STATE OF MAINE

Department of Environmental Protection

JOHN ELIAS BALDACCI
GOVERNOR

David P. Littell
COMMISSIONER

April 27, 2009

Mr. Bart Wittmer
ExxonMobil Corporation
South Portland Terminal
170 Lincoln Street
South Portland, ME 04108

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0000485
Maine Waste Discharge License (WDL) Application # W002653-5S-E-R
Final Permit/License-ExxonMobil

Dear Mr. Wittmer:

Enclosed please find a copy of your **final** Maine MEPDES Permit/WDL which was approved by the Department of Environmental Protection. Please read the license and its attached conditions carefully. You must follow the conditions in the license to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State Law and is subject to enforcement action.

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

If you have any questions regarding this matter, please feel free to contact me at (207) 287-7658 or at phyllis.a.rand@maine.gov.

Sincerely,

Phyllis Arnold Rand

Phyllis Arnold Rand
Division of Water Quality Management
Bureau of Land and Water Quality

Enclosure

cc: Fred Gallant, DEP/SMRO
Sandy Mojica, USEPA
Doug Koopman, USEPA
Lori Mitchell, DMU
J. Thomas Budde, ExxonMobil
David Webster, USEPA

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 624-6550FAX: (207) 624-6024
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-6477 FAX: (207) 764-1507

web site: www.maine.gov/dep

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

DEPARTMENT ORDER

IN THE MATTER OF

EXXONMOBIL CORPORATION	)	MAINE POLLUTANT DISCHARGE
S. PORTLAND, CUMBERLAND COUNTY, ME	)	ELIMINATION SYSTEM PERMIT
BULK FUEL STORAGE FACILITY	)	AND
W002653-5S-E-R	)	WASTE DISCHARGE LICENSE
ME0000485 **APPROVAL**	)	**RENEWAL**

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et. seq. and Maine Law 38 M.R.S.A., Section 414-A et. seq., and applicable regulations, the Department of Environmental Protection ("Department," hereinafter) has considered the application of EXXONMOBIL SOUTH PORTLAND TERMINAL ("permittee," hereinafter), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

The permittee submitted a timely renewal application for Department Waste Discharge License (WDL) #W002653-5S-D-R/Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0000485 ("permit," hereinafter), which was issued on December 10, 2003 and expired on January 1, 2009. The permit authorized the discharge of treated storm water runoff up to a daily maximum flow rate of 610 gallons per minute (gpm), treated tank bottom waters up to a daily maximum flow rate of 100,000 gallons per day and hydrostatic test waters up to a daily maximum flow rate of 4.6 million gallons per day, to the Fore River, Class SC, in South Portland, Maine. See **Attachment A** of this permit for a site location map.

PERMIT SUMMARY

This permitting action is carrying forward all of the terms and conditions of the 12/10/03 permitting action with the following exceptions:

1. Eliminating the whole effluent toxicity (WET) testing requirement for the inland silverside (*Menidia berrylina*).

2. Revising the permitted flow of hydrostatic test waters from Outfall # 001C from 4.5 million gallons per day (MGD) to 4.6 MGD to reflect the addition of test waters from the hydrostatic testing of new piping at the facility.

PERMIT SUMMARY (cont'd)

3. Eliminating the daily maximum concentration limits for benzene, toluene, ethylbenzene and polynuclear aromatic hydrocarbons for Outfall #001B.

4. Establishing requirements for the permittee to report the daily maximum concentrations for benzene, toluene, ethylbenzene and polynuclear aromatic hydrocarbons for Outfall #001B.

CONCLUSIONS

BASED on the findings in the attached draft Fact Sheet dated April 27, 2009, and subject to the Conditions listed below, 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 MRSA Section 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.

ACTION

THEREFORE, the Department APPROVES the application of EXXONMOBIL CORPORATION to discharge 610 GALLONS PER MINUTE of treated storm water, 100,000 GALLONS PER DAY of treated tank bottom waters and 4.6 MILLION GALLONS PER DAY of hydrostatic test waters from a bulk fuel storage and transfer facility to the Fore River, Class SC, subject to the attached conditions and all applicable standards and regulations:

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

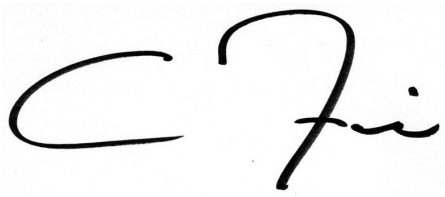
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.

3. This permit expires five (5) years from the date of signature below.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: 12/08/08.

Date of application acceptance: 12/08/08.



This permit has been digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to authority under 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date 2009.04.29 10:54:46 -04'00'

This Order prepared by PHYLLIS ARNOLD RAND, BUREAU OF LAND & WATER QUALITY

ME0000485 2009

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge treated waste waters to the Fore River. Such treated waste water discharges shall be limited and monitored by the permittee as specified below:

OUTFALL #001A - Storm water runoff(1)

Effluent Characteristic	Discharge Limitations				Monitoring Requirements	
	Monthly Average as specified	**Daily Maximum** as specified	**Monthly Average** as specified	**Daily Maximum** As specified	**Measurement Frequency** as specified	**Sample Type** as specified
Flow(2,3) *[50050]*	---	---	---	610 gpm *[78]*	1/ Quarter *[01/90]*	Measure *[MS]*
Total Suspended Solids *[00530]*	---	---	50 mg/L(4) *[19]*	100 mg/L *[19]*	1/ Quarter *[01/90]*	Grab(5) *[GR]*
Oil & Grease *[00552]*	---	---	---	15 mg/L *[19]*	1/Quarter *[01/90]*	Grab(5) *[GR]*
Benzene *[34030]*	---	---	---	Report mg/L *[19]*	1/Quarter *[01/90]*	Grab(5) *[GR]*

SPECIAL CONDITIONS

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

OUTFALL #001B – Tank bottom waters(1,6)

Effluent Characteristic	Discharge Limitations				Monitoring Requirements	
	Monthly Average as specified	**Daily Maximum** As specified	**Monthly Average** as specified	**Daily Maximum** as specified	**Measurement Frequency** as specified	**Sample Type** as specified
Flow (Gallons) (3) *[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]*
PAH's (Single chemical)(7) *[38528]*	---	---	---	Report ug/L *[28]*	1/Discharge ***[01/DS]***	Grab *[GR]*
BTEX(8) *[49491]*	---	---	---	Report mg/L *[19]*	1/Discharge ***[01/DS]***	Grab *[GR]*
MTBE(8) *[22417]*	---	---	---	Report ug/L*[28]*	1/Discharge ***[01/DS]***	Grab *[GR]*
Whole Effluent Toxicity (WET)(9) Acute – NOEL *Mysidopsis bahia* *[TDM3E]* (Mysid shrimp)	---	---	---	100%*[23]*	---	Grab *[GR]*

SPECIAL CONDITIONS

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

OUTFALL #001C - Hydrostatic test waters(1)

Effluent Characteristic	Discharge Limitations				Monitoring Requirements	
	Monthly Average as specified	Daily Maximum as specified	Monthly Average as specified	Daily Maximum As specified	Measurement Frequency As specified	Sample Type as specified
Flow (3) *[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(10) *[00552]*	---	---	---	15 mg/L *[19]*	1/Discharge ***[01/DS]***	Grab *[GR]*
Total Residual Chlorine(11) *[50060]*	---	---	---	13 ug/L *[28]*	1/Discharge ***[01/DS]***	Grab *[GR]*

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Footnotes:

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

Outfall #001A (storm water) samples for all parameters shall be collected after the oil/water separator during the first hour of discharge.

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

Outfall #001C (hydrostatic test waters) samples for all parameters shall be collected from the tank or piping prior to discharge directly to the receiving waters or before being co-mingled with storm water runoff.

