STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

April 25, 2016

Ms. Carol Granfield
Kittery Interim Town Manager
200 Rogers Road Extension
Kittery, ME. 03904
e-mail: *cgranfield@kitteryme.org*

RE: General Permit - Aquatic Pesticide For The Control of Mosquito-Borne Diseases MEG140002/W009021-5Y-E-R – Town of Kittery

Dear Ms. Granfield:

Enclosed, please find a Department Order granting coverage under the General Permit – Aquatic Pesticides For The Control of Mosquito-Borne Diseases (GP), which was issued by the Department on July 17, 2015, for a five year term.

A copy of the final July 17, 2015, GP is attached to this Department Order. Please read the permit and its attached conditions carefully. You must follow the conditions in the order to satisfy the requirements of law.

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

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

Sincerely,

Gregg Wood
Division of Water Quality Management
Bureau of Water Quality

Enc.
cc: Stuart Rose, DEP/EMRO Lori Mitchell, DEP/CMRO
Sandy Mojica, USEPA Olga Vergara, USEPA Marelyn Vega, USEPA

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

DEPARTMENT ORDER
IN THE MATTER OF

TOWN OF KITTERY	)	AQUATIC PESTICIDE FOR
KITTERY, YORK COUNTY, MAINE	)	THE CONTROL OF MOSQUITO
MEG140002	)	BORNE DISEASES
W009021-5Y-E-R **APPROVAL**	)	**GENERAL PERMIT COVERAGE**

The Department of Environmental Protection (Department) has considered the Notice of Intent submitted by the TOWN OF KITTERY, with supportive data, agency review comments and other related materials on file for coverage under the , and FINDS THE FOLLOWING FACTS.

The permittee has agreed to comply with all terms and conditions of the General Permit – Aquatic Pesticides For The Control of Mosquito-Borne Diseases #MEG140000 (GP), which was issued by the Department on July 17, 2015. Operated in accordance with GP #MEG140000, the discharges identified by the permittee will not have a significant adverse effect on water quality or cause or contribute to the violation of the water quality standards of the receiving water.

THEREFORE, the Department GRANTS the TOWN OF KITTERY, coverage for under GP MEG140000 subject to the terms and conditions therein.

DONE AND DATED AT AUGUSTA, MAINE, THIS 25th DAY OF April, 2016.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhn
for Paul Mercer, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

The Original Notice of Intent was received by the Department on April 12, 2016.
The Original Notice of Intent was accepted by the Department on April 20, 2016.

Date filed with Board of Environmental Protection: _____
This Order prepared by GREGG WOOD, BUREAU OF WATER QUALITY
MEG140002 Kittery 2016 4/25/16

Filed
APR 25 2016
State of Maine
Board of Environmental Protection

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

July 17, 2015

TO: Interested Parties of Record

Sent via electronic mail
Delivery confirmation requested

RE: Reissued General Permit
General Permit – Application of Aquatic Pesticides for the Control Of Mosquito-Borne Diseases

Dear Interested Party:

Attached, please find a reissued Maine Pollutant Discharge Elimination System General Permit #MEG140000 – *Application of Aquatic Pesticides for the Control of Mosquito-Borne Diseases.*

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.*"

Sincerely,

Bill Hinkel

Bill Hinkel
Division of Water Quality Management
Bureau of Water Quality
bill.hinkel@maine.gov
ph: 207.485.2281

ec: Nancy Colbert Puff, Town Manager, Kittery; Stephen H. Burns, Town Manager, York; Kimberly A. Foss, Swamp, Inc.; Henry Jennings, DACF; Sara Robinson, Maine CDC; Lori Mitchell, MDEP; Olga Vergara, USEPA; Sandy Mojica, USEPA; Marelyn Vega, USEPA

STATE OF MAINE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

General Permit
Application of Aquatic Pesticides for the Control of Mosquito-Borne Diseases

Maine Pollutant Discharge Elimination System
Maine Waste Discharge License Program

Bureau of Water Quality — July 16, 2015
Maine Pollutant Discharge Elimination System (MEPDES) Permit #MEG140000
Maine Waste Discharge License (WDL) #W008226-5Y-D-R

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

GENERAL PERMIT FOR APPLICATION OF AQUATIC PESTICIDES FOR THE CONTROL OF MOSQUITO-BORNE DISEASES

Table of Contents

PROCEDURAL AND REGULATORY SUMMARY	1
CONCLUSIONS	2
ACTION	3
SPECIAL CONDITIONS	
A. Authority	4
B. Definitions	4-5
C. Applicability and Eligibility	5-6
D. Notification, Decisions, and Effective Term of Coverage	6-9
E. Authorized Discharges	10
F. Narrative Limitations	10
G. Aquatic Pesticide Treatment Plan	10-11
H. Reopening of Permit for Modification	11
I. Severability	11
FACT SHEET	
1. Procedural and Regulatory Summary	1
2. Administrative Requirements	1-2
3. Description of General Permit Intent	3-5
4. Area of Coverage and Eligibility	5-6
5. Conditions of Permit	6
6. Receiving Water Quality Standards	6-9
7. Best Practicable Treatment	9-10
8. Discharge Impact on Receiving Water Quality	10
9. Public Comments	10
10. Department Contacts	10
11. Response to Comments	11

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

DEPARTMENT ORDER

IN THE MATTER OF

GENERAL PERMIT		) MAINE POLLUTANT DISCHARGE
AQUATIC PESTICIDES FOR THE CONTROL		) ELIMINATION SYSTEM PERMIT
OF MOSQUITO-BORNE DISEASES		)
STATE OF MAINE		) AND
#W008226-5Y-D-R		) WASTE DISCHARGE LICENSE
#MEG140000	**APPROVAL**	) **RENEWAL**

In compliance with the applicable provisions of *Pollution Control*, 38 M.R.S.A. §§ 411 – 424-B, *Water Classification Program*, 38 M.R.S.A. §§ 464 – 470 and *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, and applicable rules of the Maine Department of Environmental Protection (Department), the Department has considered the renewal of Maine Pollutant Discharge Elimination System (MEPDES) General Permit #MEG140000 / Maine Waste Discharge License (WDL) #W008226-5Y-C-R, *Application of Aquatic Pesticides for the Control of Mosquito-Borne Diseases*, which was issued on July 28, 2010 for a five-year term, with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

PROCEDURAL AND REGULATORY SUMMARY

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

On July 28, 2010, the Department issued a General Permit for the *Application of Aquatic Pesticides for the Control of Mosquito-Borne Diseases* to certain waters of the State that constitute breeding habitat for mosquito species known to be potential vectors of infectious diseases. The July 28, 2010 General Permit was issued for a five-year term and superseded the initial MEPDES General Permit issued by the Department on September 28, 2005.

