming a fish to know whether the mercury level exceeds the action level, the Maine Department of Human Services decided to establish a statewide advisory for all freshwater fish that recommends limits on consumption. Maine has already instituted statewide programs for removal and reduction of mercury sources.” Pursuant to 38 M.R.S.A. § 420(1-B)(B), “a facility is not in violation of the ambient criteria for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to section 413 subsection 11.” However, *Interim Effluent Limitations and Controls for the Discharge of Mercury*, 06-096 CMR 519(1)(A)(1) states that overboard discharges licensed pursuant to 38 M.R.S.A. § 413 are not subject to the rule. The Department has no information that the discharge from the permittee, as conditioned, causes or contributes to non-attainment of applicable Class B water quality standards.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Flow: This permitting action is carrying forward the flow limitation of 6,500 GPD and a minimum monitoring frequency requirement of once per month. A review of the month Discharge Monitoring Report (DMR) data for the period February 2010 – April 2015 indicates the facility has complied with the flow limitations for 100% of the measurements.
- b. Dilution Factors: The Department established applicable dilution factors for the discharge in accordance with freshwater protocols established in Department Rule Chapter 530, *Surface Water Toxics Control Program*, October 2005. This permitting action is calculating dilution factors associated with the discharge based on the 6,500 GPD (same as 0.0065 MGD) flow limit to ensure that water quality-based limits are protective of receiving water quality on a year-round basis.

With a monthly average flow limit of 0.0065 MGD, dilution factors associated with the discharge from the Town’s Canal Road Facility may be calculated as follows:

$$\begin{aligned} \text{Acute: } 1Q10 &= 27.2 \text{ cfs} \Rightarrow \frac{(27.2 \text{ cfs})(0.6464) + 0.0065 \text{ MGD}}{0.0065 \text{ MGD}} = 2,814:1 \\ \text{Modified Acute: } \frac{1}{4} 1Q10 &= 6.8 \text{ cfs} \Rightarrow \frac{(6.8 \text{ cfs})(0.6464) + 0.0065 \text{ MGD}}{0.0065 \text{ MGD}} = 704:1 \end{aligned}$$

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (continued)

Chronic: $7Q_{10} = \frac{60 \text{ cfs} \Rightarrow (60 \text{ cfs})(0.6464) + 0.0065 \text{ MGD}}{0.0065 \text{ MGD}} = 6,206:1$

Harmonic Mean = $\frac{180 \text{ cfs} \Rightarrow (180 \text{ cfs})(0.6464) + 0.0065 \text{ MGD}}{0.0065 \text{ MGD}} = 18,617:1$

06-096 CMR Chapter 530(4)(B)(1) states that, "Analyses using numerical acute criteria for aquatic life must be based on 1/4 of the 1Q10 stream design flow to prevent substantial acute toxicity within any mixing zone, according to EPA's Mixing Zone Policy and to ensure a Zone of Passage of at least 3/4 of the cross-sectional area of any stream as required by Department rule. Where it can be demonstrated that a discharge achieves complete and rapid mixing with the receiving water, by way of an efficient diffuser or other effective method, analyses may use a greater proportion of the stream design flow, up to and including all of it, as long as the required Zone of Passage is maintained."

- c. Biochemical Oxygen Demand (BOD₅) and Total Suspended Solids (TSS): Previously established monthly average and weekly average BOD₅ & TSS concentration limits of 30 mg/L and 45 mg/L, respectively, are based on secondary treatment requirements as defined in Department rule 06-096 CMR Chapter 525(3)(III). Daily maximum BOD₅ & TSS concentration limits of 50 mg/L are based on a Department best professional judgment (BPJ) of best practicable treatment (BPT) and a minimum monitoring frequency requirement of once quarterly.