Sampling and analysis must be conducted in accordance with; a) methods approved in Title 40, *Code of Federal Regulations* (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Laboratories that analyze the permittee's compliance samples are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000).

All detectable analytical test results shall be reported to the Department including results which are detected below the respective reporting limits (RL's) specified by the Department or as specified by other approved test methods. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the detection limit achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL is not acceptable and will be rejected by the Department. For mass, if the analytical result is reported as <Y or if a detectable result is less than a RL, report as <X lbs/day, where X is the parameter specific limitation established in the permit. A list of the Department's current RL's are in **Attachment B** of this permit.

Storm Water Runoff – Outfall #001A

(1) The flow through the oil/water separator shall consist of storm water runoff only except as specified for treated tank bottom waters discharged through Outfall #001B and hydrostatic test waters discharged through Outfall #001C. The direct or indirect discharge of liquids from petroleum product pipelines, transport tanks, vessels or storage tanks through the oil/water separator is not authorized by this permit except as specified for Outfalls #001B and #001C. No chemical treatment such as dispersants, emulsifiers or surfactants may be added to the oil/water separator or any waste water discharge stream contributing flow to the separator.

SPECIAL CONDITIONS

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

(2) **Flow** - At no time shall the flow through the oil/water separator exceed the design flow of the separator (610 gpm).

(3) Flow measurement devices or calculated flow estimates via pump curves or tank volumes or other methods must be approved by the Department. Measurement of flow may be suspended upon approval from the Department in the event the permittee limits flow to the separator by installing a permanent constriction to prevent flows from exceeding the design capacity of the separator. The installation, replacement or modification of any flow measurement or constriction device requires prior approval by the Department. For the purposes of this permitting action, utilizing pump curves and run times for measuring flows for Outfalls #001A and #001B and utilizing the strapping chart (a chart showing amount of material stored versus depth of material in tank) for Outfall #001C for measuring flow are approved by the Department.

(4) **Total Suspended Solids (TSS)** – The monthly average concentration limitation of 50 mg/L for TSS is based on an average over the previous twelve-month period. For the purposes of this permitting action, the **twelve-month rolling average** calculation is based on the test results for the most recent twelve-month period. Months when there is no discharge are not to be included in the calculations. See page 8 of the Fact Sheet of this permit for an example calculation.

(5) One grab sample for TSS, benzene and oil & grease analyses for each sampling event shall be taken during the first hour of discharge.

(6) **Tank Bottom Water Only – Outfall #001B**

After treatment via the granular activated carbon treatment system, the treated tank bottom waters 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 water from the clean holding tank meeting all the discharge limits of this permit may bypass the oil/water separator. The treated tank bottom water shall be discharged at or in close proximity to the existing permitted outfall for storm water runoff. The discharge of tank bottom waters 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 waters 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

SPECIAL CONDITIONS

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

representative batch are within the discharge limitations as specified in Special Condition A (Outfall #001B) of this permit, the treated tank bottom waters in the clean holding tank may then be discharged. The discharge of treated tank bottom water 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 water 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 water shall be discharged at or in close proximity to the existing permitted stormwater outfall. The discharge of tank bottom waters 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.

After two years of monitoring tank bottom discharges, and monitoring of at least six different treated tank bottom discharge events demonstrating consistent compliance with limitations established in this permit, the permittee may request suspension of this condition requiring that the treated tank bottom water shall be stored in a clean holding tank until all monitoring and testing requirements have been completed.

(7) **Polynuclear Aromatic Hydrocarbons (PAH's)** 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		

(8) **BETX**, **MTBE**- When discharging tank bottom water which may contain the BETX compounds and/or MTBE, 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.

(9) **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 ExxonMobil, multi-concentration WET testing is waived and definitive WET testing shall be conducted using 100% effluent collected from tank bottom water that is representative of the discharge.

SPECIAL CONDITIONS

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

ExxonMobil is prohibited from discharging tank bottom water 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.

(10) **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.

(11) **Total residual chlorine (TRC)** - When using chlorinated hydrostatic testing water, the total residual chlorine shall be measured and limited as specified in the effluent limitations for hydrostatic test water.

TRC analysis shall be performed using an approved test method in 40 CFR Part 136 that brackets the expected TRC of the hydrostatic testing water.

Compliance with the daily maximum limitation will be based on the Department's Reporting Level (RL) of detection of 50 ug/L (0.05 mg/L). All analytical test results shall be reported to the Department including results which are detected below the RL of 0.05 mg/L.

Detectable results: All detectable analytical test results shall be reported to the Department including results which are detected below the RL of 0.05 mg/L. If the Analytical test result is below 0.05 mg/L, the concentration result shall be reported as <X where X is the reporting level achieved by the laboratory for that test. If the

SPECIAL CONDITIONS

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

concentration result is at or above 0.05 mg/L, the concentration shall be reported at that level.

Non-detectable results: If the analytical test result is non-detect at or below 0.05 mg/L, the concentration result shall be reported as <X where X is the reporting level achieved by the laboratory for that test.

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

B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time that would impair the usages designated by the classification of the receiving waters.

2. The effluent shall not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated by the classification of the receiving waters.

3. The discharge shall not cause visible discoloration or turbidity in the receiving waters which would impair the usages designated by the classification of the receiving waters.

4. Notwithstanding specific conditions of this license the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

C. OIL/WATER SEPARATOR MAINTENANCE

The permittee shall maintain an up-to-date Operations and Maintenance Plan for the oil/water separator. The plan shall include, but not be limited to, measures to ensure the separator performs within the designed performance standards of the system, is maintained on a routine basis to maximize the design capacity and efficiency of the system and that adequate staffing and training of personnel is provided to ensure compliance with discharge limitations. The Operations and Maintenance Plan shall remain on site at all times and will be subject to periodic inspection by Department personnel.

For the purposes of minimizing suspended solids in the storm water directed to the separator, the permittee shall implement best management practices (BMP's) for erosion and sedimentation control. See Department publication entitled, Maine Erosion And Sedimentation Control BMP's for guidance. The permittee shall periodically inspect, maintain and repair erosion and sedimentation control structures as necessary.

SPECIAL CONDITIONS

D. HYDROSTATIC TEST WATER

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 water quality standards. Hydrostatic test water from tanks and pipes that have been washed, cleaned and certified for welding need not be discharged through the oil/water separator. The permittee shall notify the Department of an intended discharge of hydrostatic test water at least three days, excluding weekends, prior to the discharge.

E. STORM WATER POLLUTION PREVENTION PLAN (SWPPP)

The permittee shall implement the Storm Water Pollution Prevention Plan (SWPPP) that was required in a previous permitting action. If the site or any operations conducted on it have changed or are expected to change materially or substantially, the permittee shall modify its SWPPP as necessary to include such changes and notify the Department and the EPA within 90 days of such modifications. The permittee shall maintain a copy of the SWPPP and any subsequent revisions at the terminal and shall make the plan available to any Department or EPA representative upon request.

The SWPPP requirements are intended to facilitate a process whereby the permittee thoroughly evaluates potential pollution sources at the terminal and selects and implements appropriate measures to prevent or control the discharge of pollutants in storm water runoff. The process involves the following four steps: (1) formation of a team of qualified facility personnel who will be responsible for preparing the SWPPP and assisting the terminal manager in its implementation; (2) assessment of potential storm water pollution sources; (3) selection and implementation of appropriate management practices and controls; and, (4) periodic evaluation of the effectiveness of the plan to prevent storm water contamination and comply with the terms and conditions of this permit.

F. UNAUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with the terms and conditions of this permit and only from Outfalls #001A, Outfall #001B and Outfall #001C. Discharges of waste water from any other point source are not authorized under this permit, but shall be reported in accordance with Standard Condition B(5)(*Bypass*) of this permit.