During the week of March 8, 2015, the Department provided public notice of its intent to renew the July 28, 2010 General Permit in the Bangor Daily, Morning Sentinel, Kennebec Journal, Portland Press Herald, and Times Record newspapers. The notice solicited comments on a draft permit, when available, and provided an opportunity to request a public hearing. In accordance with *Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002, *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (last amended August 25, 2013), and *General Permits for Certain Wastewater Discharges*, 06-096 CMR 529(3)(c) (last amended June 27, 2007), the July 28, 2010 General Permit remained in force until the effective date of this permit renewal.

CONCLUSIONS

Based on the findings in the attached Fact Sheet, dated April 15, 2015, and subject to the special and standards conditions that follow, the Department makes the following **CONCLUSIONS**:

1. The discharge associated with the *Application of Aquatic Pesticides for the Control of Mosquito-Borne Diseases* covered under this General Permit, 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 associated with the *Application of Aquatic Pesticides for the Control of Mosquito-Borne Diseases* covered under this General Permit, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.

3. The provisions of the State's antidegradation policy, *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(F), will be met, in that:

   (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;

   (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;

   (c) The standards of classification of the receiving water body are met or, 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 discharge associated with the *Application of Aquatic Pesticides for the Control of Mosquito-Borne Diseases* covered under this General Permit is subject to effluent limitations that require application of best practicable treatment as defined in *Conditions of licenses*, 38 M.R.S.A. § 414-A(1)(D).

ACTION

Based on the findings and conclusions as stated above, the Department APPROVES the renewal of General Permit #MEG140000, *Application of Aquatic Pesticides for the Control of Mosquito-Borne Diseases*, to certain waters of the State[1] that provide mosquito habitat, SUBJECT TO THE ATTACHED CONDITIONS, including:

1. The attached Special Conditions, including any effluent limitations and monitoring requirements.

2. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached.

3. This General Permit and the authorization to discharge become effective upon the date of signature below and expire at midnight five (5) years from the effective date. Prior to expiration of this General Permit, the Department must make a determination if it is to be renewed, and, if so, must commence renewal proceedings. If the General Permit is to be renewed, it shall remain in force until the Department takes final action on the renewal. [*Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002, *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (last amended August 25, 2013), and *General Permits for Certain Wastewater Discharges*, 06-096 CMR 529(3)(c) (last amended June 27, 2007)]

DONE AND DATED AT AUGUSTA, MAINE THIS 17th DAY OF July, 2015.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
for PATRICIA W. AHO, Commissioner

Filed
JUL 17 2015
State of Maine
Board of Environmental Protection

Date filed with Board of Environmental Protection: _____

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of Public Notice: Week of March 8, 2015
This Order prepared by Bill Hinkel, BUREAU OF WATER QUALITY

[1] Waters of the State covered by this General Permit are: Class GPA as described in 38 M.R.S.A. § 480-B(5) and 38 M.R.S.A. § 465-A, and tributaries to Class GPA; Class AA, A, B, and C as described in 38 M.R.S.A. § 465; Class SA, SB, and SC as described in 38 M.R.S.A. § 465-B; and those waters classified as such and having drainage areas of less than ten square miles.

SPECIAL CONDITIONS

A. AUTHORITY

A permit is required for the direct or indirect discharge of pollutants to waters of the State and United States. *Waste discharge licenses*, 38 M.R.S.A. § 413(1) and *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, *et seq*. The Department is authorized by the United States Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. The Department may issue a general permit authorizing the discharge of certain pollutants from multiple individual discharge sources and locations which all have the same type of discharges and which involve situations where the Department determines there is a relatively low risk for significant environmental impact. 06-096 CMR 529. The Department has determined that discharges resulting from the application of an authorized aquatic pesticide that conform to the applicability and coverage standards established herein may be authorized by a general permit. Certain discharges, including the discharge of aquatic pesticides considered to be a low risk for human and environmental effects as identified by the Maine Department of Agriculture, Conservation and Forestry, may be authorized to discharge under a general permit without submitting a notice of intent where the Department finds that a notice of intent requirement would be inappropriate. In such cases, the Department may require some other form of notification. In making such a finding, the Department shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit.

B. SPECIALIZED DEFINITIONS

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

1. **Aquatic pesticide treatment plan.** "Aquatic pesticide treatment plan" means a written plan prepared by the applicant, or agent thereto, for a specific treatment area and submitted for approval as part of the Notice of Intent required for coverage under this General Permit. The aquatic pesticide treatment plan must identify all pesticides(s) proposed for use and any other chemical(s) or compound(s) proposed for use.

2. **Authorized aquatic pesticide.** "Authorized aquatic pesticide" *(i)* is any substance or mixture of substances applied in, on or over the waters of the State or in such a way as to enter those waters intended for preventing, destroying, repelling, or mitigating any pest[2]; *(ii)* is registered with both the United States Environmental Protection Agency (USEPA) and Maine Board of Pesticides Control (BPC); and *(iii)* will not cause a violation of an applicable water quality standard, as determined by the Department.

