STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

Paul Mercer
COMMISSIONER

September 6, 2016

Ms. Amy Booth
JFB Thomas Drive Development, LLC
GWB Thomas Drive Development, LLC
c/o Boulos Asset Management
One Canal Plaza, Suite 500
Portland, Maine 04096
*e-mail: abooth@boulos.com*

**RE: Long Creek Post Construction Storm Water General Permit #MEG190000**
**MEG190135 – 1 Thomas Drive**

Dear Ms. Booth:

Enclosed, please find a Department Order granting coverage for Colonel Westbrook Associates under the Long Creek Post Construction Storm Water General Permit (GP) #MEG190000, which was issued by the Department on April 21, 2015. A copy of the final GP #MEG190000 is attached to this Department Order.

Compliance with this permit will protect water quality. If you have any questions regarding the matter, please feel free to call me at 287-7693.

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

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

Sincerely,

Gregg Wood
Division of Water Quality Management
Bureau of Water Quality

Enc.
cc: Alison Moody, DEP/SMRO
Sandy Mojica, USEPA
Lori Mitchell, DEP/CMRO
Olga Vergara, USEPA
Aubrey Strause, LCWMD
Marelyn Vega, USEPA

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

**DEPARTMENT ORDER**
**IN THE MATTER OF**

| | | |
|---|---|---|
| JFB THOMAS DRIVE DEVELOPMENT, LLC | ) | LONG CREEK POST CONSTRUCTION |
| GWB THOMAS DRIVE DEVELOPMENT, LLC | ) | STORM WATER |
| WESTBROOK, CUMBERLAND COUNTY, MAINE | ) | |
| MEG190135 | ) | MEG190000 |
| **1 THOMAS DRIVE** | ) | **GENERAL PERMIT COVRAGE** |
| **APPROVAL** | ) | **NEW** |

The Department of Environmental Protection (Department) has considered the Notice of Intent submitted by JFB THOMAS DRIVE DEVELOPMENT, LLC & GWB THOMAS DRIVE DEVELOPMENT, LLC, with supportive data, agency review comments and other related materials on file for coverage under the Long Creek Post Construction Storm Water General Permit, #MEG190000, issued by the Department on April 21, 2015, and FINDS THE FOLLOWING FACTS.

The permittee has agreed to comply with all terms and conditions of the Long Creek Post Construction Storm Water General Permit and understands that it shall participate in the Long Creek Watershed Management Plan through entering into and abiding by the Participating Landowner Agreement with the Long Creek Watershed Management District.

Operated in accordance with the Long Creek Post Construction Storm Water General Permit, #MEG190000, 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 JFB THOMAS DRIVE DEVELOPMENT, LLC & GWB THOMAS DRIVE DEVELOPMENT, LLC coverage for under the Long Creek Post Construction Storm Water General Permit, #MEG190000, subject to the terms and conditions therein.

DONE AND DATED AT AUGUSTA, MAINE, THIS 7th DAY OF September, 2016.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:_____
PAUL MERCER, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

The Notice of Intent was received by the Department on August 30, 2016.
The Notice of Intent was accepted by the Department on August 30, 2016.

Date filed with Board of Environmental Protection: _____

Filed
SEP 07 2016
State of Maine
Board of Environmental Protection

This Order prepared by GREGG WOOD, BUREAU OF WATER QUALITY
MEG190134 8/31/16

# 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.**

STATE OF MAINE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

# General Permit – Post Construction Discharge of Stormwater in the Long Creek Watershed

**Maine Pollutant Discharge Elimination System Permit**
**Maine Waste Discharge License**

Bureau of Land and Water Quality
MEPDES Permit #MEG190000
Wastewater Discharge License #W-9052-5Y-B-N

**April 15, 2015**

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

# GENERAL PERMIT -- POST CONSTRUCTION DISCHARGE OF STORMWATER IN THE LONG CREEK WATERSHED

MEPDES Permit #MEG190000
Wastewater Discharge License #W-9052-5Y-B-N

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Fact Sheet

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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

| | |
|---|---|
| LONG CREEK POST-CONSTRUCTION | ) MAINE POLLUTANT DISCHARGE |
| STORMWATER DISCHARGE | ) ELIMINATION SYSTEM PERMIT |
| GENERAL PERMIT | ) |
| STATE OF MAINE | ) AND |
| #MEG190000 | ) WASTE DISCHARGE LICENSE |
| #W-9052-5Y-B-N **APPROVAL** | ) **RENEWAL** |

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, § 1251, et seq. and Conditions of Licenses, 38 M.R.S.A. Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department) is hereby renewing combination Maine Pollutant Discharge Elimination System(MEPDES) Permit #MEG190000/ Waste Discharge License (WDL) #W-9052-5Y-A-N, Long Creek Post-Construction Stormwater Discharge (General Permit),with its supportive data, agency review comments, and other related materials on file, the Department FINDS THE FOLLOWING FACTS:

## 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. From that point forward, the program has been referenced as the MEPDES permit program.

On December 3, 2008, USEPA, in consultation with the State of Maine, made a preliminary determination that a designation of certain stormwater discharges in the Long Creek watershed is appropriate because the discharges are contributing to applicable water quality violations. This designation became final on October 28, 2009.

On October 29, 2009, the Department approved Long Creek Post-Construction Stormwater Discharge General Permit # MEG190000/WDL #W-9052-5Y-A-N, for the discharge of post-construction stormwater to Long Creek in the municipalities of South Portland, Portland, Westbrook and Scarborough, Maine.

**REGULATORY SUMMARY (cont'd)**

Subsequent to issuance of the permit, the Department determined that the definition of the Long Creek Watershed incorrectly included Clark's Pond in the watershed of Long Creek. The designation decision issued by the USEPA does not include Clark's Pond, nor did the Department issue preliminary notice of the general permit to landowners whose property drains to Clark's Pond.

Based on the above findings, the Department concluded that a corrected general permit was required to accurately reflect the designated watershed of Long Creek as not including Clark's Pond.

