STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

October 12, 2017

Mr. Matt Lutkus
Town Manager
Town of Damariscotta
21 School Street
Damariscotta, ME. 04543
e-mail: townmanager@damariscottame.com

RE: General Permit Discharge of Waste Snow
MEG210012/W009007-5Y-A-N

Dear Mr. Lutkus:

Enclosed, please find a Department Order granting coverage under the General Permit for the Discharge of Waste Snow (GP), which was issued by the Department on February 28, 2014, for a five year term. As a result, individual Maine Pollutant Discharge Elimination System (MEPDES) permit #ME010276/Maine Waste Discharge License (WDL) #W009007-5V-B-R lasted issued by the Department to the Town of Damariscotta on October 12, 2012, is being retired.

A copy of the final February 28, 2014, GP is attached to this Department Order. Please read the MSGP and its attached conditions carefully. 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: Lori Mitchell, DEP/CMRO Denise Behr, DEP/CMRO Irene Saumur, 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 DAMARISCOTTA	)	**DISCHARGE OF WASTE SNOW**
DAMARISCOTTA, LINCOLN COUNTY, MAINE	)	
MEG210012	)	**GENERAL PERMIT COVERAGE**
W009007-5Y-A-N	)	
SNOW DUMP	)	
DAMARISCOTTA APPROVAL	)	

The Department of Environmental Protection (Department) has considered the Notice of Intent submitted by the TOWN OF DAMARISCOTTA, with supportive data, agency review comments and other related materials on file for coverage under the General Permit For The Discharge of Waste Snow (GP) #MEG210000, issued by the Department on February 28, 2014, and FINDS THE FOLLOWING FACTS.

The permittee has agreed to comply with all terms and conditions of the GP. Operated in accordance with GP #MEG210000, 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 DAMRISCOTTA, coverage for under GP #MEG210000 subject to the terms and conditions therein.

DONE AND DATED AT AUGUSTA, MAINE, THIS 16th DAY OF October, 2017.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
for Paul Mercer, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Notice of Intent received October 11, 2017.
Notice of Intent accepted October 12, 2017.

Date filed with Board of Environmental Protection: Filed OCT 16 2017 State of Maine Board of Environmental Protection

This Order prepared by Gregg Wood, Bureau of Water Quality
MEG210012 10/12/17

STATE OF MAINE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

General Permit – Discharge of Waste Snow

Maine Pollutant Discharge Elimination System Permit
Maine Waste Discharge License

Bureau of Land and Water Quality
MEPDES Permit #MEG210000
Waste Discharge License #W009106-5Y-A-N

February 28, 2014

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

DEPARTMENT ORDER

IN THE MATTER OF

DISCHARGE OF WASTE SNOW	)	MAINE POLLUTANT DISCHARGE
GENERAL PERMIT	)	ELIMINATION SYSTEM PERMIT
STATE OF MAINE	)	AND
#MEG210000	)	WASTE DISCHARGE LICENSE
#W009106-5Y-A-N **APPROVAL**	)	**NEW**

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, *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 developed a new combination Maine Pollutant Discharge Elimination System (MEPDES) permit / Maine Waste Discharge License (WDL) (General Permit) for the discharge of waste snow to certain estuarine or marine waters of the State.

FINDINGS AND CONCLUSIONS

With its supportive data, agency review comments, and other related materials on file, the Department **FINDS THE FOLLOWING FACTS AND MAKES THE FOLLOWING CONCLUSIONS**:

1. A discharge 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. A discharge 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

FINDINGS AND CONCLUSIONS (cont'd)

(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. A discharge covered under this General Permit is subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S.A. § 414-A(1)(D).

ACTION

Based on the findings and conclusions as stated above, the Department APPROVES the issuance of General Permit #MEG2[illegible]0000, *Discharge of Waste Snow General Permit*, for the discharge of pollutants contained within snow to Class SB or SC waters of the State of Maine[1], SUBJECT TO THE FOLLOWING CONDITIONS, including:

1. The following 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 will 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 28th DAY OF February, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Patricia W. Aho
PATRICIA W. AHO, Commissioner

Filed
FEB 28 2014
State of Maine
Board of Environmental Protection

Date filed with Board of Environmental Protection _____

Date of Public Notice: October 31, 2013
This Order prepared by Bill Hinkel, BUREAU OF LAND & WATER QUALITY

[1] Subject to applicability and eligibility criteria set forth in Special Condition A of this General Permit.

SPECIAL CONDITIONS

A. APPLICABILITY AND ELIGIBILITY

This General Permit applies only to discharges to estuarine or marine waters of the State classified as SB or SC pursuant to *Classifications of estuarine and marine waters*, 38 M.R.S.A. § 469, and that, 1) if located on a coastal wetland, are fully submerged with each daily high tide; and 2) 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. The Department will determine on a case-by-case basis for each proposed discharge whether applicable water quality standards are currently achieved. This determination will be based on the status of water quality as specified in the State of Maine's biennial Integrated Water Quality Monitoring and Assessment Report, prepared pursuant to Sections 303(d) and 305(b) of the *Federal Water Pollution Control Act*, or other available relevant data.

This General Permit does not apply to any coastal wetland, as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(2) that is not fully submerged from tidal action during each high tide.

