



STATE OF MAINE
Department of Environmental Protection

JOHN ELIAS BALDACCI
GOVERNOR

Beth Nagusky
Acting Commissioner

January 3, 2011

Mr. Gary Brooks
Veazie Sewer District
34 Hobson Avenue
Veazie, Maine 04401

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0100706
Maine Waste Discharge License (WDL) Application # W-002754-6C-G-M
Permit Modification – CBOD and BOD₅ Limitations and Monitoring Requirements

Dear Gary:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL Permit Modification which was approved by the Department of Environmental Protection. Please read the modification, permit/license, and its attached conditions carefully. You must follow the conditions in the order 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 the matter, please feel free to contact Tanya Hovell, your compliance inspector, at (207) 941-4569 or tanya.hovell@maine.gov or Dick Darling, your technical assistance engineer, at (207) 462-5358 or dick.darling@maine.gov.

Sincerely,

Robert D. Stratton
Division of Water Quality Management
Bureau of Land and Water Quality

Enc.

pc: Tanya Hovell, Dick Darling, Lori Mitchell (MEDEP); Sandy Mojica (USEPA)

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

DEPARTMENT ORDER

IN THE MATTER OF

VEAZIE SEWER DISTRICT	)	MAINE POLLUTANT DISCHARGE
VEAZIE, PENOBSCOT COUNTY, MAINE	)	ELIMINATION SYSTEM PERMIT
PUBLICLY OWNED TREATMENT WORKS	)	AND
#ME0100706	)	WASTE DISCHARGE LICENSE
#W-002754-6C-G-M	APPROVAL)	MODIFICATION

Pursuant to the provisions of Maine Law 38 M.R.S.A., Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department, MEDEP) has considered the modification request by the VEAZIE SEWER DISTRICT (Veazie SD), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

MODIFICATION REQUESTED

The Veazie SD has requested that effluent limitations and monitoring requirements established in its 2007 Maine Pollutant Discharge Elimination System (MEPDES) Permit / Maine Waste Discharge License (WDL) for biochemical oxygen demand (BOD₅) be eliminated and replaced with previously established limits and monitoring requirements for carbonaceous BOD (CBOD). The permittee, the Department's technical assistance engineer, and the Department's compliance inspector agree that the effluent characteristics that were the basis for establishing the 2007 conventional limits represent temporary improvements in effluent quality that have since ceased. The parties further agree that current effluent quality resembles that which was present at the time of issuance of the 2002 WDL and request that the earlier technology-based CBOD effluent limitations be reestablished. Accordingly, the Department is making a best professional judgement (BPJ) determination to revise effluent limits, monitoring requirements, and percent removal requirements in Permit Special Condition A.1, *Effluent Limitations and Monitoring Requirements*, of MEPDES Permit #ME0100706 / Maine WDL #W002754-5L-F-R, issued by the Department on November 30, 2007 and revised on January 2, 2008 and June 12, 2008. This action is being taken pursuant to Permit Special Condition M, which follows.

M. REOPENING OF PERMIT FOR MODIFICATIONS

Upon evaluation of the tests results or monitoring requirements specified in Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at anytime 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 effluent or ambient water quality monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information including, but not limited to, new information from ambient water quality studies of the receiving waters.

PERMIT MODIFICATION SUMMARY

This permit modification modifies the effluent limitations and monitoring requirements as follows:

1. reestablishes previous effluent limitations, monitoring requirements, and percent removal requirements for carbonaceous biochemical oxygen demand (CBOD), and eliminates limitations and requirements for biochemical oxygen demand (BOD₅), based on Department best professional judgement.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated December 16, 2010 and revised January 3, 2011, 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 groundwater 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 waterbody 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 Permit Modification of MEPDES Permit #ME0100706 / Maine WDL #W002754-5L-F-R, issued by the Department on November 30, 2007 (revised on January 2, 2008 and June 12, 2008), to the VEAZIE SEWER DISTRICT to discharge up to a monthly average of 0.35 million gallons per day (MGD) of secondary treated sanitary wastewaters to the Penobscot River, Class B, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions applicable To All Permits," revised July 1, 2002, copy attached to the 11/30/07 MEPDES Permit / Maine WDL cited above.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All other terms and conditions in the 11/30/07 MEPDES Permit / Maine WDL and 01/02/08 and 06/12/08 revisions not modified by this Permit Modification remain in effect and enforceable.
4. This minor revision **expires November 30, 2012**, concurrent with the 11/30/07 MEPDES Permit / Maine WDL.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

