STATE OF MAINE

Department of Environmental Protection

PAUL R. LEPAGE
GOVERNOR

DARRYL N. BROWN
COMMISSIONER

March 22, 2011

Mr. Mark LaPlante
Dead River Hatchery
Nestle Waters North America, Inc
109 Poland Spring Drive
Poland Spring, Maine 04274

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0110477
Maine Waste Discharge License (WDL) Application # W-000905-6F-F-R
Final Permit, Dead River Fish Hatchery, Pierce Pond Township, Maine

Dear Mark:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL which was approved by the Department of Environmental Protection. Please read the 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 call me at (207) 215-1579 or contact me via email at Robert.D.Stratton@maine.gov.

Sincerely,

Bob Stratton DEP

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

Enc./cc: Beth DeHaas (MEDEP); Sandy Mojica (USEPA); Bill Taylor (Pierce Atwood)

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

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

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

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

web site: www.maine.gov/dep

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

IN THE MATTER OF

DEAD RIVER FISH HATCHERY	)	MAINE POLLUTANT DISCHARGE
PIERCE POND TWP, SOMERSET COUNTY, ME)		ELIMINATION SYSTEM PERMIT
FISH HATCHERY	)	AND
#ME0110477	)	WASTE DISCHARGE LICENSE
#W-000905-6F-F-R **APPROVAL**	)	**RENEWAL**

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

APPLICATION SUMMARY

The applicant has applied for a renewal of Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0110477 / Maine Waste Discharge License (WDL) #W-000905-5Q-C-R/D-T, which was issued on December 19, 2005 for a five-year term. The MEPDES Permit / Maine WDL and subsequent permit modifications approved the discharge of a monthly average of 1.75 million gallons per day (MGD) of fish hatchery wastewater to Black Brook, Class B, from a commercial rainbow trout fish hatchery and rearing facility in Pierce Pond Township, Maine.

PERMIT SUMMARY

This permitting action is similar to the December 19, 2005 MEPDES Permit / Maine WDL and subsequent permit modifications and revisions in that it is carrying forward all previous terms and conditions with a few exceptions. This permitting action is different in that it is:

1. establishing seasonal production based thresholds based on Department BPJ, below which effluent BOD_5 and TSS limitations and monitoring requirements are not required;
2. revising effluent dissolved oxygen monitoring frequency requirements from once per week to once per two weeks; and
3. updating requirements related to proper use and record keeping of therapeutic agents and disinfecting/sanitizing agents.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated February 18, 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 in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;

   (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;

   (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;

   (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and

   (e) Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.

4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

ACTION

THEREFORE, the Department APPROVES the above noted application of DEAD RIVER HATCHERY to discharge fish hatchery wastewater consisting of a monthly average flow of 1.75 MGD to Black Brook, 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.

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

3. This permit becomes effective upon the date of signature below and expires at midnight five (5) years thereafter. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of this permit and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (effective April 1, 2003)]

DONE AND DATED AT AUGUSTA, MAINE THIS 23rd DAY OF March, 2011.

DEPARTMENT OF ENVIRONMENTAL PROTECTION.

BY: Teco Brown for
DARRYL N. BROWN, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: December 15, 2010
Date of application acceptance: December 16, 2010

Date filed with Board of Environmental Protection:

Filed
MAR 28 2011
State of Maine
Board of Environmental Protection

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 **fish hatchery and rearing facility wastewater from Outfall #001A** to Black Brook. Such discharges shall be limited and monitored by the permittee as specified below.

Monitoring Parameter	Discharge Limitations and Reporting Requirements				Minimum Monitoring Requirements		
	Monthly Average as specified	Daily Maximum as specified	Monthly Average as specified	Daily Maximum as specified	Daily Minimum as specified	Measurement Frequency as specified	Sample Type as specified
Flow *[50050]*	1.75 MGD *[03]*	---	---	---	---	Daily *[01/01]*	Measured *[MS]*
BOD[1] *[00310]* **From June 1-Sept 30 yearly when >550 lbs of fish on site; From Oct 1-May 31 yearly when >1000 lbs of fish on site.**	75 lbs/day *[26]*	125 lbs/day *[26]*	6 mg/L *[19]*	10 mg/L *[19]*	---	1/Month *[01/30]*	Composite[2] *[CP]*
TSS[1] *[00530]* **From June 1-Sept 30 yearly when >550 lbs of fish on site; From Oct 1-May 31 yearly when >1000 lbs of fish on site.**	75 lbs/day *[26]*	125 lbs/day *[26]*	6 mg/L *[19]*	10 mg/L *[19]*	---	1/Month *[01/30]*	Composite[2] *[CP]*
Total Phosphorus[3] **From June 1 – Sept 30 yearly** *[00665]*	0.61 lbs/day *[26]*	report lbs/day *[26]*	0.050 mg/L *[19]*	report mg/L *[19]*	---	Once/2 weeks *[01/14]*	Composite[2] *[CP]*
Fish on Hand *[45604]*	report lbs/day *[26]*	report lbs/day *[26]*	---	---	---	Once/2 weeks *[01/14]*	Calculated *[CA]*
Dissolved Oxygen[4] **From June 1 – Sept 30 yearly** *[00300]*	---	---	report mg/L *[19]*	report mg/L *[19]*	7.5 mg/L *[19]*	Once/2 weeks *[01/14]*	Measured *[MS]*
pH *[00400]*	---	---	---	6.0-8.5 S.U. *[12]*	---	Once/2 weeks *[01/14]*	Grab *[GR]*

The italicized numeric values bracketed in the table above and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports (DMRs). Footnotes are found on Page 5..

SPECIAL CONDITIONS
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS, FOOTNOTES:

Effluent Monitoring: Effluent values shall be collected at Outfall #001A following all means of wastewater treatment prior to discharge to the receiving water. Outfall #001A shall be located at the outfall of the settling pond and shall entail the only discharge from the facility. All monitoring shall be conducted so as to capture conditions representative of wastewater generating processes at the facility, such as flow-through and cleaning discharge flows, use of therapeutic and disinfecting/sanitizing agents, etc. and in consideration of settling pond detention times. Any change in sampling location must be 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 effluent limits are gross, end of pipe limits, unless otherwise specified.**

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. 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. BOD_5 and TSS: **Effluent limits and monitoring requirements for BOD_5 and TSS shall only be in effect: (a) from June 1 through September 30 when there are more than 550 pounds of fish on site and (b) from October 1 through May 31 when there are more than 1,000 pounds of fish on site.** When these time frame and production level thresholds are not met, the permittee shall enter "NODI-9" for BOD_5 and TSS on its DMR.