On November 6, 2009 – The Department issued corrected general permit MEG 190000/WDL #W-9052-5Y-A-N. The permit envisioned a ten-year program of implementation and compliance with the Long Creek Watershed Management Plan dated 2009, or subsequent modifications of the Plan to attain the water quality standards assigned to Long Creek.

**CONCLUSIONS**

Based on the findings in the attached **Fact Sheet** dated April 15, 2015, and subject to the conditions listed in Parts I, II and III of this General Permit (GP), the Department makes the following CONCLUSIONS:

1. The discharge(s) covered under this GP, 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(s) covered under this GP, 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, Maine law, 38 M.R.S.A. § 464(4)(F), will be met, in that:

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

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

(c) The standards of classification of the receiving water body are met or 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(s) covered under this GP will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S.A. § 414-A(1)(D).

5. The cumulative effect of the designated dischargers' compliance with this general permit, or equally stringent individual permits or alternative general permits, will result in compliance with the water quality standards applicable to Long Creek by December 31, 2020.

**ACTION**

Based on the findings and conclusions as stated above, the Department is hereby issuing MEPDES Permit # MEG190000/WDL #W-9052-5Y-B-N, for the discharge of post-construction stormwater to Long Creek in the municipalities of South Portland, Portland, Westbrook and Scarborough, Maine, SUBJECT TO THE ATTACHED CONDITIONS, including:

1. Authorization to discharge under this general permit is conditioned upon Long Creek Watershed Management District's satisfactory implementation of the Long Creek Watershed Management Plan, as approved by the Department.

2. Inspection and maintenance details of the Long Creek Watershed Management Plan must be submitted to, and approved by, the Department, before any permittee may obtain coverage under this permit.

3. Monitoring and assessment details of the Long Creek Watershed Management Plan must be submitted to, and approved by, the Department, before any permittee may obtain coverage under this permit.

4. The attached Standard Conditions included as Part VI of this general permit.

5. The expiration date of this permit is five (5) years from the date of signature below.

6. This permit becomes effective 60 days following the date of signature below and expires at midnight five (5) years after that date. If the GP is to be renewed, it shall remain in force until the Department takes final action on the renewal. Upon reissuance of a renewal of the GP, persons wishing to continue coverage shall apply for coverage under the renewed GP not later than 30 days prior to the effective date of the new GP.

DONE AND DATED AT AUGUSTA, MAINE, THIS 21st DAY OF April, 2015.

COMMISSIONER OF ENVIRONMENTAL PROTECTION

BY: Michael Kulus
for Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of Public Notice Nov. 6, 2014.

Date filed with Board of Environmental Protection

Filed
APR 22 2015
State of Maine
Board of Environmental Protection

This Order prepared by Rod Robert, BUREAU OF LAND & WATER QUALITY

## PART I. General Permit Coverage

**A. General coverage of this permit** - An operator of property from which there is a designated discharge is required to obtain a Maine Pollutant Discharge Elimination System permit. A designated discharge is a post-construction storm water discharge from a property (parcel) in the Long Creek Watershed on which there is a total discharging impervious area equal to or greater than one acre. This general permit authorizes the direct discharge of stormwater from such a parcel to Long Creek or its tributaries, including discharges to municipal separate storm sewer systems or other private or public conveyance systems that convey stormwater to Long Creek or its tributaries. Discharges must meet the requirements of this general permit and applicable provisions of Maine's waste discharge and water classification statutes and rules. Compliance with this general permit authorizes a person to discharge stormwater, pursuant to Water Pollution Control Law, 38 M.R.S.A. § 413, as described below. Discharges listed in Part I(E) are excluded from coverage under this general permit.

The Department has determined that the cumulative effect of the designated dischargers' compliance with this general permit, or equally stringent individual permits or alternative general permits, will result in compliance with the water quality standards applicable to the Long Creek and its tributaries by December 31, 2020.

Coverage under this general permit is required if the total impervious area on a parcel is equal to or greater than one acre on or after the effective date of this permit, unless the discharge is authorized under an individual permit or alternate general permit (as described in Part V), or the Department determines that there is no discharge from the property to waters of the state within the Long Creek Watershed other than groundwater.

**B. Authority** - A permit is required for the direct or indirect discharge of pollutants to surface waters of the State pursuant to federal law, Title 33 USC, §1251,. The Department may issue a general permit authorizing the discharge of certain pollutants pursuant to 06-096 CMR 529. The similarity of discharges has prompted the Department to issue this General Permit (GP) for those discharges located in fresh waters (Class AA, A, B, C, GPA) and marine waters (Class SA, SB and SC) pursuant to Maine law 38 MRSA, §464, sub-§4A. A violation of a condition or requirement of a GP constitutes a violation of the State's water quality laws, and subjects the discharger to penalties under Maine law, 38 M.R.S.A. §349. Nothing in this GP is intended to limit the Department's authority under the waste discharge and water classification statutes or rules. This GP does not affect requirements under other applicable Maine statutes and Department rules.

This general permit does not prevent a municipality from adopting stricter standards than contained in this general permit, or in state or federal law.

**PART I General Permit Coverage (cont'd)**

C. **Authorization -** To be covered under this general permit, an operator of a property with a designated stormwater discharge must submit to the Department a Notice of Intent (NOI) form and associated materials in accordance with the requirements of Part III of this permit. Upon review of the NOI, the Department may grant or deny authorization to discharge in accordance with Part III. If denied, the operator(s) must resubmit an NOI or submit an application for an individual or an alternative General Permit.

D. **Continuation of general permit coverage** - Once granted, coverage under this general permit continues provided there are no changes in the discharge as described in the NOI and all requirements of this general permit are met. If changes occur or are proposed, the permittee who filed the NOI must notify the Department, as specified in this general permit. Upon reissuance of an updated general permit, a permittee wishing to continue coverage shall submit a new NOI to the Department.

If this permit is not revoked or replaced prior to the expiration date, and the Department makes a determination that it is to be reissued, with or without changes, this permit will be administratively continued and remain in force and effect until the Department issues a new general permit. In that case, any permittee who was granted permit coverage prior to the expiration date remains covered by the continued permit provided there are no changes in the discharge and all requirements of this permit are met.