SPECIAL CONDITIONS

G. MONITORING AND REPORTING

Monitoring results shall be summarized for each calendar quarter and reported on separate Discharge Monitoring Report Forms provide by the Department and **postmarked on or before the thirteenth (13th) 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 (15th) day of the month** following the completed reporting period. A signed copy of the Discharge Monitoring Report and all other reports required herein shall be submitted to the following address:

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

H. ANTI-BACKSLIDING

Federal regulation 40 CFR, §122(l) contains the criteria for what is often referred to as the anti-backsliding provisions of the Federal Water Pollution Control Act (Clean Water Act). In general, the regulation states that except for provisions specified in the regulation, effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards or conditions in the previous permit. Applicable exceptions include: (1) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation and (2) information is available which was not available at the time of the permit issuance (other than revised regulations, guidance or test methods) and which would justify the application of less stringent effluent limitations at the time of permit issuance.

This permitting action is removing concentration limitations for total benzene, toluene, ethylbenzene and polynuclear aromatic hydrocarbons from Outfall #001B based on new information that was not available at the time of the previous licensing action, namely, subsequent to the issuance of the previous permit, the EPA rescinded its criteria maximum concentrations for these pollutants. The Department has made the determination that authorizing less-stringent limitations by removing concentration limitations and establishing "report only" limitations for these pollutants will not cause or contribute to failure of the receiving water to meet its classification standards.

SPECIAL CONDITIONS

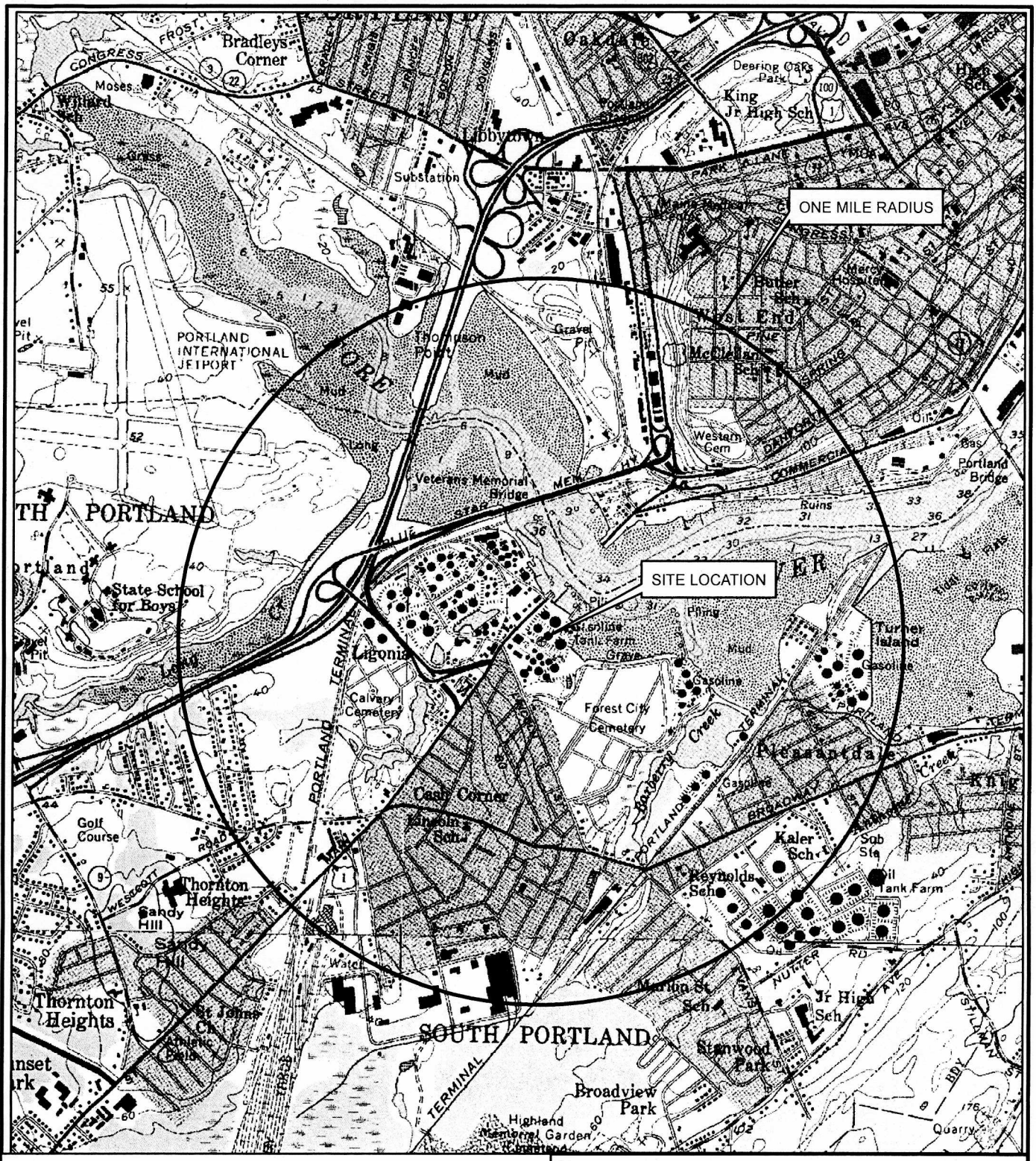
I. REOPENING OF PERMIT FOR MODIFICATIONS

Upon evaluation of the tests results in the 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 such as mixing zone information/characteristics.

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 shall remain in full force and effect, and shall be construed and enforced in all aspects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.

ATTACHMENT A



■ QUADRANGLE LOCATION

0 1,000 2,000 Feet

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

Title:

ONE MILE RADIUS MAP

EXXONMOBIL SOUTH PORTLAND TERMINAL No. 18-054
170 LINCOLN STREET, SOUTH PORTLAND, MAINE

Prepared For:

ExxonMobil Pipeline Company

ROUX ASSOCIATES, INC.
Environmental Consulting & Management

Compiled By: JT	Date: 9/26/08	FIGURE
Prepared By: CRS	Scale: AS SHOWN	1
Project Mgr.: JT	Office: MA	
File No.: ONE_MR	Project: 17277M02	

T:GIS:XOM/PORTLAND/ONE_MILE_RADIUS.mxd

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)**[1]	**Flow Avg. for Month (MGD)**[2]
Acute dilution factor			
Chronic dilution factor		**Date Sample Collected**	Date Sample Analyzed
Human health dilution factor			
Criteria type: M(arine) or F(resh)	**m**		

Laboratory _____ Telephone _____
Address _____
Lab Contact _____ Lab ID # _____

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.

			Effluent Limits, %			Receiving Water or Ambient	**Effluent Concentration (ug/L or as noted)**		**Possible Exceedence** [7]		
			Acute	Chronic			WET Result, % Do not enter % sign	Reporting Limit Check	Acute	Chronic	
	WHOLE EFFLUENT TOXICITY										
	Mysid Shrimp										
	Sea Urchin										
	WET CHEMISTRY										
	pH (S.U.) (9)					(8)					
	Total Organic Carbon (mg/L)					NA					
	Total Solids (mg/L)					NA					
	Total Suspended Solids (mg/L)					NA					
	Salinity (ppt.)										
	ANALYTICAL CHEMISTRY [3,4]										
	Also do these tests on the effluent with WET. Testing on the receiving water is optional	Reporting Limit	Effluent Limits, ug/L Acute[6]	Chronic[6]	Health[6]			Reporting Limit Check	Possible Exceedence [7] Acute	Chronic	Health
	TOTAL RESIDUAL CHLORINE (mg/L) (9)	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)					

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.

