STATE OF MAINE

Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patricia W. Aho
COMMISSIONER

December 15, 2011

Mr. Neil Leighton
Limestone Water & Sewer District
6 Water Company Road
P.O. Box 544
Limestone, Maine 04750

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0102849
Maine Waste Discharge License (WDL) Application # W-006654-6D-H-M
Permit Modification

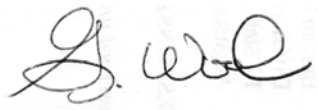
Dear Mr. Leighton:

Enclosed please find a copy of your **final** Maine MEPDES/WDL **modification** which was approved by the Department of Environmental Protection. Please read the permit 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 call me at 287-7693.

Sincerely,



Gregg Wood
Division of Water Quality Management
Bureau of Land and Water Quality

Enc.

cc: William Sheehan, DEP/NMRO
Sandy Mojica, USEPA

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

DEPARTMENT ORDER

IN THE MATTER OF

LIMESTONE WATER & SEWER DISTRICT	)	MAINE POLLUTANT DISCHARGE
PUBLICLY OWNED TREATMENT WORKS	)	ELIMINATION SYSTEM PERMIT
CARIBOU, AROOSTOOK COUNTY, MAINE	)	AND
ME0102849	)	WASTE DISCHARGE LICENSE
W006654-6D-H-M **APPROVAL**	)	**MINOR REVISION**

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 the LIMESTONE WATER & SEWER DISTRICT (LWSD/permittee hereinafter), with its supportive data, agency review comments, and other related material on file and finds the following facts:

APPLICATION SUMMARY

The LWSD filed an application with the Department on October 28, 2011, to modify Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102849/WDL #W006654-5L-F-R, issued by the Department on March 11, 2009, to authorize a discharge to the Aroostook River, Class C, in Caribou, Maine. The March 11, 2009, permit authorized the discharge to the Little Madawaska River, Class B, in Caribou, Maine. During the summer of 2011, the LWSD completed the construction of a 7-mile long outfall pipe from a pump station it owns and operates in the Town of Limestone to a sewer manhole along the Aroostook River in Caribou. The manhole structure combines the effluent flow from the LWSD facility and effluent flow from the Caribou Utility District's (CUD) waste water treatment facility and the combined effluent is discharged to the Aroostook River, Class C, via the final outfall pipe for the CUD. It is noted the outfall pipe to the Little Madawaska River remains intact as an emergency overflow structure in the event of unforeseen issues arise with the integrity or the ability of the new 7-mile long outfall to convey treated waste water to the Aroostook River.

PERMIT SUMMARY

This permitting action is carrying forward all the terms and conditions of the March 11, 2009, permit except that this permit modification is;

1. Acknowledging the discharge has been removed from the Little Madawaska River and is now being conveyed to the Aroostook River.

2. Establishing new dilution factors for the discharge to the Aroostook River.

3. Establishing a new technology based concentration limit for total residual chlorine (TRC) of 1.0 mg/L and eliminating the previously established technology based monthly average concentration limit of 0.1 mg/L and daily maximum water quality based concentration limit of 0.27 mg/L for TRC.

4. Increasing the monthly average and daily maximum concentration limits for *E. coli* bacteria given the discharge is now to a Class C waterbody.

5. Eliminating the monitoring and reporting requirements for total phosphorus as the Department has made a determination it has enough data on total phosphorus levels being discharged from the permittee's facility.

6. Modifying the acute no observed effect level (A-NOEL) and chronic no observed effect level (C-NOEL) critical thresholds based on the revised dilution factors and eliminating the C-NOEL limit of 6.5% for the water flea as an updated statistical evaluation indicates the discharge no longer has a reasonable potential toxic exceed the new C-NOEL of 1.1%.

7. Reducing the surveillance and screening level monitoring frequencies by half for whole effluent toxicity (WET) and analytical chemistry to be consistent with the monitoring frequencies specified by 06-096 CMR Department rule Chapter 530, *Surface Water Toxics Control Program.*

8. Revising the Special Condition K, *Chapter 530 (2)(D)(4) Certification*, of the March 11, 2009, permit to incorporate the most current boilerplate language for the certification requirements.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated November 14, 2011, and subject to the Conditions listed below, the Department makes the following conclusions:

For discharge of secondary treated waste waters from the waste water treatment facility:

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 natural 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 discharges will be subject to effluent limitations that require application of best practicable treatment as defined in Maine law, 38 M.R.S.A., §414-A(1)(D).

ACTION

THEREFORE, the Department APPROVES the application for the LIMESTONE WATER & SEWER DISTRICT, to modify MEPDES permit #ME0102849/WDL W006654-5L-F-R issued by the Department on March 11, 2009, to authorize the discharge of an unspecified quantity of secondary treated waste waters to the Aroostook River, Class C, in Caribou, Maine. The discharges shall be 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 MEPDES permit #ME0102849/WDL #W006654-5L-F-R, issued by the Department on March 11, 2009.