Coverage under this general permit ceases if:

1. **Notice of termination -** The permittee submits a Notice of Termination;

2. **Individual permit -** An individual permit is issued for the permittee's discharges;

3. **General permit not reissued -** This general permit expires following a formal decision by the Department not to reissue this permit; or

4. **Reissuance or replacement of general permit -** This general permit is replaced by a new general permit and the permittee does not submit a new NOI to the Department in accordance with the new general permit to maintain authorization to discharge.

**PART I General Permit Coverage (cont'd)**

**E. Limitations on coverage**

1. **Compliance with this general permit** - This general permit does not authorize a stormwater discharge unless it is in compliance with the requirements of this general permit. If the Department determines that the requirements of this general permit have not been met, the Department may notify the Long Creek Watershed Management District and the permittee and may:

   **a.** Authorize coverage under this general permit after appropriate controls and implementation procedures designed to bring the discharge into compliance with this general permit have been implemented as determined by the Department;

   **b.** Require an individual waste discharge permit;

   **c.** Inform the permittee that the discharge is prohibited; or

   **d.** Take enforcement action to address the violation(s).

   Compliance with Part I(E)(1) does not preclude any enforcement activity under Maine law for an underlying violation.

2. **Other permit** - A stormwater discharge is not authorized by this general permit may also require an individual waste discharge permit or coverage under another waste discharge general permit to fully comply with state and federal law. Other waste discharge general permits include the Maine Construction General Permit, which applies to disturbances of 1 or more acres, only during a site's construction phase, and Multi-Sector General Permit.

3. **Discharge of hazardous substances, chemicals, or oil** - This general permit does not authorize the discharge of stormwater containing hazardous substances, chemicals, or oil.

4. **Waste discharge license (groundwater)** - A waste discharge license ("WDL") may be required for the discharge of stormwater through any well or wells, including drywells and subsurface fluid distribution systems. For complete requirements, see *Rules to Control the Subsurface Discharge of Pollutants*, 06-096 CMR 543 (effective October 6, 2006), and *Stormwater Management*, 06-096 CMR 500 Appendix D (last amended December 27, 2011).

   A "subsurface fluid distribution system" is an assemblage of perforated pipes, drain tiles, or similar mechanisms intended to distribute fluids below the surface of the ground. A "well" is a bored, drilled, or driven shaft the depth of which is greater than the largest surface dimension, whether the shaft is typically dry or contains liquid; or a dug hole the depth of which is greater than the largest surface dimension; or a subsurface fluid distribution system. "Well injection" means the subsurface discharge of fluids into or through a well.

**PART II. Definitions**

In addition to the definitions found in Maine law, 06-096 CMR 520 (effective January 12, 2001) and in the waste discharge and water classification laws, the terms in section B(1-44) have the following meanings when used in this GP.

A. **Applicant** - "Applicant" means a person who files an NOI pursuant to Part III of this general permit.

B. **Department** - "Department" means the State of Maine Department of Environmental Protection.

C. **Discharge** -"Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to waters of the State other than groundwater. "Direct discharge" or "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.[1] For the purposes of this permit, the Department views a direct discharge of stormwater as occurring when the runoff is not attenuated (infiltrated, filtered and/or detained for a long enough period to allow treatment), as evidenced either by channelized flow, or by the lack of sufficient land area (based on soils, vegetative cover, slope, flow path distance and relative size of contributing impervious area) before it becomes channelized or reaches a receiving waterway or water body.

D. **Impervious area** - "Impervious area" means the total area of a parcel, right-of –way or easement that consists of building and associated constructed facilities; areas such as asphalt or concrete, that are covered with a low-permeability material,; or areas such as gravel roads and unpaved parking areas that are compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, roads, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater.

   The demolition and removal of impervious area is subtracted from the total impervious area when calculating the total impervious area, provided that the area where impervious area has been demolished and removed is restored so that it no longer has reduced permeability, and is permanently stabilized using vegetation in conformance with standards in the Maine Construction General Permit, Appendix A.

E. **Long Creek Watershed** - "Long Creek Watershed" means all areas that discharge to Long Creek or its tributaries from the headwaters down to, but not including, Clarks Pond.

[1] See Water Classification Program, 38 M.R.S.A. § 466(5) (definition of "direct discharge") and 06-096 CMR 520 (definition of "point source").

**PART II Definitions (cont'd)**

F. **Long Creek Watershed Management District** - "Long Creek Watershed Management District" (or "District") means the entity established to provide oversight over implementation of the Long Creek Watershed Management Plan.

G. **Long Creek Watershed Management Plan** – "Long Creek Watershed Management Plan (or Plan) means a plan developed jointly by the municipalities of South Portland, Portland, Westbrook and Scarborough, along with other entities, and approved by the Maine Department of Environmental Protection, for the purpose of restoring the water quality of Long Creek dated July 2009 or modifications, as approved by the DEP."

H. **Municipal separate storm sewer system (MS4)** - "Municipal Separate Storm Sewer System" or ("MS4") means conveyances for stormwater, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, Maine Department of Transportation (MaineDOT), Maine Turnpike Authority (MTA), State agency or Federal agency or other public entity that discharges directly to waters of the State other than groundwater.

I. **Notice of Intent (NOI)** - "Notice of Intent" or "NOI" means a notification of intent to seek coverage under this general permit, as provided in Part III(A), made by the applicant to the Department on an NOI form(s) provided by the Department.

J. **Notice of Termination (NOT)** - "Notice of Termination" or "NOT" means a notification of intent to end coverage under this general permit on a form provided by the Department.

K. **Operator** - "Operator" means the person who has control over a parcel, or a right of way or easement located on a parcel, with a designated discharge of stormwater to Long Creek or its tributaries. The owner of a parcel will be considered by the Department to be the operator, unless there is a written agreement, which provides another person with authority to make decisions with respect to stormwater discharges from the impervious area and associated areas of the parcel needed for stormwater management.

L. **Parcel** - "Parcel" means the block or piece of land a person owns or has sufficient title, right or interest in regardless of size, and regardless of whether the block of land is divided into lots.