	PRIORITY POLLUTANTS [4]								Possible Exceedence [7]		
			Effluent Limits					Reporting Limit Check			
		Reporting Limit	Acute[6]	Chronic[6]	Health[6]				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	3									
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-TRICHLOROBENZENE	5									
BN	1,2-(O)DICHLOROBENZENE	5									
BN	1,2-DIPHENYLHYDRAZINE	10									
BN	1,3-(M)DICHLOROBENZENE	5									
BN	1,4-(P)DICHLOROBENZENE	5									
BN	2,4-DINITROTOLUENE	6									
BN	2,6-DINITROTOLUENE	5									
BN	2-CHLORONAPHTHALENE	5									
BN	3,3'-DICHLOROBENZIDINE	16.5									
BN	3,4-BENZO(B)FLUORANTHENE	5									
BN	4-BROMOPHENYLPHENYL ETHER	2									
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	3									
BN	BENZO(G,H,I)PERYLENE	5									
BN	BENZO(K)FLUORANTHENE	3									
BN	BIS(2-CHLOROETHOXY)METHANE	5									
BN	BIS(2-CHLOROETHYL)ETHER	6									
BN	BIS(2-CHLOROISOPROPYL)ETHER	6									
BN	BIS(2-ETHYLHEXYL)PHTHALATE	3									
BN	BUTYLBENZYL PHTHALATE	5									
BN	CHRYSENE	3									
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									
BN	FLUORANTHENE	5									
BN	FLUORENE	5									
BN	HEXACHLOROBENZENE	2									
BN	HEXACHLOROBUTADIENE	1									
BN	HEXACHLOROCYCLOPENTADIENE	10									
BN	HEXACHLOROETHANE	2									
BN	INDENO(1,2,3-CD)PYRENE	5									
BN	ISOPHORONE	5									
BN	N-NITROSODI-N-PROPYLAMINE	10									

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.

	PRIORITY POLLUTANTS [4]									
			Effluent Limits					Reporting Limit Check	**Possible Exceedence** [7]		
		Reporting Limit	Acute[6]	Chronic[6]	Health[6]				Acute	Chronic	Health
BN	N-NITROSODIMETHYLAMINE	1									
BN	N-NITROSODIPHENYLAMINE	5									
BN	NAPHTHALENE	5									
BN	NITROBENZENE	5									
BN	PHENANTHRENE	5									
BN	PYRENE	5									
P	4,4'-DDD	0.05									
P	4,4'-DDE	0.05									
P	4,4'-DDT	0.05									
P	A-BHC	0.2									
P	A-ENDOSULFAN	0.05									
P	ALDRIN	0.15									
P	B-BHC	0.05									
P	B-ENDOSULFAN	0.05									
P	CHLORDANE	0.1									
P	D-BHC	0.05									
P	DIELDRIN	0.05									
P	ENDOSULFAN SULFATE	0.1									
P	ENDRIN	0.05									
P	ENDRIN ALDEHYDE	0.05									
P	G-BHC	0.15									
P	HEPTACHLOR	0.15									
P	HEPTACHLOR EPOXIDE	0.1									
P	PCB-1016	0.3									
P	PCB-1221	0.3									
P	PCB-1232	0.3									
P	PCB-1242	0.3									
P	PCB-1248	0.3									
P	PCB-1254	0.3									
P	PCB-1260	0.2									
P	TOXAPHENE	1									
V	1,1,1-TRICHLOROETHANE	5									
V	1,1,2,2-TETRACHLOROETHANE	7									
V	1,1,2-TRICHLOROETHANE	5									
V	1,1-DICHLOROETHANE	5									
V	1,1-DICHLOROETHYLENE (1,1-dichloroethene)	3									
V	1,2-DICHLOROETHANE	3									
V	1,2-DICHLOROPROPANE	6									

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.

	PRIORITY POLLUTANTS [4]									
			Effluent Limits					Reporting Limit Check	Possible Exceedence [7]		
		Reporting Limit	Acute[6]	Chronic[6]	Health[6]				Acute	Chronic	Health
V	1,2-TRANS-DICHLOROETHYLENE (1,2-trans-dichloroethene)	5									
V	1,3-DICHLOROPROPYLENE (1,3-dichloropropene)	5									
V	2-CHLOROETHYLVINYL ETHER	20									
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) Report ammonia, metals and priority pollutants 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:

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND
MAINE WASTE DISCHARGE LICENSE

FACT SHEET

Date: **April 27, 2009**

PERMIT NUMBER: **ME0000485**
LICENSE NUMBER: **W002653-5S-E-R**

NAME AND ADDRESS OF APPLICANT:

ExxonMobil Corporation
3225 Gallows Road
Fairfax, VA 22037

COUNTY WHERE DISCHARGE OCCURS: **Cumberland**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

South Portland Terminal
170 Lincoln Street
South Portland, Maine 04108

RECEIVING WATER AND CLASSIFICATION: **Fore River, Class SC**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Bart A. Wittmer**
(207) 741-2403
bart.a.wittmer@exxonmobil.com

1. APPLICATION SUMMARY

The permittee submitted a timely renewal application for Department Waste Discharge License (WDL) #W002653-5S-D-R/Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0000485 ("permit," hereinafter), which was issued on December 10, 2003 and expired on January 1, 2009. The permit authorized the discharge of treated storm water runoff up to a daily maximum flow rate of 610 gallons per minute (gpm), treated tank bottom waters up to a daily maximum flow rate of 100,000 gallons per day and hydrostatic test waters up to a daily maximum flow rate of 4.6 million gallons per day, to the Fore River, Class SC, in South Portland, Maine.

2. PERMIT SUMMARY

a. This permitting action is carrying forward all of the terms and conditions of the 12/10/03 permitting action with the following exceptions:

1. Eliminating the whole effluent toxicity (WET) testing requirement for the inland silverside (*Menidia berrylina*).

2. Revising the permitted flow of hydrostatic test waters from Outfall # 001C from 4.5 million gallons per day (MGD) to 4.6 MGD to reflect the addition of test waters from the hydrostatic testing of new piping at the facility.
3. Eliminating the daily maximum concentration limits for benzene, toluene, ethylbenzene and polynuclear aromatic hydrocarbons for Outfall #001B.

2. Establishing requirements for the permittee to report the daily maximum concentrations for benzene, toluene, ethylbenzene and polynuclear aromatic hydrocarbons for Outfall #001B.

b. History: The most current/relevant licensing/permitting actions include:

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 EPA issued a renewal of NPDES permit #ME0000485 to the Mobil Oil Corporation for a five-year term.

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

December 8, 2008 – The permittee submitted a complete and timely application to renew the 12/10/03 MEPDES permit.

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 and home heating oil. In addition, ethanol (denatured with gasoline up to 5%) operations were added since the last permitting action. 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

2. PERMIT SUMMARY (cont'd)

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 water 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. 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 to Outfall #001C. This permitting action is establishing the addition of up to a maximum of 100,000 gallons of hydrostatic test water from facility piping to Outfall #001C.

The tank bottom water is drawn from the bottoms of the petroleum storage tanks. The tank bottom water consists of condensation, roof and/or roof seal leakage water, and/or water from transport tanks, barges or ships. The tank bottom water also contains incidental spills and storm water runoff. Since the previous permitting action, the permittee has experienced spills resulting in a total of less than 7 gallons to the receiving water.

The applicant proposes no changes in the waste water quality, quantity or treatment of the storm water discharge through the oil/water separator that would alter the nature of the discharge described in the previous license.

d. Waste water treatment: Most of the storm water is captured and detained in the diked areas around the various tanks. These individual diked areas are designed to contain the tank volumes plus additional volume for precipitation or firefighting activities (extinguishing chemicals and water). Storm water from the diked areas is either manually drained by gravity or pumped out and conveyed to an oil/water separator where it receives best practicable treatment prior to discharge through Outfall #001A. Oil from the oil/water separator is returned to product; the solids are disposed off-site. The oil/water separator drain valves are always kept closed for safety and must be opened each time a diked area is drained. The permittee has indicated in the application for permit renewal that the oil/water separator is rated for 610 gallons per minute (gpm).

