



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PAUL MERCER  
COMMISSIONER

September 6, 2016

Mr. Mark LaPlante  
Dead River Fish Hatchery  
109 Poland Spring Road  
Poland Spring, ME 04274  
[Mark.laplante@waters.nestle.com](mailto:Mark.laplante@waters.nestle.com)

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0110477  
Maine Waste Discharge License (WDL) Application #W000905-6F-G-R  
**Final Permit**

Dear Mr. LaPlante

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,

Gregg Wood  
Division of Water Quality Management  
Bureau of Water Quality

Enc.

cc: Denise Behr, DEP/CMRO  
Olga Vega, USEPA

Lori Mitchell, DEP/CMRO  
Marelyn Vega, USEPA

Sandy Mojica, USEPA

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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

NESTLÉ WATERS NORTH AMERICA, INC.	)	MAINE POLLUTANT DISCHARGE
DEAD RIVER FISH HATCHERY	)	ELIMINATION SYSTEM PERMIT
PIERCE POND TWP, SOMERSET COUNTY, MAINE	)	AND
#ME0110477	)	WASTE DISCHARGE LICENSE
#W000905-6F-G-R	)	<b>RENEWAL</b>
<b>APPROVAL</b>		

In compliance with the applicable provisions of *Pollution Control*, 38 M.R.S. §§ 411 – 424-B, *Water Classification Program*, 38 M.R.S. §§ 464 – 470 and *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, *et seq.*, and applicable rules of the Department of Environmental Protection (Department), the Department has considered the application of NESTLÉ WATERS NORTH AMERICA, INC. (Nestlé), with its supportive data, agency review comments, and other related materials on file, and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

On March 1, 2016, the Department accepted as complete for processing, a renewal application from Nestlé for Waste Discharge License (WDL) #W000905-6F-F-R / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0110477, which was issued on March 23, 2011 for a five-year term. The March 23, 2011 MEPDES permit authorized Nestlé to discharge a monthly average of 1.75 million gallons per day (MGD) of fish hatchery wastewater from its Dead River Fish Hatchery to Black Brook, Class B, in Pierce Pond Township, Maine. It is noted that the previous permit specified the permittee as Dead River Fish Hatchery rather than Nestlé, which was and still is the legal owner of the facility.

**PERMIT SUMMARY**

This permitting action is carrying forward all the terms and conditions of the March 23, 2011 permitting action and July 16, 2009 minor revision, except that it is:

1. Eliminating the effluent limitations and monitoring requirements for biochemical oxygen demand (BOD<sub>5</sub>) based on new information;
2. Eliminating the monthly average concentration and mass limitations for total phosphorus;

**PERMIT SUMMARY (cont'd)**

3. Eliminating the monthly average reporting requirement for fish on hand;
4. Eliminating the pH limitation and monitoring requirements based on new information;
5. Eliminating the dissolved oxygen limitation and monitoring requirements based on new information;
6. Revising Special Condition F, *Operation and Maintenance (O&M) Plan*, to include specific best practicable control technology currently available (BPT) practices pursuant to 40 CFR 451.11;
7. Eliminating previous Special Condition G, *Settling Basin Cleaning*, based on revisions to Special Condition F, *Operation and Maintenance (O&M) Plan*;
8. Eliminating previous Special Condition H, *Disease and Pathogen Control and Reporting*, Special Condition I, *Therapeutic Agents*, and Special Condition J, *Disinfecting/Sanitizing Agents*, as the permittee has indicated that these compounds are not used at the facility; and
9. Eliminating previous Special Condition K, *Minimum Treatment Technology Requirement*, as best practicable treatment (BPT) is incorporated into the reissued permit as Special Condition F.

## CONCLUSIONS

Based on the findings summarized in the attached and incorporated Fact Sheet dated May 16, 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. § 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. Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - d. Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
  - e. Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in *Conditions of licenses*, 38 M.R.S. § 414-A(1)(D).

**ACTION**

Based on the findings and conclusions as stated above, the Department APPROVES the above noted application of NESTLÉ WATERS NORTH AMERICA, INC. to discharge a monthly average of 1.75 MGD of treated fish hatchery wastewater from its Dead River Fish Hatchery to Black Brook, Class B, in Pierce Pond Township, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

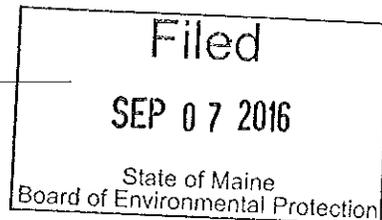
1. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit and the authorization to discharge become effective upon the date of signature below and expire at midnight five (5) years from the effective date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the authorization to discharge and the terms and conditions of this permit and all 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. § 10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 C.M.R. 2(21)(A) (amended October 19, 2015)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 6<sup>th</sup> DAY OF September 2016.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Keuhns  
for PAUL MERCER, Commissioner



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

Date of initial receipt of application: February 29, 2016

Date of application acceptance: March 1, 2016

This Order prepared by Bill Hinkel, BUREAU OF WATER QUALITY

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge **treated fish hatchery wastewater from Outfall #001A** to Black Brook in Pierce Pond Township, Maine. Such discharges are limited and must be monitored by the permittee as specified below<sup>(1)</sup>:

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow <i>[50050]</i>	1.75 MGD <i>[03]</i>	---	---	---	Daily <i>[01/01]</i>	Estimated <i>[ES]</i>
TSS <i>[00530]</i>	75 lbs./day <i>[26]</i>	125 lbs./day <i>[26]</i>	6 mg/L <i>[19]</i>	10 mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Composite <sup>(2)</sup> <i>[CP]</i>
Fish on Hand <i>[45604]</i>	---	Report lbs./day <i>[26]</i>	---	---	1/Month <i>[01/30]</i>	Calculate <i>[CA]</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 6 of this permit for applicable footnotes.