This Order prepared by Robert D. Stratton, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge secondary treated sanitary wastewaters from **Outfall #001A** to the Penobscot River. Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
	as specified	as specified	as specified	as specified	as specified	as specified	as specified	as specified
Flow [50050]	0.35 MGD [03]	---	report MGD [03]	---	---	---	Continuous [99/99]	Recorder [RC]
Carbonaceous Biochemical Oxygen Demand (CBOD) [80082]	73 lbs/day [26]	117 lbs/day [26]	131 lbs/day [26]	25 mg/L [19]	40 mg/L [19]	45 mg/L [19]	1/Week [01/07]	24-Hr. Composite [24]
CBOD ₅ %Removal ⁽¹⁾ [51016]	---	---	---	65% [23]	---	---	1/Month [01/30]	Calculate [CA]
Total Suspended Solids (TSS) [00545]	88 lbs/day [26]	131 lbs/day [26]	146 lbs/day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Week [01/07]	24-Hr. Composite [24]
TSS % Removal ⁽¹⁾ [81011]	---	---	---	85% [23]	---	---	1/Month [01/30]	Calculate [CA]
Settleable Solids [00545]	---	---	---	---	---	0.3 ml/L [25]	3/Week [03/07]	Grab [GR]
<i>E. Coli</i> Bacteria ⁽²⁾ May 15 to September 30 [31633]	---	---	---	64/100 ml ⁽³⁾ [13]	---	427/100 ml [13]	1/Week [01/07]	Grab [GR]
Total Residual Chlorine ⁽⁴⁾ [50060]	---	---	---	---	---	1.0 mg/L [19]	5/Week [05/07]	Grab [GR]
pH ⁽⁵⁾ [00400]	---	---	---	---	---	6.0-9.0 s.u. [12]	3/Week [03/07]	Grab [GR]

The italicized numeric values bracketed in the table above and in the text on subsequent pages are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports (DMRs). Footnotes are found on pages 6 and 7 of the 11/30/07 Permit/WDL and are amended on the next page.

REVISED PERMIT SPECIAL CONDITIONS

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

Footnotes:

Sampling Locations:

Influent sampling for CBOD and TSS shall be collected after the grit removal / screening processes at the headworks of the facility.

Effluent sampling for all parameters shall be collected after the chlorine contact chamber, the last treatment process prior to discharge to the receiving water. Any change in sampling location(s) must be reviewed and approved by the Department in writing. Sampling and analysis must be conducted in accordance with: a) methods approved by 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. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services. Samples that are sent to a POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 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 (RLs) 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 a <X lbs/day, where X is the parameter specific limitation established in the permit.

1. **Percent Removal** – The treatment facility shall maintain a minimum of 65 percent removal of CBOD₅ and 85 percent removal of TSS for all flows receiving secondary treatment during all months that the facility discharges. Compliance with the limitations shall be based on a twelve-month rolling average. Calendar monthly average percent removal values shall be calculated based on influent and effluent concentrations. For the purposes of this permitting action, the twelve-month rolling average calculation is based on the most recent twelve-month period. The TSS percent removal limit shall be waived when the 12-month rolling average influent TSS concentration is less than 200 mg/L. For instances when this occurs, the facility shall report “NODI-9” on the monthly Discharge Monitoring Report.
2. ***E. coli* bacteria limits and monitoring requirements** – *E. coli* bacteria limits and monitoring requirements are seasonal and apply between May 15th and September 30th of each year. The Department reserves the right to require year round disinfection to protect the health, safety, and welfare of the public.