2. Composite Samples: Composite sample means a sample consisting of a minimum of four grab samples collected at two-hour intervals during the working day at the facility. Alternatively, upon approval by the Department's compliance inspector, the permittee may use 24-hour composites collected with an automatic composite sampler.

3. Total Phosphorus: The concentration and mass effluent limits and monitoring requirements shall consist of gross, end-of-pipe values. Phosphorus limits and monitoring requirements are seasonal and are only in effect from June 1 through September 30 each year. Laboratory analysis shall consist of a low-level phosphorus analysis with a minimum detection limit of 1 part per billion (1 ug/L).

4. Supplemental Data Forms: In addition to specified DMR reporting requirements, the permittee shall submit all data from effluent dissolved oxygen monitoring to the Department in a supplemental report accompanying the appropriate monthly discharge monitoring report pursuant to Permit Special Condition E.

SPECIAL CONDITIONS
B. NARRATIVE EFFLUENT LIMITATIONS:

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

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

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

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

C. UNAUTHORIZED DISCHARGES:

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on December 16, 2010; 2) the terms and conditions of this permit; and 3) only from Outfall #001A, located at the outfall of the settling pond. Discharges of wastewater from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

D. NOTIFICATION REQUIREMENT:

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

1. Any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system.

2. For the purposes of this section, adequate notice shall include information on:

   a. The quality or quantity of wastewater introduced to the waste water collection and treatment system; and

   b. Any anticipated impact of the change in the quantity or quality of the wastewater to be discharged from the treatment system.

SPECIAL CONDITIONS
E. MONITORING AND REPORTING:

Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report (DMR) forms provided by the Department. If you are receiving printed-copy DMR forms by mail, the completed, returned forms must be **postmarked on or before the thirteenth (13th) day of the month or hand-delivered to the Department's Regional Office such that the DMRs are received by the Department on or before the fifteenth (15th) day of the month** following the completed reporting period. A signed copy of the DMR and all other reports required herein shall be submitted to the Department assigned inspector (unless otherwise specified by the Department) at the following address:

Department of Environmental Protection
Bureau of Land and Water Quality
Division of Water Quality Management
17 State House Station
Augusta, Maine 04333-0017

Alternatively, if you are submitting an electronic Discharge Monitoring Report (eDMR), the completed eDMR must be electronically submitted to the Department by a facility authorized DMR Signatory **not later than close of business on the 15th day of the month** following the completed reporting period. **Printed Copy documentation** submitted in support of the eDMR must be **postmarked on or before the thirteenth (13th) day of the month or hand-delivered to the Department's Regional Office such that it is received by the Department on or before the fifteenth (15th) day of the month** following the completed reporting period. **Electronic documentation** in support of the eDMR must be submitted **not later than close of business on the 15th day of the month** following the completed reporting period.

F. OPERATION & MAINTENANCE (O&M) PLAN:

This facility shall have a current written comprehensive Operation & Maintenance (O&M) Plan. The plan shall provide a systematic approach by which 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.

The O&M Plan shall establish Best Management Practices (BMP) to be followed in operating the facility, cleaning the raceways/culture tanks, screens, and other equipment and disposing of any solid waste. The purpose of the BMP portion of the plan is to identify and to describe the practices which minimize the amounts of pollutants (biological, chemical, and medicinal) discharged to surface waters. Among other items, the plan shall describe in detail efficient feed management and feeding strategies to minimize discharges of uneaten feed and waste products, how and when the accumulated solids are to be removed, dewatered, and methods of disposal. The plan shall also describe where the removed material is to be placed and the techniques used to prevent it from re-entering the surface waters from any onsite storage. The plan shall document the recipients and methods of any offsite waste disposal.

SPECIAL CONDITIONS

F. OPERATION & MAINTENANCE (O&M) PLAN (cont'd)

By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades, the permittee shall evaluate and modify the O&M Plan including site plan(s) and schematic(s) for the wastewater treatment facility to ensure that it is up-to-date. The O&M Plan shall be kept on-site at all times and made available to Department and EPA personnel upon request.

Within 90 days of completion of new and or substantial upgrades of the wastewater treatment facility, the permittee shall submit the updated O&M Plan to their Department inspector for review and comment.

G SETTLING BASIN CLEANING:

All wastewater settling structures shall be cleaned when accumulated materials occupy 20% of a basin's capacity, when material deposition in any area of the basins exceed 50% of the operational depth, or at any time that said materials in or from the basins are contributing to a violation of permit effluent limits. The permittee is responsible for reporting effluent violations pursuant to Standard Conditions D.1 (f) and (g).

H. DISEASE AND PATHOGEN CONTROL AND REPORTING:

Dead River Hatchery must comply with Maine Department of Inland Fisheries and Wildlife and Maine Department of Marine Resources salmonid fish health rules (12 MRSA, §6071; 12 MRSA, §§7011, 7035, 7201, and 7202, or revised rules). The cited rules include requirements for notification to the appropriate agency within 24-hours of pathogen detection. In the event of a catastrophic pathogen occurrence, in addition to the requirements of the rules, **the permittee shall notify the Department in writing within 24-hours of detection**, with information on necessary control measures and the veterinarian involved. The permittee shall submit to the Department for review and approval, information on the proposed treatment including materials/chemicals to be used, material/chemical toxicity to aquatic life, the mass and concentrations of materials/chemicals as administered, and the concentrations to be expected in the effluent. If, upon review of information regarding a treatment pursuant to this section, the Department determines that significant adverse effects are likely to occur, it may restrict or limit such use.