## SPECIAL CONDITIONS

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

#### FOOTNOTES

1. **Sampling** – All effluent monitoring must be conducted at a location following the last treatment unit in the treatment process, as to be representative of end-of-pipe effluent characteristics. Any change in sampling location must be approved by the Department in writing. 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 publicly owned treatment works (POTW) licensed pursuant to *Waste discharge licenses*, 38 M.R.S. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 C.M.R. 263 (effective date 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 (DMR).
2. **Composite Samples** – Composite samples means a sample consisting of a minimum of four grab samples collected at two-hour intervals during a single working day at the facility. Alternatively, the permittee may use 24-hour composites collected with an automatic composite sampler. The permittee must indicate the type of sample collected on the DMR.

### 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 effluent 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.

## SPECIAL CONDITIONS

### C. AUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with the permittee's General Application for Waste Discharge Permit, accepted for processing on March 1, 2016; the terms and conditions of this permit; and only from Outfall #001A (treated fish hatchery wastewater). Discharges of wastewater from any other point source(s) are not authorized under this permit, and must be reported in accordance with Standard Condition D(1)(f), *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.
3. For the purposes of this section, adequate notice must include information on:
  - a. The quality or quantity of wastewater introduced to the wastewater collection and treatment system; and
  - b. Any anticipated impact of the change in the quantity or quality of the wastewater to be discharged from the treatment system.

### E. MONITORING AND REPORTING

Monitoring results obtained during the previous month must be summarized for each month and reported on separate DMR forms provided by the Department and **postmarked on or before the thirteenth (13<sup>th</sup>) 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 (15<sup>th</sup>) 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  
Bureau of Water Quality  
Division of Water Quality Management  
17 State House Station  
Augusta, Maine 04333-0017

## SPECIAL CONDITIONS

### E. MONITORING AND REPORTING (cont'd)

Alternatively, if the permittee submits an electronic DMR (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 **15<sup>th</sup> 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 (13<sup>th</sup>) 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 (15<sup>th</sup>) 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 15<sup>th</sup> day of the month following the completed reporting period.

### F. OPERATIONS AND MAINTENANCE (O&M) PLAN

By no later than December 31, 2016, the permittee must submit an updated O&M plan to the Department for review and comment [*ICIS Code 09699*]. The permittee must have a current written 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. An acceptable O&M plan must ensure the following items are adequately addressed:

1. Solids Control
  - a. Methods and practices to ensure efficient feed management and feeding strategies that limit feed input to the minimum amount reasonably necessary to achieve production goals and sustain targeted rates of aquatic animal growth in order to minimize potential discharges to waters of the State.
  - b. In order to minimize the discharge of accumulated solids from the settling basin, settling tanks, and production systems, identify and implement procedures for routine cleaning of rearing units and settling tanks, and procedures to minimize any discharge of accumulated solids during the inventorying, grading, and harvesting of aquatic animals in the production system.
  - c. Procedure for removal and disposal of mortalities to prevent discharge to waters of the State.
2. Materials Storage
  - a. Ensure proper storage of drugs<sup>1</sup>, pesticides<sup>1</sup>, feed, and any petroleum and/or hazardous waste products in a manner designed to prevent spills that may result in the discharge of drugs, pesticides, or feed to waters of the State.

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<sup>1</sup> Drug. "Drug" means any substance defined as a drug in section 201(g)(1) of the *Federal Food, Drug and Cosmetic Act* [21 U.S.C. § 321].

## SPECIAL CONDITIONS

### F. OPERATIONS AND MAINTENANCE (O&M) PLAN (cont'd)

- b. Implement procedures for properly containing, cleaning, and disposing of any spilled material that has the potential to enter waters of the State.
3. Structural Maintenance
    - a. Inspect the production system and the wastewater treatment system on a routine basis in order to identify and promptly repair any damage.
    - b. Conduct regular maintenance of the production system and the wastewater treatment system in order to ensure that they are properly functioning.
  4. Recordkeeping
    - a. Maintain records for fish rearing units documenting the feed amounts and estimates of the numbers and weight of fish.
    - b. Maintain records that document the frequency of cleaning, inspections, repairs and maintenance made to ensure the proper operation of the treatment system.
  5. Training
    - a. In order to ensure the proper clean-up and disposal of spilled material adequately, train all relevant personnel in spill prevention and how to respond in the event of a spill.
    - b. Train staff on the proper operation and cleaning of production and wastewater treatment systems including training in feeding procedures and proper use of equipment to prevent unauthorized discharges.

**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 U.S. Environmental Protection Agency (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.**

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<sup>1</sup> **Pesticide.** "Pesticide" means any substance defined as a "pesticide" in section 2(u) of the *Federal Insecticide, Fungicide, and Rodenticide Act* [7 U.S.C. § 136 (u)].

## **SPECIAL CONDITIONS**

### **G. REOPENING OF PERMIT FOR MODIFICATION**

In accordance with 38 M.R.S. § 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.

### **H. 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  
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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).

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

**B. OPERATION AND MAINTENANCE OF FACILITIES**

**1. General facility requirements.**

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

(d) Prohibition of bypass.