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

PERMIT MODIFICATION FACT SHEET

Date: December 16, 2010

Revised: January 3, 2011

MEPDES PERMIT NUMBER:

ME0100706

WASTE DISCHARGE LICENSE:

W-002754-6C-G-M

NAME AND ADDRESS OF APPLICANT:

**VEAZIE SEWER DISTRICT
30 Hobson Avenue
Veazie, Maine 04401**

COUNTY: PENOBSCOT

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**VEAZIE SEWER DISTRICT
30 Hobson Avenue
Veazie, Maine 04401**

RECEIVING WATER / CLASSIFICATION:

Penobscot River, Class B

COGNIZANT OFFICIAL AND TELEPHONE NUMBER:

Mr. Gary Brooks

(207) 942-1536; gbrooks@veaziesewerdistrict.com

1. MODIFICATION REQUESTED

The Veazie SD has requested that effluent limitations and monitoring requirements established in its 2007 Maine Pollutant Discharge Elimination System (MEPDES) Permit / Maine Waste Discharge License (WDL) for biochemical oxygen demand (BOD₅) be eliminated and replaced with previously established limits and monitoring requirements for carbonaceous BOD (CBOD). The permittee, the Department's technical assistance engineer, and the Department's compliance inspector agree that the effluent characteristics that were the basis for establishing the 2007 conventional limits represent temporary improvements in effluent quality that have since ceased. The parties further agree that current effluent quality resembles that which was present at the time of issuance of the 2002 WDL and request that the earlier technology-based CBOD effluent limitations be reestablished. Accordingly, the Department is making a best professional judgement (BPJ) determination to revise effluent limits, monitoring requirements, and percent removal requirements in Permit Special Condition A.1, *Effluent Limitations and Monitoring Requirements*, of MEPDES Permit #ME0100706 / Maine WDL #W002754-5L-F-R, issued by the Department on November 30, 2007 and revised on January 2, 2008 and June 12, 2008. This action is being taken pursuant to Permit Special Condition M, which follows.

1. MODIFICATION REQUESTED (cont'd)
M. REOPENING OF PERMIT FOR MODIFICATIONS

Upon evaluation of the tests results or monitoring requirements specified in Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at anytime 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 effluent or ambient water quality monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information including, but not limited to, new information from ambient water quality studies of the receiving waters.

2. PERMIT MODIFICATION SUMMARY

This permit modification modifies the effluent limitations and monitoring requirements as follows:

- a. reestablishes previous effluent limitations, monitoring requirements, and percent removal requirements for carbonaceous biochemical oxygen demand (CBOD), and eliminates limitations and requirements for biochemical oxygen demand (BOD₅), based on Department best professional judgement.

3. BASIS FOR THE MODIFICATION

The Department's manual entitled, Design, Operation & Regulation of Aerated Facultative Lagoons in Maine (Maine Lagoon Task Force, 1997), recommends that BOD₅ and TSS permit limits may be adjusted on a case-by-case basis when a facility demonstrates that it "cannot consistently achieve secondary treatment" based on a "problem (that) is uncontrollable while using a properly designed and operated lagoon or pond as the principal biological treatment process" and with "no extenuating circumstances such as overloading or industrial wastes." In November 2000, the Department made the determination that the Veazie SD facility had fulfilled the considerations in the Task Force Report for alternate limits and established CBOD and TSS limitations equivalent to secondary treatment based on code of Federal Regulations (40 CFR) Part 133, in lieu of conventional secondary treatment limitations for BOD and TSS. For its 2007 Permit / WDL renewal, the Department reviewed DMR data for Veazie SD for the period of November 2002 through July 2007, determined based on improvements in effluent quality that the Veazie SD could meet secondary treatment limitations for BOD₅ and TSS under most conditions, and established those limits in the 2007 permitting action. Subsequently, Veazie SD began experiencing noncompliance with the newly established BOD₅ limits and requested that the Department review its situation. The Department's technical assistance engineer determined that the observed improvements in wastewater treatment processes and effluent quality from 2002-2007 were

3. BASIS FOR THE MODIFICATION (cont'd)

the result of differences in the chemical composition of the influent waste-stream from a single contributing business. With the cessation of that business, the wastewater treatment processes and effluent quality returned to pre-2002 conditions, again demonstrating an inability to consistently meet BOD₅ secondary treatment requirements. Based on BPJ, the Department has determined it appropriate to reinstate the previous CBOD effluent limitations, monitoring requirements, and percent removal requirements, and to eliminate the same for BOD₅.