B. NOTIFICATION, DECISIONS AND EFFECTIVE TERM OF COVERAGE

1. **Notice of Intent (NOI).** The Department will provide a Notice of Intent form to be used with this General Permit. A person[2] seeking coverage under this General Permit must submit a completed NOI to the Department for review and approval. Forms must be mailed or hand-delivered to:

   Department of Environmental Protection
   Bureau of Land and Water Quality
   Division of Water Quality Management
   Permitting Section
   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. **Public notice.** Within 15 days prior to filing a Notice of Intent with the Department, the person seeking coverage under this General Permit must notify all abutters[3] of each proposed discharge point. The notice must be mailed by certified mail or Certificate of Mailing to abutters, as determined by local tax records or other reliable means, to the municipal office of the municipality(ies) where the project is located and, if the project is

[2] Person as defined at 06-096 CMR 2(1)(P).
[3] Abutter means a person who owns property that is both (1) adjoining and (2) within 1 mile of the delineated project boundary, including owners of property directly across a public or private right of way. 06-096 CMR (2)(1)(A).

SPECIAL CONDITIONS

B. NOTIFICATION, DECISIONS AND EFFECTIVE TERM OF COVERAGE (cont'd)

located in the unorganized or deorganized areas of the state, to the appropriate county commissioners. The notice must contain the following information.

a. The legal name, address and telephone number of the person responsible for the discharge.
b. A map showing the location of the discharge point(s).
c. A description of the area(s) from which snow will be collected for discharge, including an estimate of square feet and/or linear miles of surfaces within the collection area(s).
d. The anticipated date for filing the application with the Department.

3. **NOI information.** A complete NOI must contain the following information.

a. Facility, applicant, owner and operator information.

b. A statement addressing alternatives to the direct discharge of waste snow, including efforts to avoid the discharge through upland disposal and storage.

c. A map showing the location of the discharge point(s), the mean low water depth, and Global Positioning System (GPS) reference data if available.

d. A description of the area(s) from which snow will be collected for discharge, including an estimate of square feet and/or linear miles of surfaces within the collection area(s).

e. Color photographs of the proposed discharge point(s) that are representative of conditions at high and low tide.

f. A description of snow and ice treatments used within the collection area(s).

g. A description of the litter removal program or screening methods used to satisfy the best management practices established in the General Permit.

h. Evidence of title, right or interest (TRI) pursuant to 06-096 CMR 2(11)(D) in all property from which the discharge(s) will occur.

i. A list of abutters to whom public notice was provided.

j. For corporations, a *Certificate of Good Standing* or a statement signed by a corporate officer affirming that the corporation is in good standing.

k. 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.

SPECIAL CONDITIONS

B. NOTIFICATION, DECISIONS AND EFFECTIVE TERM OF COVERAGE (cont'd)

4. Decisions.

a. **Effective date of coverage.** Within fifteen (15) calendar days following receipt of a complete NOI, the Department must issue a decision either approving or denying authorization to discharge under this General Permit. If the Department does not notify the applicant of its decision within fifteen (15) calendar days following receipt of a complete NOI, the NOI is accepted and authorization to discharge under this General Permit is approved. In the event authorization to discharge under this General Permit is not approved, the Department must notify the applicant of the reason(s) for denying authorization to discharge under this General Permit. Denial of authorization to discharge under this General Permit is not appealable to the Board of Environmental Protection and is not final agency action. The approval of authorization to discharge under this General Permit is appealable in accordance with *Board responsibilities and duties*, 38 M.R.S.A. § 341-D(4).

b. **Individual permit coverage.** The Department may require, or an interested party may petition the Department to consider, that a person authorized to discharge 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), or, in in the opinion of the Department, the discharge is more appropriately controlled under an individual permit. A person 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. Authorization to discharge under this General Permit continues from year to year provided payment of an applicable annual fee pursuant to *Maine Environmental Protection Fund*, 38 M.R.S.A. § 353-B, that there are no significant changes in the discharge as described in the NOI, and that there are no adverse receiving water quality impacts resulting from the discharge.

   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. If the General Permit is to be renewed, it will remain in force until the Department takes final action on the renewal. Upon issuance 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 renewal General Permit.

6. **Transfers of ownership.** In the event that the person authorized to discharge under this General Permit transfers the responsibility to a new person, coverage under this General Permit may be transferred by the new person proposing to continue a discharge notifying the Department in writing, provided the new person proposing to continue a discharge proposes no significant changes in the facility or its operation. The notice must include documentation that the new person has: 1) the technical and financial capacity to comply with this General Permit; 2) title, right or interest in the facility; and 3) a *Certificate of*

SPECIAL CONDITIONS

B. NOTIFICATION, DECISIONS AND EFFECTIVE TERM OF COVERAGE (cont'd)

Good Standing or a statement signed by a corporate officer affirming that the corporation is in good standing, if applicable. Such notification must be made within two weeks of the transfer. If increases or significant changes in the discharge are proposed, a new NOI must be filed.

7. **Changed conditions**. In the event a person authorized to discharge under this General Permit proposes to make significant changes in the nature or scope of the operations of facilities described in a NOI previously approved, the authorized person must notify the Department as soon as becoming aware of and before implementing such changes. Based on its evaluation of the proposed changes, the Department may require the submittal of a new NOI or that an individual permit is obtained.