I. THERAPEUTIC AGENTS:

All medicated fish feeds, drugs, and other fish health therapeutants shall be registered with USEPA as appropriate, approved by the US Food and Drug Administration (USFDA), and applied according to USFDA accepted guidelines and manufacturer's label instructions. Records of all such materials used are to be maintained at the facility for a period of five years. This permitting action does not authorize routine off-label or extra-label drug use. Such uses shall only be

SPECIAL CONDITIONS

I. THERAPEUTIC AGENTS (cont'd)

permitted in emergency situations when they are the only feasible treatments available and only under the authority of a veterinarian. **The permittee shall notify the Department in writing within 24-hours of such use.** This notification must be provided by the veterinarian involved and must include the agent(s) used, the concentration and mass applied, a description of how the use constitutes off-label or extra-label use, the necessity for the use in terms of the condition to be treated and the inability to utilize accepted drugs or approved methods, the duration of the use, the likely need of repeat treatments, and information on aquatic toxicity. Such uses and discharges will be subject to Department review and approval. If, upon review of information regarding the use of a drug pursuant to this section, the Department determines that significant adverse effects are likely to occur, it may restrict or limit such use. **The use and discharge of therapeutic agents is subject to the conditions described in Permit Special Condition C, Unauthorized Discharges.**

J. DISINFECTING/SANITIZING AGENTS:

Records of all disinfectants and/or sanitizing agents used that have the potential to enter the waste stream or receiving water, their volumes and concentrations as used and concentrations at the point of discharge, shall be maintained at the facility for a period of five years. This permitting action only authorizes the discharge of those materials applied for, evaluated by the Department, and either regulated or determined to be deminimus in this permitting action or in subsequent Department actions. **The use and discharge of disinfecting/sanitizing agents is subject to the conditions described in Permit Special Condition C, Unauthorized Discharges.**

K. MINIMUM TREATMENT TECHNOLOGY REQUIREMENT:

Based on the information provided and Department BPJ, the permittee shall provide minimum treatment technology for the Pierce Pond Township facility that shall consist of treatment equal to or better than 60-micron microscreen filtration of the effluent, wastewater settling/clarification, and removal of solids. Dead River Hatchery shall provide treatment and/or effluent quality equal to or better than the BPJ minimum treatment technology and shall comply with all effluent limitations, monitoring requirements, and operational requirements established in this permitting action. Additional treatment may be necessary to achieve specific water quality based limitations.

SPECIAL CONDITIONS

L. 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, new water quality monitoring data or modeling 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 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 water.

M. SEVERABILITY

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND
MAINE WASTE DISCHARGE LICENSE

FACT SHEET

Date: February 18, 2011

MEPDES PERMIT NUMBER: # ME0110477
MAINE WDL NUMBER : # W-000905-6F-F-R

NAME AND ADDRESS OF APPLICANT:

DEAD RIVER HATCHERY
Nestle Waters North America
109 Poland Spring Drive
Poland Spring, Maine 04274

COUNTY: SOMERSET

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

DEAD RIVER HATCHERY
78 Ratchet Road
Pierce Pond Township, Maine 04961

RECEIVING WATER / CLASSIFICATION: Black Brook, Class B

COGNIZANT OFFICIAL AND TELEPHONE NUMBER:

Mark Laplante, Natural Resource Supervisor (207) 998-6383, mark.laplante@waters.nestle.com

1. APPLICATION SUMMARY

The applicant has applied for a renewal of Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0110477 / Maine Waste Discharge License (WDL) #W-000905-5Q-C-R / D-T, which was issued on December 19, 2005 for a five-year term. The MEPDES Permit / Maine WDL and subsequent permit modifications approved the discharge of a monthly average of 1.75 million gallons per day (MGD) of fish hatchery wastewater to Black Brook, Class B, from a commercial rainbow trout fish hatchery and rearing facility in Pierce Pond Township, Maine.

2. PERMIT SUMMARY

a. Regulatory - January 12, 2001 – The Department received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine, excluding areas of special interest to Maine Indian Tribes. On October 30, 2003, after consultation with the U.S. Department of Justice, USEPA extended Maine's NPDES program delegation to all but tribally owned discharges. That decision was subsequently appealed. On August 8, 2007, a panel of the U.S. First Circuit Court of Appeals ruled that Maine's environmental regulatory jurisdiction applies uniformly throughout the State. From January 12, 2001 forward, the program has been referred to as the MEPDES program and permit #ME0110477 utilized as the primary reference number for the Pierce Pond Township facility (previous #MEU500905).

b. Terms and conditions – This permitting action is similar to the December 19, 2005 MEPDES Permit / Maine WDL and subsequent permit modifications and revisions in that it is carrying forward all previous terms and conditions with a few exceptions. This permitting action is different in that it is:

1. establishing seasonal production based thresholds based on Department BPJ, below which effluent BOD_5 and TSS limitations and monitoring requirements are not required;
2. revising effluent dissolved oxygen monitoring frequency requirements from once per week to once per two weeks; and
3. updating requirements related to proper use and record keeping of therapeutic agents and disinfecting/sanitizing agents.

c. History: The most recent relevant regulatory actions include the following:

June 9, 1976 – The Maine Department of Environmental Protection issued WDL #905 for the discharge of a daily average of 1.5 MGD of treated fish hatchery wastewater from the Beautiful Valley Trout Farm hatchery in Pierce Pond Township to Black Brook, Class B-1. The WDL was issued for a five-year term.

April 19, 1985 – The Department issued WDL #W-000905-41-A-R to Beautiful Valley Trout Farm for the discharge of a daily average of 1.5 MGD of treated fish hatchery wastewater. The WDL was issued for a five-year term.

March 25, 1987 – The Department issued # W-000905-41-B-M, transferring the WDL for the Pierce Pond Township facility to Sea Run Partnership. The term of the WDL remained the same as in #W-000905-41-A-R.

July 1, 1999 - The Department received an application from Sea Run Holdings, Inc. for renewal of the WDL for the discharge of fish hatchery wastewater from the Pierce Pond Township facility. The application was assigned #W-000905-5Q-C-R.

2004 -The Pierce Pond Township facility was purchased by Nestle Waters North America Inc. and renamed the Dead River Hatchery.

2. PERMIT SUMMARY (cont'd)

September 2005 – The Department eliminated the Permit Compliance System tracking number of #MEU500905 previously assigned to the Pierce Pond Township facility in favor of MEPDES permit #ME0110477.

December 19, 2005 – The Department issued MEPDES Permit #ME0110477 / Maine WDL #W-000905-5Q-C-R / D-T to Dead River Hatchery for the discharge of a monthly average of 1.5 MGD of fish hatchery wastewater to Black Brook in Pierce Pond Township, Class B. The Permit / WDL was issued for a five-year term.