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

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

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

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

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

6. Upsets.

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**C. MONITORING AND RECORDS**

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

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

**3. Monitoring and records.**

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

**5. Publicly owned treatment works.**

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

**E. OTHER REQUIREMENTS**

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

**Maximum daily discharge limitation** means the highest allowable daily discharge.

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

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

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

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

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

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

**FACT SHEET**

DATE: **MAY 16, 2016**

PERMIT NUMBER: **#ME0110477**

WASTE DISCHARGE LICENSE: **#W000905-6F-G-R**

NAME AND ADDRESS OF APPLICANT:  
**NESTLÉ WATERS NORTH AMERICA, INC.  
109 POLAND SPRING DRIVE  
POLAND SPRING, MAINE 04274**

COUNTY: **SOMERSET**

NAME AND ADDRESS WHERE DISCHARGE(S) OCCUR(S):  
**NESTLÉ WATERS NORTH AMERICA, INC.  
DEAD RIVER FISH HATCHERY  
78 RATCHET ROAD  
PIERCE POND TOWNSHIP, MAINE 04961**

RECEIVING WATER AND CLASSIFICATION: **BLACK BROOK, CLASS B**

COGNIZANT OFFICIAL CONTACT INFORMATION:  
**MARK LAPLANTE  
207-998-6383  
[mark.laplante@waters.nestle.com](mailto:mark.laplante@waters.nestle.com)**

**1. APPLICATION SUMMARY**

Application: On March 1, 2016, the Department of Environmental Protection (Department) accepted as complete for processing, a renewal application from Nestlé Waters North America, Inc. (Nestlé) for Waste Discharge License (WDL) #W000905-6F-F-R / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0110477, which was issued on March 23, 2011 for a five-year term. The March 23, 2011 MEPDES permit authorized Nestlé to discharge a monthly average of 1.75 million gallons per day (MGD) of fish hatchery wastewater from its Dead River Fish Hatchery to Black Brook, Class B, in Pierce Pond Township, Maine. It is noted that the previous permit specified the permittee as Dead River Fish Hatchery rather than Nestlé, which was and still is the legal owner of the facility.

## 2. PERMIT SUMMARY

- a. Terms and Conditions: This permitting action is carrying forward all the terms and conditions of the March 23, 2011 permitting action except that it is:
1. Eliminating the effluent limitations and monitoring requirements for biochemical oxygen demand (BOD<sub>5</sub>) based on new information;
  2. Eliminating the monthly average concentration and mass limitations for total phosphorus;
  3. Eliminating the monthly average reporting requirement for fish on hand;
  4. Eliminating the pH limitation and monitoring requirements based on new information;
  5. Eliminating the dissolved oxygen limitation and monitoring requirements based on new information;
  6. Revising Special Condition F, *Operation and Maintenance (O&M) Plan*, to include specific best practicable control technology currently available (BPT) practices pursuant to 40 CFR 451.11;
  7. Eliminating previous Special Condition G, *Settling Basin Cleaning*, based on revisions to Special Condition F, *Operation and Maintenance (O&M) Plan*;
  8. Eliminating previous Special Condition H, *Disease and Pathogen Control and Reporting*, Special Condition I, *Therapeutic Agents*, and Special Condition J, *Disinfecting/Sanitizing Agents*, as the permittee has indicated that these compounds are not used at the facility; and
  9. Eliminating previous Special Condition K, *Minimum Treatment Technology Requirement*, as best practicable treatment (BPT) is incorporated into the reissued permit as Special Condition F.
- b. History: This section provides a summary of recent/significant licensing and permitting actions and other significant regulatory actions completed for the facility currently operated as the Dead River Fish Hatchery.

June 9, 1976 – The Department issued WDL #905 for the discharge of a daily average of 1.5 MGD of treated fish hatchery wastewater from the Beautiful Valley Trout Farm hatchery in Pierce Pond Township to Black Brook, Class B-1. The WDL was issued for a five-year term.

April 19, 1985 – The Department issued WDL #W000905-41-A-R to Beautiful Valley Trout Farm for the discharge of a daily average of 1.5 MGD of treated fish hatchery wastewater. The WDL was issued for a five-year term.

## 2. PERMIT SUMMARY (cont'd)

March 25, 1987 – The Department issued # W000905-41-B-M, transferring the WDL for the Pierce Pond Township facility to Sea Run Partnership. The term of the WDL remained the same as in #W000905-41-A-R.

July 1, 1999 – The Department received an application from Sea Run Holdings, Inc. for renewal of the WDL for the discharge of fish hatchery wastewater from the Pierce Pond Township facility. The application was assigned #W000905-5Q-C-R.

January 12, 2001 – The Department received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine, excluding areas of special interest to Maine Indian Tribes. From that point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) program, and MEPDES permit # ME0110477 has been utilized for this facility.

2004 – The Pierce Pond Township facility was purchased by Nestlé Waters North America, Inc. and renamed the Dead River Hatchery.

December 19, 2005 – The Department issued MEPDES Permit #ME0110477 / Maine WDL #W000905-5Q-C-R / D-T to Dead River Hatchery for the discharge of a monthly average of 1.5 MGD of fish hatchery wastewater to Black Brook in Pierce Pond Township, Class B. The Permit / WDL was issued for a five-year term.

June 27, 2007 – The Department issued a Minor Revision of Maine WDL #W000905-5Q-C-R / D-T / MEPDES Permit #ME0110477, to eliminate permit requirements for annual macroinvertebrate biomonitoring. The Department's review of 2006 macroinvertebrate monitoring data indicated that Black Brook meets Class A aquatic life standards. The Minor Revision also revised the effluent flow limit from 1.5 MGD to 1.75 MGD.

July 16, 2009 – The Department issued Minor Revision #W000905-5Q-E-M / MEPDES Permit #ME0110477 to revise effluent BOD<sub>5</sub> and TSS minimum monitoring frequency requirements from once per two weeks to once per month.

