



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

July 24, 2015

Mr. Michael Brown
Director of Fisheries & Hatcheries
Maine Department of Inland Fisheries & Wildlife
284 State Street, SHS 41
Augusta, Maine 04330

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #MEG180007
Maine Waste Discharge License (WDL) Application #W009134-5Y-A-N
**General Permit Coverage – Application of Piscicide for the Control of Invasive Fishes
Round Pond – Albany Township**

Dear Mr. Brown:

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

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

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

Sincerely,

Gregg Wood
Division of Water Quality Management
Bureau of Water Quality

Enc.

cc: Stuart Rose, DEP/SMRO Marellyn Vega, USEPA
Sandy Mojica, USEPA Olga Vergara, 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 04769
(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

ME. DEPT INLAND FISHERIES & WILDLIFE)	APPLICATION OF PISCICIDES FOR THE
ROUND POND)	CONTROL OF INVASIVE FISHES
ALBANY TOWNSHIP)	GRANTING OF COVERAGE
MEG180007)	#MEG180000
W009134-5Y-A-N)	GENERAL PERMIT
APPROVAL)	

The Department of Environmental Protection (Department) has considered the Notice of Intent submitted by the MAINE DEPARTMENT OF INLAND FISHERIES AND WILDLIFE (MDIFW), with supportive data, agency review comments and other related materials on file for coverage under the Application of Piscicides for the Control of Invasive Fishes General Permit, #MEG180000, Maine Waste Discharge License #W009045-5Y-A-N, (copy attached) issued by the Department on August 29, 2014 for a five-year term, and FINDS THE FOLLOWING FACTS:

The applicant proposes to eradicate Golden shiners (*Notemigonus crysoleucas*), Brown bullhead (*Americus nebulosus*) and Banded killifish (*Fundulus diaphanous*), introduced fish species in Round Pond, Class GPA, in Albany Township, Maine, through treatments with liquid and powder formulations of the approved piscicide rotenone. The applicant has stated that the invasive fish species have impacted the growth of the brook trout (*Salvelinus fontinalis*) by competing for resources. The treatment program is part of MDIFW's Brook Trout Species Plan, Objective 4: Improve fishing quality in lakes and ponds of the Revised Strategic Management Plan for Fisheries 2001-2016.

The applicant has indicated the Round Pond aquatic piscicide treatment program complies with the provisions of General Permit #MEG180000 for control of invasive fishes utilizing an approved aquatic piscicide and appropriate treatment methods. Further, the applicant has indicated it will comply with requirements for biological monitoring, piscicide monitoring, water quality monitoring, physical monitoring, computer modeling, reporting, and all other terms and conditions of the General Permit for the Application of Piscicides for the Control of Invasive Fishes.

Administered in accordance with the General Permit, the discharges identified by the applicant will not have a significant adverse effect on water quality or cause or contribute to the violation of the water quality standards of the receiving water.

ROUND POND
W009134-5Y-A-N
MEG180007

GENERAL PERMIT COVERAGE

Page 2 of 2

THEREFORE, the Department GRANTS coverage for MDIFW under the Application of Piscicides for the Control of Invasive Fishes General Permit, #MEG180000/ #W009045-5Y-A-N (copy attached) subject to the terms and conditions therein.

DONE AND DATED AT AUGUSTA, MAINE THIS 24th DAY OF July 2015.

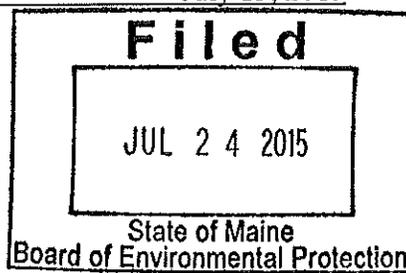
DEPARTMENT OF ENVIRONMENTAL PROTECTION.

BY: Michael Kuhns
For Patricia W. Aho, Commissioner

Public notice of the Notice of Intent was published on or about: July 16, 2015

A Notice of Intent was received by the Department on: July 10, 2015

A Notice of Intent was accepted by the Department on: July 13, 2015



Date filed with Board of Environmental Protection _____

This Order prepared by Gregg Wood, BUREAU OF WATER QUALITY

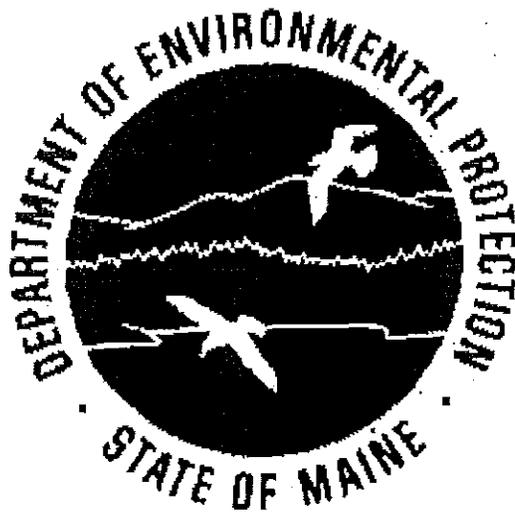
MEG180007 2015

7/25/15

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

General Permit
Application of Piscicides for the Control of
Invasive Fishes

Maine Pollutant Discharge Elimination System Permit
Maine Waste Discharge License



Bureau of Land and Water Quality

August 29, 2014

MEPDES Permit #MEG180000
Waste Discharge #W009045-5Y-A-N

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
GENERAL PERMIT FOR APPLICATION OF PISCICIDES FOR THE CONTROL OF
INVASIVE FISHES

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

DEPARTMENT ORDER

IN THE MATTER OF

APPLICATION OF PISCICIDES FOR THE)	MAINE POLLUTANT DISCHARGE
CONTROL OF INVASIVE FISHES)	ELIMINATION SYSTEM PERMIT
GENERAL PERMIT)	AND
STATE OF MAINE)	WASTE DISCHARGE LICENSE
#MEG180000)	
#W009045-5Y-B-R APPROVAL)	RENEWAL