June 27, 2007 – The Department issued a Minor Revision of Maine WDL #W-000905-5Q-C-R / D-T / MEPDES Permit #ME0110477, to eliminate permit requirements for annual macroinvertebrate biomonitoring. The Department's review of 2006 macroinvertebrate monitoring data indicated that Black Brook meets Class A aquatic life standards. The Minor Revision also revised the effluent flow limit from 1.5 MGD to 1.75 MGD.

July 16, 2009 - The Department issued Minor Revision #W-000905-5Q-E-M / MEPDES Permit #ME0110477 to revise effluent BOD_5 and TSS minimum monitoring frequency requirements from once per two weeks to once per month.

December 15, 2010 – The Dead River Hatchery submitted a timely application for renewal of its WDL / MEPDES Permit. The application was assigned WDL 000905-5Q-F-R / MEPDES Permit #ME0110477.

d. Source Description/ Facility Operation:

The Dead River fish hatchery and rearing facility was originally built in 1947. The facility was constructed and operated by the Maine Department of Inland Fisheries and Wildlife (MDIFW) until it was closed in 1968. The facility was purchased by the Schoenthaler family in approximately 1971 and reopened as Beautiful Valley Trout Farm in 1974. In approximately 1984, Evelyn Sawyer bought the facility, renamed it Sea Run Holdings, Inc. and operated it until 2004 when the property was purchased by Poland Spring Water Company and renamed as the Dead River Hatchery. The Dead River facility raises rainbow trout for sale to private pond owners. The trout are Donaldson strain, believed originally imported by MDIFW from Tennessee. The Dead River Hatchery is significantly reducing the number of fish maintained on station beginning December 1, 2010, down to a maximum of 500 pounds of fish on site after June 1, 2011.

2. PERMIT SUMMARY (cont'd)

Influent Water:

Influent water for the facility is obtained from two streams and from on-site groundwater springs. Cold Brook is located on the south side of the facility and Black Brook is located on the north side of the facility, with both streams flowing westerly and converging below (northwest of) the Dead River Hatchery. Influent flows from the two streams are blended based on their volumes and temperatures. In the summer, Cold Brook provides approximately 60% of facility water needs, with the remainder supplied from Black Brook and groundwater sources. Influent water is obtained from Cold Brook through three separate ductile iron pipes, a 6-inch diameter, an 8-inch diameter, and a 10-inch diameter pipe. Influent water from Black Book is obtained through a 15-inch diameter ductile iron pipe. Each surface water inlet is equipped with a course steel grate to screen out large organic matter. Dead River Hatchery also obtains water from ten, 4-foot to 5-foot diameter overburden tiles, which are connected to provide a source of 500-600 gallons per minute (GPM) of 41 degree Fahrenheit (41F) flow year round. All influent water is provided to Dead River Hatchery through gravity flow. Surface and groundwater sources are able to be blended in valve/head boxes at four locations at the heads of the facility hatchery building, two sets of raceways, and the former juvenile raceway labyrinth, which is no longer operated. Flows are blended in this manner to provide the necessary water volumes and temperatures for fish development. The water is then distributed via steel piping of various sizes ranging from 6-inches to 15-inches in diameter through the facility, which includes broodstock tanks, egg/fry troughs, external fish tanks and raceways.

Broodstock and Hatchery Operation:

Broodstock: Dead River Hatchery obtains its eggs from rainbow trout broodstock maintained on site. The hatchery building contains two, 6-foot diameter x 2-feet deep (425-gallons each) and two, 5-foot diameter x 2.5-feet deep (370-gallons each) circular fiberglass tanks used to house broodstock in late fall at a temperature 41F. The broodstock supply consists of two year-classes, a younger and an older class, with approximately 100 fish in each class. Eggs are obtained from broodstock between February and April each year from the older broodstock class when the fish are 3, 4, and 5-years old. When an age class reaches three years of age, the older class (now 5+ years old) is retired and a new class is started so that Dead River Hatchery always has a class in the 3-5 year old range. After they have been stripped of eggs, the broodstock fish are moved to outside raceways. Water is supplied and exits broodstock tanks via parallel independent flow. Flow through wastewater from the broodstock tanks is typically discharged via a straight trough through the former juvenile raceways labyrinth to the south side (Cold Brook) raceways. Broodstock tank wastewater can also be discharged directly to the facility wastewater ditch and settling pond. Broodstock tank wastewater is treated as described below.

Eggs and Fry: Eggs are placed in egg/fry troughs that are arranged in four lines. Each line consists of six sets of troughs (10-feet long x 2-feet, 8-inches wide x 1-foot deep), bisected in width, with water supplied via gravity flow in series through each line. The eggs are hatched

2. PERMIT SUMMARY (cont'd)

in the egg/fry troughs and fry are kept in these structures until they reach the swim up / feeding stage in approximately June. At that time, the fish are moved to inside circular tanks. Flow through wastewater from the egg/fry troughs is typically discharged via a straight trough through the former juvenile raceways labyrinth to the south side (Cold Brook) raceways. Egg/fry trough wastewater can also be discharged directly to the facility wastewater ditch and settling pond. Egg/fry trough wastewater is treated as described below.

Outside Rearing Operations:

Circular Tanks: Rearing structures at Dead River Hatchery include ten, 12-foot diameter x 3.5-feet deep (2,960-gallons each) circular fiberglass tanks. Fish are kept in these tanks until approximately July-August, at which time they reach approximately 2-3 inches in length and are then moved to raceways. Each tank receives and discharges its wastewater independently of the other tanks. Outside tank wastewater is treated as described below. During the planned downsizing of the Dead River facility, the outside circular tanks will not be used and swim up / feeding stage fish will be moved to interior tanks instead, as noted above.

