



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF
ENVIRONMENTAL PROTECTION



PAUL MERCER
COMMISSIONER

August 4, 2016

Mr. Brian Ahern
Casco Bay Energy Company, LLC.
125 Shores Road
Veazie, ME 04401
Brian.Ahern@dynegy.com

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0036188
Maine Waste Discharge License (WDL) Application #W008016-50-F-R
Final Permit/License

Dear Brian Ahern:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL **renewal** which was approved by the Department of Environmental Protection. Please read this permit/license renewal and its attached conditions carefully. Compliance with this permit/license will protect water quality.

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.

Your Department compliance inspector copied below is also a resource that can assist you with compliance. Please do not hesitate to contact them with any questions.

Thank you for your efforts to protect and improve the waters of the great state of Maine!

Sincerely,

Aaron Dumont
Division of Water Quality Management
Bureau of Water Quality

Enc.

cc: Clarissa Trasko, DEP/EMRO, Lori Mitchell, DEP/CMRO
Ogla Vergara, USEPA, Sandy Mojica, USEPA, Marelyn Vega, USEPA, Richard Carvalho, USEPA

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
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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

CASCO BAY ENERY, LLC)	MAINE POLLUTANT DISCHARGE
VEAZIE, PENOBSCOT COUNTY, MAINE)	ELIMINATION SYSTEM PERMIT
ELECTRIC GENERATING STATION)	AND
ME0036188)	WASTE DISCHARGE LICENSE
W008016-5O-F-R)	RENEWAL
APPROVAL		

In compliance with the provisions of the *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, *et seq.*, and applicable rules of the, the Department of Environmental Protection (Department) has considered the application of CASCO BAY ENERGY COMPANY, LLC (Casco Bay Energy), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

On February 2, 2016, the Department accepted as complete for processing an application from Casco Bay Energy for the renewal of a combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0036188/Maine Waste Discharge License (WDL) #W008016-5O-E-R, which was issued by the Department on April 11, 2011, and expired on April 11, 2016. The permit approved the discharge of 1.96 million gallons per day (MGD) of miscellaneous wastewaters that included 0.530 MGD of multi-media filter backwash, reverse osmosis reject and electrode-ionization stack reject, 0.018 MGD of demineralization ion exchange regeneration water, and 1.41 MGD of cooling tower cleaning wastewater which includes 0.091 MGD of boiler blowdown from a combined cycle natural gas-fired electrical generating facility known as Maine Independence Station (MIS) to the Penobscot River, Class B, in Veazie, Maine. The permittee is identified as a categorical industrial user pursuant to Title 40, Code of Federal Regulations Part 423-*Steam Electric Power Generating Point Source Category*.

PERMIT SUMMARY

This permitting action is carrying forward all the terms and conditions of the previous permitting action except that it is:

1. The Footnotes section of the permit includes a requirement that pursuant to 40 CFR Part 423.13(d)(1), there shall be no detectable levels of the 126 priority pollutants as specified in *Appendix A to Part 423 – 126 Priority Pollutants*; and
2. The Footnotes section of the permit revises the temperature monitoring requirement for Outfall #001B. Monitoring for this parameter is only required during the critical months of June, July, August, and September.

CONCLUSIONS

Based on the findings summarized in the attached and incorporated Fact Sheet dated July 25, 2016, and subject to the special and standard conditions that follow, the Department makes the following CONCLUSIONS:

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

ACTION

Based on the findings and conclusions as stated above, the Department APPROVES the above noted application of CASCO BAY ENERGY COMPA NY, LLC to discharge 1.96 million gallons per day (MGD) of miscellaneous wastewater that includes 0.530 MGD of multi-media filter backwash, reverse osmosis reject and electrode-ionization stack reject, 0.018 MGD of demineralization ion exchange regeneration water, and 1.41 MGD of cooling tower cleaning wastewater which includes 0.091 MGD of boiler blowdown wastewater from its combined cycle electrical generating station known as Maine Independence Station to the Penobscot River, Class B, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

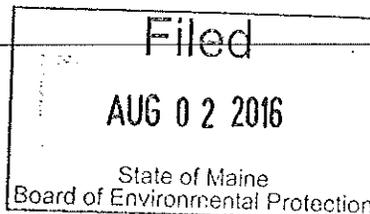
1. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit becomes effective upon the date of signature below and expires at midnight five (5) years after that date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of this permit and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (effective October 19, 2015)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 2ND DAY OF August 2016.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
for PAUL MERCER, Commissioner



