



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF  
ENVIRONMENTAL PROTECTION



PAUL MERCER  
COMMISSIONER

September 30, 2016

Mr. Brent Dickey  
225 Water Street  
Skowhegan, ME. 04976  
e-mail: [bdickey@skowhegan.org](mailto:bdickey@skowhegan.org)

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0100625  
Maine Waste Discharge License (WDL) #W002645-6D-K-R  
**Final Modification**

Dear Brent:

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

Gregg Wood  
Division of Water Quality Management  
Bureau of Water Quality

Enc.

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

Lori Mitchell, DEP/CMRO  
Marelyn Vega, USEPA

Olga Vergara, USEPA

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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

TOWN OF SKOWHEGAN ) MAINE POLLUTANT DISCHARGE  
PUBLICLY OWNED TREATMENT WORKS ) ELIMINATION SYSTEM PERMIT  
SKOWHEGAN, SOMERSET COUNTY, MAINE ) AND  
ME0100625 ) WASTE DISCHARGE LICENSE  
W002645-6D-K-M ) **APPROVAL** ) **MODIFICATION**

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et. seq. and Maine Law 38 M.R.S., Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered a request by the TOWN OF SKOWHEGAN (Town/permittee hereinafter), to modify Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0100625/Waste Discharge License (WDL) #W002645-6D-J-R (permit hereinafter) issued by the Department on October 13, 2015, for a five-year term. With its supportive data, agency review comments, and other related material on file, the Department finds the following facts:

**MODIFICATIONS REQUESTED**

The October 13, 2015, permit authorized a monthly average discharge flow of 1.65 million gallons per day (MGD) of secondary treated sanitary waste waters from a municipal waste water treatment facility to the Kennebec River, Class B, in Skowhegan, Maine. The 10/13/15 permit also allowed the discharge of primary treated waste waters when the instantaneous flow rate through the primary clarifiers exceeds 5.0 million gallons per day (MGD) and allowed the discharge of an unspecified quantity of untreated combined sanitary and storm water from eight (8) combined sewer overflow (CSO) outfalls to the Kennebec River, Class B in Skowhegan, Maine.

The Town has requested the Department modify the terms and conditions under which a bypass of secondary treatment is allowed. The 10/13/15 permit only allowed the bypass of secondary treatment when the instantaneous flow rate through the primary clarifiers exceeds an instantaneous flow rate of 3,472 gallons per minute or 5.0 MGD. The permittee has been unable to consistently meet this provision as the decision when to bypass secondary treatment has historically been based on the sludge volume index (SVI) of the secondary clarifiers rather than a numeric instantaneous flow rate through the primary clarifiers. The permittee has historically utilized the SVI as the primary factor in the decision on when to bypass secondary treatment as the previous permitting action had a provision that stated "Such CSO-related bypasses of secondary treatment may only occur in response to wet weather events when the flow exiting the

### MODIFICATIONS REQUESTED (cont'd)

primary clarifiers exceeds an instantaneous flow rate of 3,472 gallons per minute (5.0 MGD), or in accordance with the most current approved Wet Weather Flow Management Plan and shall be monitored and reported as specified below. The provision underlined was removed from the permit issued on 10/13/15 at the request of the USEPA. The permittee is requesting the Department incorporate a four tiered scale of SVI levels and minimum instantaneous flow set points at which the facility is allowed to bypass secondary treatment during wet weather events. The permittee is requesting these modifications based on a September 12, 2016, evaluation by a licensed professional engineer of the SVI values, surface overflow rates (SOR), and solids flux of the final clarifiers at the facility.

### MODIFICATIONS GRANTED/DENIED

This modification is granting the permittee's request to incorporate a four tiered scale of SVI levels and minimum instantaneous flow set points at which the facility is allowed to bypass secondary treatment during wet weather events. Additionally, the Department is revising footnotes associated with the CSO related bypassing of secondary treatment to be consistent with other MEPDES permits issued subsequent to Skowhegan's October 13, 2015 permit.

### CONCLUSIONS

BASED on the findings above, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 MRSA Section 464(4)(F), will be met, in that:
  - a. Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - b. Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
  - c. Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;

**CONCLUSIONS (cont'd)**

- d. Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
  - e. Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges (including the eight CSO's and the CSO related bypasses of secondary treatment) will be subject to effluent limitations that require application of best practicable treatment.