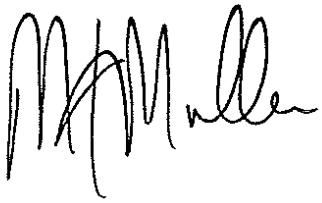
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.

3. All terms and conditions of MEPDES permit #ME0102849/WDL #W006654-5L-F-R, issued by the Department on March 11, 2009, not modified by this permitting action remain in effect and enforceable.

4. This permit modification becomes effective upon signature and expires on March 11, 2014, concurrent with #ME0102849/WDL #W006654-5L-F-R, issued by the Department on March 11, 2009. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of the this permit, the terms and conditions of the this permit and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (effective April 1, 2003)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application October 28, 2011.
Date of application acceptance November 2, 2011.



This permit is digitally signed by Michael Mullen on behalf of Commissioner Patricia Aho. It is digitally signed pursuant to 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date.
2011.12.20 09:27:23 -05'00'

This Order prepared by Gregg Wood, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge **secondary treated sanitary wastewater** from **Outfall #001A** to the Aroostook River. Such discharges shall be limited and monitored by the permittee as specified below. The italicized numeric values bracketed in the tables below 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 8-11.

Effluent Characteristic	**Discharge Limitations**						**Minimum Monitoring Requirements**	
	Monthly Average as specified	**Weekly Average** as specified	**Daily Maximum** as specified	**Monthly Average** as specified	**Weekly Average** as specified	**Daily Maximum** as specified	**Measurement Frequency** as specified	**Sample Type** as specified
Flow *[50050]*	Report (MGD) *[03]*	---	Report (MGD) *[03]*	---	---	---	Continuous *[99/99]*	Recorder *[RC]*
Biochemical Oxygen Demand (BOD_5) *[00310]*	313 lbs/day *[26]*	469 lbs/day *[26]*	521 lbs/day *[26]*	30 mg/L *[19]*	45 mg/L *[19]*	50 mg/L *[19]*	2/Week **(5)** *[02/07]*	24-Hr. Composite *[24]*
BOD5 % Removal **(1)** *[81010]*	---	---	---	85% *[11]*	---	---	1/Month *[01/30]*	Calculate *[CA]*
Total Suspended Solids (TSS) *[00530]*	313 lbs/day *[26]*	469 lbs/day *[26]*	521 lbs/day *[26]*	30 mg/L *[19]*	45 mg/L *[19]*	50 mg/L *[19]*	2/Week **(5)** *[02/07]*	24-Hr. Composite *[24]*
TSS % Removal **(1)** *[81011]*	---	---	---	85% *[11]*	---	---	1/Month *[01/30]*	Calculate *[CA]*
Settleable Solids *[00545]*	---	---	---	---	---	0.3 ml/L *[25]*	2/Week **(5)** *[02/07]*	Grab *[GR]*
E. coli Bacteria **(2)** *[31633]* *(May 15 – Sept. 30)*	---	---	---	126/100 ml **(3)** *[13]*	---	949/100 ml *[13]*	2/Week **(5)** *[02/07]*	Grab *[GR]*
Total Residual Chlorine **(4)** *[50060]*	---	---	---	---	---	1.0 mg/L *[19]*	5/Week *[05/07]*	Grab *[GR]*

SPECIAL CONDITIONS

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

OUTFALL #001A

Effluent Characteristic	**Discharge Limitations**						**Minimum Monitoring Requirements**	
	Monthly Average as specified	**Weekly Average** as specified	**Daily Maximum** as specified	**Monthly Average** as specified	**Weekly Average** as specified	**Daily Maximum** as specified	**Measurement Frequency** as specified	**Sample Type** as specified
Arsenic (total) **(6)** *[01002]* **(Upon permit issuance)**	Report lb/day *[26]*	---	---	Report ug/L *[28]*	---	---	1/Quarter *[01/90]*	24-Hr. Composite *[24]*
Arsenic (Inorganic) **(7)** *[01252]* **(Upon EPA test method approval)**	0.0042 lb/day *[26]*	---	---	0.4 ug/L *[28]*	---	---	1/Quarter *[01/90]*	24-Hr. Composite *[24]*
Bis (2-ethylhexyl) phthalate *[16770]*	0.28 lbs/day *[26]*	---	---	40 ug/L *[28]*	---	---	1/Quarter *[01/90]*	24-Hr. Composite *[24]*
pH (Std. Units) *[01077]*	---	---	---	---	---	6.0-9.0 *[12]*	5/Week *[05/07]*	Grab *[GR]*

SPECIAL CONDITIONS

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

OUTFALL #001A

SURVEILLANCE LEVEL - Beginning upon issuance of this permit modification and lasting through 12 months prior to permit expiration.