C. AUTHORIZED DISCHARGES

A person authorized to discharge under this General Permit is authorized to discharge: 1) only in accordance with the permittee's Notice of Intent; 2) only in accordance with the terms and conditions of this General Permit; and 3) only from the discrete discharge points identified in the approved NOI. Discharges of pollutants from any other point source are not authorized under this General Permit, and must be reported in accordance with Standard Condition B(5), *Bypasses*, of this General Permit.

D. NARRATIVE EFFLUENT LIMITATIONS

1. The permittee must not discharge waste snow that results in a visible oil sheen or floating foam or solids at any time which would impair the usages designated for the classification of the receiving waters.

2. The permittee must not discharge waste snow that contains materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated for the classification of the receiving waters.

3. The permittee must not discharge waste snow that causes visible discoloration or turbidity in the receiving waters that causes those waters to be unsuitable for the designated uses and characteristics ascribed to their class.

4. The permittee must not discharge waste snow that lowers the quality of any classified body of water below such classification, or lowers the existing quality of any body of water if the existing quality is higher than the classification.

5. The permittee must not discharge waste snow that causes an obstruction to navigation based on criteria set forth at 33 CFR Part 245.5.

SPECIAL CONDITIONS

D. NARRATIVE EFFLUENT LIMITATIONS (cont'd)

6. The permittee must not discharge waste snow that causes an accumulation of debris, litter or sand on an intertidal area that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class.

E. BEST MANAGEMENT PRACTICES FOR THE DISCHARGE OF WASTE SNOW

1. Only snow which is removed from the collection area within three (3) days following the end of a snow event may be discharged under this General Permit.

2. A litter removal program to minimize the presence of litter in the collection area prior to snow events or screening of snow prior to discharge must be employed.

3. The use of sand, salt, or sand/salt mixtures in areas from which snow is removed for discharge must be restricted, where appropriate, or consistent with application rates provided by the Maine Department of Transportation. See http://www.maine.gov/mdot/csd/mlrc/technical/winterplowsand/index.htm.

F. RECORD OF ACTIVITIES FOR WASTE SNOW DUMPS

The permittee must maintain a record for snow removal and discharge activities including, but not limited to, the following for each discharge location.

1. Changes in development or snow removal practices that may affect the quality or quantity of waste snow discharged.

2. The approximate quantity (gallons, cubic yards or other measure) of waste snow discharged per day.

3. Reports or observations of floating materials, deposits, changes to navigation or other circumstances that result from the discharge of waste snow.

4. A list of best management practices employed to minimize the discharge of pollutants, such as street litter and debris.

A copy of the record of activities must be made available to Department and USEPA staff upon request.

G. SEVERABILITY

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND
WASTE DISCHARGE LICENSE

FACT SHEET

FEBRUARY 25, 2014

MEPDES GENERAL PERMIT: **#MEG210000**
WASTE DISCHARGE LICENSE: **#W009106-5Y-A-N**

GENERAL PERMIT FOR THE DISCHARGE OF WASTE SNOW
ISSUED BY
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

AREA OF COVERAGE AND RECEIVING WATER CLASSIFICATION:

CLASS SB OR SC ESTUARINE OR MARINE WATERS OF THE STATE OF MAINE[1]

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

STERLING PIERCE
COMPLIANCE AND TECHNICAL ASSISTANCE
Division of Water Quality Management
Maine Dept. of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
ph: 207-287-4868
e-mail: sterling.pierce@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. This General Permit has been assigned MEPDES # MEG210000 / WDL #W009106-5Y-A-N.

[1] This General Permit does not apply to any coastal wetland, as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(2) that is not fully submerged during each high tide.

1. PROCEDURAL AND REGULATORY SUMMARY (cont'd)

On May 23, 2011, the Honorable Paul LePage, Governor of the State of Maine, signed Legislative Resolve Chapter 44, *"Resolve, Directing the Department of Environmental Protection To Amend Its Rules Regarding Snow Dumps"* (Resolves 2011 ch. 44) which directs the Department to review its rules regarding snow dumps to determine "[h]ow the rules may be amended to expedite the licensing process for municipalities that cannot be exempted from the waste discharge licensing requirement" and to ensure "the rules do not conflict with the Federal Water Pollution Control Act."

On October 31, 2013, the Department provided public notice of its intent to issue a new General Permit in accordance with *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (last amended August 25, 2013).

On October 31, 2013, the Department issued a draft General Permit for public comment.

On February 10, 2014, the Department held a public meeting for the purpose of collecting comments on the draft General Permit.

2. 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 USEPA to administer the NPDES permit program in Maine. Pursuant to *General Permits for Certain Wastewater Discharges*, 06-096 CMR 529 (last amended June 27, 2007), 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. The Department has determined that discharges of waste snow removed from public or private ways or parking lots directly into estuarine or marine waters of the State and that conform to the applicability and coverage standards established in the General Permit may be authorized by a general permit.