Pursuant to Permit Special Condition M, *Reopening of Permit for Modifications*, in the 11/30/07 MEPDES Permit / Maine WDL and Department Rule (06-096 CMR Chapter 2), the Department is revising the CBOD and BOD₅ limitations, monitoring requirements, and percent removal requirements as described above. All other limitations and requirements in the Permit / WDL, as previously revised on January 2, 2008 and June 12, 2008, remain in effect and must be complied with.

4. REVISED FACT SHEET SECTIONS

a. (§ 6.c) EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

Carbonaceous Biochemical Oxygen Demand (CBOD₅), Biochemical Oxygen Demand (BOD₅), and Total Suspended Solids (TSS): The previous permitting action (2002) carried forward from the preceeding licensing action (2000), CBOD₅ and TSS limits that were equivalent to secondary treatment limitations based on code of Federal Regulations (40 CFR) Part 133. They also carried forward monitoring requirements for BOD₅ to provide for comparison between BOD₅ and CBOD₅. From both the 2002 permitting action and the 2000 licensing action, *“On a number of occasions, the most recent being in a letter of October 31, 2000, the licensee has requested the Department; 1) consider establishing carbonaceous biochemical oxygen demand (CBOD) limitations in place of biochemical oxygen demand (BOD) limitations and 2) establish alternate TSS limitations due to historic problems meeting secondary limitations.”*

“In August of 1997, the Department published a User’s Manual entitled Design, Operation & Regulation of Aerated Facultative Lagoons in Maine prepared by the Maine Lagoon Task Force. In the Executive Summary section of the document, the Task Force states that most of the lagoons and ponds (stabilization) are meeting secondary treatment permit requirements for BOD₅ and TSS. The report also states that some ponds do not meet secondary treatment but do meet “equivalent to secondary treatment” (45 mg/L as a monthly average) for BOD₅ and TSS due largely to varying climatic and seasonal conditions. The report also makes the recommendation that BOD₅ and TSS permit limits may be adjusted on a case-by-case basis for facilities with problems due to cold weather and algae”. “The report states that adjusting limits for a facility would be considered when a) the facility demonstrates that it cannot consistently achieve secondary treatment defined as a 30-day average of 30 mg/L 95% of the time based on at least three years of monthly average data, b) the facility provided information and data to demonstrate the problem is uncontrollable while using a properly designed and operated lagoon or pond

4. REVISED FACT SHEET SECTIONS

a. (§ 6.c) EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

as the principal biological treatment process, c) there are no extenuating circumstances such as overloading or industrial wastes.” “The request for CBOD limits is based on the fact that an oxygen demand due to partial nitrification taking place in the laboratory BOD test bottle is skewing (inflating) the BOD test results.” “As for TSS, the request is based on chronic non-compliance with secondary treatment effluent limits due to excessive algal growth in the waste water treatment lagoons during the spring, summer and fall.”

In a Department memorandum dated November 9, 2000, the Department made the determination that the Veazie facility had fulfilled the considerations in the Task Force Report for alternate limits and recommended CBOD₅ as the most appropriate and relevant parameter for measuring secondary treatment performance and effluent quality at the Veazie facility. The following CBOD limits were established:

	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
CBOD ₅	25 mg/l	40 mg/L	45 mg/L

In the November 9, 2000 memo, the Department also made the determination that the Veazie facility had fulfilled the considerations for alternate TSS limits and recommended limitations as follows:

	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
TSS	45 mg/l	65 mg/L	75 mg/L

For comparison, secondary treatment requirements for BOD and TSS consist of a monthly average of 30 mg/L, a weekly average of 45 mg/L, and a daily maximum of 50 mg/L. The monthly average and weekly average limits of 25 mg/L and 40 mg/L for CBOD and 45 mg/L and 65 mg/L for TSS were technology based limits, consistent with the secondary BPT limits in federal regulation 40 CFR, Part 133.105, *Treatment Equivalent to Secondary Treatment*. The daily maximum limits were also technology based limits and were mathematically derived using the same ratio established for secondary BOD BPT limitations (i.e. 30/45/50 mg/L). The corresponding mass limits were calculated based on the applicable concentration limits and a flow of 0.35 MGD.