[2] See: *Regulations Concerning the Use of Aquatic Pesticides*, 06-096 CMR 514 (effective May 4, 1996) and *Federal Insecticide, Fungicide, and Rodenticide Act*, Title 7 U.S.C. § 136.

SPECIAL CONDITIONS

B. SPECIALIZED DEFINITIONS (cont'd)

3. **Licensed applicator.** "Licensed applicator" means a person holding a valid commercial applicator license from the State of Maine Department of Agriculture, Conservation and Forestry's Board of Pesticides Control.

4. **Integrated pest management.** "Integrated pest management" means the selection, integration and implementation of pest damage prevention and control as defined at 7 M.R.S.A. § 2401(1).

5. **Mosquito habitat.** "Mosquito habitat" means Class GPA as described in 38 M.R.S.A. § 480-B(5) and 38 M.R.S.A. § 465-A, and tributaries to Class GPA; Class AA, A, B, and C as described in 38 M.R.S.A. § 465; Class SA, SB, and SC as described in 38 M.R.S.A. § 465-B; and those waters classified as such and having drainage areas of less than ten square miles that provide habitat for mosquito species known to transmit vector-borne diseases. Mosquito breeding areas, such as artificial sources of standing water around residential and commercial areas and storm drains that will not discharge to waters of the State during the application of aquatic pesticides, are not mosquito habitat as used in this General Permit.

6. **Notice of Intent (NOI).** "Notice of Intent" means a notification of intent to seek coverage under this General Permit, when required, submitted by the applicant to the Department on a form provided by the Department.

C. APPLICABILITY AND ELIGIBILITY

Only proposed aquatic pesticide treatments that conform to the following conditions for applicability and coverage are eligible for coverage under this General Permit.

1. **Area of coverage.** The geographic area covered by this General Permit is the entire State of Maine. Subject to all terms and conditions specified herein, this General Permit authorizes the discharge (*i.e.*, application) of authorized aquatic pesticides to Class GPA, tributaries to Class GPA, Classes AA, A, B, and C, Classes SA, SB, and SC, and those waters classified as such and having drainage areas of less than ten square miles. Waters of the State that do not provide habitat for mosquito species known to transmit vector-borne diseases, as determined by the Department, are not covered by this General Permit.

2. **Protection of non-target species.** An applicant for coverage under this General Permit must demonstrate to the Department's satisfaction that the proposed treatment(s) provide adequate protection of non-target species. Applicants proposing treatments that do not provide adequate protection of non-target species are not eligible for coverage under this General Permit.

3. **Significant need to control target species.** An applicant for coverage under this General Permit must demonstrate to the Department's satisfaction a significant need to control the target species and that pesticide control offers the only reasonable and effective means to achieve control of the target species. Demonstration of significant need may include, but not be limited to, health risk, economic hardship, or loss of use, and must document that the waterbody is mosquito habitat as

SPECIAL CONDITIONS

C. APPLICABILITY AND ELIGIBILITY (cont'd)

defined in Special Condition B of this General Permit. Significant need to control may also be satisfied by documentation that the proposed aquatic pesticide treatment is consistent with the guidelines set forth in the *State of Maine Arboviral (Mosquito-Borne) Illness Surveillance, Prevention and Response Plan* (current year) published by the Maine Department of Health and Human Services.

4. **Exclusions and restrictions.** Authorized aquatic pesticides must be applied in compliance with federal labeling restrictions and in compliance with applicable statute, Board of Pesticides Control rules and best management practices. Aerial spraying from aircraft is not a method that may be used under this General Permit.

5. **Written management plan.** An applicant for coverage under this General Permit must demonstrate to the Department's satisfaction that proposed applications of authorized aquatic pesticides will be performed in conjunction with a written management plan for the control of mosquito species known to transmit vector-borne diseases. To be eligible for coverage under this General Permit, the written management plan must include provisions for integrated pest management and best management practices to reduce or eliminate anthropogenic opportunities for mosquito breeding in waters that are not jurisdictional, such as stagnant water in tires or other structures.

D. NOTIFICATION, DECISIONS AND EFFECTIVE TERM OF COVERAGE

1. **Notice of Intent (NOI).**

   a. **NOI submission not required.** In accordance with 06-096 CMR 529(2)(b)(v), an entity seeking coverage under this General Permit for aquatic pesticide treatments using low risk aquatic pesticides as identified in the Maine Department of Agriculture, Conservation and Forestry's *Plan to Protect the Public Health from Mosquito-borne Diseases* (http://www.maine.gov/dacf/php/pesticides/public_health.html) is not required to submit a Notice of Intent form to the Department to discharge under this General Permit. Prior to performing an aquatic pesticide treatment, the entity responsible for the contracting or implementing the aquatic pesticide treatments must notify the Department in writing and provide:

      i. The legal name, address, telephone number, and electronic mail address of the cognizant official responsible for the aquatic pesticide treatment.

      ii. The legal name, address, telephone number, electronic mail address, and Maine Board of Pesticides Control license number of the licensed applicator responsible for execution of the aquatic pesticide treatment.

      iii. A topographic or similar type map extending approximately one mile beyond the boundaries of the proposed treatment area which depicts the treatment location(s).

SPECIAL CONDITIONS

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

The entity responsible for contracting and executing the application of aquatic pesticides must comply with all terms and conditions specified in Special Conditions C, E, and F of this General Permit.

b. **NOI submission required.** An applicant seeking coverage under this General Permit for aquatic pesticide treatments using any pesticide other than the low risk aquatic pesticides as identified as identified in the Maine Department of Agriculture, Conservation and Forestry's *Plan to Protect the Public Health from Mosquito-borne Diseases* must submit a completed NOI to the Department for review and approval. NOI forms must be mailed or hand-delivered to:

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

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

2. **Required NOI information.** A complete NOI must contain the following information.

a. The legal name, address, telephone number, and electronic mail address of the cognizant official responsible for execution of the aquatic pesticide application plan.

b. The legal name, address, telephone number, and electronic mail address and affiliation of any agents assisting with the execution of the aquatic pesticide application plan.

c. The legal name, address, telephone number, electronic mail address, and Maine Board of Pesticides Control license number of the licensed applicator responsible for execution of the aquatic pesticide application plan.

d. A signed, dated aquatic pesticide treatment plan prepared in accordance with Special Condition G of this General Permit.

e. A topographic or similar type map extending approximately one mile beyond the boundaries of the proposed treatment area which depicts the treatment location(s).

f. In accordance with 06-096 CMR 2(11)(D), evidence of title, right or interest (TRI) in the property(ies) that will be used to access the mosquito habitat.