3. GENERAL PERMIT SUMMARY

The Department acknowledges that upland disposal of waste snow is not practicable in all communities at all times due to lack of available land owned or controlled by the person responsible for snow removal, economic feasibility of hauling snow long distances, air and other pollution associated with hauling snow, limited capacity of upland alternative disposal and storage sites, particularly during winter seasons with abundant snowfall, and inability to comply with resource setbacks established in *Snow Dumps: Best Management Practices for Pollution Prevention*, 06-096 CMR 573 (effective July 29, 2012). Pursuant to *Conditions of licenses*, 38 M.R.S.A. § 414-A(1)(D), this General Permit establishes best management practices as best practicable treatment for the discharge of waste snow to estuarine and marine waters of the State classified as Class SB or Class SC. Best management practices required by the General Permit include restrictions on the timing of discharges after snow fall

3. GENERAL PERMIT SUMMARY (cont'd)

events, litter control and minimization of sand, salt and sand-salt mixtures in waste snow. In addition, the applicability of the General Permit is limited to open waters and intertidal areas that are submerged with each high tide. Discharges to coastal wetlands that are not submerged on a daily basis, and discharges to any fresh surface water are not authorized under this General Permit. Pursuant to *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B(1)(C), there may be no direct discharge of pollutants associated with snow disposal to Class SA waters; therefore, discharges to Class SA waters are also excluded from coverage under this General Permit.

4. CONDITIONS OF PERMIT

Conditions of licenses, 38 M.R.S.A. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the requirements of the *Federal Water Pollution Control Act*, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, *Certain deposits and discharges prohibited*, 38 M.R.S.A. § 420 and *Surface Waters Toxics Control Program*, 06-096 CMR 530 (effective March 21, 2012) require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective July 29, 2012), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

5. RECEIVING WATER QUALITY STANDARDS

The applicability of this General Permit is restricted to discharges to estuarine or marine waters of the State classified as SB or SC pursuant to *Classifications of estuarine and marine waters*, 38 M.R.S.A. § 469, and that, 1) if located on a coastal wetland, are fully submerged with each daily high tide; and 2) 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 classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B(2) and (3) describe the standards for Class SB and Class SC waters, respectively.

Relevant standards for Class SB and SC waters:

- 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.

5. RECEIVING WATER QUALITY STANDARDS (cont'd)

- 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. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration.

- 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 Maine Department of Marine Resources.

- 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. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration.

- 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.

6. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has determined the existing water uses will be maintained and protected and that the discharge will not cause or contribute to the failure of the waters to meet the applicable standards for Class SB or Class SC classifications.

7. PUBLIC NOTICE

The Department provided public notice of its intent to issue a General Permit for the Discharge of Waste Snow in the *Bangor Daily, Kennebec Journal, Sun Journal*, and *Portland Press Herald* newspapers on or about October 31, 2013. Public notice provided a 30-day opportunity to request a hearing on the proposed issuance of the General Permit in accordance with *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(7)(A) (last amended May 29, 2013) and *Application Processing Procedures for Waste Discharge Licenses,* 06-096 CMR 522(8)(b)(1) (effective January 12, 2001) and for public comment on the intent to issue a General Permit through issuance of the final agency action, pursuant to 06-096 CMR 2(16). In accordance with *National Pollutant Discharge Elimination System Memorandum of Agreement Between the State of Maine and the United States Environmental Protection Agency Region 1*, Section 8.E., each person who receives a copy of a draft permit is allowed 30 days within which to submit comments.

8. DEPARTMENT CONTACTS

Additional information concerning this General Permit may be obtained from:

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

9. 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 Region 1* and 40 CFR 123.44(a)(2), the USEPA make 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 October 31, 2013 through the effective date of this final agency action, the Department solicited comments on the draft General Permit – Discharge of Waste Snow. The Department received comments, on the date indicated, from the following six (6) persons during the comment period. Responses to the comments are provided in this section.

C-1	Ivy Frignoca, Staff Attorney Conservation Law Foundation	C-2	Nick Bennett Natural Resources Council
C-3	Joseph Payne Friends of Casco Bay	Note: C-1, C-2 and C-3 jointly submitted comments by letter dated November 26, 2013.	

9. RESPONSE TO COMMENTS (cont'd)

C-4 Mary A. Colligan
Assistant Regional Administrator
National Marine Fisheries Service
November 22, 2013

C-5 Sean S. Heaney
Director for Regional Environmental Coordination
Department of the Navy
November 27, 2013
c/o
William Bullard
Senior Water Program Manager
Department of the Navy

1. ***Comment:*** The Commenters stated, "Snow dumps notoriously contain high amounts of environmental toxins...which pose grave risks to water quality for human consumption and for habitat." (C-1, C-2, C-3)

   Response: The Department recognizes that a snow dump, which is an area used for the storage and disposal of snow throughout the winter season, may contain concentrated pollutants and can be the source of a discharge that should be controlled through application of best management practices or, where necessary, a waste discharge license. The discharge of snow authorized under this General Permit is not snow that has been stored in a snow dump. The disposal of snow within three days following the end of a snow event and from an area where a litter removal program is employed to minimize the presence of litter in the collection area is not the same as a snow dump. Pollutant concentration in snow that is less than three days old is presumed to be similar to, or less than, typical storm water runoff. No changes were made based on this comment.