**ACTION**

THEREFORE, the Department APPROVES the request by the TOWN OF SKOWHEGAN, to modify combination MEPDES permit #ME0100625/WDL #W002645-6D-J-R which was issued by the Department on October 13, 2015, for a five-year term. The discharges shall be 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 to ME0100625/WDL #W002645-6D-J-R which was issued by the Department on October 13, 2015.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of ME0100625/WDL #W002645-6D-J-R which was issued by the Department on October 13, 2015, not modified by this minor revision remain in effect and enforceable.
4. This modification 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)].

**ACTION (cont'd)**

DONE AND DATED AT AUGUSTA, MAINE, THIS 4<sup>th</sup> DAY OF October 2016.

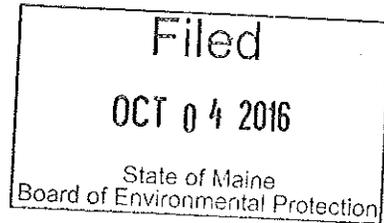
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns  
Paul Mercer, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of the request August 15, 2016.

Date of request acceptance August 15, 2016.



Date filed with Board of Environmental Protection \_\_\_\_\_

This Order prepared by GREGG WOOD, BUREAU OF WATER QUALITY

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge secondary treated waste waters to the Kennebec River. These limitations and monitoring requirements apply to all flows conveyed through the secondary treatment system at all times except as otherwise noted in the associated footnotes<sup>(1)</sup>.

**SECONDARY TREATED WASTE WATERS - OUTFALL #001A**

Effluent Characteristic	Discharge Limitations						Monitoring Requirements	
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [500501]	1.65 MGD [03]	---	Report (MGD)	---	---	---	Continuous [99/99]	Recorder [RC]
Biochemical Oxygen Demand (BOD <sub>5</sub> ) [00310]	413 lbs/Day [26]	619 lbs/Day [26]	Report lbs/Day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L <sup>(1a)</sup> [19]	1/Week [01/07]	Composite [24]
BOD <sub>5</sub> [00310] (When bypass is active)	---	---	Report lbs/Day [26]	---	---	Report mg/L [19]	1/Week [01/07]	Composite [24]
BOD <sub>5</sub> % Removal <sup>(1b)</sup> [81010]	---	---	---	85% [23]	---	---	1/Month [01/30]	Calculate [CA]
Total Suspended Solids (TSS) [00530]	413 lbs/Day [26]	619 lbs/Day [26]	Report lbs/Day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L <sup>(1a)</sup> [19]	1/Week [01/07]	Composite [24]
TSS [00530] (When bypass is active)	---	---	Report lbs/Day [26]	---	---	Report mg/L [19]	1/Week [01/07]	Composite [24]
TSS % Removal <sup>(1b)</sup> [81011]	---	---	---	85% [23]	---	---	1/Month [01/30]	Calculate [CA]
Settleable Solids [00545]	---	---	---	---	---	0.3 ml/L [25]	4/Week [04/07]	Grab [GR]
<i>E. coli</i> Bacteria <sup>(2a)</sup> [31633] (May 15 – September 30)	---	---	---	64/100 ml <sup>(3)</sup> [13]	---	427/100 ml [13]	1/Week [01/07]	Grab [GR]

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd) – OUTFALL #001A**

**SECONDARY TREATED WASTE WATERS - OUTFALL #001A**

Effluent Characteristic	Discharge Limitations						Monitoring Requirements	
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
Total Residual Chlorine <sup>(4)</sup> [50060]	---	---	---	---	---	1.0 mg/L [19]	4/Week [04/07]	Grab [GR]
Mercury (Total) <sup>(5)</sup> [71900]	---	---	---	7.0 ng/L [3M]	---	10.6 ng/L [3M]	1/Year [01/YR]	Grab [GR]
pH (Std. Units) [00400]	---	---	---	---	---	6.0-9.0 [12]	1/Day [01/01]	Grab [GR]

**SCREENING LEVEL** - Beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (Year 4 of the term of the permit) and every five years thereafter if a timely request for renewal has been made and the permit continues in force, or is replaced by a permit renewal containing this requirement, the permittee shall conduct testing as follows:

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
<b>Whole Effluent Toxicity<sup>(6)</sup></b>						
<b>Acute – NOEL</b>						
<i>Ceriodaphnia dubia</i> (Water flea) [TDA3B]	---	---	---	Report % [23]	1/Year [01/YR]	Composite [24]
<i>Salvelinus fontinalis</i> (Brook trout) [TDA6F]	---	---	---	Report % [23]	1/Year [01/YR]	Composite [24]
<b>Chronic – NOEL</b>						
<i>Ceriodaphnia dubia</i> (Water flea) [TBP3B]	---	---	---	Report % [23]	1/Year [01/YR]	Composite [24]
<i>Salvelinus fontinalis</i> (Brook trout) [TBQ6F]	---	---	---	Report % [23]	1/Year [01/YR]	Composite [24]
Analytical chemistry <sup>(7,9)</sup> [51168]	---	---	---	Report ug/L [28]	1/Quarter [01/90]	Composite/Grab [24]
Priority Pollutant <sup>(8,9)</sup> [50008]	---	---	---	Report ug/L [28]	1/Year [01/YR]	Composite/Grab [24]

**SPECIAL CONDITIONS**

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

**PRIMARY TREATED WASTE WATERS (OUTFALL #001B)**

2. Consistent with CSO bypass regulations, the permittee is allowed to bypass secondary treatment and provide primary treatment only **Outfall #001B (administrative outfall)** prior to combining with secondary treated waste water. Bypassing secondary treatment is allowed at minimum instantaneous flow set points dependent on the sludge volume index (SVI) in accordance with the following table.

SVI (ml/mg)	Minimum Instantaneous Flow
< 150	4.0 MGD
151 – 200	3.8 MGD
201 – 250	2.4 MGD
251 -300	1.0 MGD

Effluent Characteristic	Discharge Limitations				Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Influent Flow Rate Minimum <small>[00059]</small>	---	Report (MGD) <small>[03]</small>	---	---	Instantaneous <small>[91/99]</small>	Recorder <small>[RC]</small>
Flow, MGD <small>[50050]</small>	Report (Total MGD) <small>[03]</small>	Report (MGD) <small>[03]</small>	---	---	Continuous <small>[99/99]</small>	Recorder <small>[RC]</small>
BOD5 <small>[00310]</small>	Report lbs/day <small>[26]</small>	Report lbs/day <small>[26]</small>	Report mg/L <small>[19]</small>	Report mg/L <small>[19]</small>	1/Week <sup>(12)</sup> <small>[01/07]</small>	Composite <small>[24]</small>
TSS <small>[00530]</small>	Report lbs/day <small>[26]</small>	Report lbs/day <small>[26]</small>	Report mg/L <small>[19]</small>	Report mg/L <small>[19]</small>	1/Week <sup>(12)</sup> <small>[01/07]</small>	Composite <small>[24]</small>
Overflow Use, Occurrences <sup>(11)</sup> <small>[74062]</small>	---	---	Report (# of days) <small>[93]</small>	---	1/ Discharge Day <small>[01/DDD]</small>	Record Total <small>[RT]</small>
<i>E. coli</i> Bacteria <small>[31633]</small> (May 15 – September 30)	---	---	---	Report col/100 ml <small>[13]</small>	1/Week <sup>(12)</sup> <small>[01/07]</small>	Grab <small>[GR]</small>
Total Residual Chlorine <small>[50050]</small>	---	---	---	Report mg/L <small>[19]</small>	4/Week <sup>(12)</sup> <small>[04/07]</small>	Grab <small>[GR]</small>

Allowance to bypass secondary treatment will be reviewed and may be modified or terminated pursuant to Special Condition Q, *Reopening of Permit for Modification*, if there is substantial change in the volume or character of pollutants in the collection/treatment system. Also see supplemental report form, *DEP-49-CSO Form For Use With Dedicated CSO Primary Clarifier*, **Attachment A** of this permit. This modification requires the permit to modify **Attachment A** of this permit to provide a column to report the SVI for each bypass event.

**SPECIAL CONDITIONS**

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

- Consistent with CSO bypass regulations, the permittee is allowed to discharge primary and secondary treated waste water (**blended effluent**) from **Outfall #001C** (administrative outfall) to the Kennebec River.-Allowance to bypass secondary treatment will be reviewed and may be modified or terminated pursuant to Special Condition Q, *Reopening of Permit for Modification*, if there is substantial change in the volume or character of pollutants in the collection/treatment system.