SPECIAL CONDITIONS

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

g. A list of abutters to whom notice was provided in accordance with Special Condition D.3 must be submitted with the application.

h. Submit a statement that the applicant provided public notice of the Notice of Intent to the Maine Department of Inland Fisheries and Wildlife (MDIFW) Non-Game Program, the Maine Department of Conservation Natural Areas Program (MNAP), and the Maine Department of Marine Resources (if required) in accordance with Special Condition D.3.

i. The signature of an authorized person in accordance with *Applications for Waste Discharge Licenses*, 06-096 CMR 521(5) (effective January 12, 2001).

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

3. **Public notice.** In accordance with 06-096 CMR 2(14)(A) and 06-096 CMR 529(3)(a), within 30 days prior to filing a Notice of Intent with the Department, an applicant must give public notice of Intent to File a NOI application using the form included with DEPLW1168-A. A NOI application that has been previously returned as incomplete for processing must comply with these requirements if the application is not resubmitted within 30 days of the date it was returned to the applicant. The notice must be mailed by certified mail or Certificate of Mailing to:

   a. All abutters of the treatment area and project area, as determined by local tax records or other reliable means;

   b. The municipal office of the municipality(ies) where the project is located, unless the applicant is the municipality;

   c. If the project is located in the unorganized or deorganized areas of the State, to the appropriate county commissioners;

   d. Maine Department of Inland Fisheries and Wildlife (MDIFW) Non-Game Program and the Maine Department of Conservation Natural Areas Program (MNAP); and

   e. Maine Department of Marine Resources (only if marine or estuarine waters are within the project area).

4. **Decisions.**

   a. **Effective Date of Coverage.** The Department must approve or deny each NOI submitted for coverage under this General Permit: 1) within 31 calendar days of receipt of a complete NOI; 2) within 31 days of the date of public notice; or 3) on the effective date of this General Permit, whichever is later. If the Department does not notify the applicant within the specified timeframe, the NOI is automatically approved and becomes effective as if signed by the Commissioner in accordance with 06-096 CMR 2(19)(E). In the event coverage is denied, the Department must notify the applicant of the reason(s) for denial. Denial of coverage under this General Permit is not appealable to the Board of

SPECIAL CONDITIONS

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

Environmental Protection and is not final agency action. The approval of coverage under this General Permit is appealable in accordance with 06-096 CMR 2(24)(B).

b. **Individual permit coverage**. The Department may require, or an interested party may request for consideration, that a permittee covered under this General Permit obtain an individual MEPDES permit for any of the reasons specified at 06-096 CMR 529(2)(b)(3)(i)(A-G). An entity eligible for coverage under this General Permit may request to be excluded from this General Permit and instead apply for an individual MEPDES permit as provided at 06-096 CMR 529(2)(b)(3)(iii).

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

   Prior to expiration of this General Permit, the Department must make a determination if it is to be renewed, and, if so, will commence renewal proceedings. Not less than 24 months prior to expiration of this General Permit, the Department must notify all permittees who have submitted a NOI and are covered under this General Permit of the decision to renew or not renew this General Permit. If the General Permit is to be renewed, it must remain in force until the Department takes final action on the renewal. Upon reissuance of a renewal General Permit, persons wishing to continue coverage must apply for coverage, as directed in Special Condition D.1 of this General Permit, under the renewal General Permit not later than 30 days following the issuance date of the new General Permit.

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

7. **Waived requirements for public health threat.** Pursuant to 06-096 CMR 529(2)(b)(2)(ii) and 529(3)(a), the Department may waive certain notice of intent and public notice requirements specified herein if the Commissioner of the Department of Health and Human Services declares a mosquito-borne disease public health threat in accordance with the Maine Center for Disease Control and Prevention arboviral illness surveillance, prevention and response plan pursuant to 22 M.R.S.A. § 1447.

SPECIAL CONDITIONS

E. AUTHORIZED DISCHARGES

A permittee covered under this General Permit is authorized to discharge: 1) only in accordance with Special Conditions C, E, and F of this General Permit if not required to submit a NOI for approval; 2) only in accordance with the permittee's Notice of Intent if required to submit a NOI for approval; and 3) only in accordance with the terms and conditions of this General Permit. Discharges of pollutants other than the low risk aquatic pesticides as identified in the Maine Department of Agriculture, Conservation and Forestry's *Plan to Protect the Public Health from Mosquito-borne Diseases* or as approved based on information provided on an applicant's NOI are not authorized under this General Permit, and must be reported in accordance with Standard Condition B(5), *Bypasses*, of *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, attached to this General Permit.

F. NARRATIVE EFFLUENT LIMITATIONS

1. An entity covered under this General Permit must not discharge pollutants that cause a visible oil sheen, foam or floating solids at any time which would impair the uses designated for the classification of waters of the State beyond the project area.

2. An entity covered under this General Permit must not discharge pollutants that contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the uses designated for the classification of waters of the State beyond the project area.

3. An entity covered under this General Permit must not discharge pollutants that cause visible discoloration or turbidity in waters of the State beyond the project area that causes those waters to be unsuitable for the designated uses and characteristics ascribed to their class.

4. An entity covered under this General Permit must not discharge pollutants that that lower the quality of any water of the State beyond the project area below such classification, or lowers the existing quality of any water of the State beyond the project area if the existing quality is higher than the classification.