In compliance with the applicable provisions of *Pollution Control*, 38 M.R.S.A. §§ 411 – 424-B, *Water Classification Program*, 38 M.R.S.A. §§ 464 – 470 and *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, and applicable rules of the Maine Department of Environmental Protection (Department), the Department has considered the renewal of Maine Pollutant Discharge Elimination System (MEPDES) Permit / Maine Waste Discharge License (WDL) for the APPLICATION OF PISCICIDES FOR THE CONTROL OF INVASIVE FISHES (GENERAL PERMIT), with its supportive data, agency review comments, and other related materials on file, and FINDS THE FOLLOWING FACTS:

PROCEDURAL AND REGULATORY SUMMARY

On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. The Department administers the program as the Maine Pollutant Discharge Elimination System (MEPDES) permit program.

On September 9, 2009, the Department issued a General Permit for the application (discharge) of piscicides for the control of invasive fishes. This General Permit authorized the Maine Department of Inland Fisheries & Wildlife (MDIFW) and its qualifying agents to discharge aquatic piscicides to Class GPA, AA, A, B and C waters of the State, tributaries to Class GPA waters, and those waters having drainage areas of less than ten square miles, that contain populations of invasive fishes. The September 9, 2009 General Permit was issued for a five-year term.

On or about May 29, 2014, the Department provided public notice of its intent to renew the September 9, 2009 General Permit in the Bangor Daily, Kennebec Journal, Sun-Journal, and Portland Press Herald newspapers. The notice solicited comments on a draft permit, when available, and provided an opportunity to request a public hearing.

CONCLUSIONS

Based on the findings summarized in the attached Fact Sheet, dated May 30, 2014, and subject to the special and standard conditions that follow, the Department concludes that:

1. The provisions of the State's antidegradation policy, *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(F), will be met in that while the discharge will result in lowering the existing water quality of waters within the project area, the Department has made a finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
2. 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).

ACTION

Based on the findings and conclusions as stated above, the Department APPROVES the renewal of General Permit #MEG180000, *Application of Piscicides for the Control of Invasive Fishes*, for the discharge of certain pollutants resulting from the execution of a piscicide treatment plan to waters of the State classified as Class GPA, AA, A, B, and C including tributaries to Class GPA waters and those waters having drainage areas of less than ten square miles, SUBJECT TO THE ATTACHED CONDITIONS, including:

1. The attached Special Conditions, including any effluent limitations and monitoring requirements.
2. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached.
3. This General Permit and the authorization to discharge become effective upon the date of signature below and expire at midnight five (5) years from the effective date. Prior to expiration of this General Permit, the Department must make a determination if it is to be renewed, and, if so, must commence renewal proceedings. If the General Permit is to be renewed, it must remain in force until the Department takes final action on the renewal. [Maine Administrative Procedure Act, 5 M.R.S.A. § 10002, *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (last amended August 25, 2013), and *General Permits for Certain Wastewater Discharges*, 06-096 CMR 529(3)(c) (last amended June 27, 2007)]

DONE AND DATED AT AUGUSTA, MAINE THIS 29th DAY OF August, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:

Michael Kibens

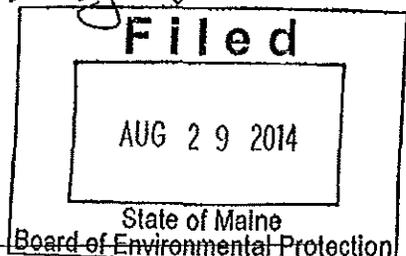
for PATRICIA W. AHO, Commissioner

Date filed with Board of Environmental Protection

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of Public Notice: May 29, 2014

This Order prepared by Bill Hinkel, BUREAU OF LAND & WATER QUALITY



SPECIAL CONDITIONS

A. AUTHORITY

A permit is required for the direct or indirect discharge of pollutants to waters of the State and United States pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413(1) and *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, *et seq.* The Department is authorized by the USEPA to administer the NPDES permit program in Maine. The Department may issue a General Permit authorizing the discharge of certain pollutants from multiple individual discharge sources and locations which all have the same type of discharges and which involve situations where the Department determines there is a relatively low risk for significant environmental impact. *General Permits for Certain Wastewater Discharges*, 06-096 CMR 529(3)(c) (last amended June 27, 2007). The Department has determined that discharges resulting from the application of authorized aquatic piscicides located within the geographic area of coverage and that conform to the applicability and coverage standards established herein may be authorized by a General Permit.

B. DEFINITIONS

In addition to the definitions found in *Definitions in the Waste Discharge Permitting Program*, 06-096 CMR 520 (effective January 12, 2001) and in the waste discharge program and water classification laws, the following terms have the following meanings when used in this General Permit.

1. **Licensed applicator.** "Licensed applicator" means a person licensed by the State of Maine Department of Agriculture, Conservation, and Forestry's Board of Pesticides Control to apply aquatic piscicides.
2. **Notice of Intent ("NOI").** "Notice of Intent" or "NOI" means a notification of intent to seek coverage under this General Permit, submitted by Maine Department of Inland Fisheries & Wildlife to the Department on a form provided by the Department.
3. **Piscicide.** "Piscicide" means any substance applied in, on or over waters of the State or in such a way as to enter those waters for the purpose of inhibiting the growth or controlling the existence of any fish species in those waters. Piscicides may be composed of granular, solid, powder, liquid, or other formulations, of which the active ingredient(s) is registered with both the USEPA and Maine Board of Pesticides Control (MBPC).
4. **Piscicide treatment plan.** "Piscicide treatment plan" means a written plan prepared by and executed by the Maine Department of Inland Fisheries and Wildlife, or qualified agents supervised by the Maine Department of Inland Fisheries and Wildlife, for a specific treatment area and submitted for approval as part of the Notice of Intent required for coverage under this General Permit. The piscicide treatment plan must identify all piscicide(s) proposed for use and any chemical(s) or compound(s) proposed to neutralize or deactivate the piscicide(s).

