



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

DEPARTMENT ORDER

IN THE MATTER OF

BUCKEYE SOUTH PORTLAND TERMINAL, LLC	)	MAINE POLLUTANT DISCHARGE
S. PORTLAND, CUMBERLAND COUNTY, ME	)	ELIMINATION SYSTEM PERMIT
BULK FUEL STORAGE FACILITY	)	AND
#ME0000485	)	WASTE DISCHARGE LICENSE
#W002653-5S-I-R	)	RENEWAL
APPROVAL	)	

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

**APPLICATION SUMMARY**

On March 19, 2019, the Department accepted as complete for processing, a renewal application from SPT for Waste Discharge License (WDL) #W002653-5S-H-R/ Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0000485 which was issued on April 10, 2014 for a five-year term. The 4/10/14 permit authorized the permittee to discharge treated stormwater runoff at a daily maximum flow rate of 610 gallons per minute (GPM), treated tank bottom wastewaters up to a daily maximum low rate of 100,000 gallons per day (GPD) and hydrostatic test wastewater at a daily maximum flow rate of 4.6 million gallons per day (MGD) to the Fore River, Class SC, in South Portland, Maine. The previous permitting action included limitations and monitoring frequencies for outfalls from which treated stormwater runoff was discharged. The Department has determined that outfalls carrying stormwater runoff are covered under the Multi Sector General Permit for Stormwater Associated with an Industrial Activity. Therefore, this permitting action only authorizes discharges of Hydrostatic Test Waters and Tank Bottom Waste Waters. See **Attachment A** of this permit for a facility site map.

**PERMIT SUMMARY**

This permitting action is carrying forward all the terms and conditions of the previous permitting actions except it is:

1. Removing Limitations and Monitoring frequencies and all references related to stormwater discharges which the Department deems covered under the Multi Sector General Permit for Stormwater Associated with an Industrial Activity.

## CONCLUSIONS

BASED on the findings summarized in the attached Fact Sheet dated November 14, 2019 and subject to the special conditions that follow, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 M.R.S. § 464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
  - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing 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 will be subject to effluent limitations that require application of best practicable treatment as defined in *Conditions of Licenses*, 38 M.R.S. § 414-A(1)(D).

**ACTION**

Based on the findings and conclusions as stated above, the Department APPROVES the above noted application of BUCKEYE SOUTH PORTLAND TERMINAL, LLC to discharge, a daily maximum of 100,000 GPD of treated tank bottom wastewaters from Outfall #002 and a daily maximum of 4.6 MGD day of hydrostatic test wastewater from Outfall #003 from a bulk fuel storage and transfer facility to the Fore River, Class SC, in South Portland, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits,*” revised July 1, 2002, copy attached.
2. The attached Special Conditions, including effluent limitations and monitoring requirements.
3. This permit and the authorization to discharge become effective upon the date of signature below and expire at midnight five (5) years from the effective date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the authorization to discharge and the terms and conditions of this permit and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5 M.R.S. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (June 9, 2018)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2019.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
Gerald D. Reid, Commissioner

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

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application \_\_\_\_\_ March 19, 2019 \_\_\_\_\_.

Date of application acceptance \_\_\_\_\_ March 19, 2019 \_\_\_\_\_.

This Order prepared by Rod Robert, Bureau of Water Quality

## SPECIAL CONDITIONS

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge **tank bottom wastewaters from Outfall #001B (when hydrostatic test wastewater is not being discharged)** to the Fore River at South Portland. Such discharges are limited and must be monitored by the permittee as specified below:

#### OUTFALL #001B – Tank bottom wastewaters<sup>(1,6)</sup>

Effluent Characteristic	Discharge Limitations		Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow (Gallons) <sup>(3)</sup> [51500]	---	100,000 gal [57]	1/Discharge [01/DS]	Measure [MS]
Total Suspended Solids [00530]	---	50 mg/L [19]	1/Discharge [01/DS]	Grab [GR]
Oil & Grease [00552]	---	15 mg/L [19]	1/Discharge [01/DS]	Grab [GR]
PAHs (Single chemical) <sup>(7)</sup> [38528]	---	Report ug/L [28]	1/Discharge [01/DS]	Grab [GR]
BTEX <sup>(8)</sup> [49491]	---	Report mg/L [19]	1/Discharge [01/DS]	Grab [GR]
Whole Effluent Toxicity (WET) <sup>(9)</sup> Acute – NOEL <i>Mysidopsis bahia</i> [TDM3E] (Mysid shrimp)	---	100% [23]	1/Discharge [01/DS]	Grab [GR]

The italicized numeric values bracketed in the table and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports.

**FOOTNOTES:** See Pages 7 through 11 of this permit for applicable footnotes.

**SPECIAL CONDITIONS**

**B. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

2. The permittee is authorized to discharge **hydrostatic test wastewater from Outfall #001C** to the Fore River at South Portland. Such discharges are limited and must be monitored by the permittee as specified below:

**OUTFALL #001C – Hydrostatic test wastewater <sup>(1)</sup>**

Effluent Characteristic	Discharge Limitations		Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow <sup>(3)</sup> [50050]	---	4.6 MGD [03]	1/Discharge [01/DS]	Measure [MS]
Total Suspended Solids [00530]	---	50 mg/L [19]	1/Discharge [01/DS]	Grab [GR]
Oil & Grease <sup>(10)</sup> [00552]	---	15 mg/L [19]	1/Discharge [01/DS]	Grab [GR]
Total Chlorine Residual <sup>(11)</sup> [50060]	---	13 ug/L [28]	1/Discharge [01/DS]	Grab [GR]

The italicized numeric values bracketed in the table and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports.

**FOOTNOTES:** See Pages 7 through 11 of this permit for applicable footnotes.

## **SPECIAL CONDITIONS**

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

#### **FOOTNOTES**

**Sampling Locations:** Discharges from Outfall, #001B and #001C shall be sampled independently, prior to co-mingling with any other waste stream(s).

Outfall #001B (tank bottom wastewaters) samples for all parameters shall be collected from the clean holding tank prior to discharge directly to the receiving waters or before being commingled with storm water runoff.

Outfall #001C (hydrostatic test wastewaters) samples for all parameters shall be collected from the tank or piping prior to discharge directly to the receiving waters or before being commingled with stormwater runoff.

1. Sampling - Samples for all parameters must be collected during the first hour of discharge. Sampling and analysis must be conducted in accordance with; a) methods approved in Title 40 *Code of Federal Regulations* (40 CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Human Services. Samples that are sent to another POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S. § 413 are subject to the provisions and restrictions of the *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (effective April 1, 2010). If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report. Laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of 10-144 CMR 263.