All three technology-based concentration limits are being carried forward in this permitting action. *Waste Discharge License Conditions*, 06-096 CMR Chapter 523(6)(f) states that all pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass. Also carried forward are previously established monthly average, weekly average and daily maximum technology-based mass limits of 1.6 lbs./day, 2.3lbs./day, and 2.6 lbs./day, respectively, which are derived using the permitted discharge flow limit of 0.0065 MGD as follows:

Mass Limit Calculations		
Monthly Average	(30 mg/L)(8.34 lbs./gallon)(0.0065 MGD) =	1.6 lbs./day
Weekly Average	(45 mg/L)(8.34 lbs./gallon)(0.0065 MGD) =	2.3 lbs./day
Daily Maximum	(50 mg/L)(8.34 lbs./gallon)(0.0065 MGD) =	2.6 lbs./day

This permitting action is also carrying forward the requirement for a minimum of 85% removal of BOD₅ & TSS pursuant to *Effluent Guidelines and Standards*, 06-096 CMR Chapter 525(3)(III)(a)(3) and (b)(3). according to the EPA's Onsite Wastewater Treatment Systems Manual, dated February 2002, table 3-7 entitled "Constituent Mass Loadings and Concentrations in Typical Residential Wastewater" [high-end range of values], influent values for BOD and TSS may be assumed to be 300 mg/L until the infrastructure is modified or replaced such that influent sample collection is practical. The Department utilizes a similar assumed influent strength of 290 mg/L.

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

A review of the monthly DMR data for the period May 2010 – May 2015 indicates the effluent has been in compliance with the BOD & TSS limitations in 100% of the reports. A statistical summary of submitted DMRs follows:

BOD Mass *

Value	Limit	N	Range (lbs/day)	Average	Exceedances
Monthly Average	1.6 lbs/day	17	0.00 – 0.1 lbs/day	0.027 lbs/day	0
Daily Maximum	2.6 lbs/day	17	0.02 – 0.1 lbs/day	0.092 lbs/day	0

*Data reflects sampling frequency of once every three months

BOD Concentration**

Value	Limit (mg/L)	N	Range (mg/L)	Average	Exceedances
Monthly Average	30 mg/L	17	<2 - 6 mg/L	<2.7 mg/L	0
Daily Maximum	50 mg/L	17	<2 - 6 mg/L	<2.7 mg/L	0

**Data reflects sampling frequency of once every three months

TSS mass *

Value	Limit (lbs/day)	N	Range (lbs/day)	Average	Exceedances
Monthly Average	1.6 lbs/day	17	0.00 – 0.2 lbs/day	0.04 lbs/day	0
Daily Maximum	2.6 lbs/day	17	0.04 – 0.2 lbs/day	0.1 lbs/day	0

* Data reflects sampling frequency of once every three months

TSS Concentration **

Value	Limit	N	Range (mg/L)	Average	Exceedances
Monthly Average	30 mg/L	17	3.0 - 20 mg/L	7.99 mg/L	0
Daily Maximum	50 mg/L	17	3.0 - 20 mg/L	7.99 mg/L	0

** Data reflects sampling frequency of once every three months

This permitting action is carrying forward the minimum quarterly monitoring frequency based on Department guidance for POTWs permitted to discharge up to 0.050 MGD.

- d. Settleable Solids: This permitting action carries forward the previously established daily maximum technology-based concentration limit of 0.3 ml/L and a minimum monitoring frequency requirement of once per quarter for settleable solids. The daily maximum concentration limit of 0.3 ml/L is considered by the Department to be BPT for secondary treated sanitary wastewater, and the minimum monitoring frequency requirement once per quarter (01/90) is based on a Department BPJ determination of the level of monitoring necessary to assess compliance with this parameter in consideration of the facility's past demonstrated performance.

A summary of settleable solids data as reported on the monthly DMRs for the period of February 2010 – April 2015 (n=19) indicates the maximum settleable solids concentration discharge has been in compliance with the 0.3 ml/L limit in 100% of the samples.

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

- e. Escherichia coli bacteria: This permitting action is carrying forward the previously established seasonal (between May 15 and September 30 of each year) monthly average and daily maximum concentration limits for *E. coli* bacteria of 64 colonies/100 ml (geometric mean) and 427 colonies/100 ml (instantaneous level), respectively, based on the State of Maine Water Classification Program criteria for Class B waters found at 38 M.R.S.A. §465(3)(B) along with a minimum monitoring frequency requirement of 2/Month.