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

The tank bottom water 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 water is then directed to a dual-

2. PERMIT SUMMARY (cont'd)

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 storm water runoff. It is noted that the permittee has not discharged treated tank bottom water from the South Portland facility since 1994.

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

All three 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 A** of this Fact Sheet for a schematic of the facility.

3. CONDITIONS OF PERMITS

Maine law, 38 M.R.S.A. Section 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S.A., Section 420 and Department rule 06-096 CMR Chapter 530, *Surface Water Toxics Control Program,* require the regulation of toxic substances not to exceed levels set forth in Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, 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

Maine law, 38 M.R.S.A., Article 4-A §469(E) classifies the Fore River as a Class SC waterway. Maine law, 38 M.R.S.A., Article 4-A, §465-B(3) describes the classification standards for Class SC waters.

5. RECEIVING WATER CONDITIONS

A document entitled, *The State of Maine, Department of Environmental Protection 2008 Integrated Water Quality Monitoring and Assessment Report,* published by the Department lists the Fore River Estuary in South Portland in Category 5-A: "Estuarine and Marine Waters Impaired by Pollutants Other Than Those Listed in [Categories] 5B Through 5-D." 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 for the designated use of "marine life use and support." The report indicates the causes of the impairment are municipal point sources, combined sewer overflows, storm water, hazardous waste sites and nonpoint spills of all sizes. The Department has scheduled calendar year 2012 to prepare a

5. RECEIVING WATER CONDITIONS (cont'd)

total maximum daily load (TMDL) report to address the impairment. In addition, all estuarine and marine waters are listed in 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. On September 25, 1992, EPA promulgated through its General Permit for Storm Water Discharge Associated with Industrial Activity, that the minimum BAT/BCT requirement for storm water discharges associated with industrial activity is a Storm Water Pollution Prevention Plan (SWPPP) [57 FR, 44438]. In addition to a SWPPP, the Department is carrying numeric effluent limitations and/or monitoring requirements forward from the previous permitting action for petroleum constituents to ensure the discharges do not contribute to violations of the State's water quality standards.

This permit authorizes the discharge of treated storm water, hydrostatic test waters and treated tank bottom waters with numeric effluent limitations which are within applicable water quality standards. The previous permitting action required the development and implementation of a Storm Water Pollution Prevention Plan for additional protection of the environment. 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.

a. Storm Water Runoff – Outfall #001A

1. Flow - Typically, the treatment technology for storm water runoff employed by bulk storage petroleum terminals is an oil/water [O/W] separator. This device uses gravity to separate the lower-density oils from water, resulting in an oil phase above the oil/water interface and a heavier particulate (sludge) phase on the bottom of the O/W separator. It follows that the sizing of O/W separators is based on the following design parameters: water flow rate, density of oil to be separated, desired percentage removal of oil and the operating temperature range.

   The O/W separator daily maximum flow limit of 610 gpm is based on the capacity rating information provided by the permittee. The O/W separator daily maximum flow limit and minimum monitoring frequency requirement of once every calendar quarter is being carried forward in this permitting action.

2. Total Suspended Solids (TSS) - Total suspended solids are limited in this permit to minimize the potential carryover of petroleum fractions to the receiving water(s) by adsorption to particulate matter or suspended solids. Both heavy metals and polynuclear aromatic hydrocarbons (PAH's) readily adsorb to particulate matter.

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

a. Storm Water Runoff – Outfall #001A

A review of the quarterly discharge flow data as reported on the DMR's submitted to the Department for the period December 2004 – December 2008 (n=16) indicate the following:

Flow

Value	Limit (gpm)	Range (gpm)	Average (gpm)
Daily Maximum	610	200 – 200	200

This permitting action is carrying forward the daily maximum TSS concentration limit of 100 mg/L based on an EPA Region I BPJ determination that the technology guidelines promulgated at 40 CFR Part 423—*Steam Electric Power Generating Point Source Category*, for point source discharges of low-volume waste water were appropriate to control the discharge of sediment particles and oils from bulk storage petroleum terminals in the region.

This permitting action is carrying forward the twelve-month rolling averaging period for compliance with the monthly average TSS concentration limit of 50 mg/L based on the Department's BPJ.

As stated in footnote #3 of Special Condition A, *Effluent Limitations and Monitoring Requirements*, the 12-month rolling averaging period is based on the most recent twelve months with sampling data. Months where no discharge took place are excluded (i.e., do not figure in a zero) in the calculation. An example for calculating the 12-month rolling average is as follows:

Calendar year 2009

Quarter #1

Month	Test Result
Jan	15 mg/L
	53 mg/L
Feb	31 mg/L
March	71 mg/L
	24 mg/L
	37 mg/L

Quarter #2

Month	Test Result
April	50 mg/L
May	34 mg/L
	47 mg/L
	39 mg/L
June	No Discharge

Quarter #3

Month	Test Result
July	25 mg/L
	72 mg/L
Aug	No Discharge
Sept	71 mg/L
	22 mg/L
	26 mg/L

Quarter #4

Month	Test Result
Oct	50 mg/L
Nov	34 mg/L
	47 mg/L
	59 mg/L
Dec	89 mg/L

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

a. Storm Water Runoff – Outfall #001A

$$\text{12-Month rolling average} = \frac{\Sigma \text{ effluent concentrations}}{\text{n results}} = \frac{896}{20} = 45 \text{ mg/L}$$

A review of the quarterly TSS data as reported on the DMR's submitted to the Department for the period December 2004 – December 2008 indicate the following:

TSS

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum (n=16)	100	< 4 – 21	8
12-month Rolling Average (n=15)	50	4 – 20	9

Results reported as "less than" were considered to be present at the minimum detection limit for calculation purposes.

3. Oil and Grease (O&G) – This permitting action is carrying forward the daily maximum oil and grease concentration limit of 15 mg/L based on Department BPJ as facilities equipped with properly designed, operated and maintained oil/water separator systems are capable of reducing oil content to 15 mg/L or less.

   A review of the quarterly O&G data as reported on the DMR's submitted to the Department for the period December 2004 – December 2008 (n=16) indicate the following:

Oil and Grease

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	15	<5 – 8	5

Results reported as "less than" were considered to be present at the minimum detection limit for calculation purposes.

4. Benzene - Three gasoline compounds with the highest solubilities 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.

   A traditional approach to limiting effluents contaminated with gasoline or other light distillates has been to limit the aggregate parameter of: benzene, ethylbenzene, toluene, and total xylenes (BETX). This approach stems from the petroleum industry's practice of determining the quality of fuels by measuring BETX, which

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

a. Storm Water Runoff – Outfall #001A

can be highly variable among gasoline products. Of the four aromatics, benzene is by far the most soluble in water. Because of its relatively high solubility in water, benzene can be considered the "limiting pollutant parameter." Therefore, a "report only" monitoring requirement of the daily maximum concentration of benzene is being carried forward in this permitting action as a screening parameter for BETX compounds.

A review of the quarterly benzene data as reported on the DMR's submitted to the Department for the period December 2004 – December 2008 (n=15) indicate the following:

Benzene

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	Report	<0.001 – 0.030	0.006

b. Tank Bottom Waters (Outfall #001B)

This permit authorizes the permittee to discharge treated tank bottom water 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 waters anticipated to be generated in a given calendar quarter. The permittee did not discharge from Outfall #001B during the reporting period of December 1, 2004 – December 1, 2008 and therefore no flow data exists.