2. ***Comment:*** The Commenters stated, "The legislative resolve directs DEP to consider adopting a general permit or permit by rule process for snow dumps; it does not mandate either approach. It is unclear from the documentation sent with the two proposed general permits, what type of analysis DEP conducted to justify shifting from individual to general permits. DEP should explain its scientific analysis and why it believes the general permit to be a more or equally effective approach to assuring that water quality standards are maintained during snow discharges to marine waters...." (C-1, C-2, C-3)

9. RESPONSE TO COMMENTS (cont'd)

Response: As stated in the draft Fact Sheet, Legislative Resolve Chapter 44, *Resolve, Directing the Department of Environmental Protection To Amend Its Rules Regarding Snow Dumps* directs the Department to review its rules regarding snow dumps to determine "[h]ow the rules may be amended to expedite the licensing process for municipalities that cannot be exempted from the waste discharge licensing requirement." The decision on how the Department would comply with the legislative directive to expedite the licensing process was a regulatory and policy decision, not a scientific decision. The regulatory mechanism used to authorize a discharge does not affect the requirement to comply with applicable water quality standards. In other words, a general permit scheme provides an equal level of control over discharges and assurance that water quality standards will be achieved as does an individual permit. A general permit mechanism simply provides an expedited process for applicants, which is what was required by the legislative resolve, while retaining all administrative and judicial appeal rights for aggrieved persons. No changes were made based on this comment.

3. ***Comment:*** The generalized Best Management Practices (BMPs) incorporated into the general permit, without site specific data or oversight, may not be adequate to protect water quality. (C-1, C-2, C-3)

   Response: The BMPs incorporated into the draft General Permit are consistent with the BMPs incorporated into individual MEPDES permits issued to entities for this category of discharge. A Department compliance inspector is assigned to each permitted facility to conduct inspections and evaluate compliance with the permit. The Department is not aware of any instances of failure of a waterbody to meet applicable standards due to the discharge of snow collected within three days of the snow event. Non-compliance with a General Permit is handled in the same manner as any non-compliance with a MEPDES permit, which range from requests to make corrective actions to initiating formal enforcement actions. No changes were made based on this comment.

4. ***Comment:*** The Department should consider regulating snow disposal activities through individual permits due to the current threats posed by global climate change, carbon emissions, acidification, nutrient loading from storm water runoff, and shortages in species caused by overharvesting. (C-1, C-2, C-3)

   Response: The Department finds that regulating snow disposal activities through individual permits rather than through a general permit would not have any effect on the threats cited by the Commenter. No changes were made based on this comment.

5. ***Comment:*** Information pertaining to snow disposal activities required by individual permits will not be part of the General Permit and will be more difficult for the public to access. (C-1, C-2, C-3)

9. RESPONSE TO COMMENTS (cont'd)

Response: The Notice of Intent (NOI) required for coverage under the General Permit requires, among other submissions, detailed information pertaining to the applicant, an alternatives analysis, the location of discharge location(s), photographs of the proposed discharge area, a description of the collection area and treatments used within the collection area. A complete and timely NOI fulfills the requirements for permit applications for purposes *Applications for Waste Discharge Licenses*, 06-096 CMR 521 (effective January 12, 2001). 06-096 CMR 529(2)(b)(2)(i). Information provided in the NOI is available for review in accordance with the *Freedom of Access Act*, 1 M.R.S.A. §§ 400-505 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(6). No changes were made based on this comment.

6. ***Comment:*** Whereas the Department must still make decisions on proposals to discharge waste snow on a case-by-case basis, individual permits should be issued, rather than coverage under a General Permit, in order to maintain a record of the Department's review of each application and to allow stakeholder input into the review process. The General Permit does not require public notice to be published and does not provide an opportunity for stakeholders to comment on the information in the Notice of Intent (NOI) under consideration. There is no opportunity for public comment at the time a covered entity notifies the Department of its continued desire to be covered under a renewed General Permit. (C-1, C-2, C-3)

   Response: Pursuant to 06-096 CMR 529, 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. Because the Department has determined that discharges of waste snow removed from public or private ways or parking lots directly into estuarine or marine waters of the State are similar and that there is a relatively low risk for significant environmental impact, a general permit is being developed for this category of discharge. A draft permit was issued for public comment and provided an opportunity to allow stakeholder input into the process.

   The General Permit provides that the Department may require, or an interested party may request for consideration, that a person authorized to discharge 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), or, in in the opinion of the Department, the discharge is more appropriately controlled under an individual permit. In that situation, all provisions for public participation would apply to an application for an individual permit and to issuance of a draft permit for public comment.

9. RESPONSE TO COMMENTS (cont'd)

The Department may specify in a general permit a procedure for providing public notice of the notice of intent or other coverage filings submitted to the Department. Whether such notice will be required, the type of notice and the timing of notice will be determined with consideration to the nature of the discharge, the anticipated level of public interest in the activity and the substance of the filing required by the general permit. Means of providing public notice may include but are not limited to publication in a newspaper, notifying abutters, filing a notice with the municipal office and/or county commissioners or posting on an internet web site maintained by the Department. 06-096 CMR 529(3)(a).

The public notice requirements specified by this General Permit are that within 15 days prior to filing a Notice of Intent with the Department, the person seeking coverage under this General Permit shall notify all abutters of each proposed discharge point. The notice must be mailed by certified mail or Certificate of Mailing to abutters, as determined by local tax records or other reliable means, to the municipal office of the municipality(ies) where the project is located and, if the project is located in the unorganized or deorganized areas of the state, to the appropriate county commissioners. The Department believes this level of public notice is appropriate for the nature of the discharge. No changes were made based on this comment.