Date filed with Board of Environmental Protection _____

Date of initial receipt of application February 1, 2016

Date of application acceptance February 2, 2016

This Order prepared by Aaron Dumont, BUREAU OF WATER QUALITY

W008016-50-F-R

SPECIAL CONDITIONS**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. Beginning the effective date of this permit, the permittee is authorized to discharge multi-media filter backwash, reverse osmosis reject and electrode-ionization stack reject, demineralization ion exchange regeneration water, cooling tower cleaning wastewater and boiler blowdown wastewater from **Outfall #001B** to the Penobscot River. The discharges shall be limited and monitored by the permittee as specified below⁽¹⁾⁽²⁾:

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow <i>[50050]</i>	---	1.96 MGD <i>[03]</i>	---	---	Continuous <i>[99/99]</i>	Measure <i>[MS]</i>
Total Suspended Solids <i>[00530]</i>	137 lbs/day <i>[26]</i>	457 lbs/day <i>[26]</i>	30 mg/L <i>[19]</i>	100 mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
Free Available Chlorine ⁽³⁾ <i>[50064]</i>	---	---	0.2 mg/L <i>[19]</i>	0.5 mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
Temperature ⁽⁴⁾ <i>[00011]</i>	---	---	---	100°F <i>[15]</i>	1/Month <i>[01/30]</i>	Measure <i>[MS]</i>
Oil and Grease <i>[03582]</i>	---	---	15 mg/L <i>[19]</i>	20 mg/L <i>[19]</i>	1/Quarter <i>[01/90]</i>	Grab <i>[GR]</i>
Total Chromium <i>[01034]</i>	---	1.04 lbs/day <i>[26]</i>	---	0.2 mg/L <i>[19]</i>	1/Quarter <i>[01/90]</i>	Grab <i>[GR]</i>
Total Zinc <i>[01092]</i>	---	12 lbs/day <i>[26]</i>	---	1.0 mg/L <i>[19]</i>	1/Quarter <i>[01/90]</i>	Grab <i>[GR]</i>
pH (Std. Unit) ⁽⁵⁾ <i>[00400]</i>	---	---	---	6.0 – 9.0 SU <i>[12]</i>	1/Quarter <i>[01/90]</i>	Grab <i>[GR]</i>

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

Footnotes: See Page 5 of this permit for applicable footnotes.

SPECIAL CONDITIONS

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

Footnotes:

1. **Sampling** – The permittee must conduct sampling and analysis in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services for wastewater. Samples that are sent to a POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (effective April 1, 2010). 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 this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report.
2. **Priority Pollutants** – Pursuant to 40 CFR Part 423.13(d)(1), there shall be no detectable levels of the 126 priority pollutants as specified in *Appendix A to Part 423 – 126 Priority Pollutants*.
3. **Free Available Chlorine (FAC)/Total Residual Chlorine (TRC)** – Pursuant to 40 CFR, Part 423.12(b)(8), neither free available chlorine nor total residual chlorine may be discharged from any unit for more than two hours in any one day and not more than one unit in any plant may discharge free available chlorine nor total residual chlorine at any time unless the utility can demonstrate to the Department that the units cannot operate at or below this level of chlorination.
4. **Temperature Monitoring** – Temperature monitoring for Outfall #001B is only required during the months of June, July, August, and September of each year.
5. **pH** – The pH of the discharge from Outfall #001B may be outside of the range of 6.0 - 9.0 standard units (SU) provided it is not more than 0.5 SU outside of the background pH of the intake water for the facility at the time of sampling or 0.5 SU outside the limitation range of 6.0 -9.0 SU. To determine compliance with this provision, the permittee must sample and document the ambient pH of the intake water if a pH result of the discharge is reported outside of the range limitation of 6.0 - 9.0 SU.

SPECIAL CONDITIONS

B. NARRATIVE EFFLUENT LIMITATIONS

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

C. AUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on February 2, 2016; 2) the terms and conditions of this permit; and 3) only from internal Outfall #001B. Discharges of wastewater from any other point source are not authorized under this permit, and must be reported in accordance with Standard Condition D(f)(1), *Twenty-four hour reporting*, of this permit.

D. NOTIFICATION REQUIREMENT

In accordance with Standard Condition D, the permittee must notify the Department of the following:

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

SPECIAL CONDITIONS

E. OPERATIONS AND MAINTENANCE (O&M) PLAN

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

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

Within 90 days of completion of new and or substantial upgrades of the wastewater treatment facility, the permittee must submit the updated O&M Plan to their Department inspector for review and comment.