SPECIAL CONDITIONS

B. DEFINITIONS (cont'd)

5. **Project area.** "Project area" includes the treatment area and all waters of the State downstream of the treatment area where the Maine Department of Inland Fisheries and Wildlife estimates that piscicide concentrations may become lethal to aquatic organisms. The project area may include one or more bodies of water downstream of the treatment area in which decreasing concentrations of the piscicide may be detected. The project area will be defined by the Maine Department of Inland Fisheries and Wildlife in the treatment plan.
6. **Target species.** "Target species" means all invasive fish species identified by the Maine Department of Inland Fisheries and Wildlife in the piscicide treatment plan required by this General Permit.
7. **Treatment area.** "Treatment area" means a water of the State identified by the Maine Department of Inland Fisheries and Wildlife that contains invasive fish(es) for which a piscicide treatment plan has been developed. Piscicides may only be applied within the treatment area.

C. APPLICABILITY AND ELIGIBILITY

Only piscicide treatment plans that conform to the following conditions for applicability and coverage are eligible for coverage under this General Permit.

1. **Area of coverage.** The geographic area covered by this General Permit is the entire State of Maine. This General Permit covers application of piscicides by a licensed applicator in accordance with an approved piscicide treatment plan for a treatment area classified as Class GPA, Class AA, Class A, Class B, and Class C, including tributaries to Class GPA waters and those waters having drainage areas of less than ten (10) square miles at the point of discharge, and that meet the standards of their ascribed classification, or where not, only if the discharge does not cause or contribute to the failure of the water body to meet the standards of classification.
2. **Significant need to control target species.** The applicant must demonstrate, to the Department's satisfaction, a significant need to control the target species and that piscicide control offers the only reasonable and effective means to achieve control of the target species. Demonstration of significant need may include, but not be limited to, health risk, economic hardship, or loss of use.
3. **Protection for non-target species.** The applicant must demonstrate, to the Department's satisfaction, that the piscicide treatment plan provides adequate protection for non-target species.
4. **Exclusions and restrictions.** Piscicides must be applied in compliance with federal labeling restrictions and in compliance with applicable statute, Board of Pesticides Control rules and best management practices. Chemicals or compounds proposed to neutralize or deactivate the authorized aquatic piscicide must be identified on the Notice of Intent and may only be discharged to waters of the State with express approval in the Department's final action on a Notice of Intent.

SPECIAL CONDITIONS

C. APPLICABILITY AND ELIGIBILITY (cont'd)

A water of the State that serves as a public water supply pursuant to 22 M.R.S.A. § 2601 is not eligible for coverage under this General Permit. Aerial spraying of piscicides from fixed wing or rotary wing aircraft is not authorized under this General Permit.

D. NOTIFICATION, DECISION, AND EFFECTIVE TERM OF COVERAGE

1. **Notice of Intent (NOI).** The Maine Department of Inland Fisheries and Wildlife, as an applicant, and seeking coverage under this General Permit must submit a completed NOI to the Department for review and approval. NOI forms must be mailed or hand-delivered to:

Wastewater Permitting Section
Department of Environmental Protection
Bureau of Land and Water Quality
Division of Water Quality Management
25 Tyson Drive
17 State House Station
Augusta, ME 04333-0017

The Department reserves the right to request additional information from the applicant based on review of the NOI. Permitting information, forms, and Augusta office directions may be obtained by contacting the Department's Waste Discharge Permitting Unit at 1-207-287-7688 or toll-free at 1-800-452-1942. Additionally, the General Permit, associated fact sheet and other forms are available for review and download at: <http://www.maine.gov/dep/water/wd/gp.html>.

2. **NOI Information.** A complete NOI must contain the following information.
 - a. The legal name, address and telephone number of the cognizant official from MDIFW responsible for execution of the piscicide treatment plan.
 - b. The legal name, address and telephone number and affiliation of any agents assisting with the execution of the piscicide treatment plan.
 - c. The legal name, address, telephone number and Maine Board of Pesticides Control license number of the licensed applicator responsible for execution of the piscicide treatment plan.
 - d. A signed, dated piscicide treatment plan prepared in accordance with Special Condition G of this General Permit.
 - e. A copy of the product label for each piscicide proposed for use and material safety data sheets for any chemicals or compounds proposed for use.
 - f. A topographic or similar type map extending approximately one mile beyond the boundaries of the project area.

SPECIAL CONDITIONS

D. NOTIFICATION, DECISION, AND EFFECTIVE TERM OF COVERAGE (cont'd)

- g. A map or schematic of the treatment area showing treatment and monitoring location(s).
- h. A statement demonstrating the date and location of the public informational meeting as described in Special Condition G.3.
- i. Copies of the published Notice of Intent to File and a list of abutters to whom notice was provided in accordance with Special Condition D.3 must be submitted with the application.
- j. The signature of an authorized person in accordance with *Applications for Waste Discharge Licenses*, 06-096 CMR 521(5) (effective January 12, 2001).

Failure to submit all required NOI information may result in finding the NOI incomplete for processing and may delay processing or result in denial of the NOI.