During calendar year 2005, Maine's Legislature approved new daily maximum water quality standard of 236 colonies/100 ml (col/100ml) for water bodies designated as Class B. The Department has determined that end-of-pipe limitations for the instantaneous concentration standard of 236 colonies/100 ml will be achieved through available dilution of the effluent with the receiving waters and need not be revised in MEPDES permits for facilities with adequate dilution, as is the case with the Town's facility. Therefore, the daily maximum bacteria limit of 427 colonies/100 ml in the previous permitting action is being carried forward in this permitting action. The bacteria limits established in this permitting action are seasonal and apply between May 15 and September 30 of each year. The Department reserves the right to impose year-round bacteria limits, if necessary, to protect the health, safety and welfare of the public.

A review of the seasonal monthly DMR data for the period May 2010 – September 2014 indicates the permittee has been in compliance with the previous permit limits and the proposed permit limits in 100% of the samples for *E. coli* bacteria. A statistical summary of results follows:

<i>E. coli</i> bacteria ⁺⁺					
Value	Limit (col/100 ml)	N	Range (col/100 ml)	Mean (col/100 ml)	Exceedances
Monthly Average	64	25	<1.0 – 11	<1.76	0
Daily Maximum	427	25	<1.0 - 118	<10	0

⁺⁺ Data reflects sampling frequency of twice each month between May 15 and September 30 of each year

- f. Total Residual Chlorine (TRC): This permitting action carries forward the previously established respective daily maximum and monthly average BPT-based concentration limits of 1.0 mg/L for TRC, as well as a minimum monitoring frequency requirement of five times per week. Limitations on TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either water quality or BPT based limits. End-of-pipe acute and chronic water quality-based concentration thresholds may be calculated as follows:

Criterion		Dilution Factors	Calculated Threshold	
Acute	0.019 mg/L	2,814:1	Acute	53 mg/L
Chronic	0.011 mg/L	6,206:1	Chronic	68 mg/L

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

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. For facilities that must dechlorinate the effluent in order to consistently achieve compliance with 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. The town's wastewater treatment process does not include effluent dechlorination following disinfection. Consequently, this permitting action is carrying forward the daily maximum and monthly average BPT-based concentration limit of 1.0 mg/L as it is more stringent than the water quality-based standards of 40 mg/L (acute threshold) and 203 mg/L (chronic threshold).

This permitting action is carrying forward the minimum monitoring frequency of five times per week (5/Week) based on a Department BPJ determination of the level of monitoring necessary to assess compliance with this parameter in consideration of the facility's past demonstrated performance. Although bacteria limitations are seasonal and apply between May 15 and September 30 of each year, TRC monitoring must be conducted during any period that chlorine-based compounds are in use at the facility as TRC is toxic at all times of the year.

A review of the DMR data for the period May 2010 – September 2014 indicates the permittee has been in compliance with both the monthly average and daily maximum concentration limits 100% and has reported values as follows:

Total residual chlorine **					
Value	Limit (mg/L)	N	Range (mg/L)	Mean (mg/L)	Exceedances
Monthly Average	1.0 mg/L	25	0.3 – 0.92mg/L	0.74 mg/L	0
Daily Maximum	1.0 mg/L	25	0.3 – 0.92mg/L	0.74 mg/L	0

- g. pH: The previously established a technology based BPT pH range limitation of 6.0 –9.0 standard units pursuant to 06-096 CMR Chapter 525(3)(III)(c) along with a monitoring frequency of 1/Week are being carried forward in this permitting action. Historically the facility has experienced problems where the discharge is more acidic than permitted. It is noted that the acidic discharge issues are not isolated to the Whitneyville facilities and are often experienced by similar treatment facilities in the region. A review of the DMR pH data for the period May 2010 – May 2015 indicates the permitted discharge has been in compliance with both the monthly average and daily maximum concentration limits in approximately 80% of the tests (see statistical summary below).

pH					
Value	Limit (su)	N	Range (su)	Mean (su)	Exceedances
Monthly Average	6.0 – 9.0 su	58	4.0 – 6.8	5.97	12
Daily Maximum	6.0 – 9.0 su	58	4.0 – 6.8	5.97	12

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

- h. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing: 38 M.R.S.A., §414-A and *Certain deposits and discharges prohibited* 38 M.R.S.A. § 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 rule, 06-096 CMR Chapter 530, *Surface Water Toxics Control Program* (toxics rule) sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected and narrative and numeric water quality criteria are met. Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants* describes ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters. Chapter 530 § (2)(A) states that “...all licensed dischargers of industrial process wastewater or domestic wastes discharging to surface waters of the State must meet the testing requirements of this section. Dischargers of other types of wastewater are subject to this subsection when and if the Department determines that toxicity of effluents may have reasonable potential to cause or contribute to exceedences of narrative or numerical water quality criteria.”