F. MONITORING AND REPORTING

Monitoring results obtained during the previous month must be summarized for each month and reported on separate Discharge Monitoring Report (DMR) forms provided by the Department and **postmarked on or before the thirteenth (13th) day of the month or hand-delivered to the Department's Regional Office such that the DMRs are received by the Department on or before the fifteenth (15th) day of the month** following the completed reporting period. A signed copy of the DMR and all other reports required herein must be submitted to the Department assigned inspector (unless otherwise specified by the Department) at the following address:

Department of Environmental Protection
Eastern Maine Regional Office
Bureau of Water Quality
Division of Water Quality Management
106 Hogan Road
Bangor, Maine 04401

Alternatively, if the permittee submits an electronic DMR, the completed DMR must be electronically submitted to the Department by a facility authorized DMR Signatory not later than close of business on the **15th day of the month** following the completed reporting period. Hard copy documentation submitted in support of the DMR must be postmarked on or before the **thirteenth (13th) day of the month or hand-delivered** to the Department's Regional Office such that it is received by the Department on or before the fifteenth (15th) day of the month following the completed reporting period. Electronic documentation in support of the DMR must be submitted not later than close of business on the 15th day of the month following the completed reporting period.

SPECIAL CONDITIONS

H. REOPENING OF PERMIT FOR MODIFICATION

In accordance with 38 M.R.S.A. § 414-A(5) and upon evaluation of the tests results or monitoring requirements specified in Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at any time and with notice to the permittee, modify this permit to: 1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded, (2) require additional monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

I. SEVERABILITY

In the event that any provision(s), or part thereof, of this permit is declared to be unlawful by a reviewing court, the remainder of the permit 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: **July 25, 2016**
PERMIT NUMBER: **ME0036188**
WASTE DISCHARGE LICENSE: **W008016-5O-F-R**

NAME AND ADDRESS OF APPLICANT:

**CASCO BAY ENERGY COMPANY, LLC
125 SHORE ROAD
VEAZIE, MAINE 04401**

COUNTY: **PENOBSCOT**

NAME AND ADDRESS WHERE DISCHARGE(S) OCCUR(S):

**CASCO BAY ENERGY COMPANY, LLC
MAINE INDEPENDENCE STATION
125 SHORE ROAD
VEAZIE, MAINE 04401**

RECEIVING WATER CLASSIFICATION: **PENOBSCOT RIVER/CLASS B**

COGNIZANT OFFICIAL CONTACT INFORMATION:

**MR. BRIAN AHERN
(207) 973-1220
Brian.Ahern@dynegy.com**

1. APPLICATION SUMMARY

On February 2, 2016, the Department of Environmental Protection accepted as complete for processing an application from Casco Bay Energy Company, LLC, for the renewal of a combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0036188/Maine Waste Discharge License (WDL) #W008016-5O-E-R, which was issued by the Department on April 11, 2011, and expired on April 11, 2016. The permit approved the discharge of 1.96 million gallons per day (MGD) of miscellaneous wastewaters that included 0.530 MGD of multi-media filter backwash, reverse osmosis reject and electrode-ionization stack reject, 0.018 MGD of demineralization ion exchange regeneration water, and 1.41 MGD of cooling tower cleaning wastewater which includes 0.091 MGD of boiler blowdown from a combined cycle natural gas-fired electrical generating facility known as Maine Independence Station (MIS) to the Penobscot River, Class B, in Veazie, Maine. The permittee is identified as a categorical industrial user pursuant to Title 40, Code of Federal Regulations Part 423-*Steam Electric Power Generating Point Source Category*.

2. PERMIT SUMMARY

- a. This permitting action is carrying forward all the terms and conditions of the previous permitting action except that is:
1. The Footnotes section of the permit includes a requirement that pursuant to 40 CFR Part 423.13(d)(1), there shall be no detectable levels of the 126 priority pollutants as specified in *Appendix A to Part 423 – 126 Priority Pollutants*; and
 2. The Footnotes section of the permit revises the temperature monitoring requirement for Outfall #001B. Monitoring for this parameter is only required during the critical months of June, July, August, and September.
- b. History: This section provides a summary of recent/significant licensing and permitting actions and other significant regulatory actions completed for Casco Bay Energy Company, LLC:

July 29, 1998 – The U.S. Environmental Protection Agency (EPA) issued National Pollutant Discharge Elimination System (NPDES) permit #ME0036188 for a five-year term for the then proposed facility.

August 24, 1998 – The Department issued WDL #W008016-50-A-N for a five-year term for the then proposed facility.

March, 2000 – The permittee's Maine Independence Station commenced operations as an electrical generating station.

January 12, 2001 – The Department received authorization from the EPA to administer the NPDES permit program in Maine. From that point forward, the permitting program has been referred as the MEPDES program. To promote consistency with the NPDES program, the MEPDES permit issued for the permittee has remained as #ME0036188.

July 13, 2001 – The permittee submitted an application to the Department to modify WDL #W008016-50-A-N to incorporate the terms and conditions of the MEPDES program.

November 1, 2001 – The Department received a letter from the permittee authorizing the EPA to retire NPDES permit #ME0036188 last issued by the EPA on August 25, 1998. Upon issuance of a final MEPDES permit, the NPDES was superseded and all terms and conditions of the NPDES became null and void.