**BLENDED EFFLUENT (OUTFALL #001C)**

Effluent Characteristic	Discharge Limitations				Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow, MGD [50050]	Report (Total MGD) [03]	Report (MGD) [03]	---	---	Continuous [99/99]	Calculate [CA]
BOD <sub>5</sub> <sup>(13)</sup> [00310]	Report lbs/day [26]	2,349 lbs/day <sup>(14)</sup> [26]	Report mg/L [19]	Report mg/L <sup>(14)</sup> [19]	1/Week <sup>(12)</sup> [01/07]	Calculate [CA]
TSS <sup>(13)</sup> [00530]	Report lbs/day [26]	5,924 lbs/day <sup>(14)</sup> [26]	Report mg/L [19]	Report mg/L <sup>(13)</sup> [19]	1/Week <sup>(12)</sup> [01/07]	Calculate [CA]
<i>E. coli</i> Bacteria <sup>(2a)</sup> [31633] (May 15 – September 30)	---	---	---	427 col/100 ml <sup>(14)</sup> [13]	1/Week <sup>(12)</sup> [01/07]	Calculate [CA]
Total Residual Chlorine <sup>(4)</sup> [50060]	---	---	---	1.0 mg/L <sup>(14)</sup> [19]	4/Week <sup>(12)</sup> [04/07]	Calculate [CA]

## SPECIAL CONDITIONS

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

#### Footnotes:

#### Sampling Locations:

Influent sampling for flow, BOD<sub>5</sub> and TSS shall be sampled just downstream of the bar rack but before grit removal.

Effluent receiving secondary treatment (Outfall #001A- physical outfall) shall be sampled for all parameters after the chlorine contact chamber on a year-round basis.

Effluent receiving primary treatment (Outfall #001B –administrative outfall) shall be sampled for flow, BOD<sub>5</sub>, TSS, *E. coli* bacteria and total residual chlorine after the storm flow chlorine contact chamber and prior to combining with the secondary treated effluent being discharged via physical outfall Outfall #001A. The calculated monitoring results for the blended effluent shall be reported on the administrative Outfall #001C (blended effluent) pages of the monthly discharge monitoring report (DMR).

Any change in sampling location(s) other than those specified above must be reviewed and approved by the Department in writing.

**Sampling** – Sampling and analysis must be conducted in accordance with; a) methods approved in 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Health & Human Services. Samples that are analyzed by laboratories operated by waste discharge facilities 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 263 263 (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.

#### Outfall #001A – Secondary treated effluent

##### 1. BOD & TSS

- a. **Outfall #001A** – Limitations for Outfall #001A remain in effect at all times with the exception of daily maximum concentration limits of 50 mg/L for BOD and TSS on any day when the bypass of secondary treatment is active and any sample results obtained on these days are not to be included in calculations to determine compliance with monthly or weekly average limitations.

**SPECIAL CONDITIONS**

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

Footnotes:

**Outfall #001A – Secondary treated effluent**

- b. **Percent removal** - The treatment facility shall maintain a minimum of 85 percent removal of both BOD<sub>5</sub> and TSS for all waste waters receiving a secondary level of treatment. The percent removal shall be based on a monthly average calculation using influent and effluent concentrations. The percent removal shall be waived when the monthly average influent concentration is less than 200 mg/L. For instances when this occurs, the facility may report "N9" on the monthly Discharge Monitoring Report.
  
2. ***E. coli* bacteria**
  - a. **(May 15 – September 30)** - Limits are seasonal and apply between May 15 and September 30 of each calendar year. The Department reserves the right to require disinfection on a year-round basis to protect the health and welfare of the public.
  
3. ***E. coli* bacteria** – The monthly average limitation is a geometric mean limitation and shall be calculated and reported as such.
  
4. **Total residual chlorine (TRC)** – TRC limits and monitoring requirements are applicable whenever elemental chlorine or chlorine based compounds are being used to disinfect the discharge. The permittee shall utilize approved test methods that are capable of bracketing the limitations in this permit.
  
5. **Mercury** – All mercury sampling (1/Year) required to determine compliance with interim limitations established pursuant to *Interim Effluent Limitations and Controls for the Discharge of Mercury*, 06-096 CMR 519 (last amended October 6, 2001) shall be conducted in accordance with EPA's "clean sampling techniques" found in EPA Method 1669, Sampling Ambient Water For Trace Metals At EPA Water Quality Criteria Levels. All mercury analyses shall be conducted in accordance with EPA Method 1631E, Determination of Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Fluorescence Spectrometry. See **Attachment B, Effluent Mercury Test Report**, of this permit for the Department's form for reporting mercury test results.