1. The parcel includes:

   a. All contiguous land in the same ownership, where "contiguous land" is defined as two areas that touch at more than one point; and

   b. Non-contiguous areas if the areas are considered part of the same parcel by the department for purposes of permitting under the Stormwater Management Law or Site Law, and a permit under one of those laws is required

**PART II Definitions (cont'd)**

2. Areas located on opposite sides of a public or private road are considered separate parcels of land unless:

   a. The road was established by the owner of land on both sides of the road on or after January 1, 1970; or

   b. The areas are considered part of the same parcel by the department for purposes of permitting under the Stormwater Management Law or Site Law, and a permit under one of those laws is required.

**M. Permittee** - "Permittee" means a person who is authorized to discharge post-construction stormwater under this general permit.

**N. Person** - "Person" means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity. Each "person" is regarded as a separate and distinct entity, except that a combination of persons is treated as a single person if:

1. Together they pursue a common scheme of development, as defined in rules adopted pursuant to the Site Location of Development Law, 38 M.R.S.A.§481 et. seq., resulting in a discharge requiring authorization even though individual persons in the combination own separate parcels that may not result in a discharge requiring approval if the parcels were considered separately; or

2. One person engages in. a transaction, with another person with the intent to evade the intent and purpose of the designation.

**O. Post-construction stormwater discharges** - Stormwater discharges from or associated with impervious area.

**P. Stormwater** - "Stormwater" means the part of precipitation including runoff from rain or melting ice and snow that flows across the surface as sheet flow, shallow concentrated flow, or in drainage ways. "Stormwater" has the same meaning as "storm water".

**Q. Stream** - "Stream" means a river, stream, or brook as defined in the Natural Resources Protection Act at 38 M.R.S.A. § 480-B.

**R. Watershed** - "Watershed" means the land area that drains, via overland flow, drainage ways, waterbodies, or wetlands to a given waterbody or wetland.

**Part III Procedure**

A. **Who must submit the Notice of Intent (NOI) -** An NOI must be filed by the operator or an agent of the operator if the total impervious area on a parcel in the Long Creek watershed is equal to or greater than one acre at any point in time on or after the effective date of this permit.

If the project also requires a permit pursuant to the Stormwater Management Law or Site Law, then the NOI must be filed at the same time as the Stormwater Management or Site Law application.

1. **Existing impervious area -** If there is one acre or more of existing impervious area on the parcel on the effective date of this general permit, then the applicant must file an NOI within 30 days after receiving notice from the Department.

2. **Future impervious area -** If a person will construct or cause to be constructed any impervious area on a parcel on or after the effective date of this general permit so that the total impervious area on the parcel will be one acre or more at any point in time, then the applicant shall file an NOI at least 14 days prior to the beginning of construction.

B. **Filing of NOI** - By submitting an NOI, the applicant agrees to comply with the standards of this general permit.

C. **Approval of NOI -** If Stormwater Management Law or Site Law approval is not required, the NOI is deemed approved 14 calendar days after the Department receives the complete NOI unless the Department approves or denies the NOI, or extends the review period, prior to that date. If the Department does not contact the applicant within this 14-day period regarding the NOI, the applicant's NOI is deemed approved. The Department may extend the 14-day review period if the Department notifies the applicant of such extension within the 14-day period.

If a Stormwater Management Law or Site Law permit or modification is required, the 14 day review period does not apply. The Department will approve or deny the NOI at the same time it issues a decision on the Stormwater Management Law or Site Law permit or modification application.

D. **Effective Date of Coverage under this General Permit -** The applicant is authorized to discharge post-construction stormwater under the terms and conditions of this general permit as follows:

1. **Not under Construction -** If a project is not under construction, authorization under this general permit will take effect upon approval of the NOI.

**PART III Procedure (cont'd)**

**2. Under Construction**

**a.** If the project is under construction and no Construction General Permit is required, authorization under this general permit will take effect upon approval of the NOI.

**b.** If the project is under construction and a Construction General Permit has been obtained, authorization under this general permit will take effect upon approval of the NOI and the filing of a Notice of Termination pursuant to the Construction General Permit.

**E. Submission**

**1. General procedure**

**a.** The operator shall file the NOI using a form provided by the Department.

**b.** The NOI must contain all information specified by this General Permit and must be signed and certified in accordance with 06-096 CMR 521(5).

**c.** Copies of the initial NOI form shall be provided by the applicant to the municipal office of the town or city in which the discharge will occur and to the District at the time it is submitted to the Department.

**d.** A new NOI will be submitted to the municipality, Long Creek Watershed Management District, and the Department within thirty (30) days of any change in an operator's contact information.

**2. Contents of Notice of Intent (NOI)**

**a.** The designated discharge operator's contact's name, email (if any), address and telephone number; contact information for billing, legal, and local and corporate management, and if applicable, contact information for the facilities winter maintenance and landscaping contractors will be included.

**b.** Facility/Site information including name, address and location of the designated discharge, Global Positioning System (GPS) reference data if available, and ownership status as a Federal, State, Tribal, Private or other public entity.

**c.** Evidence demonstrating that the operator has entered into a binding contract with the Long Creek Watershed Management District. The contract must provide for participation of the operator in implementation of the Long Creek Watershed Management Plan.

**d.** Such other information as the Department may determine is reasonably necessary to determine that the requirements of this general permit will be met. Additional information may be required on a site specific basis following submission of the NOI, if such information is necessary to determine whether or not to authorize the discharge under this general permit.

**PART III Procedure (cont'd)**

3. **Deficient NOI** - If any portion of the NOI does not meet one or more of the minimum requirements of this part, the applicant will be notified of the deficiency within the review period. It is the responsibility of the applicant to make all required changes and resubmit the NOI. The review period will commence anew upon the received submittal date of the revised NOI.

F. **Notice of Termination (NOT) and Property Transfer-** The permittee shall submit to the Department and to the LCWWD a Notice of Termination (NOT) on a form provided by the Department within 20 days of ceasing a designated stormwater discharge to the Long Creek watershed from the area subject to this general permit, or if impervious area discharging to Long Creek or its tributaries is reduced to less than one acre on the parcel.