December 31, 2001 – The Department issued a permit modification of WDL/MEPDES Permit #W008016-50-B-M/ME0036188 which superseded the NPDES permit.

November 12, 2003 – The Department issued a renewal of WDL/MEPDES Permit #W008016-50-C-M/ME0036188 for a five-year term.

2. PERMIT SUMMARY (cont'd)

November 2, 2005 – The Department issued modification of WDL/MEPDES #W008016-50-D-M/ME0036188 to incorporate the discharge of stormwater run-off from three outfalls at the MIS facility.

March 8, 2006 – The Department issued WDL/MEPDES Permit #W008016-50-D-R/ME0036188 for a five-year term.

April 11, 2011 – The Department issued WDL/MEPDES Permit #W008016-50-E-R /ME0036188 for a five-year term.

February 1, 2016 – Casco Bay Energy Company LLC., submitted a timely and complete General Application to the Department for renewal of the April 11, 2011, permit. The application was accepted for processing on February 2, 2016.

- c. Source Description: In March of 2000, the permittee commenced operation of a state-of-the art 520 megawatt (MW) nominal capacity, combined cycle, natural gas-fired generating facility, known as Maine Independence Station (MIS). The project is located on a 29.5-acre parcel off School Street in Veazie, Maine, adjacent to the Emera Maine's Graham Station. The facility includes these major components:

- Turbine generator-building
- Heat recovery steam generators (HRSGs)
- Cooling towers
- Water treatment facilities
- Water supply intake and discharge structures

Process and service waters are drawn from the Penobscot River via the intake and pump house for the former Graham Station. Wastewater from the facility is discharged to the Penobscot River via a 48-inch diameter outfall pipe. The outfall pipe conveys the wastewaters to the Penobscot River through weir. A facility site plan is included as **Attachment A** of this Fact Sheet.

- d. Wastewater Treatment: The cooling towers are mechanical draft wet cooling towers that are operated under induced draft conditions. Make-up water for the cooling towers is disinfected with chlorine to control the growth of slime, bacteria, and other organisms in the circulating water system. Sodium metabisulfite (a dechlorinating agent) is pumped to the cooling tower sump pump where the product is dispersed throughout the cooling tower basin to dechlorinate the discharge. A branch line also exists that allows the product to be pumped directly into the cooling tower blow down line.

The demineralized ion exchange system regeneration flows are neutralized by collecting the flows in a neutralization tank where they are mixed until the acidic and caustic flows neutralize one another. The pH of the combined flow neutralized between 6 and 9 standard units prior to discharge into the cooling tower basin.

2. PERMIT SUMMARY (cont'd)

Under normal circumstances, cleaning of the heat recovery steam generators and the cooling tower is performed once every 5 to 6 years during major equipment outages. The chemical metal cleaning wastes generated when cleaning the heat recovery steam generators are trucked off-site for final disposal. Cleaning the cooling tower of solids can be accomplished several ways. The cooling tower is either drained or pumped down until there is a risk of solids being discharged and then the solids are removed for filtering and drying on-site or off-site, followed by final disposal off-site. Another method would involve discharging wastewater over a weir box where the solids removed, collected and dried prior to final disposal offsite.

There are two oil/water separators at the MIS facility. The oil/water separator in the water treatment building collects contaminated water from the facility's drains and discharges to the sanitary sewer system. The oil/water separator adjacent to HRSG#2 collects stormwater from the immediate area and discharges to the stormwater collection system and detention pond.

3. CONDITIONS OF PERMIT

Conditions of licenses, 38 M.R.S.A. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, *Certain deposits and discharges prohibited*, 38 M.R.S.A. § 420 and *Surface Water Toxics Control Program*, 06-096 CMR 530 (effective March 21, 2012) require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (last amended 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.

4. RECEIVING WATER QUALITY STANDARDS

Classification of major river basins, 38 M.R.S.A. § 467(7)(A)(6) classifies this segment of the Penobscot River main stem, from the Veazie Dam to, at the point of discharge as Class B waters. *Standards for classification of fresh surface waters*, 38 M.R.S.A. § 465(3) describes the standards for Class B waters.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2012 Integrated Water Quality Monitoring and Assessment Report, prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists the 10.1 mile long main stem segment of the Penobscot River from the Veazie Dam to Reeds Brook (Assessment Unit ID ME0102000513_234R02) as, "Category 4-B: Rivers and Streams Impaired by Pollutants - Pollution Control Requirements Reasonably Expected to Result in Attainment." The impairment in this context refers to the presence of dioxin (including 2,3,7,8-TCDD), low dissolved oxygen and nutrient and eutrophication issues.