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Whole Effluent Toxicity[8]						
Acute – ANOEL						
Ceriodaphnia dubia (Water flea) [TDA3B]	---	---	---	Report %[23]	1/2 Years [01/2Y]	Composite[24]
Salvelinus fontinalis (Brook trout) [TDA6F]	---	---	---	Report %[23]	1/2 Years [01/2Y]	Composite[24]
Chronic – CNOEL						
Ceriodaphnia dubia (Water flea) [TBP3B]	---	---	---	Report %[23]	1/2 Years [01/2Y]	Composite[24]
Salvelinus fontinalis (Brook trout) [TBQ6F]	---	---	---	Report %[23]	1/2 Years [01/2Y]	Composite[24]
Analytical Chemistry[9,10] [51477]	---	---	---	Report ug/L[28]	1/2 Years [01/2Y]	Composite/Grab [24]

SCREENING LEVEL - Beginning 12 months prior to permit expiration and lasting through permit expiration and every five years thereafter.

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Whole Effluent Toxicity[8]						
Acute – ANOEL						
Ceriodaphnia dubia (Water flea) [TDA3B]	---	---	---	Report %[23]	2/Year [02/YR]	Composite[24]
Salvelinus fontinalis (Brook trout) [TDA6F]	---	---	---	Report %[23]	2/Year [02/YR]	Composite[24]
Chronic – CNOEL						
Ceriodaphnia dubia (Water flea) [TBP3B]	---	---	---	Report %[23]	2/Year [02/YR]	Composite[24]
Salvelinus fontinalis (Brook trout) [TBQ6F]	---	---	---	Report %[23	2/Year [02/YR]	Composite[24]
Analytical Chemistry[9,10] [51477]	---	---	---	Report ug/L[28]	1/Quarter [01/90]	Composite/Grab [24]
Priority Pollutant[10] [50008]	---	---	---	Report ug/L[28]	1/Year [01/YR]	Composite/Grab [24]

SPECIAL CONDITIONS

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

Footnotes:

Sampling Locations: Effluent samples for all parameters shall be collected after the last treatment process prior to discharge to the receiving water, the chlorine contact chamber, on a year-round basis. 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 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. See **Attachment A** of the March 11, 2009, permit for a list of the Department's RLs. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the RL achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL or reporting an estimated value ("J" flagged) is not acceptable and will be rejected by the Department. Reporting analytical data and its use in calculations must follow established Department guidelines specified in this permit or in available Department guidance documents.

1. **Percent removal** - The treatment facility shall maintain a minimum of 85 percent removal of both BOD_5 and TSS. The percent removal shall be based on a monthly average calculation using influent and effluent concentrations. The percent removal shall be waived when the monthly average influent 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 15 and September 30 of each year. The Department reserves the right to require disinfection on a year-round basis to protect the health, safety, and welfare of the public.

3. **Geometric mean** – The monthly average *E. coli* bacteria limitation is a geometric mean limitation and shall be calculated and reported as such.

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS,

Footnotes (cont'd)

4. **Total residual chlorine (TRC) limits and monitoring requirements –** TRC limits and monitoring requirements are applicable whenever elemental chlorine or chlorine based compounds are being used to disinfect the discharge. The permittee shall utilize test methods that bracket the applicable permit limits.

5. **2/Week sampling requirements** – There shall be at least two days between sampling events when required to sample 2/Week.

6. **Arsenic (Total)** – **Beginning upon issuance of this permit and lasting through a date on which the USEPA approves a test method for inorganic arsenic**, the permittee shall sample and analyze the discharge from the facility for total arsenic. The Department's most current reporting limit (RL) for total arsenic is 5 ug/L but may be subject to revision during the term of this permit. All detectable analytical test results shall be reported to the Department including results which are detected below the Department's most current RL at the time of sampling and reporting. Only the detectable results greater than the total arsenic threshold of 0.8 ug/L (see Fact Sheet page 28 of the March 11, 2009,permit) or the Department's RL at the time (whichever is higher) will be considered as a possible exceedence of the inorganic limit. Arsenic limits are based on risks from long-term exposure, therefore, though the effluent limit is expressed as a monthly average, the Department will evaluate compliance as an annual average.

7. **Arsenic (Inorganic)** – The limitations and monitoring requirements for inorganic arsenic are not in effect until the USEPA approves of a test method for inorganic arsenic. See Special Condition N, *Schedule of Compliance – Inorganic Arsenic*, of the March 11, 2009, permit.

8. **Whole Effluent Toxicity (WET) -** Definitive WET testing is a multi-concentration testing event (a minimum of five dilutions bracketing the acute and chronic critical thresholds of 1.3 % and 1.1% respectively), which provides a point estimate of toxicity in terms of No Observed Effect Level, commonly referred to as NOEL or NOEC. A-NOEL is defined as the acute no observed effect level with survival as the end point. C-NOEL is defined as the chronic no observed effect level with survival, reproduction and growth as the end points. The critical acute and chronic thresholds were derived as the mathematic inverse of the applicable acute and chronic dilution factors of 77:1 and 91:1 respectively.