- 3. **Public informational meeting.** Prior to submitting a NOI for coverage under this General Permit, MDIFW must hold a public informational meeting in the vicinity of the treatment area or, if the treatment area is extremely remote, in a location convenient to most abutting landowners to all affected resources. The purpose of the meeting is for MDIFW to inform the public of the project and its anticipated environmental impacts, address public concerns as appropriate and to educate the public about the opportunities for public comment to the Department during the application process. In accordance with 06-096 CMR 529(3)(a), notice of the meeting must be mailed by certified mail or Certificate of Mailing at least 10 days prior to the public informational meeting to:
 - a. The Department using the contact information in Special Condition D.1 of this General Permit;
 - b. All abutters of the treatment area and project area, as determined by local tax records or other reliable means;
 - c. The municipal office of the municipality(ies) where the project is located;
 - d. If the project is located in the unorganized or deorganized areas of the State, to the appropriate county commissioners; and
 - e. Any known affected lake associations / watershed associations.

Notice of the meeting must be published once in a newspaper circulated in the area where the project is located.

SPECIAL CONDITIONS

D. NOTIFICATION, DECISION, AND EFFECTIVE TERM OF COVERAGE (cont'd)

4. **Public notice.** In accordance with 06-096 CMR 2(14)(A) and 06-096 CMR 529(3)(a), within 30 days prior to filing with the Department, an applicant must give public notice of Intent to File a NOI application using the form included with DEPLW1046-A. A NOI application that has been previously returned as incomplete for processing must comply with these requirements if the application is not resubmitted within 30 days of the date it was returned to the applicant. The notice must be mailed by certified mail or Certificate of Mailing to:
 - a. All abutters of the treatment area and project area, as determined by local tax records or other reliable means;
 - b. The municipal office of the municipality(ies) where the project is located;
 - c. If the project is located in the unorganized or deorganized areas of the State, to the appropriate county commissioners;
 - d. Any known affected lake associations / watershed associations;
 - e. Maine Department of Marine Resources (only if marine or estuarine waters are within the project area); and
 - f. National Oceanic and Atmospheric Administration's National Marine Fisheries Service (only if marine or estuarine waters are within the project area).

The notice must also be published once in a newspaper circulated in the area where the project is located.

5. Decisions.

- a. **Effective Date of Coverage.** The Department must approve or deny each NOI submitted for coverage under this General Permit: 1) within 31 calendar days of receipt of a complete NOI; 2) within 31 days of the date of public notice; or 3) on the effective date of this General Permit, whichever is later. If the Department does not notify the applicant within the specified timeframe, the NOI is automatically approved and becomes effective as if signed by the Commissioner in accordance with 06-096 CMR 2(19)(E). In the event coverage is denied, the Department must notify the applicant of the reason(s) for denial. Denial of coverage under this General Permit is not appealable to the Board of Environmental Protection and is not final agency action. The approval of coverage under this General Permit is appealable in accordance with 06-096 CMR 2(24)(B).
- b. **Individual permit coverage.** The Department may require, or an interested party may request for consideration, that a permittee covered under this General Permit obtain an individual MEPDES permit for any of the reasons specified at 06-096 CMR 529(2)(b)(3)(i)(A-G). An entity eligible for coverage under this General Permit may request to be excluded from this General Permit and instead apply for an individual MEPDES permit as provided at 06-096 CMR 529(2)(b)(3)(iii).

SPECIAL CONDITIONS

D. NOTIFICATION, DECISION, AND EFFECTIVE TERM OF COVERAGE (cont'd)

6. **Effective term of coverage.** The term of this General Permit is five years. Coverage under this General Permit will be continued from year to year provided payment of an applicable annual fee pursuant to 38 M.R.S.A. § 353-B, and that there are no significant changes in the approved treatment plan that warrant submission of a new NOI for Department review and decision.

Prior to expiration of this General Permit, the Department must make a determination if it is to be renewed, and, if so, will commence renewal proceedings. Not less than 24 months prior to expiration of this General Permit, the Department must notify all permittees covered under this General Permit of the decision to renew or not renew this General Permit. If the General Permit is to be renewed, it must remain in force until the Department takes final action on the renewal. Upon reissuance of a renewal General Permit, persons wishing to continue coverage must apply for coverage under the renewal General Permit not later than 30 days following the issuance date of the new General Permit.

7. **Changed Conditions.** In the event that the permittee proposes to make significant changes in the nature or scope of the piscicide treatment plan described in a NOI previously approved, the permittee must notify the Department as soon as becoming aware of and before implementing such changes. Based on its evaluation of proposed changes, the Department may require the submission of a new NOI or that an individual permit be obtained. Significant changes include, but are not limited to, changes in the extent of the waterbody or areas to be treated, changes in the hydrology that expand the size of the project area, changes in facts or information described in the NOI previously submitted and approved, changes in anticipated impacts to non-target resources or organisms, or proposed discharges of chemicals or compounds not previously disclosed, and proposed additional piscicides treatments within the same treatment area ("booster treatments") not previously considered by the Department.

E. AUTHORIZED DISCHARGES

A permittee covered under this General Permit is authorized to discharge: 1) only in accordance with specific approval provided by the Department based on an accepted Notice of Intent; and 2) only in accordance with the terms and conditions of this General Permit. Discharges of pollutants from any other point source are not authorized under this General Permit, and must be reported in accordance with Standard Condition B(5), *Bypasses, of Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, attached to this General Permit.

SPECIAL CONDITIONS

F. NARRATIVE EFFLUENT LIMITATIONS

1. The permittee must not discharge pollutants that cause a visible oil sheen, foam or floating solids at any time which would impair the usages designated for the classification of waters of the State beyond the project area.
2. The permittee must not discharge pollutants that contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated for the classification of waters of the State beyond the project area.
3. The permittee must not discharge pollutants that cause visible discoloration or turbidity in waters of the State beyond the project area that causes those waters to be unsuitable for the designated uses and characteristics ascribed to their class.
4. The permittee must not discharge pollutants that that lower the quality of any water of the State beyond the project area below such classification, or lowers the existing quality of any water of the State beyond the project area if the existing quality is higher than the classification.