March 23, 2011 – The Department issued MEPDES Permit #ME0110477 / Maine WDL #W000905-6F-F-R to Dead River Hatchery for the discharge of a monthly average of 1.75 MGD of fish hatchery wastewater to Black Brook in Pierce Pond Township, Class B for a five-year term.

February 29, 2016 – Nestlé submitted a timely and complete General Application to the Department for renewal of the March 23, 2011 MEPDES permit. The application was accepted for processing on March 1, 2016, and was assigned WDL #W000905-6F-G-R / MEPDES #ME0110477.

## 2. PERMIT SUMMARY (cont'd)

- c. Source Description: The Dead River Fish Hatchery and rearing facility was originally built in 1947. The facility is currently owned and operated by Nestlé.

Influent water for the facility may be obtained from two streams and from on-site groundwater springs. Cold Brook is located on the south side of the facility and Black Brook is located on the north side of the facility, with both streams flowing westerly and converging below (northwest of) the Dead River Fish Hatchery. Each surface water inlet is equipped with a coarse steel grate to screen out large organic matter. The Dead River Fish Hatchery may also obtain water from ten, 4-foot to 5-foot diameter overburden tiles, which are connected to provide a source of 500-600 gallons per minute (GPM). All influent water is provided to the Dead River Fish Hatchery through gravity flow.

A map showing the location of the facility is included as Attachment A of this Fact Sheet.

- d. Wastewater Treatment: A water flow diagram provided by the permittee is included as Attachment B of this Fact Sheet.

Wastewater is conveyed to a settling pond and to the receiving water via Outfall #001A. The settling pond is an excavated earthen pond approximately 100 feet long by 40 feet wide with an average depth of 5 feet and a capacity of approximately 150,000 gallons and provides approximately one hour of retention time. The settling pond outlets through an 8-foot wide by approximately 30-foot long constructed conveyance ditch, then through a 500-foot to 600-foot long channel to Black Brook.

## 3. CONDITIONS OF PERMIT

*Conditions of licenses*, 38 M.R.S. § 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. § 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 (effective July 29, 2012), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

## 4. RECEIVING WATER QUALITY STANDARDS

*Classification of major river basins*, 38 M.R.S. § 467(4)(D)(2)(a) classifies Black Brook below the Dead River Fish Hatchery as Class B. *Standards for classification of fresh surface waters*, 38 M.R.S. § 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 (Report)*, prepared by the Department pursuant to Sections 303(d) and 305(b) of the *Federal Water Pollution Control Act*, lists the tributaries of the Dead River below Flagstaff Lake (Assessment Unit ID ME0103000204\_310R), which includes Black Brook at and below the point of discharge, as "Category 2: Rivers and Streams Attaining Some Designated Uses – Insufficient Information for Other Uses."

The most recent macroinvertebrate sampling conducted in Black Brook below the discharge from the Dead River Fish Hatchery (Station Number S-831) was completed in 2006. Based on three replicate rock bag samples deployed and retrieved for analysis, the Department concluded that the waterbody meets the Class A aquatic life water quality standards prescribed by 38 M.R.S. § 465(2)(B), which states that "aquatic life and bacteria content of Class A waters shall be as naturally occurs."

The Report lists all of Maine's fresh waters as, "Category 4-A: Waters Impaired by Atmospheric Deposition of Mercury." Impairment in this context refers to a statewide fish consumption advisory due to elevated levels of mercury in some fish tissues. The Report states, "All freshwaters are listed in Category 4A ([Total Maximum Daily Load] 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."

## 6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- a. Applicability of National Effluent Guidelines: The USEPA has promulgated national effluent guidelines for the *Concentrated Aquatic Animal Production Point Source Category* at 40 CFR 451 Subpart A, *Flow-Through and Recirculating Systems Subcategory*. This subpart is applicable to discharges from a concentrated aquatic animal production facility that produces 100,000 pounds or more per year of aquatic animals in a flow-through or recirculating system. The Dead River Fish Hatchery does not produce 100,000 pounds or more per year of aquatic animals in a flow-through or recirculating system and is therefore not categorically subject to regulation under this subpart. However, 38 M.R.S. § 414-A(1)(D) requires that:

*The discharge will be subject to effluent limitations that require application of the best practicable treatment. "Effluent limitations" means any restriction or prohibition including, but not limited to, effluent limitations, standards of performance for new sources, toxic effluent standards and other discharge criteria regulating rates, quantities and concentrations of physical, chemical, biological and other constituents that are discharged directly or indirectly into waters of the State. "Best practicable treatment" means the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or*

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

*best available technology economically achievable, for a category or class of discharge sources that the department determines are best calculated to protect and improve the quality of the receiving water and that are consistent with the requirements of the Federal Water Pollution Control Act, as amended, and published in 40 Code of Federal Regulations. If no applicable standards exist for a specific activity or discharge, the department must establish limits on a case-by-case basis using best professional judgment, after consultation with the applicant and other interested parties of record. In determining best practicable treatment for each category or class, the department shall consider the existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives.*

In the absence of promulgated technology-based standards for facilities that produce less than 100,000 pounds per year of aquatic animals in a flow-through or recirculating system, the Department is applying the standards set forth at 40 CFR 451, Subpart A. 40 CFR 451.11 states that any existing point source subject to the *Flow-Through and Recirculating Systems Subcategory* must meet the following requirements, expressed as practices, representing the application of best practicable control technology currently available (BPT): 1) solids control; 2) materials storage; 3) structural maintenance; 4) recordkeeping; and 5) training. While 40 CFR 451.11 does not establish numeric technology-based effluent limitation guidelines for this subcategory, it does provide that the permitting authority may require any modification to the BPT guidelines based on its exercise of its best professional judgment. The BPT requirement identified in #1-5 of this paragraph are incorporated into the permit as Special Condition F. The basis statement for all other effluent limitations and monitoring requirements is explained in this section of this fact sheet.