Chapter 530 § 2.A specifies the criteria for exemption of certain discharges from toxics testing as follows:

- (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;
- (2) Discharges from residential overboard discharge systems; or
- (3) Discharges from combined sewer overflow discharge points, provided the owner of the sewerage system is conducting or participating in a discharge abatement program.

The permittee's facility is exempt from the Chapter 530 requirements as it permitted to discharge less than 50,000 gpd, the 18,470:1 chronic dilution factor is greater than 50:1 (based on permitted flow of 0.0021) and the wastewater has domestic-like characteristics. However, should there be a substantial change in the characteristics of the discharge in the future; the Department may reopen this permit pursuant to Special Condition L, *Reopening of Permit for Modifications*, to incorporate the applicable whole effluent toxicity (WET), priority pollutant or analytical testing requirements cited above.

- i. Mercury: Pursuant to Maine law 38, M.R.S.A. §420, sub-§1-B, ¶F, on February 6, 2012, the Department issued a minor revision of the permittee's MEPDES permit that reduced the monitoring frequency for mercury from 2/Year to 1/Year given the permittee has maintained at least 5 years of mercury testing data. The 1/Year monitoring frequency is being carried forward in this permitting action. See Attachment C of this Fact Sheet for a summary report of the facility's mercury reporting results.

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

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

8. PUBLIC COMMENTS

Public notice of this application was made in the *Machias Valley News Observer* newspaper on or about March 11, 2015. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

9. DEPARTMENT CONTACTS

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

Rodney Robert
Division of Water Quality Management
Bureau of Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone: (207) 446-1875
e-mail: rodney.robert@maine.gov

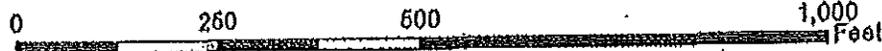
10. RESPONSE TO COMMENTS

During the period of June 29, 2015 through the issuance date of the permit/license, the Department solicited comments on the proposed draft permit/license to be issued for the discharge from The Town of Whitneyville's School Street facility. The Department did not receive comments from the permittee, state or federal agencies, or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

ATTACHMENT A

ATTACHMENT A
WHITNEYVILLE
FACILITY LOCATION MAP

TOWN of WHITNEYVILLE
 Publicly Owned Treatment Works
 MEPDES facility Location Map
 MEPDES #ME0102181 (Canal Street)
 MEPDES #ME0102687 (School Street)



LOCUS

ME0102181
 (Canal St.)

ME0102687 (School St.)

Chlorine Disinfection Unit
 Sand Filter Bed

Outfall Pipe

Pump Station

LOCUS

Legend

Wastewater Outfalls

Roads

JURISDICTION

- Private
- Park Road
- Seasonal pathway
- State aided
- State hwy
- Town Road - summer
- Town Road - winter
- Toll highway
- Town Road