G. PISCICIDE TREATMENT PLAN

The permittee must develop a piscicide treatment plan that provides at least the following information. The piscicide treatment plan is subject to review and approval by the Department in its decision-making authority on a Notice of Intent for coverage under this General Permit.

1. A description of the treatment area, including, but not limited to, water depths, substrate character (sand, gravel, mud/organic, etc.), identification of all significant inlets or outlets associated with the treatment area anticipated at the time of treatment.
2. A description and definition of the project area, and statement explaining how the size of the project area has been minimized to the greatest extent practicable.
3. The USEPA registration number, formulation, concentration, maximum application rate, and frequency of application for all piscicides proposed for use.
4. A list of all chemicals and compounds proposed for use in addition to piscicides, such as compounds to deactivate the active ingredient in the piscicide(s).
5. Identification of all target species.
6. A statement describing significant need to control the target species and that piscicide control offers the only reasonable and effective means to achieve control of the target species. Demonstration of significant need may include, but not be limited to, health risk, economic hardship, or loss of use.
7. A statement describing efforts to protect non-target species.

SPECIAL CONDITIONS

G. PISCICIDE TREATMENT PLAN (cont'd)

8. A statement describing the proposed/anticipated timeline for implementation and completion of the treatment plan.
9. A statement describing how the proposed piscicide treatment plan is necessary to achieve important economic or social benefits to the State.
10. An ambient water quality monitoring plan as required by Special Condition H of this General Permit.

H. AMBIENT WATER QUALITY MONITORING

The permittee must develop an ambient water quality monitoring plan for the treatment area and the project area that incorporates conditions for biological monitoring, water quality monitoring, and in-stream piscicide concentration monitoring. All proposed sampling locations must be labeled and denoted on a map included as part of the ambient water quality monitoring plan. The ambient water quality monitoring plan is subject to review and approval by the Department in its decision-making authority on a Notice of Intent for coverage under this General Permit. Recent, relevant biological monitoring and water chemistry data may be proposed for consideration provided such data are representative of conditions at the time the piscicide treatment plan is executed.

1. Biological monitoring. Biological monitoring must consist of a fish survey and an assessment for the presence of threatened or endangered species that may be adversely affected by the treatment and measures proposed to protect threatened or endangered species.
2. Water quality. Water quality must consist of dissolved oxygen, water temperature profile, pH, alkalinity, conductivity, and Secchi disk transparency for Class GPA waters.
3. Piscicide monitoring. Piscicide monitoring must consist of samples collected from the treatment area and project area, or in the alternative if direct analysis is not possible, through sentinel species cage(s) placed at representative locations within the treatment and project areas. Species utilized for sentinel monitoring must represent resident species within the project area.
4. Timing.
 - a. Biological and water quality monitoring must be conducted as soon as possible prior to execution of a piscicide treatment plan and within one year following completion of the piscicide treatment plan.

SPECIAL CONDITIONS

H. AMBIENT WATER QUALITY MONITORING (cont'd)

- b. Piscicide monitoring must be conducted at the downstream boundary of the project area at the time the piscicide is anticipated, through modelling or best professional judgment of the Maine Department of Inland Fisheries and Wildlife, to be present. Monitoring must continue once a week until analytical results for the piscicide are non-detectable or until tests demonstrate 100% survival of sentinel species, or until winter weather conditions inhibit the ability to obtain water quality samples.
5. Sampling methodology. The permittee must conduct sampling and analysis in accordance with methods approved by 40 Code of Federal Regulations (CFR) Part 136; alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136; or 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.
6. Reporting. MDIFW must submit a summary report to the Department within 3 months following completion of post treatment biological and water quality monitoring that contains the following information.
 - a. Biological, water quality, and piscicide monitoring results, including results of sentinel species cage testing.
 - b. A narrative discussing results and effectiveness of the piscicide treatment plan.
 - c. A narrative discussing unanticipated events or circumstances that had potential to adversely affect water quality within or beyond the project area.

The report must be sent to:

Maine Department of Environmental Protection
Bureau of Land and Water Quality
Division of Water Quality Management
Compliance Section Leader
17 State House Station
Augusta, ME 04333-0017

I. PLACARDING OF TREATMENT AND PROJECT AREAS

The permittee must placard all access areas to the treatment area and project area in accordance with instructions presented in applicable manuals or piscicide product labels. Placards must be placed not less than 1 day prior to execution of the piscicides treatment plan and must remain posted in accordance with instructions presented in applicable manuals or piscicide product labels.

SPECIAL CONDITIONS

J. REOPENING OF PERMIT FOR MODIFICATION

In accordance with 38 M.R.S.A. § 414-A(5) and upon evaluation of the test results in the Special Conditions of this permitting action, new site-specific information, or any other pertinent test results or information obtained during the term of this General Permit, the Department may, at any time and with notice to the permittee, modify this General Permit to: 1) add or change conditions or effluent limitations for toxic compounds; 2) require additional monitoring if results on file are inconclusive; or 3) change monitoring requirements or limitations based on new information.

K. SEVERABILITY

In the event that any provision, or part thereof, of this General Permit is declared to be unlawful by a reviewing court, the remainder of the General Permit must remain in full force and effect, and must 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
MAINE WASTE DISCHARGE LICENSE**

FACT SHEET

DATE: MAY 30, 2014

**GENERAL PERMIT NUMBER: #MEG180000
WASTE DISCHARGE LICENSE: #W009045-5Y-B-R**

**APPLICATION OF PISCICIDES FOR THE CONTROL OF INVASIVE FISHES
GENERAL PERMIT**

**issued by
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

AREA OF COVERAGE AND RECEIVING WATER CLASSIFICATION:

**CLASS GPA, AA, A, B AND C WATERS OF THE STATE, TRIBUTARIES TO CLASS
GPA WATERS, AND THOSE WATERS HAVING DRAINAGE AREAS OF LESS THAN
TEN SQUARE MILES, THAT CONTAIN POPULATIONS OF INVASIVE FISHES**

DEPARTMENT CONTACTS:

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1. PROCEDURAL AND REGULATORY SUMMARY

On January 12, 2001, the Maine Department of Environmental Protection (Department) received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. The Department administers the program as the Maine Pollutant Discharge Elimination System (MEPDES) permit program. The General Permit has been assigned MEPDES #MEG180000.