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

#### **Tank Bottom Wastewater Only – Outfall #001B**

1. After treatment via the granular activated carbon treatment system, the treated tank bottom wastewaters shall be stored in a clean holding tank until all monitoring and testing requirements have been completed and demonstrate that the pollutant levels are within the discharge limitations as specified. The discharge of treated tank bottom wastewater from the clean holding tank meeting all the discharge limits of this permit may bypass the oil/water separator. The treated tank bottom wastewater shall be discharged at or in close proximity to the existing permitted outfall for storm water runoff. The discharge of tank

**SPECIAL CONDITIONS**

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

**Tank Bottom Wastewater Only – Outfall #001B (cont'd)**

bottom wastewaters shall not exceed three continuous days and there shall be a lapse of a minimum of 14 days between tank bottom discharges to prevent any possible chronic effects.

In lieu of treating and holding all the tank bottom wastewaters from a designated tank, the permittee may treat a representative batch consisting of 10% of the entire batch from the designated tank or 10,000 gallons, whichever is less, and store it in a clean holding tank. After all monitoring and testing requirements have been completed and demonstrate that the pollutant levels of the representative batch are within the discharge limitations as specified in Special Condition A (Outfall #001B) of this permit, the treated tank bottom wastewaters in the clean holding tank may then be discharged. The discharge of treated tank bottom wastewater from the clean holding tank meeting all the discharge limits of this permit may bypass the oil/water separator. The remainder of the tank bottom wastewater from the designated tank may be discharged after treatment via the granular activated carbon treatment system without further monitoring and may bypass the oil/water separator. The treated tank bottom wastewater shall be discharged at or in close proximity to the existing permitted stormwater outfall. The discharge of tank bottom wastewaters shall not exceed three continuous days and there shall be a lapse of a minimum of 14 days between tank bottom discharges to prevent any possible chronic effects.

2. Polynuclear Aromatic Hydrocarbons (PAHs) shall be analyzed in accordance with 40 CFR Part 136, Appendix A, EPA Method 625. The highest single PAH of the PAH's listed below shall be reported in the daily maximum column of the DMR.

Acenaphthylene	Acenaphthene	Anthracene
Benzo(B)Fluoranthene	Benzo(K)Fluorantene	Benzo(A)Pyrene
Crysene	Fluoranthene	Fluorene
Indeno(1,2,3-cd)Pyrene	Phenanthrene	Pyrene
Benzo(ghi)perylene	Benzo(A) Anthracene	Dibenzo(A,H)Anthracene
Naphthalene		

## SPECIAL CONDITIONS

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

#### Tank Bottom Wastewater Only – Outfall #001B (cont'd)

3. BETX - When discharging tank bottom wastewater which may contain the BETX compounds, the permittee shall monitor for the suspected compounds. BETX shall be analyzed in accordance with EPA's Method 602 and must achieve reporting limits for each compound as prescribed in the Department's WET and Chemical Specific Data Report Form in **Attachment B** of this permit.
4. Whole Effluent Toxicity (WET) - Testing shall be conducted on the first discharge event of the calendar year. Definitive WET testing is a multi-concentration testing event (a minimum of five dilutions), which provides a point estimate of toxicity in terms of No Observed Effect Level, commonly referred to as NOEL or NOEC. However, in the case of batch dischargers such as South Portland Terminal, multi-concentration WET testing is waived, and definitive WET testing shall be conducted using 100% effluent collected from tank bottom wastewater that is representative of the discharge.

SPT is prohibited from discharging tank bottom wastewater until WET test results indicate Acute No Observed Effect Level (A-NOEL) at 100% effluent.

A-NOEL is defined as the acute-no observed effect level with survival as the end point. It is noted the Department defines A-NOEL as an IC-10 (inhibition concentration) based on survival in the acute test. WET testing shall be conducted using the mysid shrimp (*Mysidopsis bahia*).

Toxicity tests must be conducted by an experienced laboratory approved by the Department. The laboratory must follow procedures as described in the following U.S.E.P.A. manuals.

Methods for Measuring the Acute Toxicity of Effluent and Receiving Waters to Freshwater and Marine Organisms, (Fifth Edition), October 2002, EPA-821-R-02-012.

The permittee is also required to analyze the effluent for the parameters specified in the "Analytical Chemistry" section on the form in **Attachment B** of this permit every time a screening- or surveillance-level WET test is performed for compliance with this permit.

5. Oil and grease - Monitoring is not required if the discharge of hydrostatic test water is from tanks and pipes that are clean and certified weldable. The test water is not required to be pretreated through the oil/water separator, provided the test water is municipal water or from some other source which does not contain oil and grease.

## **SPECIAL CONDITIONS**

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

#### **Tank Bottom Wastewater Only – Outfall #001B (cont'd)**

6. Total residual chlorine (TRC) – Compliance with the daily maximum limitation is based on the U.S. Environmental Protection Agency's (USEPA) current RL of 50 ug/L (0.05 mg/L). All analytical test results must be reported to the Department, including results which are detected below the RL. Results reported at or below the RL will be considered to be in compliance with the permit. If the analytical test result is below the RL, the result must be reported as <X where X is the detection level achieved by the laboratory for that test. The Discharge Monitoring Reports will be coded with the RL of 50 ug/L such that detectable results reported at or below 50 ug/L but greater than the daily maximum water quality-based limit established in this permit will not be recorded as violations of the permit.

### **B. NARRATIVE EFFLUENT LIMITATIONS**

1. The permittee must not discharge effluent that contains a visible oil sheen, foam or floating solids at any time which would impair the usages designated for the classification of the receiving waters.
2. The permittee must not discharge effluent that contains materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated for the classification of the receiving waters.
3. The permittee must not discharge wastewater that causes visible discoloration or turbidity in the receiving waters that causes those waters to be unsuitable for the designated uses and characteristics ascribed to their class.
4. The permittee must not discharge effluent that lowers the quality of any classified body of water below such classification or lowers the existing quality of any body of water if the existing quality is higher than the classification.

## **SPECIAL CONDITIONS**

### **D. HYDROSTATIC TEST WASTEWATER**

Tanks and pipes being hydrostatically tested must be clean of product and all construction debris, including sandblasting grit, prior to testing and discharge through Outfall #001C. The discharge must be dechlorinated if test results indicate that discharged waters will violate permit limits. **The permittee must notify the Department of an intended discharge of hydrostatic test wastewater at least three business days prior to the discharge.**

### **E. AUTHORIZED DISCHARGES**

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on March 19, 2019 2) the terms and conditions of this permit; and 3) only from Outfall #001B and Outfall #001C. Discharges of wastewater from any other point source(s) are not authorized under this permit, and must be reported in accordance with Standard Condition D(5), *twenty-four hour reporting*, of this permit.

### **F. MONITORING AND REPORTING**

#### Electronic Reporting

*NPDES Electronic Reporting*, 40 C.F.R. 127, requires MEPDES permit holders to submit monitoring results obtained during the previous month on an electronic discharge monitoring report to the regulatory agency utilizing the USEPA electronic system.