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. The permittee did not discharge from Outfall #001B during the reporting period of December 1, 2004 – December 1, 2008 and therefore no data exists for this pollutant.

3. Oil & Grease: This permitting action is carrying forward a daily maximum oil and grease limitation of 15 mg/L. The limit is based on a Department BPJ of BPT and is consistent with the daily maximum limitation of 15 mg/L for the storm water runoff. The permittee did not discharge from Outfall #001B during the reporting period of December 1, 2004 – December 1, 2008 and therefore no data exists for this pollutant.

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

b. Tank Bottom Waters (Outfall #001B)

4. Polynuclear Aromatic Hydrocarbons (PAH's): PAH's are known to be ubiquitous in the environment. The primary source of PAH's is the incomplete combustion of organic compounds. These are referred to as "pyrogenic PAH's." Another source is crude oil and/or its petroleum derivatives; these PAH's are referred to as petrogenic in origin. PAH's will strongly adsorb to suspended particulates and biota. Therefore, the transport of PAH's will be largely determined by the hydrogeologic conditions in the receiving water and its aquatic system. The ultimate fate of these PAH's which accumulate in the receiving water's bottom sediment is believed to be biodegradation and biotransformation by bottom-dwelling organisms.

   Subsequent to the issuance of the previous permit, the EPA rescinded its criteria maximum concentrations (CMC's) for PAH's. (CMC's are EPA national water quality criteria recommendations for the highest in-stream concentration of a toxicant or an effluent to which organisms can be exposed for a brief period of time without causing mortality.) This permitting action is removing the PAH daily maximum concentration limit of 60 ug/L for a single chemical. This permitting action is establishing 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		

   The permittee did not discharge from Outfall #001B during the reporting period of December 1, 2004 – December 1, 2008 and therefore no data exists for these pollutants. It is noted reporting the sum of the PAH's has not been included in this permit because regulatory agencies and the permittee have not agreed on a protocol for summing non-detect results and/or detectable results below the regulatory reporting level (RL).

5. Volatile Organic Compounds (VOC's) BETX: Based on the assumption that hydrocarbons found in gasoline would likely be found in tank bottom waters, 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 solubilities 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,

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

b. Tank Bottom Waters (Outfall #001B)

such as gasoline, since it existed in light distillates at significant concentrations.

A traditional approach to limiting effluents contaminated with gasoline or other light distillates has been to limit the aggregate parameter of benzene, ethylbenzene, toluene, and total xylenes (or "BETX"). This approach stems from the petroleum industry's practice of determining the quality of fuels by measuring BETX, which can be highly variable among gasoline products. Of the four aromatics, benzene is by far the most soluble in water. Because of its relatively high solubility in water, benzene can be considered the "limiting pollutant parameter."

The EPA, the U.S. Geological Survey (USGS), the Chemical Industry Institute of Toxicology, and the Lawrence Livermore National Laboratory have or are in the process of conducting clinical and epidemiological studies on short-term (human) and long-term (animal) health effects of methyl tertiary-butyl ether (MTBE), assessing the status and trends of the Nation's ground water and surface water quality with MTBE as an analyte and researching the fate, transport and long-term degradation of MTBE.

An analysis of the carcinogenicity of MTBE was conducted by an interagency group and reported in "Interagency Assessment of Potential Health Risks Associated with Oxygenated Gasoline" (NSTC,1996). The report includes information regarding the classification of MTBE's carcinogenic potential. It states in part, *"The experimental studies provide sufficient evidence of carcinogenicity of MTBE in animals. The positive animal studies raise the concern that MTBE may pose a human health hazard. And based on animal data, MTBE is considered to be either a possible or probable human carcinogen."*

Gasoline samples taken by EPA indicate an average of 4.4 percent of a given volume as MTBE. Spillage and leaks from above-ground gasoline storage tanks and/or truck loading rack areas can transport quantities of MTBE to surface waters via the storm water drainage system. These sources may impact water quality in the Fore River; therefore, the Department is carrying forward a monitoring requirement for MTBE without numeric limitations.

BETX (Benzene, Ethylbenzene, Toluene, Xylenes): Daily maximum limitations for BETX do not take into consideration dilution in the receiving water due to the fact that the outfall pipe does not have a diffuser and is exposed at low tide resulting in a dilution factor of 1:1. The permittee may perform a mixing zone study so that it can be used to provide new information in calculating water quality based effluent limits for the discharge. If appropriate, this permit may be reopened per Special Condition I, *Reopening of Permit For Modifications*, to incorporate revised applicable water quality based limitations.

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

b. Tank Bottom Waters (Outfall #001B)

Benzene: This permitting action is removing the daily maximum benzene concentration limitation of 5100 ug/L (5.1 mg/L) based on EPA's removal of the CMC for benzene for marine waters. This permitting action is establishing the requirement for the permittee to report the daily maximum concentration of benzene discharged expressed in units of milligrams/liter (mg/L).The permittee did not discharge from Outfall #001B during the reporting period of December 1, 2004 – December 1, 2008 and therefore no data exists for this pollutant.

Ethylbenzene: This permitting action is removing the daily maximum ethylbenzene limitation of 430 ug/L (0.43 mg/L) based on EPA's removal of the CMC for ethylbenzene for marine waters. This permitting action is establishing the requirement for the permittee to report the daily maximum concentration of ethylbenzene discharged, expressed in units of milligrams/liter (mg/L).The permittee did not discharge from Outfall #001B during the reporting period of December 1, 2004 – December 1, 2008 and therefore no data exists for this pollutant.

Toluene: This permitting action is removing the daily maximum toluene limitation of 6300 ug/L (6.3 mg/L) based on EPA's removal of the CMC for toluene for marine waters. This permitting action is establishing the requirement for the permittee to report the daily maximum concentration of toluene discharged, expressed in units of milligrams/liter (mg/L).The permittee did not discharge from Outfall #001B during the reporting period of December 1, 2004 – December 1, 2008 and therefore no data exists for this pollutant.

Total Xylenes: This permitting action is carrying forward the requirement for the permittee to report the daily maximum concentration of total xylenes discharged expressed in units of milligrams/liter (mg/L). The permittee did not discharge from Outfall #001B during the reporting period of December 1, 2004 – December 1, 2008 and therefore no data exists for this pollutant.

Methyl tert-butyl ether (MTBE) & Ethyl tert-butyl ether (ETBE): The previous permitting action did not establish any limitations for MTBE or ETBE as EPA has not established CMC criterion for either parameter. This permitting action is carrying forward the requirement for the permittee to report the daily maximum concentration of MTBE discharged expressed in units of micrograms/liter (ug/L) as MTBE is the primary oxygenate in gasoline. The permittee did not discharge from Outfall #001B during the reporting period of December 1, 2004 – December 1, 2008 and therefore no data exists for these pollutants.

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

b. Tank Bottom Waters (Outfall #001B)

6. Whole Effluent Toxicity (WET): This permitting action is carrying forward an A-NOEL limitation of 100% for WET testing based on Department regulation Chapter 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. It is noted the inland silverside (*Menidia berrylina*) is no longer listed as a test species in Chapter 530; therefore, this permitting action is eliminating the inland silverside as a WET test organism.

   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). The permittee did not discharge from Outfall #001B during the reporting period of December 1, 2004 – December 1, 2008 and therefore no WET data exists.

7. Chemical-specific (priority pollutants): During the previous permitting action, the Department determined chemical-specific testing is not likely to provide additional information useful in evaluating the discharge. The Department does reserve the right to impose said testing if the WET tests indicate exceedences or a reasonable potential to exceed AWQC.

c. Hydrostatic Test Water (Outfall #001C)

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 December 2004 – December 2008 (n=1) indicate the following:

Flow

Value	Limit (MG)	Range (MG)	Average (MG)
Daily Maximum	4.5	4.0	4.0

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

c. Hydrostatic Test Water (Outfall #001C)

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 that are hydrostatically tested have been washed and cleaned in preparation for repair and testing.