Raceways: Dead River Hatchery has two lines of linear raceways. The southern most line, which is closest to Cold Brook, consists of 18 raceways arranged six long by 3 wide. The northern most line, which is closest to Black Brook, also consists of 18 raceways arranged 6 long by 3 wide, but is then followed by 3 wider raceway sections that encompass the same width as the upgradient divided sections. Each of the 36 "divided" raceway sections is 100-feet long by 5-feet wide by 2-feet deep, while the 3 wider sections are 100-feet long by 15-feet wide by 2-feet deep. Water from Black Brook is only piped to the northernmost or "Black Brook" raceways, while water from Cold Brook is piped to all areas. Because of its proximity to Cold Brook, the southern most line of raceways is referred to as the "Cold Brook" raceways. Going forward into 2011, the Dead River Hatchery will only operate the top three pools of each raceway on the Cold Brook side. Other raceways will not be in use.

e. Wastewater Treatment: Wastewater treatment at the Dead River facility consists of the following. Dead River Hatchery has historically operated three wastewater outfalls to Black Brook, functioning as described below.

Flow-through water in the broodstock tanks and egg/fry troughs typically flows to the south side (Cold Brook) raceway, but can be routed directly to a facility wastewater ditch, which in turn flows to a settling pond to be discharged to the receiving water. These structures are described further below. Flow-through water through the raceways has been historically discharged to the receiving water through two outfalls, one located at the end of each raceway. Flow-through water in the outside circular tanks is discharged via a center drain in each tank which is piped to the facility wastewater ditch and subsequently flows to the settling pond and to the receiving water.

2. PERMIT SUMMARY (cont'd)

The egg/fry troughs, broodstock tanks, and outside circular tanks are cleaned once per year when they are empty. Raceways are cleaned up to three times per year depending on need. All Dead River Hatchery structures are cleaned with water only and no chemical or cleaning agents. Wastewater generated while cleaning structures is routed to an approximately 750-foot long vegetated, constructed wastewater ditch that runs parallel to the raceways to the north. As noted above, the wastewater ditch enters the facility wastewater settling pond, then discharges to the receiving water through Outfall #001A.

The raceways at Dead River Hatchery have small rough-screened settling or quiescent zones at the end of each individual raceway, equipped with approximately 12-inch diameter concrete pipes that are used to discharge raceway cleaning water directly to the wastewater ditch and settling pond. Dead River Hatchery personnel open the side discharge valve at the beginning of cleaning, which takes approximately one hour per individual raceway section. During raceway cleaning, raceway flow-through water was historically routed directly to the facility settling pond by closing the raceway outfalls and opening pipes at the end of the raceways that connect the south (Cold Brook) raceway to the north (Black Brook) raceway to the settling pond.

The Dead River Hatchery settling pond is an excavated earthen pond approximately 100 feet long by 40 feet wide with an average depth of 5 feet and a capacity of approximately 150,000 gallons. All recovery water is piped to this pond. Dead River Hatchery estimates that the settling pond provides approximately one hour of retention time. The settling pond outlets through an 8-foot wide by approximately 30-foot long constructed conveyance ditch, then through a 500-foot to 600-foot long channel to Black Brook, that is believed to have been established historically by the existence of the hatchery discharge. Large wetland areas exist in proximity to the Dead River facility. The areas adjacent (north and south) of Dead River Hatchery consist of palustrine forested and scrub-shrub wetlands. The area below (west) of Dead River Hatchery and adjacent to Black Brook consists of palustrine scrub-shrub wetland. Braided surface water channels are common throughout these areas.

During winter conditions, fish in the raceways are only fed intermittently, raceways are not cleaned, and the facility discharge has historically consisted of flow-through water via the two "raceway outfalls".

The permittee has improved the facility outfall infrastructure to provide for permanently piping all flow-through and cleaning wastewater from the "Cold Brook" (south side) raceways to the bottom of the "Black Brook" (north side) raceways, then piping all wastewater from both raceway systems to the top (southeastern) end of the facility settling pond. These improvements, completed prior to 2010, serve to provide more consistent wastewater treatment and to establish a single facility outfall (#001A) below the settling pond. Improvements also included installation of a formal flow monitoring structure at the settling pond outlet, thus improving effluent monitoring capabilities and effluent data consistency.

2. PERMIT SUMMARY (cont'd)

Going forward into 2011, the Dead River Hatchery will only operate the top three pools of each raceway on the Cold Brook side. Other raceways will not be in use. Once the water flows through the top three raceways, water will be directed to the drainage ditch at the second raceway. All water will be discharge to Outfall #001A.

Use of agents for therapeutic and disinfecting/sanitizing purposes are addressed in subsequent Fact Sheet sections titled accordingly.

3. CONDITIONS OF PERMITS

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

4. RECEIVING WATER QUALITY STANDARDS:

Maine law, 38 M.R.S.A., Section 467.4.D(2)(a) classifies Black Brook below the Dead River Hatchery discharge as a Class B water. Maine law, 38 M.R.S.A., Section 465.3, describes the standards for Class B waters.

5. RECEIVING WATER QUALITY CONDITIONS:

The State of Maine 2010 *Integrated Water Quality Monitoring and Assessment Report* (DEPLW1187), prepared pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act contains lists of waters in Maine that are attaining water quality standards as well as those that are impaired. The report includes the receiving water in the designation *Tributaries of Dead R entering below Flagstaff Lake* (Assessment Unit ME0103000204_310R), listed in Category 2, Rivers and Streams Attaining Some Designated Uses – Insufficient Information for Other Uses (204.87 mile segment of Class A waters).

All freshwaters in Maine are listed as only partially attaining the designated use of recreational fishing due to a fish consumption advisory (Category 5-C). The advisory was established in response to elevated levels of mercury in some fish caused by atmospheric deposition. The Department has no information at this time that the Dead River facility causes or contributes to non-attainment of standards in Black Stream. Conversely, ambient macroinvertebrate biomonitoring conducted in 2006 indicated that Black Stream met the Class A aquatic life standards below the Dead River facility.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS:

Pursuant to Maine Law (38 M.R.S.A., §414-A.1), the Department shall only authorize discharges to Maine waters when those discharges, either by themselves or in combination with other discharges, *"will not lower the quality of any classified body of water below such classification". Further, "the discharge will be subject to effluent limitations that require application of the best practicable treatment". "Best practicable treatment* (BPT) *means the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically available, for a category or class of discharge sources that the department determines are best calculated to protect and improve the quality of the receiving water and that are consistent with the requirements of the Federal Water Pollution Control Act" (40 CFR). "If no applicable standards exist for a specific activity or discharge, the department must establish limits on a case-by-case basis using best professional judgement..."* considering *"...the existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives..."*. Pursuant to 38 M.R.S.A, §414-A.1 and §464.4, the Department regulates wastewater discharges through establishment of effluent limitations and monitoring requirements that are protective of Maine waters.