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

The Report lists all of Maine's fresh waters as, "Category 4-A: Waters Impaired by Atmospheric Deposition of Mercury." The impairment in this context refers to a statewide fish consumption advisory due to elevated levels of mercury in some fish tissues. The Report states, "All freshwaters are listed in Category 4-A (TMDL Completed) due to USEPA approval of a Regional Mercury TMDL.

Maine has a fish consumption advisory for fish taken from all freshwaters due to mercury. Many waters, and many fish from any given water, do not exceed the action level for mercury. However, because it is impossible for someone consuming a fish to know whether the mercury level exceeds the action level, the Maine Department of Health and Human Services decided to establish a statewide advisory for all freshwater fish that recommends limits on consumption. Maine has already instituted statewide programs for removal and reduction of mercury sources." Pursuant to 38 M.R.S.A. § 420(1-B)(B), "a facility is not in violation of the ambient criteria for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to section 413 subsection 11." The Report also lists this segment of the 10.1 mile stretch of the Penobscot River as, "Category 5-D: Rivers and Streams Impaired by Legacy Pollutants." The impairment in this context refers to legacy polychlorinated biphenyls (PCBs) found in fish tissue monitoring that revealed legacy PCBs.

The Department has no information at this time that the discharge from Casco Bay Energy, as permitted, will cause or contribute to the failure of the receiving water to meet the designated uses of its ascribed classification.

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- a. Applicability of National Effluent Guidelines: The discharge is subject to USEPA effluent guidelines for the *Steam Electric Generating Point Source Category* at 40 CFR Part 423. The wastewater discharges from outfall #001B are categorized as cooling tower blowdown, low volume wastewater from equipment and building drains, sandfilter backwash water. Limits on parameters are specified to ensure attainment of the in-stream water quality criteria and that best practicable treatment (BPT) is utilized. Permits issued by the Department impose the more stringent of the calculated water quality based or BPT based limits. Applicable section of 40 CFR 423 include:

40 CFR Part 423.12(b)(3): Limits TSS and oil and grease from low volume waste sources.

40 CFR Part 423.12(b)(7): Limits free available chlorine in cooling tower blowdown.

40 CFR Part 423.13(d)(1): Limits total chromium and total zinc in cooling tower blowdown.

- b. Flow: This permitting action is carrying forward a daily maximum effluent flow limitation of 1.96 MGD. In the previous permitting action, the Department considered establishing another tier of 1.43 MGD that did not include 0.53 MGD of sand filter backwash that has never been realized because the sand filter has not been constructed to-date. However, after further review and evaluation of calculations for establishing limitations in the permit, it was determined the reduction in the flow limit had little if any effect on limitations and was therefore disregarded.

A summary of the monthly Discharge Monitoring Report (DMR) data for the period May 2011 – April 2016 (n=56) indicates the facility has discharged effluent flows in the range of 0.04 MGD to 0.72 MGD with a daily maximum flow of 0.226 MGD.

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

- c. Dilution Factors: The Department established applicable dilution factors for the discharge in accordance with freshwater protocols established in *Surface Water Toxics Control Program*, 06-096 CMR 530 (last amended March 21, 2012). This permitting action is calculating dilution factors associated with the combined discharge from all permitted sources of 1.96 MGD as follows:

$$\text{Mod. Acute: } \frac{1}{4} Q_{10} = 718 \text{ cfs} \Rightarrow \frac{(718 \text{ cfs})(0.6464) + 1.96 \text{ MGD}}{1.96 \text{ MGD}} = 237:1$$

$$\text{Acute: } 1Q_{10} = 2,871 \text{ cfs} \Rightarrow \frac{(2,871 \text{ cfs})(0.6464) + 1.96 \text{ MGD}}{1.96 \text{ MGD}} = 947:1$$

$$\text{Chronic: } 7Q_{10} = 3,183 \text{ cfs} \Rightarrow \frac{(3,183 \text{ cfs})(0.6464) + 1.96 \text{ MGD}}{1.96 \text{ MGD}} = 1,050:1$$

$$\text{Harmonic Mean} = 8,810 \text{ cfs}^1 \Rightarrow \frac{(8,810 \text{ cfs})(0.6464) + 1.96 \text{ MGD}}{1.96 \text{ MGD}} = 2,906:1$$

- d. Temperature: *Regulations Relating To Temperature*, 06-096 CMR 582 (last amended February 18, 1989) limits thermal discharges to an in-stream temperature increase (ΔT) of 0.5°F above the ambient receiving water temperature when the weekly average temperature of the receiving water is greater than or equal to 66°F or when the daily maximum temperature is greater than or equal to 73°F. The temperature thresholds are based on USEPA water quality criteria for the protection of brook trout and Atlantic salmon. The weekly average temperature of 66°F was derived to protect for normal growth of the brook trout and the daily maximum threshold temperature of 73°F protects for the survival of juveniles and adult Atlantic salmon during the summer months. The Department interprets the term "weekly average temperature" to mean a seven (7) day rolling average. To promote consistency, the Department also interprets the ΔT of 0.5°F as a weekly rolling average (chronic) criterion when the receiving water temperature is $\geq 66^\circ\text{F}$ and $< 73^\circ\text{F}$ and interprets the ΔT of 0.5°F as a daily maximum (acute) criterion when the receiving water temperature is $\geq 73^\circ\text{F}$.