The previous permitting action established Special Condition K, *Minimum Treatment Technology Requirement*, to specify that the permittee must provide treatment equal to or better than 60-micron microscreen filtration. The Department is not prescribing the type of treatment that the permittee must provide. The permittee is responsible for ensuring compliance with the technology-based and water quality-based effluent limitations established in this permit. Therefore, the Department concludes that previous Special Condition K is not necessary and it is being eliminated in this permitting action.

- b. **Flow:** The previous permitting action established, and this permitting action is carrying forward, a monthly average discharge flow limit of 1.75 MGD.

The following table summarizes effluent data reported on Discharge Monitoring Reports (DMRs) for the period of April 2011 through September 2015.

### Flow (DMRs=54) Outfall #001A

Value	Limit (MGD)	Range (MGD)	Mean (MGD)
Monthly Average	1.75	0.80 – 1.60	1.5

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

- c. Dilution Factors: Dilution factors associated with the permitted discharge flow of 1.75 MGD from the Dead River Fish Hatchery were derived in accordance with 06-096 CMR 530(4)(A) as follows:

$$\text{Mod. Acute: } \frac{1}{4} \text{ 1Q10} = 0.19 \text{ cfs} \quad \Rightarrow \frac{(0.19 \text{ cfs})(0.6464) + 1.75 \text{ MGD}}{1.75 \text{ MGD}} = 1.1:1$$

$$\text{Acute: 1Q10} = 0.76 \text{ cfs} \quad \Rightarrow \frac{(0.76 \text{ cfs})(0.6464) + 1.75 \text{ MGD}}{1.75 \text{ MGD}} = 1.3:1$$

$$\text{Chronic: 7Q10} = 0.9 \text{ cfs} \quad \Rightarrow \frac{(0.9 \text{ cfs})(0.6464) + 1.75 \text{ MGD}}{1.75 \text{ MGD}} = 1.3:1$$

$$\text{Harmonic Mean} = 2.7 \text{ cfs} \quad \Rightarrow \frac{(2.7 \text{ cfs})(0.6464) + 1.75 \text{ MGD}}{1.75 \text{ MGD}} = 2.0:1$$

06-096 CMR 530(4)(B)(1) states,

*Analyses using numerical acute criteria for aquatic life must be based on 1/4 of the 1Q10 stream design flow to prevent substantial acute toxicity within any mixing zone and to ensure a zone of passage of at least 3/4 of the cross-sectional area of any stream as required by Chapter 581. Where it can be demonstrated that a discharge achieves rapid and complete mixing with the receiving water by way of an efficient diffuser or other effective method, analyses may use a greater proportion of the stream design flow, up to and including all of it, as long as the required zone of passage is maintained.*

The Dead River Fish Hatchery discharges to the bank of Black Brook. The Department is making a best professional judgment that this discharge does not achieve complete and rapid mixing of the effluent with the receiving waters. Therefore, the Department is utilizing the default stream flow of 1/4 of the 1Q10 in acute evaluations pursuant to 06-096 CMR 530.

- d. Biochemical Oxygen Demand (BOD<sub>5</sub>) and Total Suspended Solids (TSS): Neither the USEPA nor Department has promulgated effluent limitation guidelines for BOD<sub>5</sub> or TSS that are applicable to the discharge from the Dead River Fish Hatchery. The previous permitting action established monthly average and daily maximum concentration limitations of 6 mg/L and 10 mg/L, respectively, for BOD<sub>5</sub> and TSS based on best professional judgment (BPJ) of best practicable treatment (BPT). The previous permit also established monthly average and daily maximum mass limitations of 75 lbs./day and 125 lbs./day, respectively, for BOD<sub>5</sub> and TSS that were derived from a previous flow limit of 1.5 MGD.

The Department's Division of Environmental Assessment (DEA) reviewed fish hatchery information in consideration of using TSS as a surrogate for BOD<sub>5</sub>. It should be noted that TSS is more closely related to problems most commonly encountered at aquatic animal facilities, such as phosphorus enrichment and solids control, than is BOD<sub>5</sub>. BOD can cause depressed dissolved oxygen in the receiving waters and increased carbon levels may create a favorable environment for nuisance bacterial/fungal growth such as *Sphaerotilus natans* that may result in non-attainment of narrative

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

water quality standards. The *State of Maine 2012 Integrated Water Quality Monitoring and Assessment Report* does not list Black Brook as being in non-attainment of applicable water quality standards. Therefore, the Department concludes that Black Brook does not exhibit BOD-related impacts as a result of the discharge from the Dead River Fish Hatchery.

After reviewing approximately 6 years of BOD<sub>5</sub> and TSS and data, the Department concluded that the results of the two parameters showed a strong correlation. Therefore, the Department concluded that TSS could be relied upon to reflect BOD<sub>5</sub> conditions. Whereas: 1) the Dead River Fish Hatchery operations and processes are not likely to change; 2) the Department has a statistically significant BOD<sub>5</sub> data set from this and multiple similar hatcheries; 3) neither the USEPA nor Department have promulgated numeric effluent guidelines for BOD<sub>5</sub> for the *Flow-Through and Recirculating Systems Subcategory*; and 4) in the best professional judgment of the Department, effluent limitations for BOD<sub>5</sub> are not necessary to ensure compliance with water quality standards, this permitting action is eliminating the effluent limitations and monitoring requirements for BOD<sub>5</sub> based on this new information that was not available at the time the previous permit was issued.