In January 2006, through a collaborative effort among the Maine Departments of Environmental Protection, Maine Department of Inland Fisheries & Wildlife (MDIFW), and (then called) Maine Department of Conservation, the State of Maine developed *Rapid Response Plan For Invasive Aquatic Plants, Fish, and Other Fauna* for responding to new infestations of invasive fish species and for dealing with invasive faunal introductions. "The primary goal of rapid response deployment is to initiate eradication efforts (which may take years to complete) or critical interim measures to achieve effective containment while a longer term eradication or suppression strategy is formulated. This means mobilizing and deploying as quickly as possible to address a newly detected aquatic invasive plant *within the first season of detection, and, preferably, to treat the infestation in less than 30 days*. Inherent in rapid response is the need to use physical techniques or chemical treatments that can knock out an invasive species before it has a chance to proliferate, providing such techniques or treatments are practical and pose little risk to rare or endangered species or human health. We acknowledge that, in the short run, commonly occurring native communities may be compromised, or surface uses may be curtailed, but believe that these are acceptable tradeoffs to avoid spreading such harmful species to other parts of a water body or other waters of the state."

On November 27, 2007, the USEPA issued a final rule stating that pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) were exempt from the federal Clean Water Act's NPDES permitting requirements. The USEPA's determination specifically referenced the application of pesticides directly to waters of the United States in order to control pests that are present in those waters. On January 7, 2009, the US 6th Circuit Court of Appeals (*National Cotton Council, et al. v. EPA*) vacated USEPA's 2007 rule. The USEPA has not promulgated effluent guideline limitations for this category of discharge.

On September 9, 2009, the Department issued a General Permit for the application (discharge) of piscicides for the control of invasive fishes. The September 9, 2009 General Permit authorized the MDIFW and its qualifying agents to discharge aquatic piscicides to Class GPA, AA, A, B and C waters of the State, tributaries to Class GPA waters, and those waters having drainage areas of less than ten square miles, that contain populations of invasive fishes.

On or about May 29, 2014, the Department provided public notice of its intent to renew the September 9, 2009 General Permit in Bangor Daily, Kennebec Journal, Sun-Journal, and Portland Press Herald newspapers. The notice solicited comments on a draft permit, when available, and provided an opportunity to request a public hearing.

2. ADMINISTRATIVE REQUIREMENTS

The General Permit's administrative procedures and requirements are consistent with *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (last amended August 25, 2013), *General Permits for Certain Wastewater Discharges*, 06-096 CMR 529(3)(c) (last amended June 27, 2007), 06-096 CMR 514, and applicable Maine laws. Individuals seeking coverage under the General Permit must file a Notice of Intent (NOI) containing sufficient information and facts as to allow the Department to determine if the proposed piscicide treatment plans are anticipated to comply with the General Permit terms and conditions. Pursuant to 06-096 CMR 2, within 30 days prior to filing the NOI with the Department, an applicant for coverage under the General Permit is required to give public notice of its intent to submit a NOI to the Department, and an original or photocopy of the public notice must be submitted to the Department with the NOI.

Once a completed NOI is received, the Department has a maximum of 30 days in which to act on it. If no other action is taken within that 30-day period, the NOI is considered approved on the 31st day following the Department's receipt of the NOI.

The term of the General Permit is five years. Coverage under the General Permit will be continued from year to year through payment of an applicable annual fee pursuant to *Maine Environmental Protection Fund*, 38 M.R.S.A. § 353-B, provided there are no changes in the facility or its operation as described in the NOI. Prior to expiration of the General Permit, the Department must make a determination if it is to be renewed, and, if so, will commence renewal proceedings. Not less than 24 months prior to expiration of the General Permit, the Department must notify all permittees covered under the General Permit of the decision to renew or not renew the General Permit. If the General Permit is to be renewed, it must remain in force until the Department takes final action on the renewal. Upon reissuance of a renewal General Permit, persons wishing to continue coverage must apply for coverage under the renewal General Permit not later than 30 days following the issuance date of the new General Permit.

3. DESCRIPTION OF PERMITTED ACTIVITIES

The Maine Department of Inland Fisheries & Wildlife is responsible for coordinating the State's efforts to prevent, limit the spread of, and reduce the harmful effects of invasive fish species and for preventing, controlling, and managing invasive aquatic fish populations. Pursuant to 38 M.R.S.A. § 466(8-A), invasive species are determined by MDIFW and a species may be determined to be invasive for all waters or for specific waters. The Department is responsible for regulating discharges of pollutants to waters of the State pursuant to 38 M.R.S.A. § 413(1).

The General Permit authorizes the discharge of certain pollutants resulting from the execution of a Department-approved piscicide treatment plan by the Maine Department of Inland Fisheries & Wildlife, or its agent. Piscicides must be registered with both the USEPA and Maine Board of Pesticides Control. Piscicides discharged in accordance with the General Permit must be applied in compliance with federal labeling restrictions and in compliance with applicable statute, Maine Board of Pesticides Control rules and best management practices. Chemicals or compounds proposed to neutralize or deactivate the authorized aquatic piscicide

3. DESCRIPTION OF PERMITTED ACTIVITIES (cont'd)

must be identified on the Notice of Intent and may only be discharged to waters of the State with express approval in the Department's final action on a Notice of Intent. A water of the State that serves as a public water supply pursuant to 22 M.R.S.A. § 2601 is not eligible for coverage under the General Permit. Aerial spraying of piscicides from fixed wing or rotary wing aircraft is not authorized under the General Permit.