G. AQUATIC PESTICIDE TREATMENT PLAN

An entity submitting a NOI for coverage under this General Permit must develop an aquatic pesticide treatment plan that contains provisions for at least the following approval criteria. The aquatic pesticide treatment plan is subject to review and approval by the Department in its decision-making authority on a NOI for coverage under this General Permit. The permittee must implement the approved aquatic pesticide treatment plan.

1. A description of the treatment area, including, but not limited to, general habitat characterization and identification of all known significant surface water inlets or outlets within the area affected by aquatic pesticide treatments the time of treatment, and statement explaining how the size of the aquatic pesticide treatment area has been minimized to the greatest extent practicable.

SPECIAL CONDITIONS

G. AQUATIC PESTICIDE TREATMENT PLAN (cont'd)

2. The pesticide label and labeling, the USEPA registration number, formulation, concentration, maximum application rate, frequency of application, and the safety data sheets for all aquatic pesticide proposed for use.

3. A list of, and the safety data sheets for, all chemicals and compounds proposed in addition to aquatic pesticides.

4. Identification of all target species and a statement demonstrating that the proposed aquatic pesticide treatment plan provides adequate protection of non-target species.

5. A statement describing efforts to protect non-target species.

6. A statement demonstrating a significant need to control the target species and that pesticide control offers the only reasonable and effective means to achieve control of the target species.

7. A statement demonstrating that the proposed aquatic pesticide application plan will be performed in conjunction with a written management plan for the control of mosquito species known to transmit vector-borne diseases.

8. A statement describing the proposed/anticipated timeline for implementation and completion of the treatment plan.

H. REOPENING OF PERMIT FOR MODIFICATION

In accordance with 38 M.R.S.A. § 414-A(5), the Department may, with notice to the permittee, reopen a permit to add or change conditions or effluent limitations for toxic compounds, to include specific limitations based on new information, or based on any other pertinent information obtained during the term of this General Permit.

I. SEVERABILITY

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

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
MAINE WASTE DISCHARGE LICENSE

FACT SHEET

DATE: **APRIL 15, 2015**

GENERAL PERMIT NUMBER: **#MEG140000**
WASTE DISCHARGE LICENSE: **# W008226-5Y-D-R**

APPLICATION OF AQUATIC PESTICIDES FOR THE CONTROL OF MOSQUITO-BORNE DISEASES GENERAL PERMIT
issued by
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

AREA OF COVERAGE AND RECEIVING WATER CLASSIFICATION:

AREA OF COVERAGE IS THE ENTIRE STATE OF MAINE

WATERS ELIGIBLE FOR COVERAGE ARE THE FOLLOWING CLASSIFICATIONS THAT PROVIDE HABITAT FOR MOSQUITO SPECIES KNOWN TO TRANSMIT VECTOR-BORNE DISEASES:

- **CLASS GPA AS DESCRIBED IN 38 M.R.S.A. § 480-B(5) AND 38 M.R.S.A. § 465-A**
- **TRIBUTARIES TO CLASS GPA**
- **CLASS AA, A, B, AND C AS DESCRIBED IN 38 M.R.S.A. §465**
- **CLASS SA, SB, AND SC AS DESCRIBED IN 38 M.R.S.A. § 465-B**
- **THOSE WATERS CLASSIFIED AS SUCH AND HAVING DRAINAGE AREAS OF LESS THAN TEN SQUARE MILES**

DEPARTMENT CONTACTS:

BILL HINKEL
APPLICATION AND PERMITTING
Division of Water Quality Management
Maine Dept. of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
ph: 207-485-2281
e-mail: bill.hinkel@maine.gov

Internet resources: http://www.maine.gov/dep/ http://www.maine.gov/dep/water/wd/gp.html

1. PROCEDURAL AND REGULATORY SUMMARY

On January 12, 2001, the Maine Department of Environmental Protection (Department) received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. The Department administers the program as the Maine Pollutant Discharge Elimination System (MEPDES) permit program. The General Permit has been assigned MEPDES #MEG140000.

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

On July 28, 2010, the Department issued a General Permit for the *Application of Aquatic Pesticides for the Control of Mosquito-Borne Diseases* to certain waters of the State that constitute breeding habitat for mosquito species known to be potential vectors of infectious diseases. The July 28, 2010 General Permit was issued for a five-year term and superseded the initial MEPDES General Permit issued by the Department on September 28, 2005.

During the week of March 8, 2015, the Department provided public notice of its intent to renew the July 28, 2010 General Permit in the Bangor Daily, Morning Sentinel, Kennebec Journal, Portland Press Herald, and Times Record newspapers. The notice solicited comments on a draft permit, when available, and provided an opportunity to request a public hearing. In accordance with *Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002, *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (last amended August 25, 2013), and *General Permits for Certain Wastewater Discharges*, 06-096 CMR 529(3)(c) (last amended June 27, 2007), the July 28, 2010 General Permit remained in force until the effective date of this permit renewal.

2. ADMINISTRATIVE REQUIREMENTS

The General Permit's administrative procedures and requirements are consistent with *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (last amended August 25, 2013), *General Permits for Certain Wastewater Discharges*, 06-096 CMR 529 (last amended June 27, 2007), 06-096 CMR 514, and applicable Maine laws.

The Department has made a determination that aquatic pesticide treatments using low risk aquatic pesticides pose little or no risk to human health and the environment. Moreover, control of mosquito species known to transmit vector-borne diseases during the larval stages of their growth cycle, which is when the low risk aquatic pesticides are typically applied, presents significantly less, and typically no, risk to human health and the environment. The quantity and volume of low risk aquatic pesticides used is minimal in that treatments are typically conducted by hand and pesticides are applied conservatively to discrete mosquito habitats.

2. ADMINISTRATIVE REQUIREMENTS (cont'd)

06-096 CMR 529(2)(b)(v) provides that, "Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Department, be authorized to discharge under a general permit without submitting a notice of intent where the Department finds that a notice of intent requirement would be inappropriate. In such cases, the Department may require some other form of notification."