7. ***Comment:*** The fifteen (15) day review period for NOIs filed under the General Permit is not sufficient for an understaffed Department to complete the necessary review and should be eliminated. (C-1, C-2, C-3)

   Response: The Department must notify an applicant for coverage under a general permit within a time period specified in the general permit as to whether or not coverage for the specific discharge is accepted. 06-096 CMR 529(3)(b). The express intent of *Resolve, Directing the Department of Environmental Protection To Amend Its Rules Regarding Snow Dumps* is to expedite the licensing process. The Department selected a fifteen day review period for NOIs as a realistic time period in which to fully review and process NOIs for this category of discharge given the current number of staff assigned to waste discharge permitting. No changes were made based on this comment.

8. ***Comment:*** Effluent monitoring and / or testing is not addressed in the General Permit. "The Department should include monitoring and testing requirements because by not publishing a list of known contaminants likely to be present in waste snow and identifying the concentrations at which they become toxic, the State could inadvertently authorize the discharge of pollutants that may harm listed species or modify designated critical habitat." (C-4)

   Response: In compliance with *Conditions of licenses*, 38 M.R.S.A. § 414-A(1)(D), the discharge of snow under the General Permit is subject to effluent limitations that

9. RESPONSE TO COMMENTS (cont'd)

require application of best practicable treatment. Section 402(a)(1) of the *Federal Water Pollution Control Act* and 40 CFR 122.44(k) allow establishment of best management practices (BMPs) to control or abate the discharge of pollutants when numeric limitations and standards are infeasible. Best management practices means "schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of 'waters of the United States.' 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." 40 CFR 122.2. A BMP is a "[p]ermit condition used in place of or in conjunction with effluent limitations to prevent or control the discharge of pollutants. BMPs may include a schedule of activities, prohibition of practices, maintenance procedure, or other management practice."[2]

The Department has established best management practices for the discharge of waste snow in the General Permit under this authority. The Department has made a determination that analytical monitoring of waste snow prior to discharge is infeasible. The General Permit does, however, contain narrative conditions to prevent unreasonable impacts on receiving water quality. No changes were made based on this comment.

9. ***Comment:*** "[T]he exact GPS coordinates and spatial limits of each snow dump should be mandatory. The exact location of each snow dump and the identification of their boundaries will help planners to reduce the potential for adverse effects to listed species or the modification of designated critical habitat." "As geological and geophysical information is readily available from State Office of GIS, the exact GPS coordinates and spatial limits of salt sensitive areas should be provided." (C-4)

Response: The NOI information related to spatial data required by the General Permit is consistent with *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(11)(A), which requires GPS data "when available." The General Permit requires a map showing the location of the discharge point(s) and is conditioned such that "[t]he permittee shall not discharge waste snow that causes an accumulation of debris, litter or sand on an intertidal area that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class." General Permit at Special Condition D.6. The Department has not received any information from planners or others that the discharge of waste snow within 72 hours of the storm event has adverse effects to listed species or impacts on designated critical habitat. The Department has issued waste discharge licenses for this type of discharge for approximately two decades without any documented instances of non-attainment of receiving water quality standards, including those for aquatic life.

[2] USEPA web site Water: Industry Effluent Guidelines
http://water.epa.gov/scitech/wastetech/guide/questions_index.cfm#bmp (visited January 16, 2014)

9. RESPONSE TO COMMENTS (cont'd)

Geological and geophysical information pertaining to the spatial limits of salt sensitive areas is not readily available from the Maine Office of GIS.

No changes were made based on this comment.

10. ***Comment:*** "If the water body fails to meet its water quality classification standard for any reason during the permitted period, future permitting actions for the failed water body should require further evaluation under this GP." (C-4)

    Response: Special Condition A, *Applicability and Eligibility*, of the General Permit specifies that the General Permit applies only to discharges to waters, that among other conditions, 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. This provision is consistent with the requirements of the State's antidegradation policy, *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(F). No changes were made based on this comment.

11. ***Comment:*** "Details on, or links to, estuarine and marine water quality designations, as well as chemical constituents likely found in waste snow and information regarding their potential for toxicity should be included in the GP." (C-4)

    Response: The Integrated Water Quality Monitoring and Assessment Report summarizes water quality data collected by the Department as well as numerous other state, federal and tribal government agencies, volunteer water monitoring organizations, and other sources. The Integrated Report is also known as the 305(b) report and 303(d) list because it is required by Section 305(b) of the Clean Water Act. The Clean Water Act requires states to submit an Integrated Report to the USEPA every even-numbered year. Monitoring information is analyzed by the Department to assess the ability of Maine's water resources to meet uses such as drinking water, aquatic life support, fishing or recreation as established by Maine's water classification laws. The 303(d) list of impaired waters identifies the waters not meeting one or more of their designated uses, and is included in appendices in the Integrated Report. The Integrated Water Quality Monitoring and Assessment Report is available for download at: http://www.maine.gov/dep/water/monitoring/305b/index.htm.