Chronic:

The chronic thermal assimilative capacity (AC) of the Penobscot River (the thermal load that would cause the river's weekly rolling average water temperature to increase by 0.5°F) at a 7Q10 river flow of 3,183 cfs can be calculated as follows:

$$\text{Chronic Thermal AC} = (3,183 \text{ cfs})(0.6464)(0.5^\circ\text{F})(8.34 \text{ lbs./gal})(10^6) = 8.5 \times 10^9 \text{ BTU/day}$$

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

Based on the data cited above, the Department established a best professional judgment daily maximum temperature limit of 100°F in the previous permitting action. When the receiving water is ≥66°F and <73°F, the in-stream temperature difference of 0.5°F is a weekly rolling average limit; thus, the maximum potential thermal heat load based on a daily maximum discharge flow of 1.96 MGD at 100°F can be calculated as follows:

Maximum Potential Weekly Rolling Average Thermal Load:

$$(1.96 \text{ MGD})(100^\circ\text{F} - 66^\circ\text{F})(8.34 \text{ lbs./gal})(10^6) = 5.5 \times 10^8 \text{ BTU/day}$$

Acute:

The acute thermal assimilative capacity (AC) of the Penobscot River (the thermal load that would cause the river's daily maximum water temperature to increase by 0.5°F) at a 1Q10 river flow of 2,697 cfs can be calculated as follows:

Acute Thermal AC = $(2,871 \text{ cfs})(0.6464)(0.5^\circ\text{F})(8.34 \text{ lbs./gal})(10^6) = 7.7 \times 10^9 \text{ BTU/day}$

Based on the data cited above, the Department established a best professional judgment daily maximum temperature limit of 100°F in the previous permitting action. When the receiving water is ≥73°F, the in-stream temperature difference of 0.5°F is a daily maximum limit; thus, the maximum potential thermal heat load based on a daily maximum discharge flow of 1.96 MGD at 100°F can be calculated as follows:

Maximum Potential Daily Maximum Thermal Load:

$$=(1.96 \text{ MGD})(100^\circ\text{F} - 73^\circ\text{F})(8.34 \text{ lbs./gal})(10^6) = 4.4 \times 10^8 \text{ BTU/day}$$

The calculated thermal heat load using the maximum discharge flow rate and temperature are lower than the assimilative capacity of the river. Therefore, compliance with the daily maximum effluent temperature limitation of 100°F, which is being carried forward in this permitting action, ensures that the discharge will not cause an in-stream temperature increase (ΔT) of 0.5°F above the ambient receiving water temperature. The calculation above are examples of thermal loading based on worst case scenarios for both the ambient receiving water and discharge from Outfall #001B. It is noted the Department determines compliance based on actual ambient receiving water flows and temperatures and actual discharge flows and temperatures.

- e. Free Available Chlorine: The previous permitting action established, and this permitting action is carrying forward a monthly average and daily maximum technology based chlorine limitations of 0.2 mg/L and 0.5 mg/L. The previous permitting action established limits based on best practicable treatment (BPT) limitation found in 40 CFR 423.12(b)(7).

Free Available Chlorine (DMRs=56)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Monthly Average	0.2	0.0 – 0.01	0.00
Daily Maximum	0.5	0.0 – 0.01	0.01

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

- f. **pH:** The previous permitting action established, and this permitting action is carrying forward a technology based pH range limitation of 6.0 – 9.0 standard units (SUs) based on 40 CFR 423.12(b)(1).

The Department reviewed 56 Discharge Monitoring Reports (DMRs) that were submitted for the period of May 2011 – April 2015 indicates that the permittee has been in compliance with the pH range limitation 100% of the time. A review of data indicates the following:

pH (DMRs=56)

Value	Limit (SU)	Range (SU)
Daily Maximum	6.0 – 9.0	8.2 – 8.80

- g. **Total Suspended Solids (TSS):** The previous permitting action established, and this permitting action is carrying forward, a monthly average and daily maximum technology based concentration limitations of 30 mg/L and 100 mg/L for TSS. The limits are consistent with the BPT limits for TSS established in federal regulation 40 CFR 423.12(b)(3).