Electronic DMRs submitted using the USEPA NetDMR system, must be:

1. Submitted by a facility authorized signatory; and
2. Submitted no later than **midnight on the 15<sup>th</sup> day of the month** following the completed reporting period.

Documentation submitted in support of the electronic DMR may be attached to the electronic DMR. Toxics reporting must be done using the Department toxsheet reporting form. An electronic copy of the Toxsheet reporting document must be submitted to your Department compliance inspector as an attachment to an email. In addition, a hardcopy form of this sheet must be signed and submitted to your compliance inspector, or a copy attached to your NetDMR submittal will suffice. Documentation submitted electronically to the Department in support of the electronic DMR must be submitted no later than midnight on the 15<sup>th</sup> day of the month following the completed reporting period.

## **SPECIAL CONDITIONS**

### **F. MONITORING AND REPORTING (cont'd)**

#### Non-electronic Reporting

If you have received a waiver from the Department concerning the USEPA electronic reporting rule, or are permitted to submit hardcopy DMR's to the Department, then your monitoring results obtained during the previous month must be summarized for each month and reported on separate DMR forms provided by the Department and **postmarked on or before the thirteenth (13<sup>th</sup>) day of the month or hand-delivered to a Department Regional Office such that the DMR's are received by the Department on or before the fifteenth (15<sup>th</sup>) day of the month** following the completed reporting period.

A signed copy of the DMR and all other reports required herein must be submitted to the Department assigned compliance inspector (unless otherwise specified) following address:

Department of Environmental Protection  
Southern Maine Regional Office  
Bureau of Water Quality  
Division of Water Quality Management  
312 Canco Road  
Portland, ME 04103

### **H. NOTIFICATION REQUIREMENT**

In accordance with Standard Condition D, the permittee must notify the Department of the following:

1. Any introduction of pollutants into the wastewater collection and treatment system from an indirect discharger in a primary industrial category discharging process wastewater; and
2. Any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system by a source introducing pollutants to the system at the time of permit issuance. For the purposes of this section, notice regarding substantial change must include information on:
  - (a) the quality and quantity of wastewater introduced to the wastewater collection and treatment system; and
  - (b) any anticipated impact caused by the change in the quantity or quality of the wastewater to be discharged from the treatment system.

## **SPECIAL CONDITIONS**

### **I. REOPENING OF PERMIT FOR MODIFICATIONS**

In accordance with 38 M.R.S. § 414-A(5) and upon evaluation of the tests results or monitoring requirements specified in Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at any time and with notice to the permittee, modify this permit to: 1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded, (2) require additional monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

### **J. SEVERABILITY**

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

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

**FACT SHEET**

DATE: **NOVEMBER 14, 2019**

PERMIT NUMBER: **#ME0000485**

WASTE DISCHARGE LICENSE: **#W002653-5S-I-R**

NAME AND ADDRESS OF APPLICANT:  
**BUCKEYE SOUTH PORTLAND TERMINAL, LLC.  
170 LINCOLN STREET  
SOUTH PORTLAND, ME 04106**

NAME AND ADDRESS WHERE DISCHARGE(S) OCCUR(S):  
**SOUTH PORTLAND TERMINAL LLC  
170 LINCOLN STREET  
SOUTH PORTLAND, ME 04108**

COUNTY: **CUMBERLAND**

RECEIVING WATER CLASSIFICATION: **FORE RIVER, CLASS SC**

COGNIZANT OFFICIAL CONTACT INFORMATION:  
**NICOLE BROWER  
(518) 453-2203  
EMAIL: [nbrower@envirospeceng.com](mailto:nbrower@envirospeceng.com)**

**1. APPLICATION SUMMARY**

Application: On March 19, 2019, the Department of Environmental Protection (Department) accepted as complete for processing from Buckeye South Portland Terminal, LLC a renewal application for Waste Discharge License (WDL) #W002653-5S-H-R/ Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0000485 which was issued on April 10, 2014 for a five-year term. The 4/10/14 permit authorized the discharge of treated stormwater runoff at a daily maximum flow rate of 610 gallons per minute (GPM), treated tank bottom wastewaters up to a daily maximum flow rate of 100,000 gallons per day (GPD) and hydrostatic test wastewater at a daily maximum flow rate of 4.6 million gallons per day (MGD) to the Fore River, Class SC, in South Portland, Maine. The previous permitting action included limitations and monitoring frequencies for several outfalls from which treated stormwater runoff was discharged. The Department has determined that outfalls carrying stormwater runoff are covered under the Multi Sector General Permit for Stormwater Associated with an Industrial Activity. Therefore, this permitting action only authorizes discharges of Hydrostatic Test Waters and Tank Bottom Waste Waters

## 2. PERMIT SUMMARY

- a. Terms and Conditions: This permitting action is carrying forward all the terms and conditions of the previous permitting action except it is:
1. Eliminating all references to the discharge of stormwater runoff.
- b. History: The most current relevant regulatory actions and or significant events include the following:

October 24, 1997 – The Department issued WDL renewal #W002653-53-B-R to the Mobil Oil Corporation for a five-year term.

August 30, 1999 – The United States Environmental Protection Agency (USEPA) issued a renewal of National Pollution Discharge Elimination System (NPDES) permit #ME0000485 to the Mobil Oil Corporation for a five-year term.

January 12, 2001 – The State of Maine received authorization from the USEPA to administer the NPDES permitting program in Maine. From this date forward, the program has been referred to as the MEPDES permit program, and MEPDES permit #ME0000485 has been utilized for this facility. On March 26, 2011, the USEPA authorized the Department to administer the MEPDES program in Indian territories of the Penobscot Nation and Passamaquoddy Tribe.

December 10, 2003 – The Department issued a permit renewal and transfer of WDL#W002653-5S-D-R /MEPDES /#ME0000485 from Mobil Oil Corporation to ExxonMobil for a five-year term.

April 29, 2009 – The Department issued MEPDES permit/WDL ME0000485/W0002653-5S-E-R for a five-year term.

October 18, 2011 – The Department issued a transfer of WDL/MEPDES #W002653-5S-E-T/#ME0000485 from ExxonMobil Corporation to South Portland Terminal, LLC for a five-year term.

January 16, 2014 – SPT submitted a timely and complete application to renew the MEPDES permit for SPT's South Portland facility, in South Portland, Maine. The application was accepted for processing on October 16, 2013 and was assigned WDL #W000485-5S-H-R / MEPDES #ME0002653.

## 2. PERMIT SUMMARY(cont'd)

- c. Source Description: The permittee is engaged in the transfer (ship-to-shore), storage and distribution of refined petroleum products such as gasoline, ultra-low sulfur diesel fuel ethanol denatured with gasoline up to 5% and home heating oil. The site encompasses approximately 28 acres with a number of above-ground storage tanks having a gross capacity of approximately 84,000 barrels (35,280,000 gallons). In addition to tankage, there is an extensive above-ground and below-ground network of piping. There is a marine docking facility to transfer product from ships and/or barges to the shore and a loading rack area where product from the storage tanks is transferred to tanker trucks to be distributed to local fuel oil dealers and gasoline stations for distribution to the general public.