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS,

Footnotes (cont'd)

a. **Surveillance level testing** - Beginning upon permit issuance and lasting through 12 months prior to permit expiration, the permittee shall conduct surveillance level WET testing. Acute and chronic tests shall be conducted on the brook trout (*Salvelinus fontinalis*) and the water flea (*Ceriodaphnia dubia*) at a frequency of once every other year (1/2 Years).

b. **Screening level testing** - Beginning 12 months prior to permit expiration and lasting through permit expiration and every five years thereafter, the permittee shall conduct screening level WET testing at a minimum frequency of twice per year (2/Year) for both species. There shall be at least 90 days between testing events. Acute and chronic tests shall be conducted on the water flea (*Ceriodaphnia dubia*) and the brook trout (*Salvelinus fontinalis*).

WET test results must be submitted to the Department not later than the next Discharge Monitoring Report (DMR) required by the permit provided, however, that the permittee may review the toxicity reports for up to 10 business days of their availability before submitting them. The permittee shall evaluate test results being submitted and identify to the Department possible exceedences of the critical acute and chronic water quality thresholds of 1.3% and 1.1% respectively. 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. methods manuals.

a. Short Term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Water to Freshwater Organisms, Fourth Edition, October 2002, EPA-821-R-02-013.

b. 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.

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Footnotes (cont'd)

9. **Analytical Chemistry** – Refers to a suite of chemicals in **Attachment A** of the March 11, 2009, permit.

   a. **Surveillance level testing** – Beginning upon permit issuance and lasting through twelve months prior to the expiration date of this permit, the permittee shall conduct surveillance level analytical chemistry testing at a minimum frequency of once every other year (1/2 Years).

   b. **Screening level testing** - Beginning twelve months prior to the expiration date of this permit and every five years thereafter, the permittee shall conduct screening level analytical chemistry testing at a minimum frequency of two times per year (2/Year).

J. 06-096 CMR 530(2)(D)(4) STATEMENT FOR REDUCED/WAIVED TOXICS TESTING

By December 31 of each calendar year, the permittee shall provide the Department with a certification describing any of the following that have occurred since the effective date of this permit ***[PCS Code 95799]***:

(a) Changes in the number or types of non-domestic wastes contributed directly or indirectly to the wastewater treatment works that may increase the toxicity of the discharge;
(b) Changes in the operation of the treatment works that may increase the toxicity of the discharge; and
(c) Changes in industrial manufacturing processes contributing wastewater to the treatment works that may increase the toxicity of the discharge.

In addition, in the comments section of the certification form, the permittee shall provide the Department with statements describing;

(d) Changes in storm water collection or inflow/infiltration affecting the facility that may increase the toxicity of the discharge.

(e) Increases in the type or volume of hauled wastes accepted by the facility.

The Department reserves the right to reinstate annual (surveillance level) testing or other toxicity testing if new information becomes available that indicates the discharge may cause or have a reasonable potential to cause exceedences of ambient water quality criteria/thresholds.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND
MAINE WASTE DISCHARGE LICENSE

FACT SHEET

DATE: **November 14, 2011**

PERMIT NUMBER: **ME0102849**
WASTE DISCHARGE LICENSE: **W006654-6D-H-M**

NAME AND ADDRESS OF APPLICANT:

LIMESTONE WATER & SEWER DISTRICT
6 Water Company Road
P.O. Box 544
Limestone, Maine 04750

COUNTY: **Aroostook**

NAME AND ADDRESS WHERE DISCHARGE(S) OCCUR(S):

363 Grimes Road
Caribou, Maine

RECEIVING WATER/CLASSIFICATION: **Aroostook River/Class C**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Neil Leighton, Chairman**
(207) 325-4788
e-mail: lwsd@maine.rr.com

1. APPLICATION SUMMARY

a. Application - The Limestone Water & Sewer District (LWSD) filed an application with the Department on October 28, 2011, to modify Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102849/WDL #W006654-5L-F-R, issued by the Department on March 11, 2009, to authorize a discharge to the Aroostook River, Class C, in Caribou, Maine. The March 11, 2009, permit authorized the discharge to the Little Madawaska River, Class B, in Caribou, Maine. During the summer of 2011, the LWSD completed the construction of a 7-mile long outfall pipeline from a pump station it owns and operates in the Town of Limestone to a sewer manhole along the Aroostook River in Caribou. The manhole structure combines the effluent flow from the LWSD facility and effluent flow from the Caribou Utility District's (CUD) waste water treatment facility and the combined effluent is discharged to the Aroostook River, Class C, via the final outfall pipe for the CUD. It is noted the outfall pipe to the Little Madawaska River remains intact as an emergency overflow structure in the event of unforeseen issues arise with the integrity or the ability of the new 7-mile long outfall to convey treated waste water to the Aroostook River.