Field conditions, the invasive species subject of the treatment, the time of year, and the hydrology of the treatment and project areas, among other factors, are variable and require site-specific consideration to maximize the goals of the treatment plan while ensuring compliance with the terms and conditions established in the General Permit.

4. AREA OF COVERAGE AND ELIGIBILITY CRITERIA

The General Permit limits coverage to those waters classified as Class GPA, Class AA, Class A, Class B, and Class C, including tributaries to Class GPA waters, and those waters having drainage areas of less than ten (10) square miles at the point of discharge. This area of coverage is identical to the area defined in the General Permit issued on September 9, 2009, and is consistent with provisions in Maine's water quality laws for the purpose of restoring biological communities affected by an invasive species. Estuarine and marine waters are not included in the General Permit since they are not types of waters that the Maine Department of Inland Fisheries & Wildlife treats for invasive species control.

In accordance with *Regulations Concerning the Use of Aquatic Pesticides*, 06-096 CMR 514(2) (effective May 4, 1996), the General Permit is carrying forward requirements for the applicant to demonstrate a significant need to control the target species and that piscicide control offers the only reasonable and effective means to achieve control of the target species and that the piscicide treatment plan provides adequate protection for non-target species. Additionally, in accordance with 38 M.R.S.A. § 464(4)(F)(5), the applicant must make a satisfactory demonstration that any discharge which would result in lowering the existing quality of any water body is necessary to achieve important economic or social benefits to the State following an opportunity for public input.

5. CONDITIONS OF PERMIT

Conditions of licenses, 38 M.R.S.A. § 414-A states that the Department shall issue a license for the discharge of any pollutants only if it finds that:

- a. 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;
- b. 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 board expects to adopt;

5. CONDITIONS OF PERMIT (cont'd)

- c. The discharge either by itself or in combination with other discharges will not lower the existing quality of any body of water, unless, following opportunity for public participation, the department finds that the discharge is necessary to achieve important economic or social benefits to the State and when the discharge is in conformance with 38 M.R.S.A. § 464(4)(F);
- d. The discharge will be subject to effluent limitations that require application of the best practicable treatment, which are the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically achievable, for a category or class of discharge sources that the Department determines are best calculated to protect and improve the quality of the receiving water and that are consistent with the requirements of the Federal Water Pollution Control Act, as amended, and published in 40 Code of Federal Regulations; and
- e. A pesticide discharge is unlikely to exert a significant adverse impact on nontarget species. This standard is only applicable to applications to discharge pesticides.

In addition, *Certain deposits and discharges prohibited*, 38 M.R.S.A. § 420 and *Surface Waters Toxics Control Program*, 06-096 CMR 530 (effective March 21, 2102) require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective July 29, 2012), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

Pursuant to 38 M.R.S.A. § 464(4)(F)(5), the Department may only issue a waste discharge license pursuant to 38 M.R.S.A. § 414-A which would result in lowering the existing quality of any water body after making a finding, following opportunity for public participation, that the action is necessary to achieve important economic or social benefits to the State and when the standards of classification of the water body are met, or if not met, if the project does not cause or contribute to the failure of the water body to meet the standards of classification.

The discharge of piscicides to waters of the State will result in a temporary lowering of existing water quality, including temporary inability to meet the designated uses of drinking water, fishing, recreation in and on the water, and habitat for aquatic life. The project will not cause or contribute to the failure of the water body to meet the standards of classification following completion of the approved piscicide treatment plan. The Department will only issue an order approving a discharge under the General Permit after making a finding that the action is necessary to achieve important economic or social benefits to the State. Each proposed piscicide treatment plan must address this statutory standard as part of the Notice of Intent information submitted for Department review and decision.

6. RECEIVING WATER QUALITY STANDARDS

The State's water quality standards establish water quality objectives for all State waters by: 1) designating uses and related characteristics of those uses for each class of water, and 2) prescribing water quality criteria necessary to protect those uses and related characteristics. In addition, the State's antidegradation policy protects and maintains certain existing uses.

The applicability of the General Permit is restricted to discharges to certain fresh waters of the State classified as Class GPA, AA, A, B, and C, including tributaries to Class GPA waters and those waters having drainage areas of less than ten square miles, pursuant to 38 M.R.S.A. §§ 465-A, 467 and 468, and that meet the standards of their ascribed classification, or where not, only if the discharge does not cause or contribute to the failure of the water body to meet the standards of classification. *Standards for classification of fresh surface waters*, 38 M.R.S.A. § 465 describes the standards for Class GPA, AA, A, B, and C waters.

Relevant standards for the receiving waters are as follows:

- Designated Uses. Class GPA, AA, A, B, and C waters must be of such quality that they are suitable for the designated uses of drinking water after disinfection or treatment (depending on classification), fishing; agriculture, recreation in and on the water, industrial process and cooling water supply, hydroelectric power recreation, and as habitat for aquatic life.
- Water Quality Criteria.
Class AA – The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs.

Class A – The dissolved oxygen content of Class A waters may be not less than 7 parts per million or 75% of saturation, whichever is higher. The aquatic life and bacteria content of Class A waters shall be as naturally occurs.

Class B – The dissolved oxygen content of Class B waters may not be less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration may not be less than 9.5 parts per million and the 1-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas. Between May 15th and September 30th, the number of *Escherichia coli* bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 64 per 100 milliliters or an instantaneous level of 236 per 100 milliliters.

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

6. RECEIVING WATER QUALITY STANDARDS (cont'd)

protection for the growth of indigenous fish, the dissolved oxygen may not be less than 6.5 parts per million as a 30-day average based upon a temperature of 24 degrees centigrade or the ambient temperature of the water body, whichever is less.