Each of the storage tanks is enclosed in an unlined area of earthen dikes or concrete walls. The diked areas are designed to contain the contents of the enclosed tanks plus an additional volume to contain any extinguishing chemicals or water and precipitation. The dikes are required by the City of South Portland for safety to prevent product from spilling from one tank area to another or directly into a receiving waterbody, provide temporary containment in the event of a tank failure and isolate tanks in the event of a major fire in a tank. The remainder of the site consists of an office building, a warehouse complex and a tank truck loading rack area.

Hydrostatic test wastewater is municipal water used to test the integrity of the permittee's structural components (tanks, pipes) and is generated several times per year. The tanks are washed and cleaned in preparation for repair and hydrostatic testing, this wash water is tank trucked to a Buckeye South Portland Terminal, LLC-approved facility for product reclamation and wastewater treatment. The permittee's largest tank would discharge approximately 4.5 million gallons of test water over a period of several days. The new pipe assemblies are hydrostatically tested prior to connecting to the existing product piping; therefore, the pipes do not come into contact with product prior to hydrostatic testing. Flows from the piping testing will be held in a portable fractionation ("frak") tank prior to discharge. This permitting action is carrying forward approval of the discharge of hydrostatic testing water from tanks and up to an additional 100,000 gallons of hydrostatic test wastewater from facility piping to Outfall #001C.

The tank bottom wastewater is drawn from the bottoms of the petroleum storage tanks. The tank bottom wastewater consists of condensation, roof and/or roof seal leakage water, and/or water from transport tanks, barges or ships. The tank bottom wastewater also contains incidental spills and storm water runoff.

## 2. PERMIT SUMMARY (cont'd)

This permit does not require further treatment of the hydrostatic testing wastewater unless dechlorination is required to protect water quality.

The tank bottom wastewater is transferred from the petroleum product storage tank to a frak tank for equalization, incidental free product separation and primary solids separation. The aqueous phase is then filtered for removal of suspended or colloidal materials that may not have settled in the frak tank. The tank bottom wastewater is then directed to a dual- stage granular activated carbon (GAC) train for the removal of dissolved high- and low- molecular weight petroleum hydrocarbon contaminants. The water is then discharged to a clean holding tank for monitoring and eventually discharged directly to the Fore River or via the oil/water separator with the stormwater runoff. It is noted that the permittee has not discharged treated tank bottom wastewater from the South Portland facility since 1994.

Tank bottom wastewater will be shipped by tank truck to a South Portland Terminal, LLC-approved facility for product reclamation and waste treatment. The permittee has chosen to retain the option to treat and discharge tank bottom wastewater at the South Portland facility and authorization to do so is therefore being carried forward in this permitting action.

Both waste streams described above are discharged through a common outfall pipe. The outfall pipe is a steel pipe measuring eight inches in diameter that exits the diked area surrounding Tank #30 and is above the mean low water level. See **Attachment C** of this Fact Sheet for a schematic of the facility.

## 3. CONDITIONS OF PERMITS

*Conditions of licenses*, 38 M.R.S. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment, be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S. § 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.

## 4. RECEIVING WATER QUALITY STANDARDS

*Classification of estuarine and marine waters*, 38 M.R.S. § 469(F) classifies the Fore River as a Class SC waterway. *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B(3) describes the classification standards for Class SC waters.

## 5. RECEIVING WATER CONDITIONS

The State of Maine 2014 Integrated Water Quality Monitoring and Assessment Report, prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists the Fore River Estuary in South Portland as, “Category 4-A: Estuarine and Marine Waters with Impaired Use, TMDL Completed.” Sampling conducted in calendar year 2001 indicates the 1.20 square miles of the Fore River Estuary in South Portland (waterbody ID #804-7) is impaired by bacteria. The Department completed the TMDL in 2009 and it was approved by USEPA on September 28, 2009.

The report lists the Fore River Estuary as “Category 5-A: Estuarine and Marine Waters Impaired by Pollutants Other Than Those Listed in 5-B Through 5-D (TMDL Required).” The Report states that aquatic life and toxics may impair “marine life use support.” The report indicates the causes of the impairment are municipal point sources, combined sewer overflows, stormwater, hazardous waste sites and nonpoint spills of all sizes. The Department had scheduled calendar year 2012 to prepare a total maximum daily load (TMDL) report to address the impairment.

The report also classifies the estuarine and marine waters in South Portland as “Category 5-D, “Estuarine and Marine Waters Impaired by Legacy Pollutants.” The Category 5-D waters partially support fishing (“shellfish” consumption) due to elevated levels of PCB’s and other persistent, bioaccumulating substances in lobster tomalley.

## 6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Discharges from activities associated with bulk petroleum stations and terminal operations must satisfy best conventional technology (BCT) and best available technology (BAT) requirements and must comply with more stringent water quality standards if BCT and BAT requirements are not adequate.

This permit authorizes the discharge of Tank bottom Waste Waters and Hydrostatic Test Wastewater with numeric effluent limitations which are within applicable water quality standards. The effluent parameters for each waste stream are discussed in more detail below. The sections are arranged according to the effluent characteristic(s) being regulated:

## 6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont’d)

- a. Tank Bottom Wastewaters – Outfall #001B - A review of the DMRs submitted to the Department for the period June 2014 – July 2019 indicate there was no tank bottom wastewater discharged during this period.

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

This permit authorizes the permittee to discharge treated tank bottom wastewater directly to the receiving waters without passing through the oil/water separator. The water quality-based limits established were based on a low water dilution factor of 1:1 as the outfall pipe is exposed at mean low water and there is no prohibition (nor does the permittee desire such a prohibition) for discharging at low tide. Limitations and monitoring requirements for this scenario are outlined below and are contained in the table for Outfall #001B in Special Condition A of this permit.

1. Flow: This permitting action is carrying forward the daily maximum flow limit of 100,000 gallons per each discharge event which is the largest quantity of tank bottom wastewaters anticipated to be generated in a given calendar quarter.
2. Total Suspended Solids (TSS): This permitting action is carrying forward a daily maximum TSS limitation of 50 mg/L based on a Department BPJ of BPT.
3. Polynuclear Aromatic Hydrocarbons (PAHs): PAHs are known to be ubiquitous in the environment. The primary source of PAHs is the incomplete combustion of organic compounds. These are referred to as "pyrogenic PAHs." Another source is crude oil and/or its petroleum derivatives; these PAHs are referred to as petrogenic in origin. PAHs will strongly adsorb to suspended particulates and biota. Therefore, the transport of PAHs will be largely determined by the hydrogeologic conditions in the receiving water and its aquatic system. The ultimate fate of these PAHs which accumulate in the receiving water's bottom sediment is believed to be biodegradation and biotransformation by bottom-dwelling organisms.