In accordance with 06-096 CMR 529(2)(b)(v), an entity seeking coverage under this General Permit for aquatic pesticide treatments using low risk aquatic pesticides as identified as identified in the Maine Department of Agriculture, Conservation and Forestry's *Plan to Protect the Public Health from Mosquito-borne Diseases* (http://www.maine.gov/dacf/php/pesticides/public_health.html) is not required to submit a Notice of Intent form to the Department to discharge under this General Permit. Prior to performing an aquatic pesticide treatment, the entity responsible for the contracting or implementing the aquatic pesticide treatments must notify the Department in writing and provide the information specified in Special Condition D.1.a. of the General Permit. The entity responsible for contracting and executing the application of aquatic pesticides must comply with all terms and conditions specified in Special Conditions C, E, and F of the General Permit. A violation of any condition set forth in Special Conditions C, E, or F of the General Permit constitutes a violation of the General Permit and is subject to enforcement action by the Department.

An applicant seeking coverage under this General Permit for aquatic pesticide treatments using any pesticide other than the low risk aquatic pesticides as identified in the Maine Department of Agriculture, Conservation and Forestry's *Plan to Protect the Public Health from Mosquito-borne Diseases* must submit a completed Notice of Intent (NOI) to the Department for review and approval. The Notice of Intent must contain sufficient information and facts as to allow the Department to determine if the proposed aquatic pesticide treatment is anticipated to comply with the General Permit terms and conditions. Pursuant to 06-096 CMR 2, within 30 days prior to filing the NOI with the Department, an applicant for coverage under the General Permit is required to give public notice of its intent to submit a NOI to the Department, and an original or photocopy of the public notice must be submitted to the Department with the NOI. Once a completed NOI is received, the Department has a maximum of 30 days in which to act on it. If no other action is taken within that 30-day period, the NOI is considered approved on the 31st day following the Department's receipt of the NOI.

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

3. DESCRIPTION OF GENERAL PERMIT INTENT

The Maine Department of Health and Human Services, Maine Center for Disease Control and Prevention (Maine CDC) annually prepares their *"State of Maine Arboviral (Mosquito-Borne) Illness Surveillance, Prevention and Response Plan."*[1] The 2014 Season edition states,

> *The two main mosquito-borne viruses (also known as arboviruses, for arthropod-borne viruses) recognized in Maine and known to cause human and animal disease are Eastern Equine Encephalitis (EEE) virus and West Nile virus (WNV). The first potentially Maine acquired human case of EEE was identified in 2008. The first case of indigenously acquired WNV occurred in 2012. Different types of mosquitoes, with species-specific feeding habits (birds and/or mammals) and habitats (environments where they are found) carry these diseases.* (p.4)
>
> *EEE virus is an alphavirus, present in some passerine (perching song birds) bird species found in fresh-water swamp habitats. The virus is transmitted among wild birds in these areas primarily by Culiseta melanura, a mosquito species that prefers to feed on birds. EEE virus has a cycle of natural infection among wild bird populations with occasional infections of humans, non-human mammals (most often horses) and large domesticated birds (emus, ostriches, etc). Bridge vectors (i.e., a mosquito species that is indiscriminant and will feed on birds or mammals) are responsible for transferring the EEE virus to humans.*
>
> *Some people infected with EEE may get only a mild flu-like illness with fever and headache. However, for people with infection of the central nervous system, a sudden high fever, severe headache, and stiff neck can be followed quickly by seizures, coma, and death.* (p.5)
>
> *The incidence of EEE infection in humans varies by geographic area. Human EEE disease is more common in areas that support dense populations of passerine birds and have favorable habitats for the larvae of the primary mosquito vector. In Maine, these areas consist mainly of large and mature white cedar and red maple swamps.* (p.5)

[1] http://www.maine.gov/dhhs/mecdc/infectious-disease/epi/vector-borne/documents/arbo-plan-2014.PDF (accessed April 14, 2015)

3. DESCRIPTION OF GENERAL PERMIT INTENT (cont'd)

WNV is a flavivirus. Similar to EEE, WNV is also maintained in the environment in a cycle that involves birds, with indiscriminant feeding mosquitoes infecting humans and other mammals. WNV causes sporadic disease in humans, and occasionally results in significant outbreaks. (p.6)

An estimated 80% of people who become infected with WNV never develop symptoms attributable to the infection. For those who do develop symptoms: severe symptoms can include high fever, headache, neck stiffness, disorientation, coma, tremors, convulsions, muscle weakness, vision loss, and paralysis. These symptoms may last weeks, and neurological effects may be permanent. (p.6)

Maine CDC provides information to the public and communities to guide planning and actions to reduce the risk of human disease from EEE virus and WNV. Individuals can take a number of simple steps that will greatly reduce the risk of mosquito-borne viruses to them, their families, and their communities. Choosing to wear protective clothing (e.g., long pants, long-sleeve shirts), using effective Environmental Protection Agency (EPA) approved repellants, and minimizing opportunities for mosquitoes to breed are all important ways individuals can help prevent the spread of EEE and WNV in Maine. Community efforts, such as public education, mosquito surveillance, and integrated pest management (IPM) measures aimed at mosquito larvae may be necessary to decrease the local risk of EEE virus and WNV. (p.8)

Chemical /Biological pesticide controls can be further divided into the application of products aimed at mosquito larvae (larvicide) and those aimed at adult mosquitoes (adulticide). Use of larvicides involves the application of chemicals or natural bacteria to surface waters (such as ponds or in storm drains) to kill mosquito larvae. Larviciding is a proactive measure that can be useful in reducing the risk of mosquito-borne disease throughout the season. The intent of a larvicide program is to control generations of targeted mosquito species before they reach the adult stage, when they are able to transmit diseases such as EEE and WNV. Larvicide programs typically begin in early spring and continue throughout the season, and may help reduce the potential for human exposure to pesticides. (p.10)