The Department reviewed 56 Discharge Monitoring Reports (DMRs) that were submitted for the period of May, 2011 – April, 2016. A review of data indicates the following:

TSS (DMRs=56)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Monthly average	30	1.6 – 4.0	2.5
Daily Maximum	100	2.5 – 5.8	2.7

- h. **Oil and Grease:** The previous permitting action established, and this permitting action is carrying forward, a daily maximum technology based concentration limitation of 15 mg/L. It is noted that this BPJ limitation is more stringent than the daily maximum technology based limit of 20 mg/L established in 40 CFR 423.12(b)(3).

The Department reviewed 11 Discharge Monitoring Reports (DMRs) that were submitted for the period of June 2011 – December, 2015. A review of data indicates the permittee has been in compliance with the daily maximum oil & grease limitation 100% of the time as values are as follows:

Oil & grease (DMRs=11)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Daily Maximum	15	5 – 5.30	5.10

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

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

8. PUBLIC COMMENTS

Public notice of this application was made in the *Bangor Daily News* newspaper on or about January 29, 2015. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits must 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).

9. DEPARTMENT CONTACTS

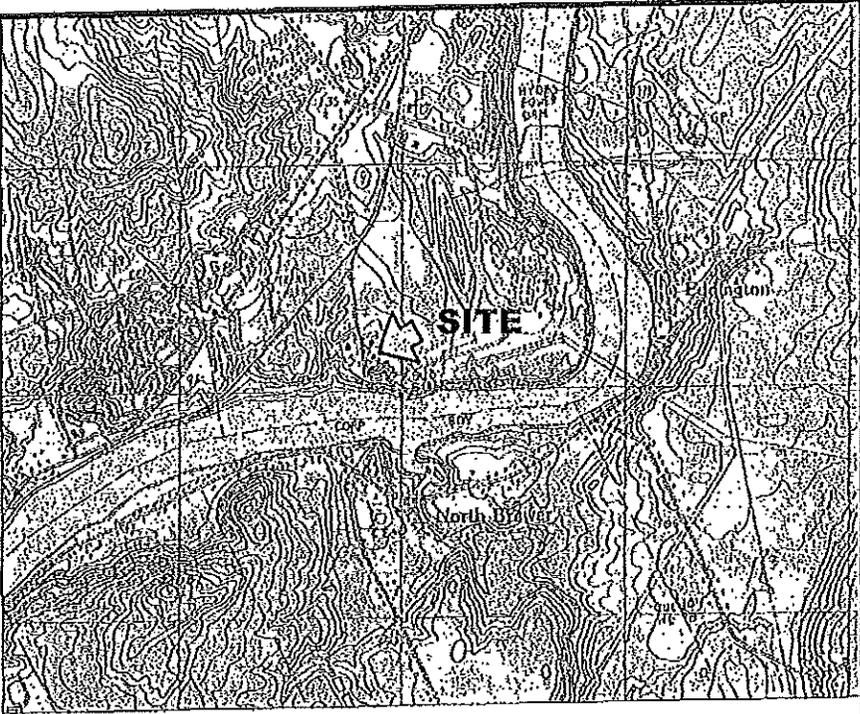
Additional information concerning this permitting action may be obtained from, and written comments sent to:

Aaron Dumont
Division of Water Quality Management
Bureau of Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone: (207) 512-7161
e-mail: Aaron.A.Dumont@maine.gov

10. RESPONSE TO COMMENTS

During the period of June 20, 2016 through the effective date of this final agency action, the Department solicited comments on the draft MEPDES permit. The Department did not receive any substantive comment on the draft permit. It is noted that minor typographical and grammatical errors identified in comments were not summarized in this section, but were corrected, where necessary, in the final permit.