Section 402(o) of the Clean Water Act contains prohibitions for anti-backsliding. Generally, anti-backsliding prohibits the issuance of a renewed permit with less stringent limitations than were established in the previous permit. The Clean Water Act contains certain exceptions to anti-backsliding at Section 402(o)(2). In the case of the Dead River Fish Hatchery and the concentration and mass limitations for BOD<sub>5</sub>, the Department has determined that these limitations would not have been established at the time the previous permit was issued based on the new information that has been obtained since issuance of the previous permit. Section 402(o)(2)(B)(i) of the Clean Water Act contains an exception to anti-backsliding for information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance.

Therefore, this permitting action is eliminating the limitations for BOD<sub>5</sub>. [It is noted that anti-backsliding prohibitions and exceptions are mirrored in Chapter 523 of the Department's rules and at 40 CFR 122.44(l)(2)(i)(B)(1).]

A summary of the effluent TSS data as reported on the DMRs submitted to the Department for the period April 2011 through September 2015 follows.

### TSS mass (DMRs=39) Outfall #001A

Value	Limit (lbs./day)	Range (lbs./day)	Mean (lbs./day)
Monthly Average	75	29 – 75	69
Daily Maximum	125	29 – 125	69

### TSS concentration (DMRs=39) Outfall #001A

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Monthly Average	6	2.4 – 5.0	2.7
Daily Maximum	10	2.5 – 5.0	2.7

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

This permitting action is carrying forward the concentration and mass limitations for TSS to ensure Class B water quality standards are met and that best practicable treatment is applied to the discharge. The previous permitting action established a waiver from monthly TSS monitoring when fish on hand was less than 550 lbs. during June 1 – September 30 of each year and less than 1,000 lbs. during October 1 – May of each year. Since July 2012, the facility has maintained well above 1,000 fish on hand at any given time, so the waiver is no longer applicable and is being eliminated. This permitting action is carrying forward a minimum monitoring frequency requirement of once per month on a year-round basis.

- e. Dissolved Oxygen (DO): The March 23, 2011 permit required effluent DO monitoring from June through September of each year and established a daily minimum limitation of 7.5 mg/L “because of the low dilution of facility effluent provided in the receiving water” and “to ensure compliance with Class B dissolved oxygen standards.” (March 23, 2011 Fact Sheet, p. 13)

The Class B dissolved oxygen standard is:

*The dissolved oxygen content of Class B waters may not be less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration may not be less than 9.5 parts per million and the 1-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas. 38 M.R.S. § 465(3)(B)*

Effluent DO data for the period of 2011 through 2015 indicate that the effluent DO is consistently in compliance with the Class B water quality standards with the minimum ranging from 8.8 mg/L to 11.42 mg/L with an arithmetic mean of 10.3 mg/L. The effluent dissolved oxygen limit has been in effect since issuance of the December 19, 2005 MEPDES permit. Macroinvertebrate monitoring conducted in 2006 demonstrated that Black Brook is meeting Class A aquatic life standards below the discharge. The Department is identifying that the continuation of effluent dissolved oxygen limitations and monitoring requirements is not necessary to ensure the discharge does not cause or contribute to non-attainment of the applicable Class B DO water quality criteria. Therefore, this permitting action is eliminating the DO limitation and monitoring and reporting requirements for dissolved oxygen based on this new information not available at the time of permit issuance. This action is consistent with the antibacksliding provisions at 40 CFR 122.44(l)(2)(i)(B)(1).

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

- f. Total Phosphorus: The previous permitting action established seasonal (June 1 – September 30, of each year) monthly average concentration and mass limitations of 0.050 mg/L and 0.61 lbs./day, respectively, for total phosphorus. These limitations were derived based on the Department's best professional judgment of the protective in-stream ambient water quality threshold of 0.035 mg/L for total phosphorous and a chronic dilution factor of 1.4:1 that was utilized in the 2005 permit and the previous discharge flow limit of 1.5 MGD as follows:

Monthly average concentration:  $(0.035 \text{ mg/L})(1.4) = 0.049 \text{ mg/L} \approx 0.050 \text{ mg/L}$

Monthly average mass:  $(0.049 \text{ mg/L})(8.34 \text{ lbs./gallon})(1.5 \text{ MGD}) = 0.61 \text{ lbs./day}^1$

*Waste Discharge License Conditions*, 06-096 C.M.R. 523 (effective January 12, 2001) specifies that water quality based limits are necessary when it has been determined that a discharge has a reasonable potential to cause or contribute to an excursion above any State water quality standard including State narrative criteria.<sup>2</sup> In addition, 06-096 C.M.R. 523 specifies that water quality-based limits may be based upon a criterion derived from a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criteria, supplemented with other relevant information which may include: *EPA's Water Quality Standards Handbook, October 1983*, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current USEPA criteria documents.<sup>3</sup>

*USEPA's Quality Criteria for Water 1986* (Gold Book) puts forth an in-stream phosphorus concentration goal of less than 0.100 mg/L in streams or other flowing waters not discharging directly to lakes or impoundments, to prevent nuisance algal growth. The use of the 0.100 mg/L Gold Book goal is consistent with the requirements of 06-096 C.M.R. 523 noted above for use in a reasonable potential (RP) calculation.

Based on the above rationale, the Department has chosen to utilize the Gold Book goal of 0.100 mg/L. It is the Department's intent to continue to make determinations of actual attainment or impairment based upon environmental response indicators from specific water bodies. The use of the Gold Book value of 0.100 mg/L for use in the RP calculation will enable the Department to establish water quality based limits in a manner that is reasonable and that appropriately establishes the potential for impairment, while providing an opportunity to acquire environmental response indicator data, numeric nutrient indicator data, and facility data as needed to refine the establishment of site specific water quality based limits for phosphorus. This permit may be reopened during the term of the permit to modify any reasonable potential calculations, phosphorus limits, or monitoring requirements based on new site-specific data.