Compliance with the monthly average limitation established in this permit will be based on the cumulative arithmetic mean of all mercury tests results that were conducted utilizing sampling Methods 1669 and analysis Method 1631E on file with the Department for this facility.

**SPECIAL CONDITIONS**

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

Footnotes:

**Outfall #001A – Secondary treated effluent**

6. **Whole effluent toxicity (WET) testing** - Definitive WET testing is a multi-concentration testing event (a minimum of five dilutions bracketing the critical acute and chronic dilution of 0.5% and 0.1% respectively), which provides a point estimate of toxicity in terms of No Observed Effect Level, commonly referred to as NOEL or NOEC. A-NOEL is defined as the acute no observed effect level with survival as the end point. C-NOEL is defined as the chronic no observed effect level with survival, reproduction and growth as the end points.
  - a. **Surveillance level testing** – Pursuant to 06-096 CMR 530(2)(D)(3)(c), surveillance level analytical chemistry testing is waived for this facility.
  - b. **Screening level testing** - Beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (Year 4 of the term of the permit) and every five years thereafter if a timely request for renewal has been made and the permit continues in force, or is replaced by a permit renewal containing this requirement, the permittee shall initiate screening level WET tests at a frequency of once per year (any calendar quarter). Testing shall be conducted on the water flea (*Ceriodaphnia dubia*) and the brook trout (*Salvelinus fontinalis*). Toxicity tests must be conducted by an experienced laboratory approved by the Department. The laboratory must follow procedures as described in the following U.S.E.P.A. methods manuals as modified by Department protocol for salmonids. See **Attachment C** of this permit for the Department protocol.
    - a. Short Term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Water to Freshwater Organisms, 4th Edition, October 2002, EPA-821-R-02-013.
    - b. Methods for Measuring the Acute Toxicity of Effluent and Receiving Waters to Freshwater and Marine Organisms, Fifth Edition, 3<sup>rd</sup> Edition, October 2002, EPA-821-R-02-012.

**SPECIAL CONDITIONS**

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

Footnotes:

**Outfall #001A – Secondary treated effluent**

WET test results must be submitted to the Department not later than the next Discharge Monitoring Report (DMR) required by the permit, provided, however, that the permittee may review the toxicity reports for up to 10 business days after receiving the results from the laboratory before submitting them. The permittee shall evaluate test results being submitted and identify to the Department possible exceedances of the critical acute and chronic water quality thresholds of 0.5% and 0.1%, respectively.

Results of WET tests shall be reported on the “*Whole Effluent Toxicity Report Fresh Waters*” form included as **Attachment D** of this permit each time a WET test is performed. Each time a WET test is performed, the permittee shall sample and analyze for the parameters in the WET Chemistry and the Analytical Chemistry sections of the most current Department form entitled, *Maine Department of Environmental Protection, WET and Chemical Specific Data Report Form*. See **Attachment E** of this permit.

7. **Analytical chemistry** – Refers to a suite of chemicals in **Attachment E** of this permit.
  - a. **Surveillance level testing** – Pursuant to 06-096 CMR 530(2)(D)(3)(c), surveillance level analytical chemistry testing is waived for this facility.
  - b. **Screening level testing** - Beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (Year 4 of the term of the permit) and every five years thereafter if a timely request for renewal has been made and the permit continues in force, or is replaced by a permit renewal containing this requirement, the permittee shall conduct screening level analytical chemistry testing at a minimum frequency of once per calendar quarter (1/Quarter) for four consecutive calendar quarters.

Test results must be submitted to the Department not later than the next Discharge Monitoring Report (DMR) required by the permit, provided, however, that the permittee may review the toxicity reports for up to 10 business days of their availability before submitting them. The permittee shall evaluate test results being submitted and identify to the Department, possible exceedances of the acute, chronic or human health AWQC as established in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective October 9, 2005). For the purposes of DMR reporting, enter a “1” for yes, testing done this monitoring period or “N-9” monitoring not required this period.