G. **Right of Entry** - Employees and agents of the Department may enter any property at reasonable hours in order to determine compliance.

H. **Changes in the activity or operator** - Coverage under this general permit will be continued provided there are no changes in the discharge as described in the NOI and associated submissions, and all requirements of this general permit are met. If the permittee proposes to expand or relocate impervious area beyond what was indicated in the original NOI, or to change the location of the discharge, then updated information must be submitted with a new NOI prior to any earth-moving activity. Information concerning minor changes on a site that do not affect the nature or amount of stormwater runoff may be submitted in a letter to the Department and the LCWWD that describes the changes.

If the operator of the property subject to this permit changes the new operator must file an NOI if he or she wishes to continue coverage under this general permit within two weeks of the property transfer. The former permittee is required to file an NOT.

If a parcel with one or more acres of impervious area is divided on or after the effective date of this general permit, then stormwater from or associated with the impervious area on the resulting parcels continues to require a permit for post-construction stormwater discharges without regard to the size of the impervious area on the resulting parcels. If a parcel with one or more acres of impervious area is divided on or after the effective date of this general permit and a resulting parcel contains no impervious area, then post-construction stormwater discharges from or associated with the resulting parcel no longer require a permit. However, if any amount of impervious area is later created on the resulting parcel that had no impervious area, post-construction discharges will require a permit.

I. **Individual permit** - A permittee whose discharge is covered under this general permit may at any time apply for an individual waste discharge permit pursuant to the Department's rules. When an individual permit is issued to a person previously subject to this general permit, the applicability of this general permit to that person is automatically terminated on the effective date of the individual permit. Alternatively, an individual permit may be required by the Department in accordance with the provisions of *General Permits for Certain Discharges,* 06-096 CMR 529(2)(b)(3).

**Part IV Requirements**

A. **Plan Participation** - The permittee must participate in implementation of and comply with the Long Creek Watershed Management Plan dated July 2009, or a subsequent modification of the Plan, provided the modification has been approved by the Department. Annual progress reports shall be submitted by the permittee no later than May 31st of each calendar year and will include activities of the previous calendar year. The Long Creek Watershed Management District may submit an annual report on behalf of all permittees participating in the Plan.

B. **Implementation of Plan** - The permittee shall support implementation of the Plan through the Long Creek Watershed Management District, including making appropriate payments, supplying the necessary easements within an agreement with the District, and cooperating with the District on Plan implementation in accordance with the schedule approved by the Department (See Parts IV.C., D and E.). The District determines the cost amount that each permittee shall pay based upon factors listed in the plan. If a permittee agrees to carry out some activity on the property in exchange for a reduced cost, then that activity is also an enforceable requirement of this general permit for that permittee. The failure of the permittee to make timely payments of costs for implementation of the plan, or to carry out agreed upon activities, will be grounds for termination of coverage under this general permit. In addition, if the Long Creek Watershed Management District fails to implement the plan as approved by the Department, the Department will take action to modify or revoke the general permit, if appropriate.

C. **Required activities** - The permittee shall abide by its agreement with the Long Creek Watershed Management District and support implementation of the following activities as described in the Plan. Otherwise, coverage under this permit may be terminated and an individual permit required.

1. **Construction of Tier 1, Tier 2, in-stream and riparian projects** - Construction of Tier 1, Tier 2, in-stream and riparian projects must be completed as follows.

**Part IV Requirements (cont'd)**

a. If operators on 100% of properties from which there is a designated discharge participate in implementation of the Plan through this permit, permittees shall support the Long Creek Watershed Management District implementation of all identified Tier 1 and Tier 2 projects in the plan, along with all identified in-stream and riparian projects in the plan, by December 31, 2020.

b. If less than 100% of all impervious area is covered under this general permit, then permittees shall support the Long Creek Watershed Management District construction of projects that provide a commensurate percentage of water quality benefits as provided in the Plan. For example, if permittees representing 80% of the total impervious area covered by the Residual Designation submit NOIs, then the projects that would produce 80% of the benefits of the entire plan, as determined by the Department, must be constructed.

c. Once a funding rate for a permittee is established, it cannot be increased during the term of the general permit due to another permittee defaulting on payment. The funding rate may be adjusted during the next re-issuance of the general permit.

d. Required projects may change as new opportunities for stormwater treatment projects emerge over time, provided any revised project would accomplish at least as much benefit to Long Creek and its tributaries as the project it would replace in the Plan, and is approved by the department.

2. **Inspection and Maintenance** - Inspection and maintenance of stormwater treatment practices constructed in accordance with sub-section 1 above is required, along with pollution prevention and good housekeeping practices on property covered by the Plan, as approved by the Department.

3. **Monitoring and assessment** - Implementation of a monitoring and assessment plan, as approved by the Department, is required for use in measuring progress in restoring Long Creek.

D. **Periodic assessment of the Plan** - The Department will periodically reassess whether the Plan and its implementation are sufficient to provide for necessary improvement in water quality prior to any reissuance of this general permit and will provide for stricter or more relaxed requirements as necessary. In approving the Plan and any modifications, the Department is making a Best Professional Judgment that practices are meeting expectations and providing a reasonable assurance of meeting water quality standards by December 31, 2020. The Department may require any or all dischargers to apply for individual permits if the Department determines that any requirements in this general permit are not met.

E. **Conditional authorization** - Authorization to discharge under this general permit is conditioned upon the Long Creek Watershed Management District's satisfactory implementation of the Long Creek Watershed Management Plan, as approved by the Department.

## PART V Relationship to Other General and Individual Permits

**A.** The requirements of this general permit apply unless one of the following conditions applies:

1. An individual permit is applied for and obtained; and, if necessary, a Notice of Termination is filed; or

2. An operator with a project having both post-construction stormwater and industrial stormwater discharges obtains authorization through an alternative general permit, such as the Multi-Sector General Permit that includes discharge requirements under this general permit.