ATTACHMENT A



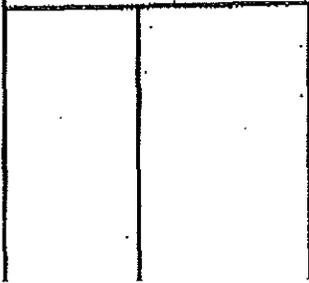
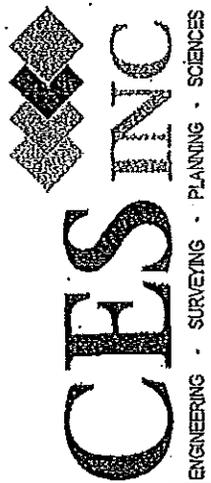
LOCATION MAP: USGS QUADRANGLE: VEAZIE, MAINE
 SCALE: 1"=2000'
 MAPTECH® USGS TOPOGRAPHIC SERIES™,
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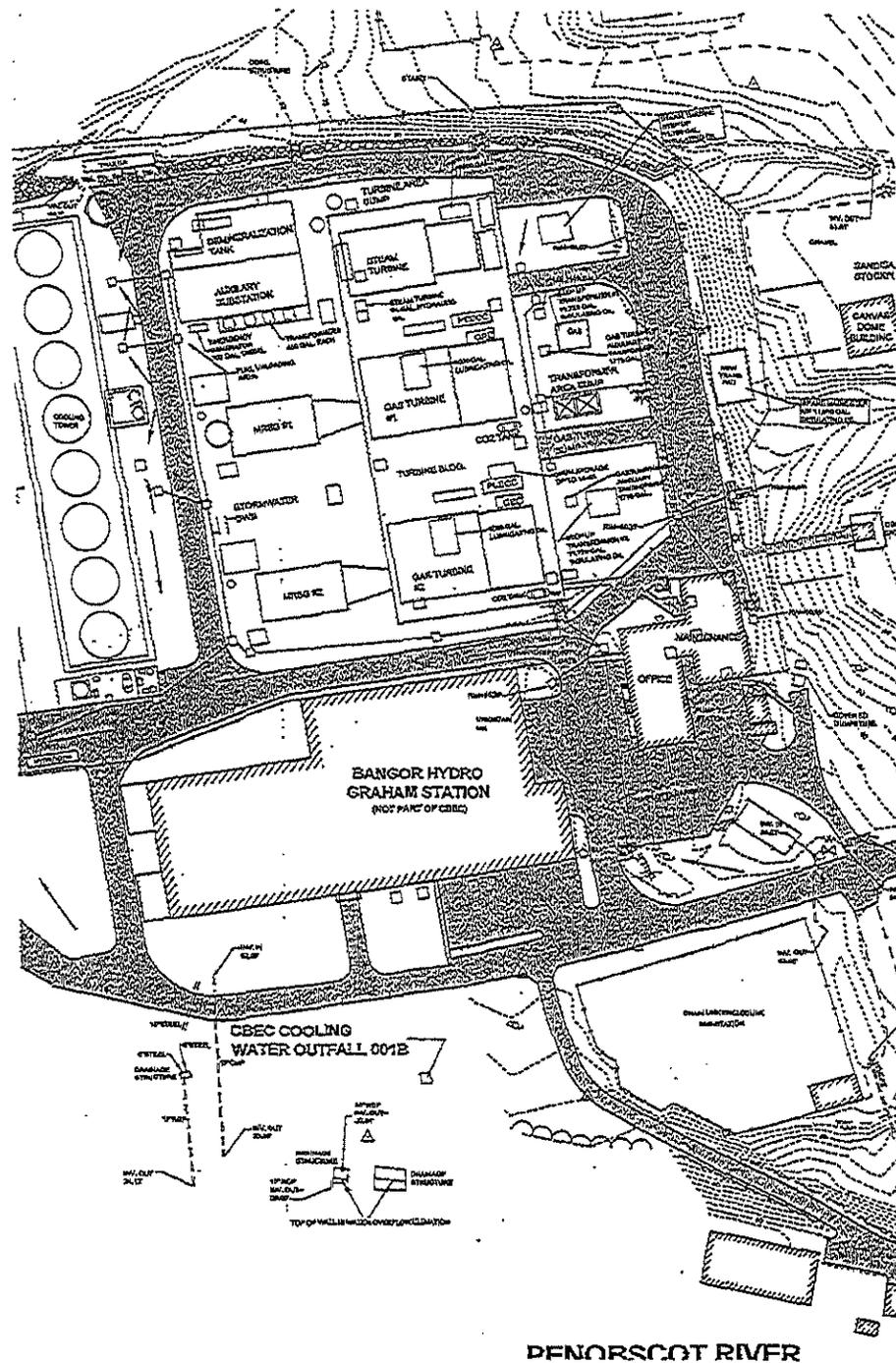
T.207-989-4824 F.207-989-4881
 T.207-255-3270 F.207-255-8367
 T.207-764-8412 F.207-764-8414
 T.207-288-0587 F.207-288-0588
 T.207-376-3140 F.207-376-3198

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DENORSCOT RIVER

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

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A. GENERAL PROVISIONS

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

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

(a) They are not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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

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

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

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

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

5. Bypasses.

(a) Definitions.

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

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

(c) Notice.

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

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

6. Upsets.

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

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C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
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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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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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)(i) of this section if the oral report has been received within 24 hours.

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

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

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

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

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

- (i) One hundred micrograms per liter (100 ug/l);
- (ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
- (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

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. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days 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 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 and the applicant a copy of the documents. All 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

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by 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 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 as part of an appeal only when 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 show 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, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information 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.* An applicant proceeding with a project pending the outcome of an appeal 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 initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final 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. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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.



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.