At the time of the previous permitting action, the Department undertook to revise its wastewater discharge permitting program for fish hatcheries and rearing facilities to provide for establishment of scientifically valid and consistently applied effluent limitations, monitoring and operational requirements based on the Department's best professional judgement (BPJ) of best practicable treatment (BPT) or site specific water quality conditions. This permitting action represents a continuance of that process based on observations and analyses conducted for Dead River Hatchery and other facilities since issuance of the previous permitting actions.

a. Flow: The previous permitting action established a monthly average discharge limit of 1.5 MGD. In 2007, the discharge limit was revised to 1.75 MGD to address seasonal storm flows beyond the control of the permittee that were entering the facility and exiting with its wastewater discharge. The 1.75 MGD monthly average discharge flow limit and the required daily minimum measurement frequency, consistent with Department guidelines for wastewater treatment facility discharges, are being carried forward in this permitting action.

   A review of the Discharge Monitoring Report (DMR) data for the Dead River facility for the period of January 2006 through December 2010 indicates the following.

EFFLUENT FLOW

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	1.75 MGD	1.4 MGD	1.7 MGD	1.5 MGD	54

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

b. Dilution Factors: The Department has made the determination that dilution factors associated with wastewater discharges shall be derived in accordance with freshwater protocols established in Department Regulation Chapter 530, *Surface Water Toxics Control Program*, October 2005 and methods for low flow calculation contained in Estimating Monthly, Annual, and Low 7-day, 10-year Streamflows for Ungaged Rivers in Maine (Scientific Investigations Report 2004-5026, US Department of Interior, US Geological Service). To calculate potential effects from a facility's effluent discharge, the Department utilizes the receiving water's available dilution during low flow conditions. The Dead River facility discharges its treated effluent via a small channel which flows into Black Brook. Typically, these types of discharges do not achieve rapid and complete mixing with the receiving water since initial dilution is based on mixing resulting from the momentum of a discharge as it exits a discharge pipe (jet effect) as well as the dispersion of the effluent plume as it rises to the surface of the receiving water. With a monthly average flow limitation of 1.75 MGD, the dilution factors associated with the Dead River facility are calculated as follows:

Mod. Acute: ¼ 1Q10 = 0.19 cfs $\Rightarrow \frac{(0.19 \text{ cfs})(0.6464) + 1.75 \text{ MGD}}{1.75 \text{ MGD}} = 1.1:1$

Acute: 1Q10 = 0.76 cfs $\Rightarrow \frac{(0.76 \text{ cfs})(0.6464) + 1.75 \text{ MGD}}{1.75 \text{ MGD}} = 1.3:1$

Chronic: 7Q10 = 0.9 cfs $\Rightarrow \frac{(0.9 \text{ cfs})(0.6464) + 1.75 \text{ MGD}}{1.75 \text{ MGD}} = 1.3:1$

Harmonic Mean = 2.7 cfs $\Rightarrow \frac{(2.7 \text{ cfs})(0.6464) + 1.75 \text{ MGD}}{1.75 \text{ MGD}} = 2.0:1$

Chapter 530.4.B(1) states that analyses using numeric acute criteria for aquatic life must be based on ¼ of the 1Q10 stream design flow to prevent substantial acute toxicity within any mixing zone. The regulation goes on to say that where it can be demonstrated that a discharge achieves rapid and complete mixing with the receiving water by way of an efficient diffuser or other effective method, analyses may use a greater proportion of the stream design, up to including all of it. As stated above, Dead River Hatchery's discharge does not achieve rapid and complete mixing, thus the Department is utilizing the default stream flow of ¼ of the 1Q10 pursuant to Chapter 530.5 in acute evaluations.

c. Biochemical Oxygen Demand (BOD_5) and Total Suspended Solids (TSS): The previous permitting action established monthly average and daily maximum concentration limits of 6 mg/L and 10 mg/L respectively for BOD_5 and TSS based on Department Best Professional Judgement (BPJ) of Best Practicable Treatment (BPT). These limits were based on recommendations included in USEPA's 2002 proposed draft National Effluent Guidelines for TSS from fish hatchery wastewater receiving a secondary level of treatment, the Department's long-standing view of the relationship with and significance

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

of BOD_5, and consideration of effluent quality from facilities utilizing the Department's BPJ of minimum treatment technology. Mass limits were calculated based on the monthly average flow limit, the appropriate concentration limits, and a standard conversion factor.

In 2007, the discharge limit was revised to 1.75 MGD to address seasonal storm flows beyond the control of the permittee that were entering the facility and exiting with its wastewater discharge. Because the flow increase was not associated with increased facility production, pollutant mass limits that were calculated based on the 1.5 MGD production flow were retained. The previous permitting action established requirements for BOD_5 and TSS monitoring at a minimum frequency of once per two weeks. In 2009, based on the review of effluent monitoring conducted to date and Department BPJ, the minimum required monitoring frequency was revised to once per month.

A review of the DMR data for the Dead River facility for the period of January 2006 through December 2010 indicates the following.

BOD MASS

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	75 lbs/day	<23 lbs/day	44 lbs/day	<26 lbs/day	54
Daily Max.	125 lbs/day	<23 lbs/day	75 lbs/day	<28 lbs/day	54

BOD CONCENTRATION

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	6 mg/L	<2 mg/L	3.5 mg/L	<2.1 mg/L	54
Daily Max.	10 mg/L	<2 mg/L	6.0 mg/L	<2.2 mg/L	54

TSS MASS

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	75 lbs/day	<12 lbs/day	27 lbs/day	<14 lbs/day	54
Daily Max.	125 lbs/day	<3 lbs/day	38 lbs/day	<15 lbs/day	54

TSS CONCENTRATION

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	6 mg/L	<1 mg/L	2.3 mg/L	<1.2 mg/L	54
Daily Max.	10 mg/L	<1 mg/L	3.0 mg/L	<1.3 mg/L	54

The permittee has indicated that the number of fish kept on station will be reduced significantly starting December 1, 2010 and that only 500 pounds of fish will be maintained on site after June 1, 2011. The previously established BOD_5 and TSS mass and concentration limits and once per month minimum monitoring requirement are being carried forward in this permitting action. However, when the effluent limitations and monitoring requirements are in effect is being revised in response to the reduced biomass