   A review of the TSS discharge data as reported on the DMR's submitted to the Department for the period December 2004 – December 2008 (n=1) indicate the following:

Total Suspended Solids

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	50	5	5

3. Oil & Grease: This permitting action is carrying forward a daily maximum oil and grease concentration limit of 15 mg/L that was 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.

   A review of the oil and grease discharge data as reported on the DMR's submitted to the Department for the period December 2004 – December 2008 (n=1) indicate the following:

Oil and Grease

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	15	<5	<5

4. Total residual chlorine (TRC): This permitting action is carrying forward the daily maximum TRC limit of 13 ug/L. The limitation is based on EPA's acute criteria maximum concentration (CMC) of 13 ug/L for marine waters. The limitation does not take into consideration dilution in the receiving water due to the fact that the outfall pipe does not have a diffuser and is above the low-water mark. A chronic limit is not specified because the discharge is not a continuous discharge.

   Compliance with the daily maximum limitation will be based on the Department's Reporting Level (RL) of detection of 50 ug/L (0.05 mg/L). All analytical test results shall be reported to the Department including results which are detected below the RL of 0.05 mg/L.

   Detectable results: All detectable analytical test results shall be reported to the Department including results which are detected below the RL of 0.05 mg/L. If the Analytical test result is below 0.05 mg/L, the concentration result shall be reported as <X where X is the reporting level achieved by the laboratory for that test. If the concentration result is at or above 0.05 mg/L, the concentration shall be reported at that level.

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

c. Hydrostatic Test Water (Outfall #001C)

Non-detectable results: If the analytical test result is non-detect at or below 0.05 mg/L, the concentration result shall be reported as <X where X is the reporting level achieved by the laboratory for that test.

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

A review of the discharge data as reported on the DMR's submitted to the Department for the period December 2004 – December 2008 (n=1) indicate the following:

Total Residual Chlorine

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	13	<0.1	<0.1

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the waterbody to meet standards for Class SC classification. A more in-depth review of the water quality and impairment issue for the Fore River estuary cited in Section 5, *Receiving Water Conditions*, of this Fact Sheet is scheduled for calendar year 2012 when a total maximum daily load (TMDL) is scheduled to be performed by the Department.

8. PUBLIC COMMENTS

Public notice of this application was made in the *Portland Press Herald* newspaper on or about November 10, 2008. The Department receives public comment on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

9. DEPARTMENT CONTACTS

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

Phyllis Rand
Division of Water Quality Management
Bureau of Land and Water Quality
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 email: phyllis.a.rand@maine.gov Tel: (207) 287-7658

10. RESPONSE TO COMMENTS

During the period of March 19, 2009, through April 20, 2009, the Department solicited comments on the proposed draft Maine Pollutant Discharge Elimination System Permit to be issued to ExxonMobil Corporation for the proposed discharges. The Department received three significant comments on the draft permit from ExxonMobil Corporation in a letter to the Department dated April 9, 2009. The significant comments and Department responses are below:

Comment #1:

Permit Part A.1, Footnote (8), Page 9, Paragraph 5: The requirement to conduct a definitive acute toxicity test is excessive when the compliance limit or trigger for further WET assessment if 100% effluent. No other permitted constituents require dilution of the effluent to determine at what point the sample passes, in case it doesn't pass at 100%, nor should this be required for WET. The unnecessary sacrifice of living organisms is contrary to ExxonMobil's policy of reducing animal use in testing; the results of a definitive WET test, if the A-NOEC of 100% effluent is not met, does not assist either ExxonMobil or the agency in determining what action needs to be taken in the absence of additional testing. In other words, it's a pass-fail test at 100% effluent and testing at other concentrations is unnecessary and lacks value. Unlike in cases of continuous or ongoing discharge, the batch discharge of the tank bottom water is a totally controlled process which can't take place until the wastewater passes all the tests. Knowing at what level toxicity is mitigated in the undischarged wastewater is not informative—because the water cannot be, and won't be, discharged if it shows toxicity at the level limited by the permit.

Response to Comment #1:

Note: The above-referenced footnote is Footnote #9, not Footnote #8.

Permit Part A.1, Footnote #9, Paragraph 5, will be revised as follows (revisions underlined):

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 ExxonMobil, multi-concentration WET testing is waived and definitive WET testing shall be conducted using 100% effluent collected from tank bottom water that is representative of the discharge. ExxonMobil is prohibited from discharging tank bottom water until WET test results indicate Acute No Observed Effect Level (A-NOEL) at 100% effluent.*

10. RESPONSE TO COMMENTS (cont'd)

Comment #2:

Fact Sheet Part 6.c.4, Page 13, Paragraphs 5-7: ExxonMobil appreciates the Department's clarification of the conditions that would be considered compliance with the limits on TRC, but requests that this be added to the permit to provide more clarity to the conditions of compliance. The reporting level in this section is not consistent with the RL in the "WET and Chemical Specific Report Form" [the Report Form]. The Fact sheet uses 0.01[mg/L], and the Report Form uses 0.05 [mg/L]. Also we believe the following sentences should read[:]

> "Detectable results: All detectable analytical test results shall be reported to the Department including results which are detected below the M[R]L of **0.05** mg/L. **If the Analytical test result is below 0.05 mg/L, the concentration result shall be reported as <X where X is the reporting level achieved by the laboratory for that test.** If the concentration result is at or above **0.05** mg/L, the concentration shall be reported at that level.
>
> Non-detectable results: If the analytical test result is **non-detect at or** below 0.05 mg/L, the concentration result shall be reported as <X where X is the **reporting** level achieved by the laboratory for that test."

Response to Comment #2:

The suggested changes to Fact Sheet Part 6.c.4 shall be reflected in this section. The suggested changes shall also be reflected in Footnote #11 of this Permit.