**B.** For new construction activity, the requirements of this permit apply upon termination of requirements under the Maine Construction General Permit (MCGP), pursuant to Part III.D.2.b., if applicable. The MCGP authorizes stormwater discharges from construction activity including, but not limited to, clearing, grading, excavation, and filling, where land disturbance total is equal to or greater than one acre, and where stormwater runoff discharges to waters of the state in the Long Creek Watershed other than groundwater.

**C.** For redevelopment, the requirements of this general permit are in addition to the requirements under the MCGP, pursuant to Part III.D.2.b, if applicable.

**D.** The requirements of this general permit replace the requirements of the following:

1. General Permits for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems;

2. General Permit for the Discharge of Stormwater from Maine Department of Transportation and Maine Turnpike Authority Municipal Separate Stormwater Sewer System Facilities; and

3. General Permit for the Discharge of Stormwater from State or Federally Owned Municipal Separate Sewer System Facilities

**PART VI Standard Conditions**

A. **Removed substances** - Solids, sludge, filter backwash or other pollutants removed or resulting from the treatment of wastewaters shall be disposed of in a manner approved by the Department.

B. **Monitoring requirement** - The Department may require monitoring of an individual discharge as may be reasonably necessary in order to characterize the nature, volume or other attributes of that discharge or its sources.

C. **Other information** - When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Department, he or she shall promptly submit such facts or information.

D. **Endangered species** - Pursuant to State and Local Cooperation Law, 12 M.R.S.A. § 12806, a state agency or municipal government shall not permit, license, fund or carry out projects that will:

1. Significantly alter the habitat identified under Conservation of Endangered Species Law, 12 M.R.S.A. § 12804, subsection 2 of any species designated as threatened or endangered under this subchapter; or

2. Violate protection guidelines set forth in 12 M.R.S.A. § 12804, subsection 3.

E. **Individual permit or alternative general permit** - When an individual permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative general permit, the applicability of this permit to the individual permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual permit is denied to an operator otherwise subject to this permit, or the operator is denied coverage under an alternative general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Commissioner.

F. **Other standard conditions** - Pursuant to General Permits for Certain Wastewater Discharges, 06-096 CMR 529(3)(h), the following conditions also apply to discharges pursuant to this general permit and are incorporated herein as if fully set forth.

1. Chapter 523, Section 2 (applicable to all discharges)

2. Chapter 523, Section 3 (applicable to certain categories of discharges)

# STATE OF MAINE

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

# Fact Sheet – Post Construction Discharge of Stormwater in the Long Creek Watershed

## Maine Pollutant Discharge Elimination System Permit

Bureau of Land and Water Quality

**April 15, 2015**

MEPDES Permit #MEG190000

# Maine Pollutant Discharge Elimination System (MEPDES) Fact Sheet and Supplemental Information for Issuance of a General Permit for Post-Construction Discharge of Stormwater in the Long Creek Watershed

**AGENCY: Maine Department of Environmental Protection (DEP)**
**ACTION: Notice to Issue MEPDES General Permit**

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**Reference Sites:** This document references Maine statutes (M.R.S.A citations), Maine rules (CMR citations), Federal Clean Water Act, and Federal rules (CFR citations). See the specific web sites for further information.

- The texts of Maine statutes can be found at: http://www.mainelegislature.org/legis/statutes/
- The text of Department rules can be found at: http://www.state.me.us/sos/cec/rcn/apa/06/chaps06.htm
- The text of the Clean Water Act can be found at: http://www.epa.gov/npdes/pubs/cwatxt.txt
- The text of Title 40, Part 122 of the Federal rules can be found at: http://www.access.gpo.gov/nara/cfr/waisidx_08/40cfr122_08.html
- The text of the U.S. Environmental Protection Agency Preliminary Residual Designation of stormwater discharges to Long Creek pursuant to the Clean Water Act may be found at: http://www.epa.gov/region1/npdes/stormwater/assets/pdfs/LongCreekRD.pdf
- The Long Creek Watershed Management Plan and supporting information can be found at www.restorelongcreek.org.
- Additional information concerning stormwater in Maine may be found at: http://www.maine.gov/dep/blwq/docstand/stormwater/index.htm

**Summary:** The Maine Department of Environmental Protection ("DEP") is issuing a MEPDES general permit for post-construction discharges of stormwater from property with one acre or more of impervious area in the Long Creek watershed located in the municipalities of South Portland, Westbrook, Portland and Scarborough, Maine. This permit covers the discharge of stormwater from such properties to Long Creek and its tributaries, or to a municipal separate storm sewer system or other conveyance that discharges to Long Creek or its tributaries. The general permit describes permit coverage and limitations, definitions, requirements, procedures, and standard conditions. There is also a section addressing the relationship of this permit to other programs.

## A. Background

### 1. Clean Water Act

Section 301(a) of the Clean Water Act (CWA) provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharge is in compliance with certain other sections of the Act. 33 U.S.C. 1311(a). The CWA defines "discharge of a pollutant" as "(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft." 33 U.S.C. 1362(12). A "point source" is any "discernible, confined and discrete conveyance" but does not include "agricultural storm water discharges and return flows from irrigated agriculture." 33 U.S.C. 1362(14).

The term "pollutant" includes, among other things, "garbage... chemical wastes, biological materials ...and industrial, municipal, and agricultural waste discharged into water."

### 2. Maine Pollutant Discharge Elimination System (MEPDES) Permits

A MEPDES permit authorizes the discharge of a pollutant or pollutants into receiving water under certain conditions. The MEPDES program relies on two types of permits: individual and general. An individual permit is a permit specifically tailored for an individual discharger or situations that require individual consideration. Upon receiving the appropriate permit application(s), the permitting authority develops a draft permit for public comment for that particular discharger based on the information contained in the permit application (e.g., type of activity, nature of discharge, receiving water quality). Following consideration of public comments, a final permit is then issued to the discharger for a specific time period (not to exceed 5 years) with a provision for reapplying for further permit coverage prior to the expiration date.