This permitting action is carrying forward the requirement for the permittee to report the daily maximum concentration of PAH discharged expressed in units of micrograms/liter (ug/L).

Single PAH compounds to be analyzed include:

Acenaphthylene	Acenaphthene	Anthracene
Benzo(B)Fluoranthene	Benzo(K)Fluorantene	Benzo(A)Pyrene
Crysene	Fluoranthene	Fluorene
Indeno(1,2,3-cd)Pyrene	Phenanthrene	Pyrene
Benzo(ghi)perylene	Benzo(A)Anthracene	Dibenzo(A,H)Anthracene
Naphthalene		

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

The permittee is required under footnote #7 of this permitting action to report the highest concentrations of individual PAH compounds.

4. BETX (Benzene, Ethylbenzene, Toluene, Xylenes): Based on the assumption that hydrocarbons found in gasoline would likely be found in tank bottom wastewaters, the Department determined dissolved gasoline constituents typically remain in oil/water separator effluent at a concentration of 15 ppm. Generally, the higher the solubility of a gasoline constituent in water, the more difficult it is to remove. Three gasoline compounds with the highest solubility are: naphthalene, propylene, and benzene. Propylene and naphthalene, however, are minor constituents of gasoline. In the past, benzene has been selected as the main pollutant of concern in light distillates, such as gasoline, since it existed in light distillates at significant concentrations.

This permitting action is carrying forward the requirement to report the daily maximum concentrations of benzene, ethylbenzene, toluene, and total xylenes in milligrams/liter (mg/L).

5. Whole Effluent Toxicity (WET): This permitting action is carrying forward an A-NOEL limitation of 100% for WET testing based on 06-096 CMR 530, "*Surface Water Toxics Control Program*." The limitation of 100% effluent (undiluted effluent) is specified because of the lack of dilution in the receiving water as the outfall pipe does not have a diffuser and discharges above the low-water mark. The permittee may perform a mixing zone study so that it can be used to provide new information in calculating the acute water quality-based threshold for WET testing. If appropriate, this permit may be reopened per Special Condition I, *Reopening of Permit For Modifications*, to incorporate revised applicable water quality-based thresholds.

The Department is carrying forward the WET testing frequency of 1/Year and the requirement that the WET test shall be conducted on the first discharge event of the calendar year.

Should test results indicate an observed effect, the permit will be reopened per Special Condition I, *Reopening of Permit For Modifications*, to require additional WET testing and/or the submission of a toxicity reduction evaluation (TRE).

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

- b. Hydrostatic Test Wastewater - Outfall #001C – A review of the DMRs submitted to the Department for the period June 2014 – July 2019 indicates that there three hydrostatic test wastewater discharge event during this period.

1. Flow – For each discharge event, this permitting action is establishing a maximum limit of 4.6 million gallons per day which is the sum of the volume of the largest tank onsite and the maximum discharge volume from hydrostatic testing of the new piping system.

A review of the discharge flow data as reported on the DMR's submitted to the Department for the period (n=3) indicate the following:

### Flow

Value	Limit (MGD)	Result (MGD)
Daily Maximum	4.6	1.47

This permitting action is carrying forward the daily maximum limitation of 4.6 MGD from the previous permitting action based on the maximum flow rate the permittee anticipates from this process.

2. Total Suspended Solids (TSS) – This permitting action is carrying forward the TSS daily maximum limit of 50 mg/L that is based on a Department BPJ of limits that were achievable given the tanks and pipes that are hydrostatically tested have been washed and cleaned in preparation for repair and testing.

A review of the discharge TSS data as reported on the DMRs submitted to the Department for the period June 2014 – July 2019 (n=3) indicate the following:

### TSS

Value	Limit (mg/L)	Result (mg/L)
Daily Maximum	50	4.3

3. Oil & Grease – This permitting action is carrying forward a daily maximum oil and grease concentration limit of 15 mg/L that is a Department BPJ of limits that are achievable given the fact that the piping is new and the tanks that are hydrostatically tested have been washed and cleaned in preparation for repair and testing.

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

4. Total residual chlorine (TRC) – This permitting action is carrying forward a daily maximum TRC limit of 13 ug/L. This limitation is based on USEPA's acute criteria maximum concentration (CMC) of 13 ug/L for marine waters. A chronic limit is not specified because the discharge is not continuous.

Compliance with the daily maximum TRC limitation is based on USEPA's current minimum level (ML) of detection of 50 ug/L (0.05 mg/L).

It is noted the quarterly Discharge Monitoring Reports (DMRs) are coded with the numeric value of 0.05 mg/L such that detectable results reported below the ML will not be considered a violation of the permit.

## 7. PUBLIC COMMENTS

Public notice of this application was made in the Portland Press Herald on or about March 18, 2019. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits must have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