PERMIT SUMMARY

This permitting action is carrying forward all the terms and conditions of the March 11, 2009, permit except that this permit modification is;

1. Acknowledging the discharge has been removed from the Little Madawaska River and is now being conveyed to the Aroostook River.

2. Establishing new dilution factors for the discharge to the Aroostook River.

3. Establishing a new technology based concentration limit for total residual chlorine (TRC) of 1.0 mg/L and eliminating the previously established technology based monthly average concentration limit of 0.1 mg/L and daily maximum water quality based concentration limit of 0.27 mg/L for TRC.

4. Increasing the monthly average and daily maximum concentration limits for *E. coli* bacteria given the discharge is now to a Class C waterbody.

5. Eliminating the monitoring and reporting requirements for total phosphorus as the Department has made a determination it has enough data on total phosphorus levels being discharged from the permittee's facility.

6. Modifying the acute no observed effect level (A-NOEL) and chronic no observed effect level (C-NOEL) critical thresholds based on the revised dilution factors and eliminating the C-NOEL limit of 6.5% for the water flea as a updated statistical evaluation indicates the discharge no longer has a reasonable potential toxic exceed the new C-NOEL of 1.1%.

7. Reducing the surveillance and screening level monitoring frequencies by half for whole effluent toxicity (WET) and analytical chemistry to be consistent with the monitoring frequencies specified by 06-096 CMR Department rule Chapter 530, *Surface Water Toxics Control Program*.

8. Revising the Special Condition K, *Chapter 530 (2)(D)(4) Certification* of the March 11, 2009, permit to incorporate the most current boilerplate language for the certification requirements.

2. CONDITIONS OF PERMIT

Maine law, 38 M.R.S.A. §414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the 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., §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.

3. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A., Section 467(C)(1)(f) classifies the Aroostook River at the point of discharge as Class C waters. Maine law, 38 M.R.S.A., §465(4) establishes the classification standards for Class C waters as follows:

A. Class C waters must be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; agriculture; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; navigation; and as a habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class C water may be not less than 5 parts per million or 60% of saturation, whichever is higher, except that in identified salmonid spawning areas where water quality is sufficient to ensure spawning, egg incubation and survival of early life stages, that water quality sufficient for these purposes must be maintained. In order to provide additional protection for the growth of indigenous fish, the following standards apply.

(1) The 30-day average dissolved oxygen criterion of a Class C water is 6.5 parts per million using a temperature of 22 degrees centigrade or the ambient temperature of the water body, whichever is less, if:

(a) A license or water quality certificate other than a general permit was issued prior to March 16, 2004 for the Class C water and was not based on a 6.5 parts per million 30-day average dissolved oxygen criterion; or

(b) A discharge or a hydropower project was in existence on March 16, 2005 and required but did not have a license or water quality certificate other than a general permit for the Class C water. This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004.

(2) In Class C waters not governed by subparagraph (1), dissolved oxygen may not be less than 6.5 parts per million as a 30-day average based upon a temperature of 24 degrees centigrade or the ambient temperature of the water body, whichever is less. This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004. The department may negotiate and enter into agreements with licensees and water quality certificate holders in order to provide further protection for the growth of indigenous fish. Agreements entered into under this paragraph are enforceable as department orders according to the provisions of sections 347-A to 349.

3. RECEIVING WATER QUALITY STANDARDS (cont'd)

Between May 15th and September 30th, the number of Escherichia coli bacteria of human and domestic animal origin in Class C waters may not exceed a geometric mean of 126 per 100 milliliters or an instantaneous level of 236 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. The board shall adopt rules governing the procedure for designation of spawning areas. Those rules must include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

C. Discharges to Class C waters may cause some changes to aquatic life, except that the receiving waters must be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community. This paragraph does not apply to aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species.

4. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2010 Integrated Water Quality Monitoring and Assessment Report, prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists all of Maine's fresh waters as, "*Category 4-A: Waters Impaired With Impaired Use, TMDL Completed, waters Impaired by Atmospheric Deposition of Mercury*. The report states the impairment is caused by atmospheric deposition of mercury; a regional scale TMDL has been approved. Maine has a fish consumption advisory for fish taken from all freshwaters due to mercury. Many waters and many fish from any given water, do not exceed the action level for mercury. However, because it is impossible for someone consuming a fish to know whether the mercury level exceeds the action level, The Maine Department of Health and Human Services decided to establish a statewide advisory for all freshwater fish that recommends limits on consumption. Maine has already instituted statewide programs for removal and reduction of mercury sources.

Pursuant to Maine law, 38 M.R.S.A. §420(1-B)(B), "a facility is not in violation of the ambient criteria for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to section 413 subsection 11." The Department established interim monthly average and daily maximum mercury concentration limits for the LWSD which have not been exceed to date.

The Department has no information at this time that the discharge from the LWSD will cause or contribute to the failure of the receiving water to meet the designated uses of its assigned classification.

5. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

a. Dilution Factors: Dilution factors associated with the monthly average dry weather design criterion for the facility of 1.25 MGD were derived in accordance with Department rule, 06-096 CMR, Chapter 530 Section 4.A *Surface Water Toxics Control Program* and were calculated as follows:

Acute: 1Q10 = 147.5 cfs $\Rightarrow \frac{(147.5 \text{ cfs})(0.6464) + 1.25^{(1)} \text{ MGD}}{1.25 \text{ MGD}} = 77{:}1$

Chronic: 7Q10 = 173.5 cfs $\Rightarrow \frac{(173.5 \text{ cfs})(0.6464) + 1.25 \text{ MGD}}{1.25 \text{ MGD}} = 91{:}1$

Harmonic Mean = 520.5 cfs[(2)] $\Rightarrow \frac{(520.5 \text{ cfs})(0.6464) + 1.25 \text{ MGD}}{1.25 \text{ MGD}} = 270{:}1$

The Department has determined that the outfall structure associated with the CUD's discharge provides complete and rapid mixing of the effluent with the receiving waters.

Footnotes:

(1) Design capacity of the LWSD waste water treatment facility.

(2) The harmonic mean dilution factor is approximated by multiplying the 7Q10 value by a factor of three (3). This multiplying factor is based on guidelines for estimation of human health dilution presented in the U.S. EPA publication, "*Technical Support Document for Water Quality-Based Toxics Control"* (Office of Water; EPA/505/2-90-001, page 88), and represents an estimation of harmonic mean flow on which human health dilutions are based in a riverine 7Q10 flow situation.

b. Total Residual Chlorine: The previous permitting action established a monthly average technology-based concentration limit of 0.1 mg/L, and a daily maximum water quality-based concentration limit of 0.27 mg/L, and a minimum monitoring frequency requirement of five per week for TRC. Limitations on TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. Department licensing/permitting actions impose the more stringent of either a water quality-based or BPT based limit. Revised end-of-pipe acute and chronic water quality based concentration thresholds may be calculated as follows:

			Calculated	
Acute (A) Criterion	Chronic (C) Criterion	A & C Dilution Factors	Acute Threshold	Chronic Threshold
0.019 mg/L	0.011 mg/L	77:1 (A) 91:1 (C)	1.46 mg/L	1.0 mg/L

5. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

The Department has established a daily maximum BPT limitation of 1.0 mg/L for facilities that disinfect their effluent with elemental chlorine or chlorine-based compounds. The daily maximum technology-based standard of 1.0 mg/L is more stringent than the calculated acute water quality-based threshold of 1.46 mg/L and is therefore being established in this permitting action.

c. Total phosphorus – The March 11, 2009, permit established a seasonal (June – September) 2/Month monitoring requirement for total phosphorus. The permittee was required to report the monthly average and daily maximum mass and concentration test results. A review of the test results for the period May 2009 – September 2011 indicate total phosphorus values as follows:

Total phosphorus – mass (DMRs = 12)

Value	Limit (lbs/day)	Range (lbs/day)	Mean (lbs/day)
Weekly Average	Report	1.00 – 7.09	3.23
Daily Maximum	Report	1.16 – 9.89	3.88

Total phosphorus – concentration (DMRs = 12)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Weekly Average	Report	0.25 – 0.67	0.40
Daily Maximum	Report	0.30 – 0.74	0.46

Given the consistency in the total phosphorus data between 2008 and 2011, the Department has made a best professional judgment that it has sufficient information to conduct future modeling to determine if water quality standards are being maintained. Therefore, this permit modification is eliminating the monitoring and reporting requirements for total phosphorus.

d. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing: Maine law, 38 M.R.S.A., §414-A and §420, prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. Department rule, 06-096 CMR Chapter 530, *Surface Water Toxics Control Program* sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected and narrative and numeric water quality criteria are met. Department rule 06-096 CMR Chapter 584, Surface *Water Quality Criteria for Toxic Pollutants*, sets forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

5. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

WET monitoring is required to assess and protect against impacts upon water quality and designated uses caused by the aggregate effect of the discharge on specific aquatic organisms. Acute and chronic WET tests are performed on invertebrate and vertebrate species. Priority pollutant and analytical chemistry testing is required to assess the levels of individual toxic pollutants in the discharge, comparing each pollutant to acute, chronic, and human health AWQC as established in Chapter 584.

Chapter 530 establishes four categories of testing requirements based predominately on the chronic dilution factor. The categories are as follows:

1) Level I – chronic dilution factor of <20:1.
2) Level II – chronic dilution factor of ≥20:1 but <100:1.
3) Level III – chronic dilution factor ≥100:1 but <500:1 or >500:1 and Q ≥1.0 MGD
4) Level IV – chronic dilution >500:1 and Q ≤1.0 MGD

The March 11, 2009, permit placed the LWSD facility into a Level I category as the chronic dilution when discharging to the Little Madawaska River was 15.5:1. Chapter 530 (1)(D) specifies the criteria to be used in determining the minimum monitoring frequency requirements for WET, priority pollutant and analytical chemistry testing. Given the discharge has been redirected to the Aroostook River, the chronic dilution factor has been increased to 91:1. Based on the Chapter 530 criteria, the permittee's facility now falls into the Level II frequency category as the facility has a chronic dilution factor of ≥20:1 but <100:1. Chapter 530(1)(D)(1) specifies that routine screening and surveillance level testing requirements are as follows:

Screening level testing – Beginning 12 months prior to permit expiration and lasting through permit expiration and every five years thereafter.