In contrast, a general permit (GP) covers multiple facilities/sites/activities within a specific category for a specific period of time (not to exceed 5 years). For GPs, the Department develops and issues the permit in advance, with dischargers then generally obtaining coverage under the permit through submission of a Notice of Intent (NOI). A GP is also subject to public comment prior to issuance. For the case of this GP, the Department is the permitting authority. The permitting authority reviews the permittee and geographic area and develops appropriate permits considering technology and water quality. In addition, the Department may issue a permit that has different requirements from a National Pollutant Discharge Elimination System (NPDES) permit issued by the U.S. Environmental Protection Agency (EPA) for similar types of discharges, as long as it satisfies the regulatory requirements of the NPDES program, the CWA, and state law.

## A. Background (cont'd)

Under 40 CFR 122.28, general permits may be written to cover categories of point sources having common elements, such as facilities that involve the same or substantially similar types of operations, that discharge the same types of wastes, or that are more appropriately regulated by a general permit. Given the possible number of pesticide operations requiring MEPDES permit coverage and the discharges common to these operations, the Department believes that it makes administrative sense to issue the GP, rather than issuing individual permits to each Operator.
Courts have approved of the use of general permits. See e.g., *Natural Res. Def. Council v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977); *EDC v. US EPA*, 344 F.3d 832, 853 (9th Cir. 2003). The general permit approach allows the Department to allocate resources in a more efficient manner and to provide more timely coverage and may significantly simplify the permitting process for the majority of pesticide dischargers. As with any permit, the CWA requires the GP to contain technology-based effluent limitations, as well as any more stringent limits when necessary to meet applicable state water quality standards. State water quality standards apply in all surface Waters of the State and the territorial seas, defined in section 502(8) of the CWA as extending three miles from the baseline. *Pacific Legal Foundation v. Costle*, 586 F.2d 650, 655-656 (9th Cir. 1978); *Natural Resources Defense Council, Inc. v. U.S. EPA*, 863 F.2d 1420, 1435 (9th Cir. 1988).

## 3. History of the Long Creek General Permit

On December 3, 2008, EPA Region 1, in consultation with the State of Maine, determined that a designation of certain stormwater discharges in the Long Creek watershed was appropriate because they are contributing to applicable water quality violations.
EPA's "Preliminary Residual Designation Pursuant to Clean Water Act" can be found online at (http://www.epa.gov/region1/npdes/stormwater/assets/pdfs/LongCreekRD.pdf).

This preliminary designation was published in the Federal Register on December 31, 2008 (http://www.restorelongcreek.org/docs/FR_notice_12-31-08.pdf). The preliminary designation requires that property with one acre or more of impervious area that discharges to Long Creek obtain a permit under the Clean Water Act.

On October 28, 2009 EPA issued its final designation decision order.

In 2006, prior to EPA's designation determination, the City of South Portland had received an EPA grant to develop a comprehensive watershed management plan for Long Creek. A steering committee was established, consisting of both private and public sector stakeholders. Sub-committees were also established to work through the technical and policy issues for Long Creek. Participants sought to develop a plan that would provide an economically efficient approach to restoring water quality in Long Creek. EPA's determination caused participants to become interested in developing a plan to provide an implementation scheme that would allow for complying with permit requirements.

## A. Background (cont'd)

On December 3, 2008, USEPA, in consultation with the State of Maine, made a preliminary determination that a designation of certain stormwater discharges in the Long Creek watershed is appropriate because the discharges are contributing to applicable water quality violations. This designation became final on October 28, 2009.

On October 29, 2009, the Department approved Long Creek Post-Construction Stormwater Discharge General Permit # MEG190000/WDL #W-9052-5Y-A-N, for the discharge of post-construction stormwater to Long Creek in the municipalities of South Portland, Portland, Westbrook and Scarborough, Maine.
Subsequent to issuance of the permit, the Department determined that the definition of the Long Creek watershed incorrectly included Clark's Pond in the watershed of Long Creek. The designation decision issued by the USEPA does not include Clark's Pond, nor did the Department issue preliminary notice of the general permit to landowners whose property drains to Clark's Pond.
On November 6, 2009 – The Department issued corrected general permit MEG 190000/WDL #W-9052-5Y-A-N. The permit envisioned a ten-year program of implementation and compliance with the Long Creek Watershed Management Plan, dated July 2009, or subsequent modifications of the Plan to attain the water quality standards assigned to Long Creek.

This general permit provides designated property owners with a means to comply with the requirements of the designation and provides a means for restoration of Long Creek to proceed through implementation of the Long Creek Watershed Management Plan.

## B. Use of the General Permit Option

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants to waters of the United States is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit, unless such a discharge is otherwise authorized by the Act. Title 38 M.R.S.A. Section 413 of Maine's waste discharge law provides that no person may directly or indirectly discharge or cause to be discharged any pollutants without first obtaining a license from the Department. Standards and requirements are specified in statute and rule. Although such permits are generally issued to individual discharges, EPA's and Maine's regulations authorize the issuance of "general permits" to categories of discharges (see 40 CFR Section 122.28 and 06-096 CMR 529(2)).

As the NPDES permitting authority in Maine, DEP is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

- Involve the same or substantially similar types of operations;
- Discharge the same types of wastes;
- Require the same effluent limitations or operating conditions;
- Require the same or similar monitoring requirements; and
- In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

**B. Use of the General Permit Option (cont'd)**

Upon reviewing these factors and the circumstances of the Long Creek designation, DEP has determined that designated stormwater discharges may be appropriately controlled through a general permit process given that they are of similar nature, largely from roads, commercial parking lots and buildings and will best be dealt with using a collective, watershed-wide approach. This general permit meets the requirements of 06-096 CMR 529, "General Permits for Certain Wastewater Discharges" and 06-096 CMR 521(9), "Storm water discharges."

## C. The General Permit -- Information concerning certain provisions.

"Parts" as used below, refer to the enumerated parts of the general permit.

**Part I -- General permit coverage**

The general permit authorizes the direct discharge of stormwater from designated discharges in the Long Creek watershed. Designated discharges are those discharges from property with one acre or more of impervious area that flow to Long Creek or its tributaries, or to a municipal separate storm sewer or other public or private system that discharges to Long Creek or its tributaries.