## 8. DEPARTMENT CONTACTS

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

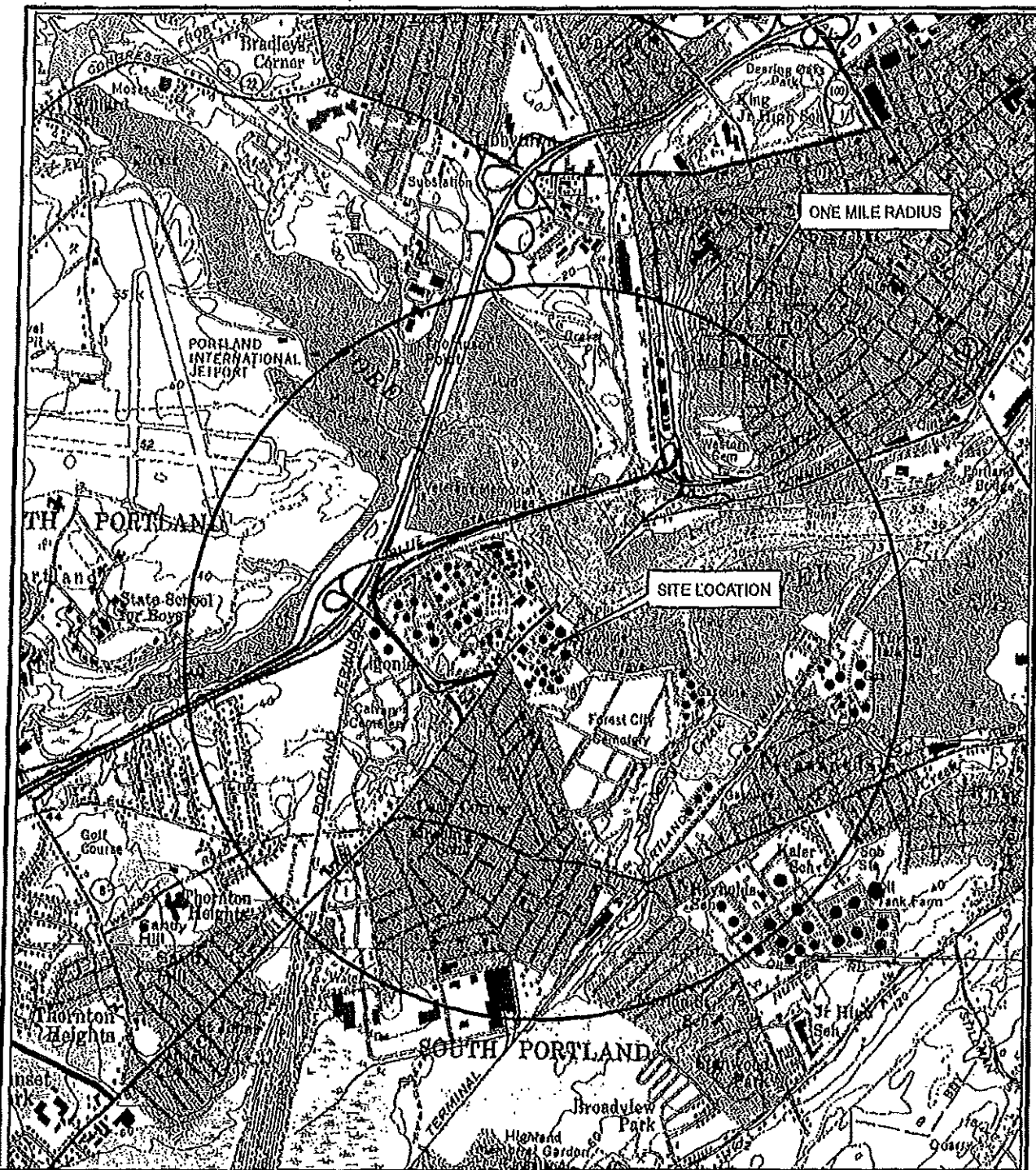
Rodney Robert  
Division of Water Quality Management  
Bureau of Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 446-1875 Fax: (207) 287-3435  
e-mail: [rodney.robert@maine.gov](mailto:rodney.robert@maine.gov)

## 9. RESPONSE TO COMMENTS

*Reserved until the end of the formal thirty day comment period*

# ATTACHMENT A

T:\GIS\XOM\PORTLAND\ONE MILE RADIUS.mxd



■ QUADRANGLE LOCATION



0 1,000 2,000  
Feet

SOURCE:  
USGS; 1975, South Portland, ME  
7.5 Minute Topographic Quadrangle  
Contour Interval 3 Meters

Title:			
<b>ONE MILE RADIUS MAP</b>			
EXXONMOBIL SOUTH PORTLAND TERMINAL No. 18-054 170 LINCOLN STREET, SOUTH PORTLAND, MAINE			
Prepared For:			
ExxonMobil Pipeline Company			
 <b>ROUX</b> ROUX ASSOCIATES, INC. Environmental Consulting & Management	Compiled By: JI	Date: 9/26/08	FIGURE  <b>1</b>
	Prepared By: CRS	Scale: AS SHOWN	
	Project Mgr.: JT	Office: VA	
	File No.: ONE_MR	Project: 7277M02	

## **ATTACHMENT B**

**Maine Department of Environmental Protection  
WET and Chemical Specific Data Report Form**

This form is for reporting laboratory data and facility information. Official compliance reviews will be done by DEP.

Facility Name \_\_\_\_\_ MEPDES # \_\_\_\_\_ Facility Representative Signature \_\_\_\_\_  
 Pipe # \_\_\_\_\_ To the best of my knowledge this information is true, accurate and complete.

Licensed Flow (MGD) \_\_\_\_\_ Flow for Day (MGD)<sup>(1)</sup> \_\_\_\_\_ Flow Avg. for Month (MGD)<sup>(2)</sup> \_\_\_\_\_  
 Acute dilution factor \_\_\_\_\_  
 Chronic dilution factor \_\_\_\_\_  
 Human health dilution factor \_\_\_\_\_  
 Criteria type: M(arine) or F(resh) M Date Sample Collected \_\_\_\_\_ Date Sample Analyzed \_\_\_\_\_

Laboratory \_\_\_\_\_ Telephone \_\_\_\_\_  
 Address \_\_\_\_\_  
 Lab Contact \_\_\_\_\_ Lab ID # \_\_\_\_\_

Last Revision - April 25, 2012

ERROR WARNING ! Essential facility information is missing. Please check required entries in bold above.

**MARINE AND ESTUARY VERSION**

Please see the footnotes on the last page.

WHOLE EFFLUENT TOXICITY				Receiving Water or Ambient	Effluent Concentration (ug/L or as noted)	WET Result, % Do not enter % sign	Reporting Limit Check	Possible Exceedence <sup>(7)</sup>		
	Effluent Limits, %	Acute	Chronic					Acute	Chronic	
Mysid Shrimp										
Sea Urchin										
<b>WET CHEMISTRY</b>										
pH (S.U.) <sup>(9)</sup>					(8)					
Total Organic Carbon (mg/L)					NA					
Total Solids (mg/L)					NA					
Total Suspended Solids (mg/L)					NA					
Salinity (ppt.)										
<b>ANALYTICAL CHEMISTRY <sup>(3)</sup></b>										
Also do these tests on the effluent with WET. Testing on the receiving water is optional	Reporting Limit	Effluent Limits, ug/L					Reporting Limit Check	Possible Exceedence <sup>(7)</sup>		
		Acute <sup>(6)</sup>	Chronic <sup>(6)</sup>	Health <sup>(6)</sup>				Acute	Chronic	Health
TOTAL RESIDUAL CHLORINE (mg/L) <sup>(9)</sup>	0.05				NA					
AMMONIA	NA				(8)					
M ALUMINUM	NA				(8)					
M ARSENIC	5				(8)					
M CADMIUM	1				(8)					
M CHROMIUM	10				(8)					
M COPPER	3				(8)					
M CYANIDE	5				(8)					
M LEAD	3				(8)					
M NICKEL	5				(8)					
M SILVER	1				(8)					
M ZINC	5				(8)					