<sup>1</sup> The fact sheet associated with the previous permitting action does not show the calculations resulting in the mass limit of 0.61 lbs. day. The 0.61 lbs./day limit was based on a previous flow limit of 1.5 MGD.

<sup>2</sup> *Waste Discharge License Conditions*, 06-096 CMR 523(5)(d)(1)(i) (effective date January 12, 2001)

<sup>3</sup> 06-096 CMR 523(5)(d)(1)(vi)(A)

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

A summary of the effluent total phosphorus data as reported on the DMRs submitted to the Department for the seasonal monitoring period from 2010 through 2014 follows.

**Total-P Mass**

Value	Limit (lbs./day)	Range (lbs./day)	Mean (lbs./day)
Monthly Average	0.61	Not available	Not available
Daily Maximum	Report	0.05 – 0.62	0.16

**Total-P Concentration**

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Monthly Average	0.050	0.02 – 0.05	0.03
Daily Maximum	Report	0.02 – 0.05	0.04

The Department’s draft ambient water quality criterion for Class B waters is 0.030 mg/L for phosphorus. The Dead River Fish Hatchery uses multiple sources of water for the hatchery. The facility selects and blends sources of water from the headwaters of Black Stream and Cold Brook, and from ground water. Conservatively, background phosphorus is not being factored into the reasonable potential calculation. The reasonable potential analysis is being conducted using the effluent flow limitation of 1.75 MGD and the long-term average effluent total phosphorus concentration of 0.03 mg/L.

Reasonable Potential Analysis

$$Cr = \frac{QeCe}{Qr}$$

- Qe = effluent flow = 1.75 MGD
- Ce = effluent pollutant concentration = 0.03 mg/L
- Qr = receiving water flow = 1.75 MGD
- Cr = receiving water concentration

$$Cr = \frac{(1.75 \text{ MGD} \times 0.03 \text{ mg/L})}{1.75 \text{ MGD}} = 0.030 \text{ mg/L}$$

- Cr = 0.030 mg/L < 0.100 mg/L ⇒ **No Reasonable Potential**
- Cr = 0.030 mg/L = 0.030 mg/L ⇒ **No Reasonable Potential**

Based on this reasonable potential calculation, the Department concludes that the discharge of treated wastewater from the Dead River Fish Hatchery does not have a reasonable potential to exceed the USEPA’s Total P Ambient Water Quality Goal of 0.100 mg/L or the Department’s draft ambient water quality criterion of 0.030 mg/L for phosphorus. Based on Department guidance memorialized in a letter to wastewater treatment facilities, dated July 1, 2014, this permitting action is eliminating the monthly average concentration and mass limitations of 0.050 mg/L and 0.61 lbs./day, respectively, for total phosphorus. Elimination of these limitations based on new information regarding characterization of the effluent based on recent data is an allowable exception to anti-backsliding at 40 CFR

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

122.44(l)(2)(i)(B)(1). The permittee must notify the Department of any substantial change in the volume or character of pollutants, including but not limited to an increase in the phosphorous content in the effluent, being introduced into the wastewater collection and treatment system.

- g. Fish on Hand: The previous permitting action established daily maximum and monthly average fish on hand mass reporting requirements. The fact sheet associated with the previous permit states, that the fish on hand monitoring and reporting requirement “is intended to enable both the Department and the permittee in evaluating management practices at the facility and trends in effluent quality and receiving water impacts.”

A summary of the fish on hand data as reported on the DMRs submitted to the Department for the period April 2011 through September 2015 follows:

**Fish on Hand**

Value	Limit (lbs./day)	Range (lbs./day)	Mean (lbs./day)
Monthly Average	Report	210 – 5,533	2,297
Daily Maximum	Report	210 – 5,533	2,297

The permittee is required to maintain records for fish rearing units documenting the feed amounts and estimates of the numbers and weight of fish pursuant to Special Condition F of the permit. The Department considers direct reporting of fish on hand data on monthly Discharge Monitoring Reports valuable for purposes of assisting in the diagnosis of operational/effluent problems and ultimately to effectively and efficiently respond to compliance problems at fish hatcheries, when they occur.

However, after review of the data, the Department believes that a once per month daily maximum mass reporting requirement is sufficient for purposes of assisting in compliance evaluations. Therefore, the daily maximum fish on hand mass reporting requirement is being carried forward in this permitting action and the monthly average reporting requirement is being eliminated.

- h. pH: The previous permitting action established a pH range limitation of 6.0 – 8.5 standard units (SU), pursuant to 38 M.R.S. § 464(4)(A)(5), which states that the Department may not issue a waste discharge permit for a discharge that causes the pH of fresh waters to fall outside of the 6.0 to 8.5 range.

The effluent pH, as reported on the DMRs submitted to the Department for the period April 2011 through September 2015, ranged from 6.09 SU to 7.73 SU (n = 54). The Dead River Fish Hatchery does not actively control the pH of wastewater through chemical addition or other methods.

Based on the recent pH data summarized above, the Department is making a best professional judgment determination that the discharge does not exhibit a reasonable potential to exceed the pH range established by 38 M.R.S. § 464(4)(A)(5). Whereas the Dead River Fish Hatchery does not actively control the pH of wastewater, this permitting action is eliminating the pH limitation and monitoring requirements based on this new information (recent compliance data). This action complies with the anti-backsliding provision at 40 CFR 122.44(l)(2)(i)(B)(1).