    Chemical constituents and potential for toxicity associated with the discharge of waste snow is considered to be less than the stormwater runoff that would ultimately be generated if the snow was not rapidly removed from the collection area following a storm event. "Stormwater runoff is generated when precipitation from rain and snowmelt events flows over land or impervious surfaces and does not percolate into the ground. As the runoff flows over the land or impervious surfaces (paved streets, parking lots, and building rooftops), it accumulates debris, chemicals, sediment or other pollutants that could adversely affect water quality if the runoff is discharged

9. RESPONSE TO COMMENTS (cont'd)

untreated."[3] Removing snow within the collection area within 3 days of the end of a storm event reduces the potential for additional pollutant loading associated with stormwater runoff during periods of snow melt.

No changes were made based on this comment.

12. ***Comment:*** The reference to 38 M.R.S.A. § 414-A(5)(B)(4) in Section 6 of the fact sheet should be accurate or removed. (C-4)

    Response: The Department agrees that the reference to 38 M.R.S.A. § 414-A(5)(B)(4) in Section 6 of the fact sheet should be removed to avoid confusion related to the Department's authority to require an individual permit, which is addressed in Special Condition B.4.b. of the General Permit. This change has been made.

13. ***Comment:*** "References to standards for dissolved oxygen and bacterial concentration for receiving waters during the May-September timeframe are irrelevant and should be omitted." (C-4)

    Response: *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B(2) and (3) describe the standards for Class SB and Class SC waters, respectively. Nothing in Section 6 of the fact sheet contradicts the statutory requirements for dissolved oxygen or bacteria content of the receiving waters. No changes we made based on this comment.

14. ***Comment:*** "There needs to be clarification regarding what waste snow discharges are regulated by the draft permits. The permits themselves and the definitions in 06-096 CMR 573 are not sufficiently clear. As currently written, any snow removal that creates a pile of waste snow (even a couple full shovels) that discharges to the ground or surface waters specified in the permits could be regulated." Consider clarifying the Department rules and draft permit to "further define regulated waste snow/snow dumps, and provide exemptions for waste snow/snow dump discharges of "de minimis" size, from certain persons or size facilities (ex. homeowners), and that remain on site vice hauled to and dumped on a different property." (C-5)

    Response: The draft General Permit applies to the direct discharge of snow to certain estuarine or marine waters of the State classified as SB or SC pursuant to *Classifications of estuarine and marine waters*, 38 M.R.S.A. § 469. These discharges are not snow dumps as defined by 38 M.R.S.A. § 361-A(4-A-1)[4]. The Clean Water

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[3] USEPA web site Stormwater Program http://cfpub.epa.gov/npdes/home.cfm?program_id=6 (visited January 22, 2014)

[4] 38 M.R.S.A. § 361-A(4-A-1) defines snow dump as "a facility that is used for the storage of snow and incidental materials collected from public or private ways."

9. RESPONSE TO COMMENTS (cont'd)

Act does not provide authority to establish exemptions for discharges of waste snow. However, the Maine Office of the Attorney General has advised that the DEP may use enforcement discretion for discharges of snow that it deems "de minimus." Historically, and as a default presumption, the Department has considered pushing, plowing, or blowing snow from bridges, docks, wharves, roadways and other areas that abut water bodies to be "de minimus." The Department will continue to regulate discharges of snow in the same manner as it has historically. No changes we made based on this comment.

15. ***Comment:*** "The permit does not address snow melt runoff from commercial snow melting units. Are these discharges exempt from permitting? We understood these discharges were previously allowed through the MS4 permit. However, the MS4 permit does not allow discharges that require an individual waste discharge permit or are required to obtain coverage under another waste discharge general permit." "Consider discussing commercial snow melting units in the fact sheets, permits themselves, or Department guidance." (C-5)

    Response: The General Permit addresses the discharge of frozen snow within three (3) days following the end of a snow event. Snow melt runoff, either as stormwater or from a point source such as a commercial snow melting unit, is not a component of this General Permit. No changes we made based on this comment.

16. ***Comment:*** The permit discusses the use of salt/sand, but not the use of pre-treatment liquids or alternative treatments like beet juice products that are also used. "Consider adding the use of pre-treatment liquids to the permit and discussing any restrictions or BMPs for their use." (C-5)

    Response: One of the best management practices established in the General Permit requires that the use of sand, salt, or sand/salt mixtures in areas from which snow is removed for discharge must be restricted, where appropriate, or consistent with application rates provided by the Maine Department of Transportation. The Department's primary objective related to this BMP is to minimize or prevent discharges of sand, which has the potential to adversely affect the benthic community of the receiving waters. The General Permit requires the applicant to provide a description of snow and ice treatments used within the collection area(s). Based on this information, the Department will determine whether the discharge is more appropriately controlled under an individual permit. No changes we made based on this comment.

17. ***Comment:*** It might not be possible to remove the snow within 3 days under all circumstances. Provide a technical basis for the 3 day window and consider exceptions for extenuating circumstances. (C-5)

9. RESPONSE TO COMMENTS (cont'd)

Response: The decision to establish the best management practice limiting authorization to discharge only that snow which is removed from the collection area within three (3) days following the end of a snow event is based on Department best professional judgment. An entity that cannot comply with this condition may apply for an individual permit. No changes we made based on this comment.