RIVER CLASSIFICATION

- AA
- A
- B
- C

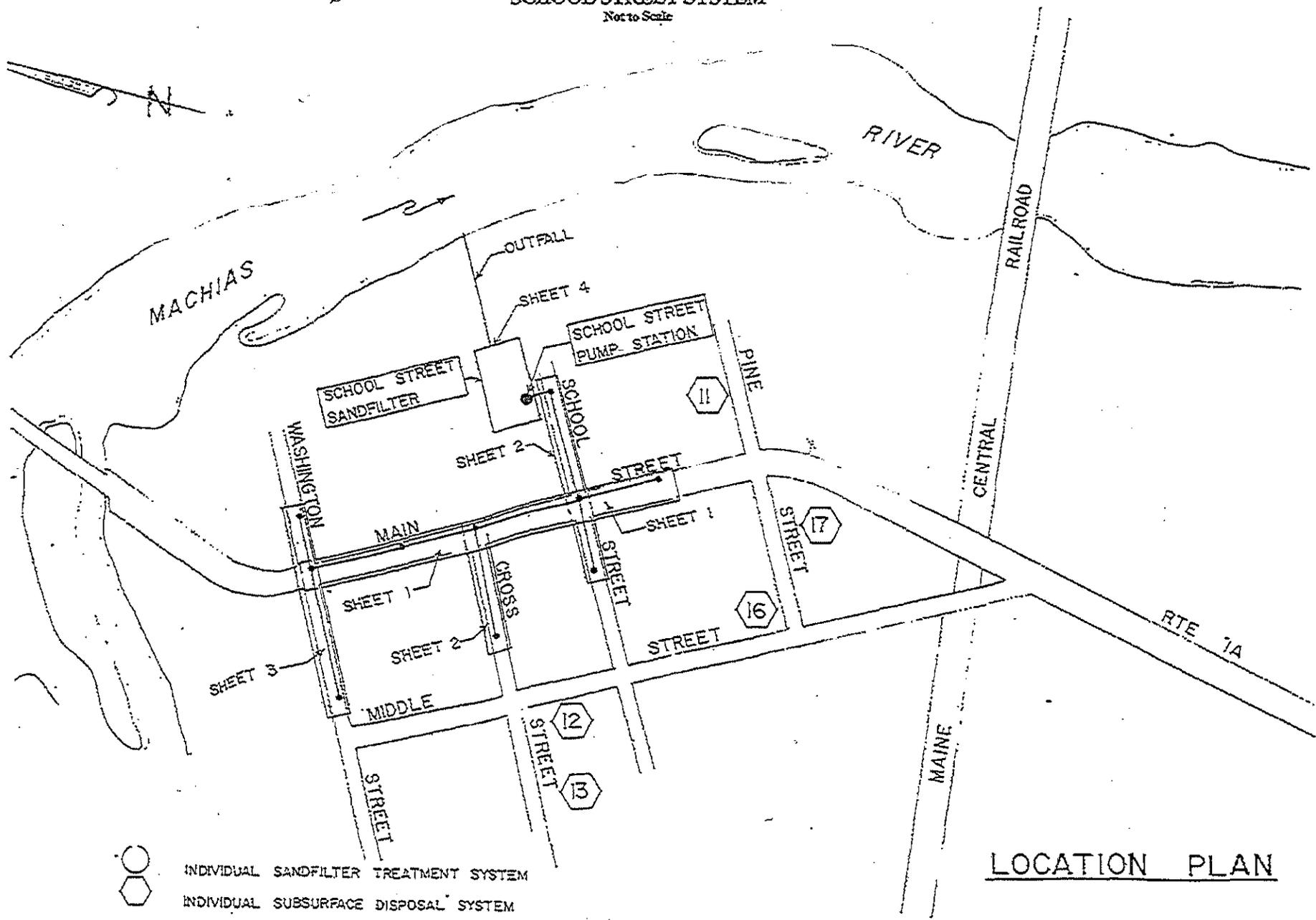


ATTACHMENT B

Sewer System Layout

SCHOOL STREET SYSTEM

Not to Scale



INDIVIDUAL SANDFILTER TREATMENT SYSTEM

INDIVIDUAL SUBSURFACE DISPOSAL SYSTEM

LOCATION PLAN

ATTACHMENT C



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHAPTER 530.2(D)(4) CERTIFICATION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
Commissioner

MEPDES# _____ Facility Name _____

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

COMMENTS:

Name (printed): _____

Signature: _____ Date: _____

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

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

Scheduled Toxicity Testing for the next calendar year

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

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

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

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

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

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

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

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MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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A. GENERAL PROVISIONS

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

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

(a) They are not

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

(ii) Known to be hazardous or toxic by the licensee.

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

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

(a) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act, and 38 MRSA, §420 or Chapter 530.5 for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(b) Any person who violates any provision of the laws administered by the Department, including without limitation, a violation of the terms of any order, rule license, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

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

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

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

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

5. Bypasses.

(a) Definitions.

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

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

(c) Notice.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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

(d) Prohibition of bypass.

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

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

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

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

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

6. Upsets.

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

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

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

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

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

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

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

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

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

C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

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

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D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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