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

on site and equivalent to another facility with similar conditions. Based on the number of fish at the facility during sensitive and less sensitive times of the year for the receiving water and Department BPJ, effluent limits and monitoring requirements for BOD_5 and TSS shall only be in effect: (a) from June 1 through September 30 when there are more than 550 pounds of fish on site and (b) from October 1 through May 31 when there are more than 1,000 pounds of fish on site.

d. Total Phosphorus and Orthophosphate: Phosphorus is a nutrient that encourages the growth of plants such as planktonic algae and macrophytes in northern waters. Oxygen levels in the water are reduced in the early morning hours due to extended nighttime respiration of algae. The decomposition of excess plant material further reduces the amount of available oxygen in the water through biochemical oxygen demand. Lowering oxygen levels in a receiving water impacts the aquatic life in that water, making it unfit for some forms of life. Further, enrichment from excess nutrients, such as phosphorus, can result in reductions in aquatic macro-invertebrate species diversity, an indicator of the overall health of a receiving water. Excess phosphorus can also result in undesirable aesthetic conditions in a receiving water, impacting that water's ability to meet standards for maintaining recreational use, a designated use by law. Therefore, any increase in the phosphorus content in a receiving water has the potential to cause or contribute to non-attainment of classification standards. Pursuant to Maine law (38 MRSA § 414-A.1), the Department shall only authorize discharges to Maine waters when those discharges, either by themselves or in combination with other discharges, "*will not lower the quality of any classified body of water below such classification*".

In the previous permitting action, the Department established a seasonal monthly average phosphorus concentration limit of 0.050 mg/L based on a 0.035-mg/L BPJ instream ambient water quality (AWQ) threshold and the Dead River facility's chronic dilution factor. Based on Department research, the AWQ threshold of 0.035 mg/L corresponds to the maximum level at which algae blooms will not typically occur in a receiving river or stream under normal circumstances. As phosphorus is typically of concern under chronic discharge conditions, the 7Q10 dilution described in Fact Sheet Section 6b, Dilution Factors, is utilized in calculation of a water quality based effluent limit. A monthly average mass limit of 0.61 lbs/day was established based on the concentration limit and monthly average effluent flow limit. Monitoring and reporting requirements were also established for the daily maximum phosphorus mass and concentration discharged. As phosphorus is typically a summer time concern for water quality in free flowing rivers and streams, the effluent limits and monitoring requirements were in effect from June 1 through September 30 each year. A schedule of compliance was established for the effective date of the limits to provide for infrastructure, operation and maintenance upgrades, as appropriate, to insure compliance. A required minimum monitoring frequency of once per two weeks was established based on the Department's BPJ of monitoring frequencies necessary to more accurately characterize facility effluent conditions.

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

The previous permitting action established a one year monitoring requirement for monthly average and daily maximum orthophosphate mass and concentration. Orthophosphate is the portion of total phosphorous that is readily available for uptake by aquatic plants. The requirement was fulfilled and is not being carried forward in this permitting action.

A review of the DMR data for the Dead River facility for the period of January 2006 through December 2010 indicates the following.

PHOSPHORUS MASS

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	report lbs/day / 0.61 lbs/day	0.17 lbs/day	<3.50 lbs/day	<0.76 lbs/day	17
Daily Max.	report lbs/day	0.18 lbs/day	<6.30 lbs/day	<0.93 lbs/day	17

No exceedences of monthly average limit based on tiered implementation and < values

PHOSPHORUS CONCENTRATION

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	report mg/L / 0.050 mg/L	0.014 mg/L	<1.150 mg/L	<0.126 mg/L	17
Daily Max.	report mg/L	0.014 mg/L	<1.300 mg/L	0.174 mg/L	17

No exceedences of monthly average limit based on tiered implementation and < values

ORTHO-PHOSPHORUS MASS

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	report lbs/day	<0.580 lb/day	<0.630 lb/day	<0.613 lb/day	3
Daily Max.	report lbs/day	<0.580 lb/day	<0.630 lb/day	<0.613 lb/day	3

ORTHO-PHOSPHORUS CONCENTRATION

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	report mg/L	<0.050 mg/L	<0.050 mg/L	<0.050 mg/L	3
Daily Max.	report mg/L	<0.050 mg/L	<0.050 mg/L	<0.050 mg/L	3

The Department is currently undergoing rulemaking to establish new nutrient criteria. Until new rules are adopted, the Department is continuing to utilize the BPJ AWQ threshold for phosphorus described above. This permitting action carries forward the phosphorus effluent limitations and monitoring requirements described above.

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

e. Fish on Hand: This permitting action is carrying forward the reporting requirement for monthly average and daily maximum mass of fish on hand. This parameter is intended to enable both the Department and the permittee in evaluating management practices at the facility and trends in effluent quality and receiving water impacts. This permitting action is also carrying forward the required minimum monitoring frequency of once per two weeks based on the Department's BPJ of the monitoring frequency necessary to more accurately characterize facility effluent conditions.

A review of the DMR data for the Dead River facility for the period of January 2006 through December 2010 indicates the following.

FISH ON HAND

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	report lbs/day	960 lbs/day	7484 lb/day	3789 lb/day	54
Daily Max.	report lbs/day	960 lbs/day	7484 lb/day	3789 lb/day	54

f. Dissolved Oxygen (effluent): The previous permitting action established a seasonal daily minimum effluent dissolved oxygen (DO) limit of 7.5 mg/L and once per week monitoring requirements from June 1 through September 30 each year. This limit was established because of the low dilution of facility effluent provided in the receiving water. It was based on Department modeling and to ensure compliance with Class B dissolved oxygen standards. The previous permitting action also established monthly average and daily maximum effluent DO monitoring requirements at a minimum frequency of once per week.

A review of the DMR data for the Dead River facility for the period of January 2006 through December 2010 indicates the following.