3. DESCRIPTION OF GENERAL PERMIT INTENT (cont'd)

> *Adulticides generally involve the application of fine "mists" of pesticide over a relatively broad area or barrier treatments around the edge of properties to bring about the rapid reduction of adult mosquitoes. Adulticiding occurs in response to current surveillance activity. Adulticiding 11 can quickly reduce existing, biting adult mosquitoes throughout a spray area, but its effects are relatively short lived, raising the possibility of repeat applications. In addition, adulticide spray sites are most likely to be areas of high human population density increasing the potential for human pesticide exposure. Comprehensive mosquito control programs may utilize both of the control methods, larviciding and adulticiding, if indicated by surveillance data.* (p.10-11)
>
> *Maine CDC, the Maine Department of Agriculture, Conservation, and Forestry, the Maine Board of Pesticides Control, and the Maine Department of Environmental Protection are available to provide guidance and recommendations to assist municipalities in plan development and when faced with response decisions.* (p.10)

The General Permit authorizes the discharge of aquatic pesticides to certain waters of the State that constitute breeding habitat for mosquito species known to be potential vectors of infectious diseases. Pesticides must be registered with both the USEPA and Maine Board of Pesticides Control. Pesticides discharged in accordance with the General Permit must be applied in compliance with federal labeling restrictions and in compliance with applicable statute, Maine Board of Pesticides Control rules and best management practices. A permit is not required pursuant to 38 M.R.S.A. § 413(1) for the application of aquatic pesticides to mosquito breeding areas that are not waters of the State, or that at the time of application and during efficacy will not flow into a water of the State, such as a storm drain during dry period of the year.

Aerial spraying from aircraft is not a method that may be used under this General Permit.

4. AREA OF COVERAGE AND ELIGIBILITY CRITERIA

The General Permit limits coverage to Class GPA, tributaries to Class GPA, Classes AA, A, B, and C, Classes SA, SB, and SC, and those waters classified as such and having drainage areas of less than ten square miles. Waters of the State that do not provide habitat for mosquito species known to transmit vector-borne diseases, as determined by the Department, are not covered by this General Permit. The General Permit applies to the entire state of Maine.

In accordance with *Regulations Concerning the Use of Aquatic Pesticides*, 06-096 CMR 514(2) (effective May 4, 1996), the General Permit is carrying forward requirements for the applicant to demonstrate a significant need to control the target species and that aquatic pesticide control offers the only reasonable and effective means to achieve control of the target species and that the aquatic pesticide treatment plan provides adequate protection for non-target species.

5. CONDITIONS OF PERMIT

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

a. The discharge either by itself or in combination with other discharges will not lower the quality of any classified body of water below such classification;

b. The discharge either by itself or in combination with other discharges will not lower the quality of any unclassified body of water below the classification which the board expects to adopt;

c. The discharge either by itself or in combination with other discharges will not lower the existing quality of any body of water, unless, following opportunity for public participation, the department finds that the discharge is necessary to achieve important economic or social benefits to the State and when the discharge is in conformance with 38 M.R.S.A. § 464(4)(F);

d. The discharge will be subject to effluent limitations that require application of the best practicable treatment, which are the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically achievable, for a category or class of discharge sources that the Department determines are best calculated to protect and improve the quality of the receiving water and that are consistent with the requirements of the Federal Water Pollution Control Act, as amended, and published in 40 Code of Federal Regulations; and

e. A pesticide discharge is unlikely to exert a significant adverse impact on non-target species. This standard is only applicable to applications to discharge pesticides.

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

6. RECEIVING WATER QUALITY STANDARDS

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

The applicability of the General Permit is restricted to discharges to Class GPA as described in 38 M.R.S.A. § 480-B(5) and 38 M.R.S.A. § 465-A, and tributaries to Class GPA; Class AA, A, B, and C as described in 38 M.R.S.A. § 465; Class SA, SB, and SC as described in 38 M.R.S.A. § 465-B, and that meet the standards of their ascribed classification, or where not, only if the discharge does not cause or contribute to the failure of the water body to meet the standards of classification. *Standards for*

6. RECEIVING WATER QUALITY STANDARDS (cont'd)

classification of fresh surface waters, 38 M.R.S.A. § 465 describes the standards for Class GPA, AA, A, B, and C waters.

Relevant standards for the receiving waters are as follows:

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

- Water Quality Criteria.
  Class AA – The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs.

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

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

  Class C – The dissolved oxygen content of Class C water may be not less than 5 parts per million or 60% of saturation, whichever is higher, except that in identified salmonid spawning areas where water quality is sufficient to ensure spawning, egg incubation and survival of early life stages, that water quality sufficient for these purposes must be maintained. In order to provide additionalprotection for the growth of indigenous fish, the dissolved oxygen may not be less than 6.5 parts per million as a 30-day average based upon a temperature of 24 degrees centigrade or the ambient temperature of the water body, whichever is less.

6. RECEIVING WATER QUALITY STANDARDS (cont'd)

Standards for classification of estuarine and marine waters, 38 M.R.S.A. § 465-B describes the standards for Class SA, SB, and SC waters.

Relevant standards for the receiving waters are as follows:

Class SA – Class SA waters must be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, navigation and as habitat for fish and other estuarine and marine life. The habitat must be characterized as free-flowing and natural.

The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters shall be as naturally occurs.

There may be no direct discharge of pollutants to Class SA waters, except for, among other specified discharges, the discharge of aquatic pesticides approved by the Department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that provide for protection of non-target species.

Class SB – Class SB waters must be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat must be characterized as unimpaired.

The dissolved oxygen content of Class SB waters must be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters.

Discharges to Class SB waters may not cause adverse impact to estuarine and marine life in that the receiving waters must be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There may be no new discharge to Class SB waters that would cause closure of open shellfish areas by the Department of Marine Resources. For the purpose of allowing the discharge of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety, the department may find that the discharged effluent will not cause adverse impact to estuarine and marine life as long as the materials and methods used provide protection for non-target species.