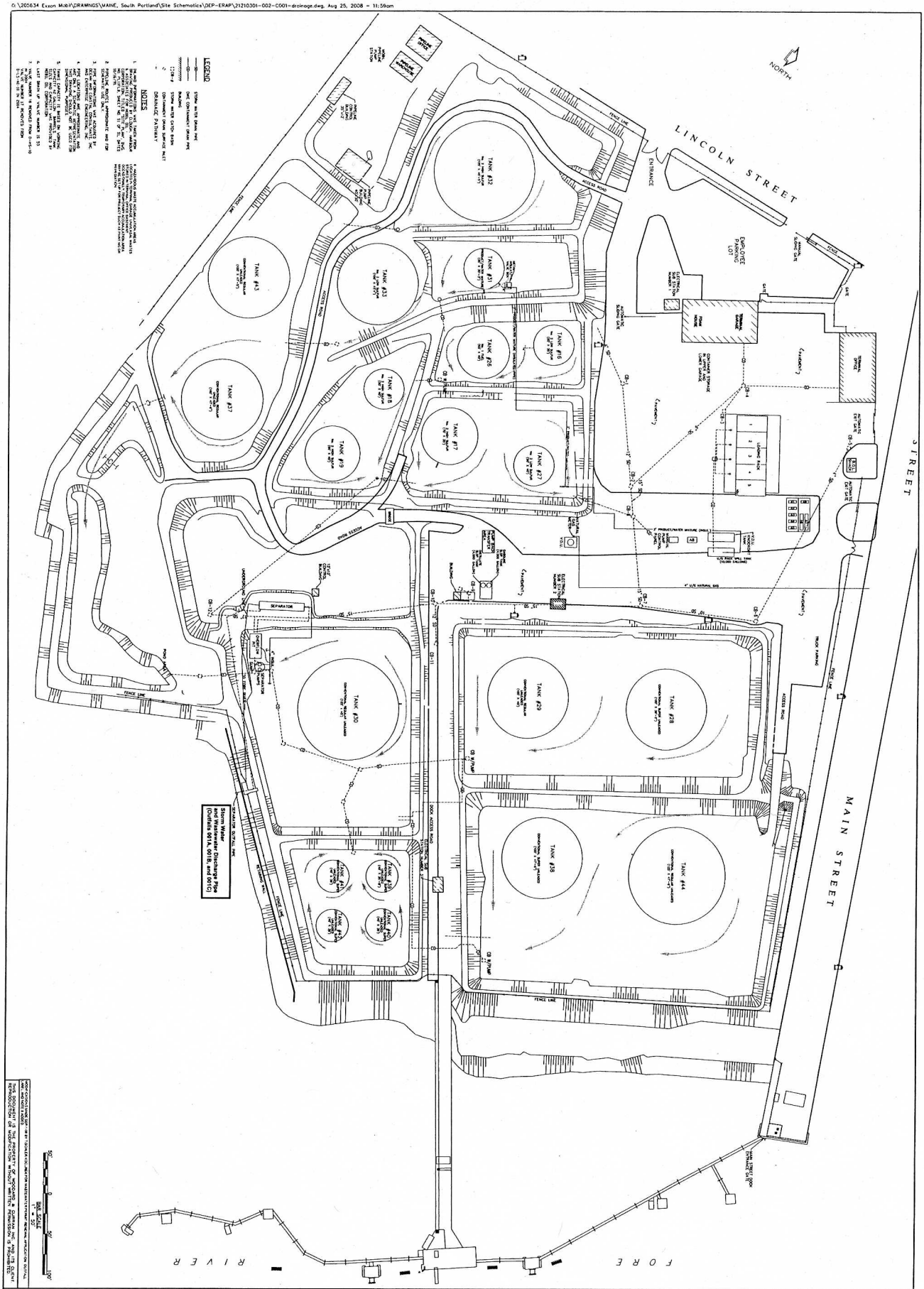
Comment #3:

Attachment B, WET and Chemical Specific Data Report Form: ExxonMobil notes that Reporting Limits are listed in the form. Based on conversations with ME DEP these RLs [RL's]are the same RLs [RL's] on Page 7. The column listing the RLs [RL's]does not specifically have units listed. ExxonMobil requests ME DEP amend the form to clearly state the units for the RLs [RL's].

Response to Comment #3:

The changes shall be reflected in Footnote #4 on the WET and Chemical Specific Data Report Form.

ATTACHMENT A


LINCOLN STREET
MAIN STREET
RIVER
FORE
NORTH
TANK #32
TANK #33
TANK #31
TANK #16
TANK #26
TANK #18
TANK #17
TANK #19
TANK #27
TANK #37
TANK #3
TANK #30
TANK #29
TANK #28
TANK #38
TANK #44
TANK #42
TANK #43
TANK #40
TANK #41
LEGEND
NOTES
Storm Water Discharge Pipes
(Outfalls 001A, 001B, and 001C)
SCALE: 1" = 50'
DIAGRAM #2
SITE DRAINAGE PLAN
EXXONMOBIL
SOUTH PORTLAND, MAINE
EXXONMOBIL OIL DISTRIBUTION
Drainage Plan
JOB NO. 20563.12
DATE: JUNE 2008
SHEET: 2 OF 6
DESIGNED BY:
DRAWN BY: PFF
CHECKED BY: D. MARTIN
21210301-002-C001-drainage.dwg
REV. DESCRIPTION DATE
41 HUTCHINS DRIVE
PORTLAND, MAINE 04102
800.426.4262 | www.woodardcurran.com
WOODARD & CURRAN
COMMITMENT & INTEGRITY DRIVE RESULTS

CONTENTS

A. GENERAL PROVISIONS

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

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

(a) They are not

(i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
(ii) Known to be hazardous or toxic by the licensee.

(b) The discharge of such materials will not violate applicable water quality standards.

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

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

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

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

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

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

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

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

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

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

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

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

B. OPERATION AND MAINTENACE OF FACILITIES

1. General facility requirements.

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

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

(b) The permittee shall at all times maintain in good working order and operate at maximum efficiency all waste water collection, treatment and/or control facilities.

(c) All necessary waste treatment facilities will be installed and operational prior to the discharge of any wastewaters.

(d) Final plans and specifications must be submitted to the Department for review prior to the construction or modification of any treatment facilities.

(e) The permittee shall install flow measuring facilities of a design approved by the Department.

(f) The permittee must provide an outfall of a design approved by the Department which is placed in the receiving waters in such a manner that the maximum mixing and dispersion of the wastewaters will be achieved as rapidly as possible.

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

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

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

5. Bypasses.

(a) Definitions.

(i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

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

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

(c) Notice.

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

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

(d) Prohibition of bypass.

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

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
(C) The permittee submitted notices as required under paragraph (c) of this section.

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

6. Upsets.

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

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

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

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;
(ii) The permitted facility was at the time being properly operated; and
(iii) The permittee submitted notice of the upset as required in paragraph D(1)(f) , below. (24 hour notice).
(iv) The permittee complied with any remedial measures required under paragraph B(4).

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

C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.

(c) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;
(ii) The individual(s) who performed the sampling or measurements;
(iii) The date(s) analyses were performed;
(iv) The individual(s) who performed the analyses;
(v) The analytical techniques or methods used; and
(vi) The results of such analyses.

(d) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in the permit.

(e) State law provides that any person who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule license, permit approval or decision is subject to the penalties set forth in 38 MRSA, §349.

D. REPORTING REQUIREMENTS

1. Reporting requirements.

(a) Planned changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

(ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D(4).

(iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

(b) Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. This permit is not transferable to any person except upon application to and approval of the Department pursuant to 38 MRSA, § 344 and Chapters 2 and 522.

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices.

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.

(iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.

(e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(f) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance

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

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

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

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

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

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

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

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

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

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

(i) One hundred micrograms per liter (100 ug/l);
(ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
(iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

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

(i) Five hundred micrograms per liter (500 ug/l);
(ii) One milligram per liter (1 mg/l) for antimony;
(iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
(iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

5. Publicly owned treatment works.

(a) All POTWs must provide adequate notice to the Department of the following:

(i) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA or Chapter 528 if it were directly discharging those pollutants.
(ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
(iii) For purposes of this paragraph, adequate notice shall include information on (A) the quality and quantity of effluent introduced into the POTW, and (B) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(b) When the effluent discharged by a POTW for a period of three consecutive months exceeds 80 percent of the permitted flow, the permittee shall submit to the Department a projection of loadings up to the time when the design capacity of the treatment facility will be reached, and a program for maintaining satisfactory treatment levels consistent with approved water quality management plans.

E. OTHER REQUIREMENTS

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

(a) For municipal sources. During power failure, all wastewaters which are normally treated shall receive a minimum of primary treatment and disinfection. Unless otherwise approved, alternate power supplies shall be provided for pumping stations and treatment facilities. Alternate power supplies shall be on-site generating units or an outside power source which is separate and independent from sources used for normal operation of the wastewater facilities.

(b) For industrial and commercial sources. The permittee shall either maintain an alternative power source sufficient to operate the wastewater pumping and treatment facilities or halt, reduce or otherwise control production and or all discharges upon reduction or loss of power to the wastewater pumping or treatment facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004 **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. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days 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 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 and the applicant a copy of the documents. All 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

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status*. Standing to maintain an appeal requires the appellant to show they are particularly injured by 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 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 as part of an appeal only when 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 show 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, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information 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.* An applicant proceeding with a project pending the outcome of an appeal 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 initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final 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. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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.