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PRIORITY POLLUTANTS <sup>(4)</sup>		Effluent Limits				Reporting Limit Check	Possible Exceedence <sup>(7)</sup>		
		Reporting Limit	Acute <sup>(6)</sup>	Chronic <sup>(6)</sup>	Health <sup>(6)</sup>		Acute	Chronic	Health
M	ANTIMONY	5							
M	BERYLLIUM	2							
M	MERCURY (5)	0.2							
M	SELENIUM	5							
M	THALLIUM	4							
A	2,4,6-TRICHLOROPHENOL	5							
A	2,4-DICHLOROPHENOL	5							
A	2,4-DIMETHYLPHENOL	5							
A	2,4-DINITROPHENOL	45							
A	2-CHLOROPHENOL	5							
A	2-NITROPHENOL	5							
A	4,6-DINITRO-O-CRESOL (2-Methyl-4,6-dinitrophenol)	25							
A	4-NITROPHENOL	20							
A	P-CHLORO-M-CRESOL (3-methyl-4-chlorophenol)+B80	5							
A	PENTACHLOROPHENOL	20							
A	PHENOL	5							
BN	1,2,4-TRICHLORO BENZENE	5							
BN	1,2-(O)DICHLORO BENZENE	5							
BN	1,2-DIPHENYLHYDRAZINE	20							
BN	1,3-(M)DICHLORO BENZENE	5							
BN	1,4-(P)DICHLORO BENZENE	5							
BN	2,4-DINITROTOLUENE	6							
BN	2,6-DINITROTOLUENE	5							
BN	2-CHLORONAPHTHALENE	5							
BN	3,3'-DICHLORO BENZIDINE	16.5							
BN	3,4-BENZO(B)FLUORANTHENE	5							
BN	4-BROMOPHENYLPHENYL ETHER	5							
BN	4-CHLOROPHENYL PHENYL ETHER	5							
BN	ACENAPHTHENE	5							
BN	ACENAPHTHYLENE	5							
BN	ANTHRACENE	5							
BN	BENZIDINE	45							
BN	BENZO(A)ANTHRACENE	8							
BN	BENZO(A)PYRENE	5							
BN	BENZO(G,H,I)PERYLENE	5							
BN	BENZO(K)FLUORANTHENE	5							
BN	BIS(2-CHLOROETHOXY)METHANE	5							
BN	BIS(2-CHLOROETHYL)ETHER	6							
BN	BIS(2-CHLOROISOPROPYL)ETHER	6							
BN	BIS(2-ETHYLHEXYL)PHTHALATE	10							
BN	BUTYLBENZYL PHTHALATE	5							
BN	CHRYSENE	5							
BN	DI-N-BUTYL PHTHALATE	5							
BN	DI-N-OCTYL PHTHALATE	5							
BN	DIBENZO(A,H)ANTHRACENE	5							
BN	DIETHYL PHTHALATE	5							
BN	DIMETHYL PHTHALATE	5							

**This form is for reporting laboratory data and facility information. Official compliance reviews will be done by DEP.**

[illegible]

**Maine Department of Environmental Protection  
WET and Chemical Specific Data Report Form**

**This form is for reporting laboratory data and facility information. Official compliance reviews will be done by DEP.**

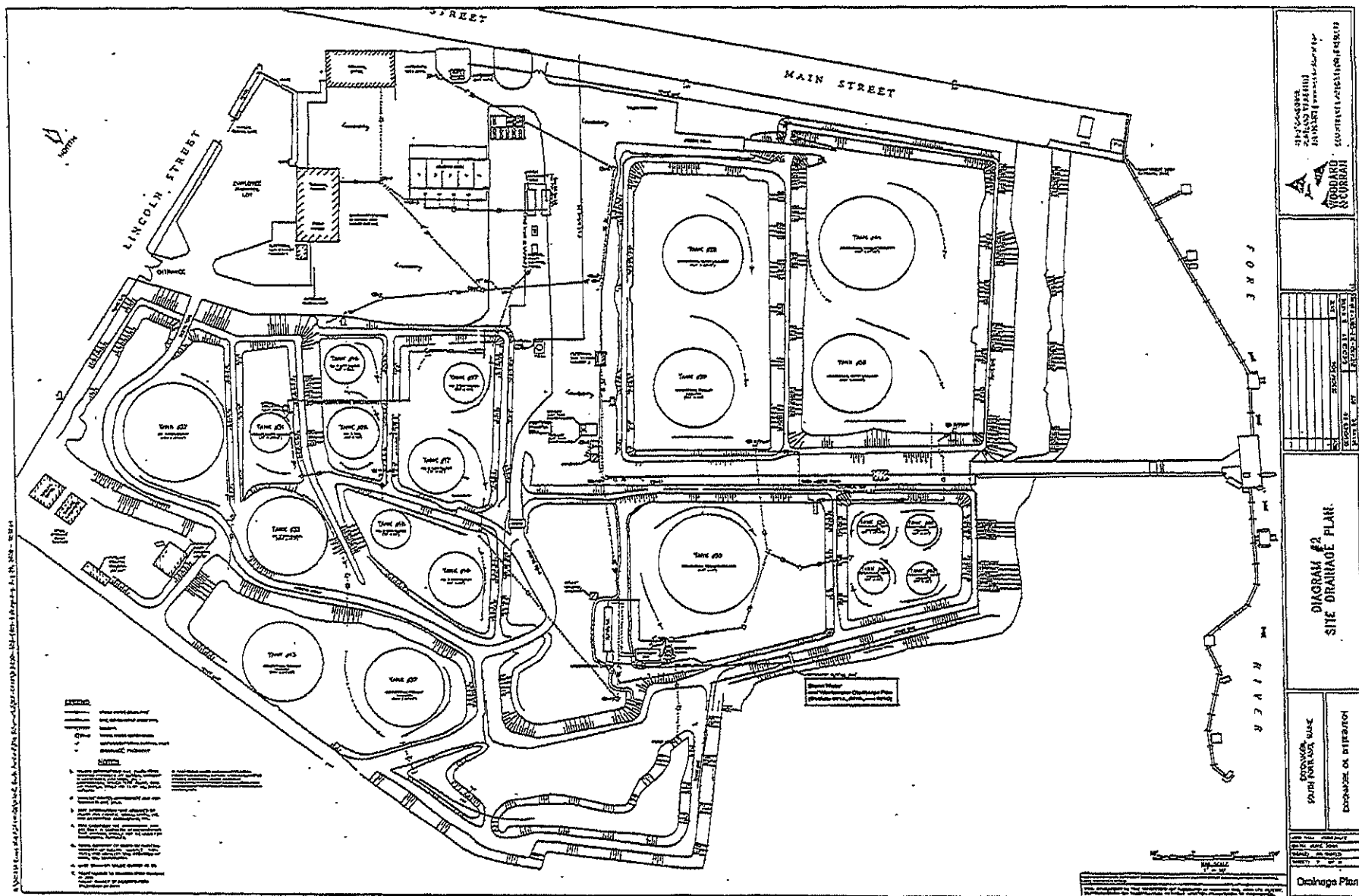
V	ACROLEIN	NA									
V	ACRYLONITRILE	NA									
V	BENZENE	5									
V	BROMOFORM	5									
V	CARBON TETRACHLORIDE	5									
V	CHLOROBENZENE	6									
V	CHLORODIBROMOMETHANE	3									
V	CHLOROETHANE	5									
V	CHLOROFORM	5									
V	DICHLOROBROMOMETHANE	3									
V	ETHYLBENZENE	10									
V	METHYL BROMIDE (Bromomethane)	5									
V	METHYL CHLORIDE (Chloromethane)	5									
V	METHYLENE CHLORIDE	5									
V	TETRACHLOROETHYLENE (Perchloroethylene or Tetrachloroethene)	5									
V	TOLUENE	5									
V	TRICHLOROETHYLENE (Trichloroethene)	3									
V	VINYL CHLORIDE	5									