Class GPA – Class GPA waters must be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters must have a stable or decreasing trophic state, subject only to natural fluctuations and must be free of culturally induced algal blooms that impair their use and enjoyment. The number of *Escherichia coli* bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 29 per 100 milliliters or an instantaneous level of 194 per 100 milliliters.

- Antidegradation Policy. State waters are protected by the State's antidegradation policy which provides that certain existing in-stream water uses and the level of water quality necessary to protect those existing uses must be maintained and protected. 38 M.R.S.A. § 464(4)(F).

7. DISCHARGE LIMITATIONS AND CONTROLS

Neither the USEPA nor the Department has promulgated effluent guideline limitations for the discharge of piscicides for the control of invasive species. The General Permit requires monitoring of biological conditions, piscicide concentrations, water quality, and physical conditions to assess the impact of the treatment on receiving water quality. The General Permit restricts the discharge of piscicides to comply with federal labeling restrictions and with applicable statutes, Board of Pesticides Control rules and best management practices. Based on information provided in the Notice of Intent, the Department will specify the discharge limitations for all piscicides and related treatment compounds that are authorized. The applicant must provide a statement describing significant need to control the target species, that piscicide control offers the only reasonable and effective means to achieve control of the target species, and describe efforts to control non-target species.

The General Permit requires biological monitoring before and after treatment to assess the impact of the treatment on aquatic communities within the project area. Biological monitoring prior to treatment is also conducted to ensure threatened or endangered species that may be adversely affected by the treatment and that are present in the project area are adequately protected. This information will primarily be used by the Maine Department of Inland Fisheries and Wildlife to refine and continually improve subsequent treatment plans. The information will also provide the basis for determining that the designated use of habitat for aquatic life has been satisfactorily restored.

8. DISCHARGE LIMITATIONS AND CONTROLS (cont'd)

The General Permit requires water quality monitoring of dissolved oxygen, water temperature profile, pH, alkalinity, conductivity, and Secchi disc transparency for Class GPA waters. This information will be used by the Department to provide the basis for determining that the designated use of habitat for aquatic life has been satisfactorily restored.

The General Permit requires piscicide monitoring within the treatment area and project area either through direct analysis, or if not possible, through sentinel species cage(s) placed at representative locations within the treatment and project areas. This monitoring requirement will provide data to determine compliance with the discharge limitations for specific piscicides and to evaluate the impact of treatments on aquatic life within the project area.

The General Permit requires placarding of the project area in accordance with instructions presented in applicable manuals or piscicide product labels.

9. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

The discharge of piscicides associated with an approved piscicide treatment plan will have temporary adverse impacts on receiving water quality. Although Department rule and the General Permit require minimization of impacts to non-target species, the nature of the activity and types of piscicides available to achieve the Maine Department of Inland Fisheries and Wildlife's resource management objectives cannot ensure complete protection of non-target species. The designated uses of recreation in and on the water, fishing and drinking water will temporarily not be met within the project area. The MDIFW is required to hold a public meeting in advance of submitting a Notice of Intent for a proposed treatment, in part, to support that the action is necessary to achieve important economic or social benefits to the State.

10. PUBLIC COMMENTS

Public notice of this intent to renew the September 9, 2009 General Permit was made in the Bangor Daily, Kennebec Journal, Sun-Journal, and Portland Press Herald newspapers on or about May 29, 2014. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

11. DEPARTMENT CONTACTS

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

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Division of Water Quality Management

Bureau of Land & Water Quality

Department of Environmental Protection

17 State House Station

Augusta, Maine 04333-0017

Telephone: (207) 485-2281 Fax: (207) 287-3435

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12. RESPONSE TO COMMENTS

In accordance with the National Pollutant Discharge Elimination System Memorandum of Agreement Between the State of Maine and the United States Environmental Protection Agency, finalized on January 12, 2001, and 40 CFR 123.44(a)(2), the USEPA may take up to 90 days from receipt of the proposed General Permit to comment upon, object to or make recommendations with respect to the proposed permit. During the period of May 30, 2014 through the effective date of this final agency action, the Department solicited comments on the draft General Permit – Application of Piscicides for the Control of Invasive Fishes. The Department did not receive substantive comments on the draft General Permit. It is noted that minor typographical and grammatical errors identified in comments were not included in this section, but were corrected, where necessary, in the final permit.

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

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

A. GENERAL PROVISIONS

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

2. **Other materials.** Other materials ordinarily produced or used in the operation of this facility, which have been specifically identified in the application, may be discharged at the maximum frequency and maximum level identified in the application, provided:
 - (a) They are not
 - (i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
 - (ii) Known to be hazardous or toxic by the licensee.

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

3. **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of State law and the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.
 - (a) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act, and 38 MRSA, §420 or Chapter 530.5 for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
 - (b) Any person who violates any provision of the laws administered by the Department, including without limitation, a violation of the terms of any order, rule license, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

5. Bypasses.

(a) Definitions.

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

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

(c) Notice.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

(d) Prohibition of bypass.

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

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

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

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

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

6. Upsets.

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
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C. MONITORING AND RECORDS

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

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

3. **Monitoring and records.**
 - (a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

 - (b) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration, and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.

 - (c) Records of monitoring information shall include:
 - (i) The date, exact place, and time of sampling or measurements;
 - (ii) The individual(s) who performed the sampling or measurements;
 - (iii) The date(s) analyses were performed;
 - (iv) The individual(s) who performed the analyses;
 - (v) The analytical techniques or methods used; and
 - (vi) The results of such analyses.

 - (d) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in the permit.

 - (e) State law provides that any person who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule license, permit approval or decision is subject to the penalties set forth in 38 MRSA, §349.

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D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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