## 7. OPERATIONS AND MAINTENANCE (O&M) PLAN

The previous permitting action established Special Condition F *Operation and Maintenance (O&M) Plan*, which is contained in the majority of MEPDES permits and all fish hatchery permits. In this permitting action, the Department is revising the condition to incorporate and require inclusion of specific best practicable treatment (BPT) practices pursuant to 40 CFR 451.11. In addition to the previous requirements of the O&M Plan, the revised O&M Plan must ensure the following items are adequately addressed: 1) solids control; 2) materials storage; 3) structural maintenance; 4) recordkeeping; and 5) training. This permitting action is requiring the submission of an updated O&M Plan by December 31, 2016.

The previous permitting action established Special Condition G, *Settling Tank Cleaning*. Through inclusion of the revised O&M Plan the need for a separate condition for settling basin cleaning is redundant and is therefore being eliminated.

## 8. USE OF DRUGS FOR DISEASE CONTROL AND PESTICIDES AND OTHER COMPOUNDS

The previous permitting action established Special Condition H, *Disease and Pathogen Control and Reporting*, Special Condition I *Therapeutic Agents*, and Special Condition J, *Disinfecting/Sanitizing Agents*. The permittee has stated that no drugs, therapeutants or pesticides are used at this facility.

## 9. 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 water body to meet standards for Class B classification.

## 10. PUBLIC COMMENTS

Public notice of this application was made in the *Morning Sentinel* newspaper on February 25, 2016. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 C.M.R. 522 (effective January 12, 2001).

## 11. DEPARTMENT CONTACTS

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

Gregg Wood  
Division of Water Quality Management  
Bureau of Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017  
Telephone: (207) 287-7693  
e-mail: [gregg.wood@maine.gov](mailto:gregg.wood@maine.gov)

# **ATTACHMENT A**

# Dead River Fish Hatchery

Pierce Pond Township, Maine

Black Brook Pond

Dead River Township

Dead River Fish Hatchery

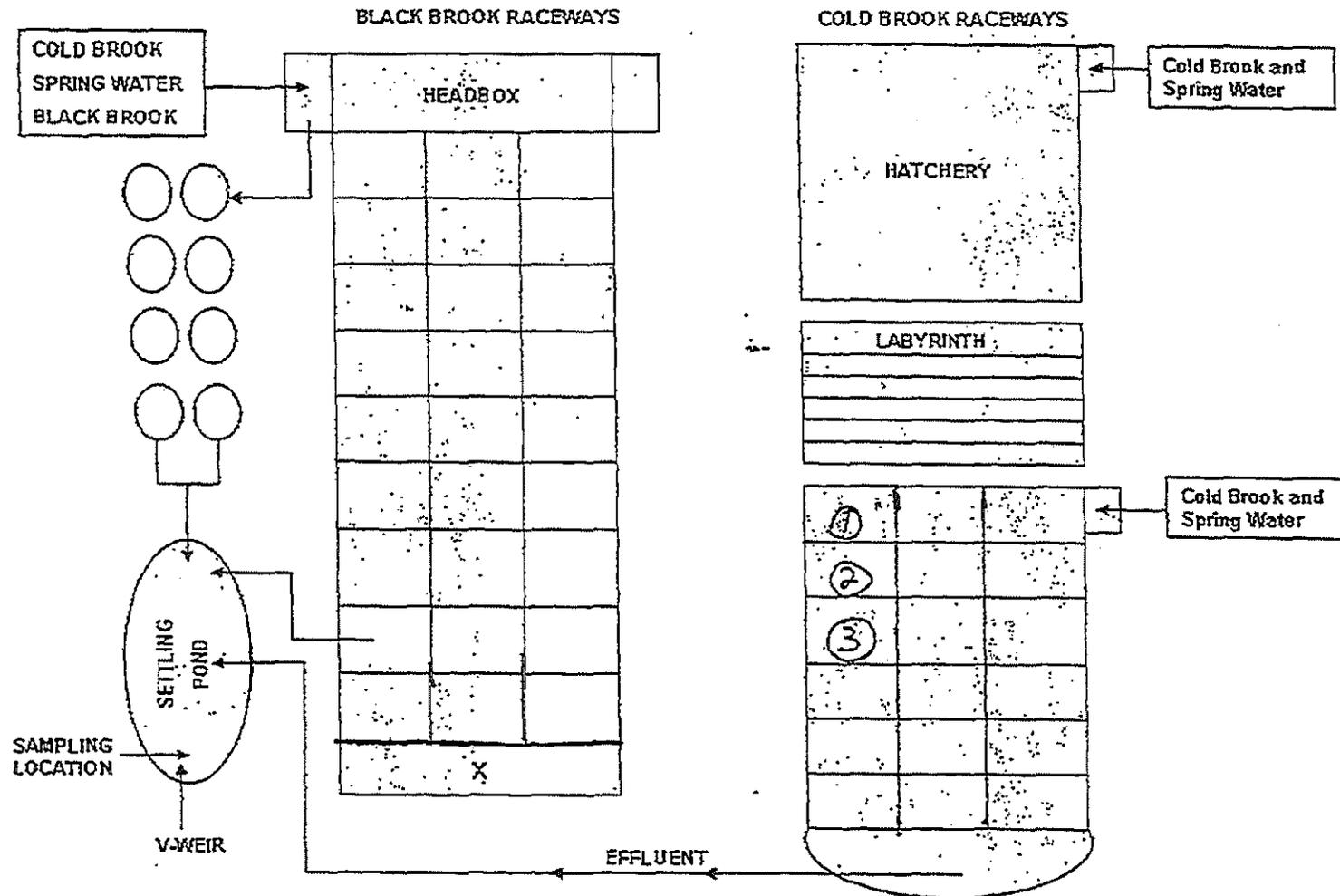
Google earth

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# WATER FLOW DIAGRAM





# 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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