**SPECIAL CONDITIONS**

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

Footnotes:

**Outfall #001A – Secondary treated effluent**

8. **Priority pollutant testing** – Refers to a suite of chemicals in **Attachment E** of this permit.
  - a. **Surveillance level testing** – Pursuant to 06-096 CMR 530(2)(D)(3)(c), surveillance level priority pollutant testing is not required.
  - b. **Screening level testing** – Beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (Year 4 of the term of the permit) and every five years thereafter if a timely request for renewal has been made and the permit continues in force, or is replaced by a permit renewal containing this requirement, the permittee shall conduct screening level priority pollutant testing at a minimum frequency of once per year.
9. **Priority pollutant and analytical chemistry** - Testing shall be conducted on samples collected at the same time as those collected for whole effluent toxicity tests when applicable. Priority pollutant and analytical chemistry testing shall be conducted using methods that permit detection of a pollutant at existing levels in the effluent or that achieve minimum reporting levels of detection as specified by the Department.

Test results must be submitted to the Department not later than the next Discharge Monitoring Report (DMR) required by the permit, provided, however, that the permittee may review the toxicity reports for up to 10 business days of their availability before submitting them. The permittee shall evaluate test results being submitted and identify to the Department, possible exceedances of the acute, chronic or human health AWQC as established in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective October 9, 2005). For the purposes of DMR reporting, enter a "1" for yes, testing done this monitoring period or "N-9" monitoring not required this period.

**SPECIAL CONDITIONS**

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

Footnotes:

**Outfall #001B – Primary treated only waste stream**

10. **Minimum instantaneous influent flow** – The permittee must report the minimum instantaneous influent flow rate entering the headworks of the plant for each month during which there was a CSO-bypass discharge.
11. **Overflow occurrence** – An overflow occurrence is defined as the period of time between initiation and cessation of flow from the storm flow chlorine contact tank. Overflow occurrences are reported in number of days. Overflow occurrences are reported in number of days. Multiple overflow occurrences may occur in a single day but should be reported as a single event.
12. **Sampling** – Sampling for BOD, TSS, *E. coli* bacteria (1/Week) and total residual chlorine (4/Week) are only required if a continuous overflow occurrence is greater than 60 minutes in duration or intermittent occurrences totaling 120 minutes during a 24-hour period. Multiple intermittent overflow occurrences in one discharge day are reported as one overflow occurrence and are sampled according to the measurement frequency specified. One composite sample for BOD5 and TSS and one grab sample for *E. coli* bacteria and total residual chlorine each must be collected per overflow occurrence that meets the timeframes specified above. Sampling of an overflow occurrence is only required if the overflow occurrence coincides with the regularly scheduled sampling days of the secondary treated waste stream. Composite samples must be flow proportioned from all intermittent overflows during that 24-hour period.
13. **BOD & TSS** – For reporting compliance with the daily maximum mass limitation for BOD and TSS when the secondary bypass has been active, the permittee shall mathematically add the daily mass values of BOD and TSS of the secondary treated waste water (Outfall #001A) to each of the corresponding daily BOD and TSS mass values of the primary treated waste water (Outfall #001B) when the bypass is active and report the highest combined mass of BOD and TSS values for each month. Example calculation is as follows:

(Daily BOD/TSS mass for Outfall #001A during a bypass event) + (Daily BOD/TSS mass for Outfall #001B during a bypass event) = BOD/TSS mass (daily blended effluent for each bypass event).

Report the highest blended effluent BOD/TSS mass values for each month.

**SPECIAL CONDITIONS**

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

Footnotes:

**OUTFALL #001C – Blended effluent**

14. **BOD, TSS, Total residual chlorine & *E. coli* bacteria** - To fulfill the daily maximum reporting concentration requirements for BOD, TSS and total residual and the bacteria counts for *E. coli* bacteria when the secondary bypass has been active, the permittee shall report the daily maximum flow weighted concentration and bacteria count for each month in accordance with the following equation:

[(Daily BOD/TSS/TRC/concentration and bacteria count of Outfall #001A for each bypass event) x (Daily flow of Outfall #001A for each bypass event)

+

(Daily BOD/TSS/TRC/concentration and bacteria count of Outfall #001B for each bypass event) x (Daily flow of Outfall #001B for each bypass event)]

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(Daily flow for Outfall #001A each bypass event) + (Daily flow for Outfall #001B for each bypass event)

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Weighted concentration or bacteria count

Report the highest weighted concentration results and bacteria count of the blended effluent for each month.



# 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.

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**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.**

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