18. ***Comment:*** "[M]easuring a quantity of waste snow will be crude at best. This data collection may not serve a useful purpose or facilitate analysis of the efficacy of the BMPs in protecting water quality." Reconsider this record keeping requirement. (C-5)

    Response: The General Permit requirement to maintain records on the approximate quantity (gallons, cubic yards or other measure) of waste snow discharged per day is a reasonable requirement in order to quantify the discharge of snow. The Department respectfully disagrees that these data may not serve a useful purpose or facilitate analysis of the efficacy of the BMPs in protecting water quality. No changes we made based on this comment.

19. ***Comment:*** This comment is in regard to the condition that requires a person covered under the General Permit to employ a litter removal program to minimize the presence of litter in the collection area prior to snow events or screening of snow prior to discharge.

    "Consider defining 'prior.' Immediately prior to each snow event is not practical. Consider discussing what would be considered an acceptable 'litter removal program.' We assume street and parking lot sweeping by mechanical means would be acceptable, but not practical or cost effective for smaller facilities. Street sweeping requirements in Maine MS4 permits are currently annual, scheduled after the snow season. Would mechanical sweeping prior to the snow season meet the requirements of this section? Consider defining 'screening.' Is this visual observation or actual physical screening? (C-5)

    Response: The Department recognizes that various terms used in this condition are not defined in water quality statutes or rules. The intent of this best management practice is to minimize the discharge of incidental litter to the greatest extent practicable and to ensure the narrative effluent limitations established in the General Permit are achieved. There are a variety of strategies that an entity may employ to satisfy this condition. The Department has added a requirement in the General Permit to submit as part of the NOI a description of the litter removal program used within the collection area(s).

On February 10, 2014, the Department held a public meeting in Augusta, Maine, in accordance with *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(8), for the purpose of collecting comments on the draft General Permit. Two people, Nick Bennett (C-2) and Joseph Payne (C-3), provided comment in

9. RESPONSE TO COMMENTS (cont'd)

opposition to the draft General Permit at the public meeting. Responses to the oral comments are provided in this section.

20. ***Comment:*** With respect to snow discharges, the Department regulates fresh waters differently than it does salt water. Salt water should be protected for the sources of food it provides. The commenter expressed concern that the discharges would cause non-attainment of applicable water quality standards. (C-3)

    Response: The discharge of snow removed from public or private ways or parking lots directly into the fresh surface waters of the State is prohibited. 38 M.R.S.A. § 413(2-B). Such discharges may not be licensed pursuant to 38 M.R.S.A. § 413(1). A similar statutory prohibition does not exist for estuarine or marine waters.

    Class SB and SC waters must be of such quality that they are suitable for the designated uses of fishing, aquaculture, propagation and harvesting of shellfish. 38 M.R.S.A. §§ 465-B(2)(A) and 465-B (3)(A). The Department has made a determination that discharges that comply with the terms and conditions established in the General Permit will not cause the receiving water to be unsuitable for the designated uses of fishing, aquaculture, propagation and harvesting of shellfish. No waters in Maine are listed in the State of Maine 2010 Integrated Water Quality Monitoring and Assessment Report as impaired due to the discharge of waste snow. No changes were made based on this comment.

21. ***Comment:*** A general permit should not be issued for this category of discharge. Individual permits should be issued to better control the variable quality of snow discharged. (C-2, C-3)

    Response: Legislative Resolve Chapter 44, *"Resolve, Directing the Department of Environmental Protection To Amend Its Rules Regarding Snow Dumps"* (Resolves 2011 ch. 44) directs the Department to determine "[h]ow…to expedite the licensing process for municipalities that cannot be exempted from the waste discharge licensing requirement." The Department may issue a general permit for a category of discharge that involve the same or substantially similar types of operations and that is the same types of waste and that requires the same effluent limitations or operating conditions. 06-096 CMR 529(2)(a)(2)(ii). Historically, the Department has regulated the discharge of waste snow through individual permits that contained substantially similar terms and conditions. The Department has determined that this category of discharge is satisfactorily regulated under a general permit and that individual permits offer no added regulatory benefit. No changes were made based on this comment.

22. ***Comment:*** Arsenic is added to salt to prevent clumping and the aquatic toxicity of arsenic in salt waters is much lower than it is in fresh water. (C-2)

9. RESPONSE TO COMMENTS (cont'd)

Response: The discharges authorized under this General Permit are for snow that has been collected within three days following the end of a storm event. Typically, salt is not applied during snow events and is used as a de-icing treatment after plowing and snow removal is completed. Snow discharged under this General Permit is considered to be similar to or less polluted than storm water runoff that would otherwise be discharged to the receiving water during periods of snowmelt. No changes were made based on this comment.

23. ***Comment:*** A person who seeks coverage under this General Permit or an individual permit for the discharge of snow should consider alternatives to the discharge. (C-2, C-3)

Response: The General Permit contains a requirement to provide a statement addressing alternatives to the direct discharge of waste snow, including efforts to avoid the discharge through upland disposal and storage, as part of the Notice of Intent information. The Department will take this information into consideration when reviewing an applicant's NOI for a decision either approving or denying authorization to discharge under the General Permit. No changes were made based on this comment.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

11. Other laws. The issuance of this permit does not authorize any injury to persons or property or invasion of other property rights, nor does it relieve the permittee 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

(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.

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

(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.

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.

DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012 **Contact: (207) 287-2811**

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

Other Considerations in Appealing a Decision to the Board

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

What to Expect Once You File a Timely Appeal with the Board

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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