Level	WET Testing	Priority pollutant testing	Analytical chemistry
II	2 per year	1 per year	4 per year

Surveillance level testing – Beginning upon issuance of the permit and lasting through 12 months prior to permit expiration.

Level	WET Testing	Priority pollutant testing	Analytical chemistry
II	1 per year	None required	2 per year

5. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

Department rule Chapter 530(1)(D)(3)(c) states in part, "*Dischargers in Level II may reduce surveillance testing to one WET or specific chemical series every other year provided that testing in the preceding 60 months does not indicate any reasonable potential for exceedence as calculated pursuant to section 3(E).*"

Chapter 530(3)(E) states "*For effluent monitoring data and the variability of the pollutant in the effluent, the Department shall apply the statistical approach in Section 3.3.2 and Table 3-2 of USEPA's "Technical Support Document for Water Quality-Based Toxics Control" (USEPA Publication 505/2-90-001, March, 1991, EPA, Office of Water, Washington, D.C.) to data to determine whether water-quality based effluent limits must be included in a waste discharge license. Where it is determined through this approach that a discharge contains pollutants or WET at levels that have a reasonable potential to cause or contribute to an exceedence of water quality criteria, appropriate water quality-based limits must be established in any licensing action.*"

Chapter 530 §3 states, "*In determining if effluent limits are required, the Department shall consider all information on file and effluent testing conducted during the preceding 60 months. However, testing done in the performance of a Toxicity Reduction Evaluation (TRE) approved by the Department may be excluded from such evaluations.*"

WET evaluation

On 11/7/11, the Department conducted a statistical evaluation on the most recent 60 months of WET data that indicates that the discharge does not exceed or have a reasonable potential (RP) to exceed the acute or chronic critical ambient water quality criteria (AWQC) thresholds (1.3% and 1.1% – mathematical inverse of the acute dilution factor 77:1 and the chronic dilution factor 91:1).

Given the absence of exceedences or reasonable potential to exceed critical WET thresholds, this permitting action is eliminating the C-NOEL limitation of 6.5% for the brook trout as established in the March 11, 2009, permit. In addition, the permittee meets the reduced surveillance level monitoring frequency criteria found at Department rule Chapter 530(1)(D)(3). Therefore, this permit modification is reducing the surveillance level monitoring frequency for both the water flea and the brook trout to once every other year (1/2 years). As for screening level testing beginning 12 months prior to the expiration date of the permit, this permit modification is reducing the monitoring frequency from 1/Quarter established in the March 11, 2009, permit to two times per year (2/Year) given the facility now falls into the Level II category of Chapter 530.

5. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

The March 11, 2009, permit contained Special Condition K, *Chapter 530(2)(D)(4) Certification,* as required by Department rule Chapter 530(2)(D)(4) for a facility being granted reduced testing requirements. Since issuance of the previous permit, the Department has revised the language in Special Condition K which has been incorporated into this permit modification.

Chemical specific evaluation

The March 11, 2009, permit established monthly average water quality based mass and concentration limits for inorganic arsenic and bis(2ethyhexyl)phthalate based on the fact the discharge was to the Little Madawaska River and the LWSD was the only facility discharging to the Little Madawaska. The limits were derived based on a statistical evaluation conducted on March 9, 2009, on the previous 60 months of data submitted to the Department.

Chapter 530 (promulgated on October 12, 2005) §4(C), states *"The background concentration of specific chemicals must be included in all calculations using the following procedures. The Department may publish and periodically update a list of default background concentrations for specific pollutants on a regional, watershed or statewide basis. In doing so, the Department shall use data collected from reference sites that are measured at points not significantly affected by point and non-point discharges and best calculated to accurately represent ambient water quality conditions The Department shall use the same general methods as those in section 4(D) to determine background concentrations. For pollutants not listed by the Department, an assumed concentration of 10% of the applicable water quality criteria must be used in calculations."* At the time of the March 11, 2009 permit, the Department had limited information on the background levels of metals in the water column in the Little Madawaska River in the vicinity of the permittee's outfall. Therefore, a default background concentration of 10% of the applicable water quality criteria was used in the calculations of the permit limits.

Chapter 530 4(E), states "*In allocating assimilative capacity for toxic pollutants, the Department shall hold a portion of the total capacity in an unallocated reserve to allow for new or changed discharges and non-point source contributions. The unallocated reserve must be reviewed and restored as necessary at intervals of not more than five years. The water quality reserve must be not less than 15% of the total assimilative quantity."* Therefore, the Department reserved 15% of the applicable water quality criteria in the calculations of permit limits in the March 11, 2009, permit.

5. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

Chapter 530 §(3)(E) states *"... that a discharge contains pollutants or WET at levels that have a reasonable potential to cause or contribute to an exceedence of water quality criteria, appropriate water quality-based limits must be established in any licensing action."*

Chapter 530 §4(F) states in part **"***Where there is more than one discharge into the same fresh or estuarine receiving water or watershed, the Department shall consider the cumulative effects of those discharges when determining the need for and establishment of the level of effluent limits. The Department shall calculate the total allowable discharge quantity for specific pollutants, less the water quality reserve and background concentration, necessary to achieve or maintain water quality criteria at all points of discharge, and in the entire watershed. The total allowable discharge quantity for pollutants must be allocated consistent with the following principles.*

Evaluations must be done for individual pollutants of concern in each watershed or segment to assure that water quality criteria are met at all points in the watershed and, if appropriate, within tributaries of a larger river.

The total assimilative capacity, less the water quality reserve and background concentration, may be allocated among the discharges according to the past discharge quantities for each as a percentage of the total quantity of discharges, or another comparable method appropriate for a specific situation and pollutant. Past discharges of pollutants must be determined using the average concentration discharged during the past five years and the facility's licensed flow.

The amount of allowable discharge quantity may be no more than the past discharge quantity calculated using the statistical approach referred to in section 3(E) [Section 3.3.2 and Table 3-2 of USEPA's "Technical Support Document for Water Quality-Based Toxics Control"] of the rule, but in no event may allocations cause the water quality reserve amount to fall below the minimum referred to in 4(E) [15% of the total assimilative capacity]. Any difference between the total allowable discharge quantity and that allocated to existing dischargers must be added to the reserve.

Chapter 530 §(3)(D)(1) states "*For specific chemicals, effluent limits must be expressed in total quantity that may be discharged and in effluent concentration. In establishing concentration, the Department may increase allowable values to reflect actual flows that are lower than permitted flows and/or provide opportunities for flow reductions and pollution prevention provided water quality criteria are not exceeded. With regard to concentration limits, the Department may review past and projected flows and set limits to reflect proper operation of the treatment facilities that will keep the discharge of pollutants to the minimum level practicable."*

5. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

Given the LWSD discharge is now being conveyed to the Aroostook River with multiple facilities discharging to the same river, a new statistical evaluation will be conducted during the first calendar quarter of 2012. The Department is currently reviewing all the discharge data for all facilities in the Aroostook River watershed in preparation for the new evaluation. Therefore, until the new evaluation is conducted, the monthly average water quality based mass and concentration limits for inorganic arsenic and bis(2ethylhexyl)phthalate are being carried forward in this permit modification. If the new statistical evaluation determines there are other pollutants that exceed or have a reasonable potential to exceed applicable ambient water quality criteria or revised limits need to be calculated for inorganic arsenic and bis(2ethylhexyl)phthalate, this permit modification will be reopened pursuant to Special Condition O, *Reopening of Permit For Modifications*, of the March 11, 2009, permit to establish applicable limits.

6. ANTI-DEGREDATION - IMPACT ON RECEIVING WATER QUALITY

Maine's anti-degradation policy is included in 38 M.R.S.A., Section 464(4)(F) and addressed in the *Conclusions* section of this permit. Pursuant to the policy, where a new or increased discharge is proposed, the Department shall determine whether the discharge will result in a significant lowering of existing water quality. Increased discharge means a discharge that would add one or more new pollutants to an existing effluent, increase existing levels of pollutants in an effluent, or cause an effluent to exceed one or more of its current licensed discharge flow or effluent limits, after the application of applicable best practicable treatment technology.

Based on the information provided by the permittee, a review of the test results for all parameters in the March 11, 2009 permit, and calculations conducted by the Department, the Department has made the determination that the discharge approved by this permit will not result in a significant lowering of water quality. As permitted, the Department has determined the existing and designated water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the Aroostook River to meet standards for Class C classification.

7. PUBLIC COMMENTS

Public notice of this application was made in the *Aroostook Republican News* newspaper on October 26, 2011. The Department receives public comments on an application until the date a final agency action is taken on the 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.

8. DEPARTMENT CONTACTS

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

Gregg Wood
Division of Water Quality Management
Bureau of Land & Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone: (207) 287-7693 Fax: (207) 287-3435
e-mail: gregg.wood@maine.gov

9. RESPONSE TO COMMENTS

During the period of November 14, 2011, through the issuance date of the permit/license modification, the Department solicited comments on the proposed draft permit/license modification to be issued for the discharge(s) from the permittee's facility. The Department did not receive any comments on the draft permit/license modification that resulted in substantive changes to the final document. Therefore, the Department has not prepared Responses to Comments.

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.