The request for alternate limits is an available regulatory option under federal regulations found at 40 CFR Part 133, *Secondary Treatment Regulation*. Federal regulation 40 CFR, Part 133.105, *Treatment Equivalent to Secondary Treatment* establishes the minimum level of effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment.

4. REVISED FACT SHEET SECTIONS

a. (§ 6.c) EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

CBOD and TSS limitations equivalent to secondary treatment were established because the facility demonstrated that it could not consistently meet secondary treatment limitations for BOD and TSS “...even though the determination was made that the facility was properly designed, operated and maintained. With the improvements in the aeration of the lagoons (from the 2000 facility upgrade), the facility may indeed be able to meet secondary treatment requirements...” for BOD and TSS. Based on this, the 2002 permitting action required the Veazie SD to monitor and report CBOD, BOD, and TSS values. The permit stated, after two years of testing, the Department would reconsider its position on the CBOD vs BOD limitations and the TSS limitation. “Should the Department determine the facility can consistently meet secondary treatment limitations for BOD (and TSS) as specified in federal and state regulations, the permit will be re-opened...to establish applicable BOD (and TSS) limitations.”

The Department reviewed DMR data for Veazie SD for the period of November 2002 through July 2007 and provided summaries of the data included in the 2007 Permit/WDL. The Department considered the referenced data as evidence that the Veazie SD could meet secondary treatment limitations for BOD and TSS under most conditions and established those limits in the 2007 permitting action. The monthly and weekly average BOD₅ and TSS best practicable treatment (BPT) based concentration limits of 30 mg/L and 45 mg/L were based on secondary treatment requirements in Department rule Chapter 525(3)(III). The maximum daily BOD₅ and TSS concentration limits of 50 mg/L were based on a Department best professional judgment of BPT. The mass limits were based on the monthly average flow limitation of 0.35 MGD and the applicable concentration limits. The mass limits were calculated as follows.

Monthly average: $(0.35 \text{ MGD})(8.34 \text{ lbs/gal})(30 \text{ mg/L}) = 88 \text{ lbs/day}$

Weekly average: $(0.35 \text{ MGD})(8.34 \text{ lbs/gal})(45 \text{ mg/L}) = 131 \text{ lbs/day}$

Daily maximum: $(0.35 \text{ MGD})(8.34 \text{ lbs/gal})(50 \text{ mg/L}) = 146 \text{ lbs/day}$

The 2007 permitting action also revised the previously established requirement of 65% removal for CBOD and TSS to 85% removal for BOD and TSS, pursuant to Department rule Chapter 525(3)(III)(a&b)(3) except in the circumstances where the monthly average influent concentration is less than 200 mg/L. The 2007 permitting action carried forward the BOD and TSS monitoring frequencies of once per week, as is typically established for wastewater treatment facilities with effluent flows of between 0.1 and 0.5 MGD based on Department BPJ.

Subsequently, Veazie SD began experiencing noncompliance with the newly established BOD₅ limits and requested that the Department review its situation and the source of increasing effluent violations. The Department's technical assistance engineer determined that a diaper service business that was in existence and contributing wastewater to Veazie SD when effluent quality was assessed for the 2007 permit, provided extra alkalinity that positively affected nitrification at Veazie SD, reducing

4. REVISED FACT SHEET SECTIONS

a. (§ 6.c) EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

effluent levels of BOD₅. The diaper service business was subsequently closed and the Department's engineer has determined that the resulting loss of alkalinity has proven inadequate to sustain the necessary nitrification reaction, bringing about similar effluent levels of BOD₅ as were observed prior to issuance of the 2002 WDL. Based on BPJ, the Department has determined it appropriate to reinstate the previous CBOD effluent limitations, monitoring requirements, and percent removal requirements, and to eliminate the same for BOD₅.

5. DEPARTMENT CONTACTS

Additional information concerning this minor revision may be obtained from and written comments should be sent to:

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Department of Environmental Protection
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Augusta, Maine 04333-0017

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MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

A. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

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

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

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

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

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

5. Bypasses.

(a) Definitions.

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

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

(c) Notice.

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

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

6. Upsets.

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

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C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

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

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D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

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

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

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit.

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

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

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

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

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

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

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

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

(i) One hundred micrograms per liter (100 ug/l);

(ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or

(iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a 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.