**Part II -- Specialized Definitions**

The general permit makes use of existing state definitions when possible. These include "impervious area," "parcel," "common scheme of development" (within "parcel" definition), "peak flow," "person," "stormwater," "stream," and "watershed." Federal definitions used in the general permit include "municipal separate storm sewer system (MS4)," "Notice of Intent" (NOI), and "Notice of Termination." (NOT). The term "direct discharge" in the permit and fact sheet refers to a "point source" discharge. "Discharge" is a separately defined term.

**Part II -- Specialized Definitions (cont'd)**

These definitions differ from the use of the terms in EPA's residual designation, where "direct discharge" refers to the conveyance of stormwater from a property directly to Long Creek or its tributaries and "indirect discharge" refers to the discharge of stormwater from a property to Long Creek and its tributaries through an MS4 system or other public or private storm sewer conveyance. In the latter case, a discharge that reaches Long Creek indirectly through an MS4 may still meet the definition of a "direct discharge" as it is used in Maine regulations and as it appears in the Part II definitions of this permit.

**Part III -- Procedure**

This part of the general permit specifies NOI and NOT requirements, including associated submissions. The NOI must include evidence that the owner has a contract with the Long Creek Watershed Management District to participate in implementation of the Long Creek Watershed Management Plan. An NOT is required within 20 days of ceasing stormwater discharge. In cases of property transfer, the seller is required to file an NOT and the buyer files an NOI to continue general permit coverage within 14 days of the property transfer. An owner may also choose to file an application for an individual permit at any time. When an individual permit is issued, prior coverage under the general permit ceases.

**Part IV -- Requirements**

This part of the general permit specifies that the permittee must participate in implementation of and comply with the Long Creek Watershed Management Plan. Implementation of the plan is the legal responsibility of the permittee, even though work will be carried out by a third party, the Long Creek Watershed Management District (District). The permittee is therefore responsible for both making necessary payments and carrying out other work as agreed to in a contract with the District, and for ensuring that the District carries out the specified restoration work in the watershed.

The Long Creek Watershed Management Plan (Plan) identifies restoration projects, including structural best management practices (BMPs) that can be installed in specified catchment areas of the watershed (the land area from which stormwater flows to a single runoff discharge point), and in-stream and riparian work. A technical committee recommended these projects after an assessment of various options. Structural BMP projects were sorted into Tiers 1, 2 and 3 based on the amount of benefit in relation to installation costs, with Tier 1 projects being the most economical and Tier 3 projects being the least economical for the benefits they produced. Based on its evaluation of the proposed projects, the DEP has concluded that installation of all of the Tier 1 and 2 projects, implementation of all of the proposed in-stream and riparian projects, along with on-going maintenance work, will be sufficient to allow Long Creek to meet the state's water quality standards. The Plan provides for treatment of stormwater within priority catchment areas, which in combination with the identified in-stream and riparian restoration work, and non-structural management practices, such as street sweeping, provides the most treatment for a given amount of funding. The DEP recognizes that retrofitting existing developed area may be expensive and that the most economical approaches should be taken first. The DEP further recognizes that this approach means that the stormwater runoff on some individual properties may not be treated by on-site structural controls. This is an acceptable and appropriate approach to take so long as the collective effort of all permitted parties, both under the general permit and under individual permits, results in water quality standards being met in Long Creek.

**Part IV -- Requirements (cont'd)**

The general permit requirements include flexibility in terms of the amount of work that must be completed under the Plan. The funding level of projects that must be completed, in terms of percentage of total cost funded, must equal or exceed the percentage of impervious area that is included on the property of participating operators. Operators that do not participate in the Plan will be responsible for treating their own discharges through an individual permit, which will reduce to overall amount of projects needing to be completed under the Plan. The permit also provides that a fee rate for a permittee cannot be increased due to another permittee defaulting on payment during the term of the general permit. This provision was included to provide predictability to property owners, who might otherwise not feel comfortable in entering into a contract to participate in the Plan. If a large number of property owners were to default on payments to the District, the amount of time needed to implement the required projects may necessarily be extended to a subsequent permit cycle. Rates would then be adjusted during the following cycle to allow completion of the projects, in addition to on-going costs for monitoring and maintenance work.

The DEP recognizes that over the life of the Plan, conditions in the watershed will change. New opportunities to provide economical stormwater treatment will arise, particularly with redevelopment projects that will involve soil disturbance. The Plan and the list of required projects may be changed from time to time, provided a new project provides at least as much benefit as the project it would replace, and is approved by the DEP.

The general permit requires that continual inspection and maintenance of stormwater treatment practices be carried out in accordance with the Plan, and that a water quality monitoring plan for Long Creek be established and carried out by the Long Creek Watershed Management District in order to measure progress in restoring Long Creek. The Department will periodically assess progress being made with respect to meeting water quality standards in Long Creek by December 31, 2020.

**Part V -- Relationship to other General and Individual Permits**

This part of the general permit addresses the fact that it may not apply where an individual permit has been issued for a discharge, or where an owner is already required to have separate NPDES stormwater coverage, such as for an industrial discharge, or for a construction activity. In the case of industrial activities requiring coverage for stormwater discharges, the DEP expects to issue a combined Industrial and Long Creek Post-Construction General Permit that will cover stormwater discharges from both industrial activity and from impervious area. In the case of construction projects, this post-construction general permit would apply upon termination of the construction general permit.

**Part VI -- Standard Conditions**

This part lists a short set of standard conditions applicable to all MEPDES permits, and references other standard conditions applicable under existing rules.

## RESPONSE TO COMMENTS

During the period February 16, 2015, through the issuance of this permit, the Department solicited comments from state and federal agencies, the public and parties that expressed interest in the proposed draft of this general permit. The Department did receive written miscellaneous coments from the Long Creek Watershed Management District that focused on clarification of terms and definitions and suggestions to more clearly identify this general permits' relationship to other permits. The comments received from the Long Creek Watershed Management District have been incorporated into this general permit but did not result in any substantive changes to the general permit as it was issued in its' proposed draft form.