**Notes:**

- (1) Flow average for day pertains to WET/PP composite sample day.
- (2) Flow average for month is for month in which WET/PP sample was taken.
- (3) Analytical chemistry parameters must be done as part of the WET test chemistry.
- (4) Priority Pollutants should be reported in micrograms per liter (ug/L).
- (5) Mercury is often reported in nanograms per liter (ng/L) by the contract laboratory, so be sure to convert to micrograms per liter on this spreadsheet.
- (6) Effluent Limits are calculated based on dilution factor, background allocation (10%) and water quality reserves (15% - to allow for new or changed discharges or non-point sources).
- (7) Possible Exceedence determinations are done for a single sample only on a mass basis using the actual pounds discharged. This analysis does not consider watershed wide allocations for fresh water discharges.
- (8) These tests are optional for the receiving water. However, where possible samples of the receiving water should be preserved and saved for the duration of the WET test. In the event of questions about the receiving water's possible effect on the WET results, chemistry tests should then be conducted.
- (9) pH and Total Residual Chlorine must be conducted at the time of sample collection. Tests for Total Residual Chlorine need be conducted only when an effluent has been chlorinated or residual chlorine is believed to be present for any other reason.

Comments:

# ATTACHMENT A



**DIAGRAM #2  
SITE DRAINAGE PLAN**

Project: 10000 N. 100th Ave. Project  
Client: BROWN & CALDWELL  
Date: 10/1/88  
Sheet: 1 of 1  
Drafter: J. J. J. J.

**Legend**

- Proposed drainage
- Existing drainage
- Proposed parking
- Existing parking
- Proposed building
- Existing building
- Proposed road
- Existing road
- Proposed utility
- Existing utility
- Proposed structure
- Existing structure
- Proposed vegetation
- Existing vegetation
- Proposed water body
- Existing water body

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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### A. GENERAL PROVISIONS

1. **General compliance.** All discharges shall be consistent with the terms and conditions of this permit; any changes in production capacity or process modifications which result in changes in the quantity or the characteristics of the discharge must be authorized by an additional license or by modifications of this permit; it shall be a violation of the terms and conditions of this permit to discharge any pollutant not identified and authorized herein or to discharge in excess of the rates or quantities authorized herein or to violate any other conditions of this permit.

2. **Other materials.** Other materials ordinarily produced or used in the operation of this facility, which have been specifically identified in the application, may be discharged at the maximum frequency and maximum level identified in the application, provided:

- (a) They are not
  - (i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
  - (ii) Known to be hazardous or toxic by the licensee.
- (b) The discharge of such materials will not violate applicable water quality standards.

3. **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of State law and the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

- (a) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act, and 38 MRSA, §420 or Chapter 530.5 for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- (b) Any person who violates any provision of the laws administered by the Department, including without limitation, a violation of the terms of any order, rule license, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

4. **Duty to provide information.** The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

5. **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

6. **Reopener clause.** The Department reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedule of compliance or other provisions which may be authorized under 38 MRSA, §414-A(5).

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

## **B. OPERATION AND MAINTENANCE OF FACILITIES**

### **1. General facility requirements.**

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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maximize removal of pollutants unless authorization to the contrary is obtained from the Department.

- (b) The permittee shall at all times maintain in good working order and operate at maximum efficiency all waste water collection, treatment and/or control facilities.
- (c) All necessary waste treatment facilities will be installed and operational prior to the discharge of any wastewaters.
- (d) Final plans and specifications must be submitted to the Department for review prior to the construction or modification of any treatment facilities.
- (e) The permittee shall install flow measuring facilities of a design approved by the Department.
- (f) The permittee must provide an outfall of a design approved by the Department which is placed in the receiving waters in such a manner that the maximum mixing and dispersion of the wastewaters will be achieved as rapidly as possible.

**2. Proper operation and maintenance.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

**3. Need to halt or reduce activity not a defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

**4. Duty to mitigate.** The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

### **5. Bypasses.**

#### (a) Definitions.

- (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- (b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.

#### (c) Notice.

- (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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- (ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D(1)(f), below. (24-hour notice).
- (d) Prohibition of bypass.
  - (i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:
    - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
    - (C) The permittee submitted notices as required under paragraph (c) of this section.
  - (ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (d)(i) of this section.

**6. Upsets.**

- (a) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- (c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
  - (ii) The permitted facility was at the time being properly operated; and
  - (iii) The permittee submitted notice of the upset as required in paragraph D(1)(f), below. (24 hour notice).
  - (iv) The permittee complied with any remedial measures required under paragraph B(4).
- (d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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### C. MONITORING AND RECORDS

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

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

#### **3. Monitoring and records.**

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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### D. REPORTING REQUIREMENTS

#### 1. Reporting requirements.

- (a) Planned changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
  - (i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or
  - (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D(4).
  - (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;
- (b) Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- (c) Transfers. This permit is not transferable to any person except upon application to and approval of the Department pursuant to 38 MRSA, § 344 and Chapters 2 and 522.
- (d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
  - (i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices.
  - (ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.
  - (iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.
- (e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- (f) Twenty-four hour reporting.
  - (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

- (A) Any unanticipated bypass which exceeds any effluent limitation in the permit.
- (B) Any upset which exceeds any effluent limitation in the permit.
- (C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

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

- (g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this section.
- (h) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

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

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

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

- (a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - (i) One hundred micrograms per liter (100 ug/l);
  - (ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
  - (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
  - (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

### 5. Publicly owned treatment works.

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

### E. OTHER REQUIREMENTS

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

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

### **SUMMARY**

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

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

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

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

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

#### **HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD**

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

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

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

#### **WHAT YOUR APPEAL PAPERWORK MUST CONTAIN**

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

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

#### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

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

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

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

## **II. JUDICIAL APPEALS**

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

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

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

### **ADDITIONAL INFORMATION**

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

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

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# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: November 2018

Contact: (207) 287-2452

### 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) an administrative process before the Board of Environmental Protection (Board); or (2) 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. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S. § 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. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 C.M.R. ch. 2.

#### DEADLINE 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 more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

#### HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

### INFORMATION APPEAL PAPERWORK MUST CONTAIN

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

1. *Aggrieved Status.* The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant 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.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing requirements that the appellant believes were not properly considered or fully addressed.
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 matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

### 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, and is made easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an 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 general questions regarding the appeal process.
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. Unless a stay of the decision is requested and granted, 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, and will provide 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, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. 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, the 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. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and 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. 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. § 346(4).

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

## **ADDITIONAL INFORMATION**

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

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

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