6. RECEIVING WATER QUALITY STANDARDS (cont'd)

Class SC – Class SC waters must be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and other estuarine and marine life.

The dissolved oxygen content of Class SC waters must be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters.

Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

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

7. BEST PRACTICABLE TREATMENT

Pursuant to 38 M.R.S.A. § 414-A(1)(D), 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. Neither the USEPA nor the Department has promulgated effluent guideline limitations for the discharge of aquatic pesticides for the control of mosquito species known to transmit vector-borne diseases.

The General Permit restricts the discharge of authorized aquatic pesticide to comply with federal labeling restrictions and with applicable statutes, Board of Pesticides Control rules and best management practices. The General Permit does not require submission of a Notice of Intent for treatments using low risk aquatic pesticides, as identified in the Maine Department of Agriculture, Conservation and Forestry's *Plan to Protect the Public Health from Mosquito-borne Diseases*. These low risk aquatic pesticides have been evaluated by the Maine Department of Agriculture, Conservation and Forestry and the Maine Department of Environmental Protection and collectively the State has determined that the risk to the environment and human health is absent or low due to the nature in which treatments are applied, the non-toxic characteristics of the pesticides to non-target organisms and humans, and the types of habitats in which these low risk aquatic pesticides are applied (waters that are typically not utilized for swimming or recreation). For the proposed use of aquatic pesticides not identified as low risk aquatic pesticides, the General Permit requires the

7. BEST PRACTICABLE TREATMENT (cont'd)

submission of a Notice of Intent for review and approval. Based on information provided in the Notice of Intent, the Department will specify in an approval any conditions in addition to those specified in the General Permit that are considered necessary to ensure compliance with applicable water quality standards and that best practicable treatment is applied to the discharge.

8. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

The discharge of authorized aquatic pesticides for the control of mosquito species known to transmit vector-borne diseases in accordance with the terms and conditions specified in the General Permit is not anticipated to result in a violation of water quality standards. Although Department rule and the General Permit require minimization of impacts to non-target species, the nature of the activity and types of authorized aquatic pesticides available to achieve the objective of controlling mosquito species known to transmit vector-borne diseases cannot ensure complete protection of non-target species. However, the aquatic pesticide discharge is unlikely to exert a significant adverse impact on non-target species, a finding necessary pursuant to 38 M.R.S.A. § 414-A(1)(E).

9. PUBLIC COMMENTS

Public notice of this intent to renew the July 28, 2010 General Permit was made in the *Bangor Daily*, *Morning Sentinel*, *Kennebec Journal*, *Portland Press Herald*, and *Times Record* newspapers during the week of March 8, 2015. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses,* 06-096 CMR 522 (effective January 12, 2001).

10. DEPARTMENT CONTACTS

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

Bill Hinkel
Division of Water Quality Management
Bureau of Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone: (207) 485-2281 Fax: (207) 287-3435
e-mail: bill.hinkel@maine.gov

11. RESPONSE TO COMMENTS

In accordance with the National Pollutant Discharge Elimination System Memorandum of Agreement Between the State of Maine and the United States Environmental Protection Agency, finalized on January 12, 2001, and 40 CFR 123.44(a)(2), the USEPA may take up to 90 days from receipt of the proposed General Permit to comment upon, object to or make recommendations with respect to the proposed permit. During the period of April 15, 2015 through the effective date of this final agency action, the Department solicited comments on the draft General Permit – *Application of Pesticides for the Control of Mosquito-Borne Diseases*. With the exception of the one revision discussed below, the Department did not receive substantive comments on the draft General Permit. It is noted that minor typographical and grammatical errors identified in comments were not included in this section, but were corrected, where necessary, in the final permit.

The Department and the State of Maine Department of Agriculture, Conservation and Forestry's Board of Pesticides Control (BPC) collaborated during the draft permit comment period and determined that a provision to waive certain notice of intent and public notice requirements specified in the General Permit if the Commissioner of the Department of Health and Human Services declares a mosquito-borne disease public health threat in accordance with the Maine Center for Disease Control and Prevention arboviral illness surveillance, prevention and response plan is a prudent measure to ensure the State of Maine can respond appropriately to a public health threat caused by mosquito-borne disease. The Department has revised the draft permit at Special Condition D to add a new subsection 7 providing discretion to waive certain notice of intent and public notice requirements.

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 <u>or</u> that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

CONTENTS

SECTION		TOPIC	PAGE
A		GENERAL PROVISIONS	
	1	General compliance	2
	2	Other materials	2
	3	Duty to Comply	2
	4	Duty to provide information	2
	5	Permit actions	2
	6	Reopener clause	2
	7	Oil and hazardous substances	2
	8	Property rights	3
	9	Confidentiality	3
	10	Duty to reapply	3
	11	Other laws	3
	12	Inspection and entry	3
B		OPERATION AND MAINTENANCE OF FACILITIES	
	1	General facility requirements	3
	2	Proper operation and maintenance	4
	3	Need to halt reduce not a defense	4
	4	Duty to mitigate	4
	5	Bypasses	4
	6	Upsets	5
C		MONITORING AND RECORDS	
	1	General requirements	6
	2	Representative sampling	6
	3	Monitoring and records	6
D		REPORTING REQUIREMENTS	
	1	Reporting requirements	7
	2	Signatory requirement	8
	3	Availability of reports	8
	4	Existing manufacturing, commercial, mining, and silvicultural dischargers	8
	5	Publicly owned treatment works	9
E		OTHER PROVISIONS	
	1	Emergency action - power failure	9
	2	Spill prevention	10
	3	Removed substances	10
	4	Connection to municipal sewer	10
F		DEFINTIONS	10

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).

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 if 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 MAINTENACE 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

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.

(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.

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.

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

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).

(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.

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 contaminates 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.

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.

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.