EFFLUENT DISSOLVED OXYGEN

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	report mg/L	9.1 mg/L	12.7 mg/L	10.2 mg/L	17
Daily Max.	report mg/L	9.2 mg/L	13.4 mg/L	10.5 mg/L	17
Daily Min.	7.5 mg/L	8.9 mg/L	12.1 mg/L	9.8 mg/L	17

This permitting action carries forward the daily minimum limit and monthly average and daily maximum monitoring requirements for DO, but revises the minimum monitoring frequency to once per two weeks based on the data observed. The permittee shall maintain copies of all data from effluent dissolved oxygen monitoring at the facility for a period of five years and shall provide copies of data to the Department upon request.

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

g. pH: This permitting action is carrying forward the daily maximum pH range limit of 6.0 – 8.5 standard units (su), considered by the Department as a best practicable treatment standard for fish hatcheries and rearing facilities and consistent with the pH limit established in discharge permits for these facilities. This permitting action carries forward the minimum pH monitoring frequency requirement of once per two weeks to provide for more accurate characterization of facility effluent conditions.

A review of the DMR data for the Dead River facility for the period of January 2006 through December 2010 indicates the following.

pH RANGE

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	---	6.1 s.u.	7.2 s.u.	---	54
Daily Max.	6.0-8.5 s.u.	6.3 s.u.	7.3 s.u.	---	54

7. ANTI-BACKSLIDING

Federal regulation 40 CFR, §122(l) and Department rules Chapter 523.5(1) contain the criteria for what is often referred to as the anti-backsliding provisions of the Federal Water Pollution Control Act (Clean Water Act). In general, the regulation states that except for provisions specified therein, effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards or conditions in the previous permit. Allowable exceptions to the anti-backsliding provisions, which include when:

(1) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation and

(2) information is available which was not available at the time of the permit issuance (other than revised regulations, guidance or test methods) and which would justify the application of less stringent effluent limitations at the time of permit issuance.

This permitting action revises previously established effluent limits and monitoring requirements for BOD_5 and TSS based on significant reductions in the mass of fish maintained on station. The rationale for this action is contained in Fact Sheet Section 6, *Effluent Limitations & Monitoring Requirements*. The Department believes that these actions are consistent with the anti-backsliding provisions.

8. ANTI-DEGRADATION

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. As revisions to previous effluent limitations for some pollutants may appear less restrictive, the Department is addressing the implications under the anti-degradation policy.

As noted above, this permitting action revises previously established effluent limitations and monitoring requirements for BOD_5 and TSS based on significant reductions in the mass of fish maintained on station. The rationale for this action is contained in Fact Sheet Section 6, *Effluent Limitations & Monitoring Requirements*. Based on the information provided in the referenced section, the Department does not consider these actions to result in increased discharges of pollutants and therefore does not consider the anti-degradation policy to be of issue.

9. SETTLING BASIN CLEANING:

Discharge of inadequately treated fish hatchery wastewater (excess feed and fish waste) contributes solids, BOD, and nutrients to receiving waters, which can contribute to eutrophication and oxygen depletion. This, in combination with other pollutant specific toxic effects, impacts the aquatic life and habitat value in the receiving water. Typical hatchery wastewater treatment practices include effluent filtration and settling with solids removal.

This permitting action carries forward requirements that the permittee must clean any settling structures at a minimum when accumulated materials occupy 20% of a basin's capacity, when material deposition in any area of the basin exceeds 50% of the operational depth, or at any time that said materials in or from the basins are contributing to a violation of permit effluent limits.

10. DISEASE AND PATHOGEN CONTROL AND REPORTING:

Maine Department of Inland Fisheries and Wildlife (MDIFW) Rules (Chapter 2.03-A) and Maine Department of Marine Resources (MeDMR) Rules (Chapter 24.21) state that *"the transfer and/or introduction of organisms fall within the jurisdiction of the Department of Marine Resources (12 MRSA, §6071) into coastal waters within the State of Maine and the Department of Inland Fisheries and Wildlife (12 MRSA, §§7011, 7035 and 7201, 7202) into public and/or private waters within the State of Maine. These rules are intended to protect wild and farmed salmonid fish populations and shall be applicable to all individuals involved in the culture and movement of live salmonids and gametes."* Further, both agencies' rules define Diseases of Regulatory Concern as *"...infectious agents that have been demonstrated*

10. DISEASE AND PATHOGEN CONTROL AND REPORTING (cont'd)

to cause a significant increase in the risk of mortality among salmonid populations in the State of Maine. Diseases of Regulatory Concern are classified by the Commissioner into three (3) disease categories: exotic, endemic (limited distribution) and endemic based on an annual review and analysis of epidemiological data." This permitting action carries forward requirements that the permittee must comply with MDIFW and MeDMR salmonid fish health rules (12 MRSA, §6071; 12 MRSA, §§7011, 7035, 7201, and 7202, or revised rules). The cited rules include requirements for notification to the appropriate agency within 24-hours of pathogen detection. In the event of a catastrophic pathogen occurrence, in addition to the requirements of the rules, the permittee shall notify the Department in writing within 24-hours of detection, with information on necessary control measures and the veterinarian involved. The permittee shall submit to the Department for review and approval, information on the proposed treatment including materials/chemicals to be used, material/chemical toxicity to aquatic life, the mass and concentrations of materials/chemicals as administered, and the concentrations to be expected in the effluent. If, upon review of information regarding a treatment pursuant to this section, the Department determines that significant adverse effects are likely to occur, it may restrict or limit such use.

11. THERAPEUTIC AGENTS:

In the June 30, 2004, USEPA Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category (National Effluent Guidelines), EPA requires proper storage of drugs, pesticides and feed and requires facilities to report use of any investigational new animal drug (INAD), extra-label drug use, and spills of drugs, pesticides or feed that results in a discharge to waters of the U.S. This permitting action carries forward the previous requirements that all medicated fish feeds, drugs, and other fish health therapeutants shall be approved by the US Food and Drug Administration (USFDA) and applied according to USFDA accepted guidelines and manufacturer's label instructions and that therapeutic agents must also be registered with USEPA, as appropriate. Further, records of all such materials used must be maintained at the facility for five years.

This permitting action does not authorize routine off-label or extra-label drug use. Such uses shall only be permitted in emergency situations when they are the only feasible treatments available and only under the authority of a veterinarian. The permittee shall notify the Department in writing within 24-hours of such use. This notification must be provided by the veterinarian involved and must include the agent(s) used, the concentration and mass applied, a description of how the use constitutes off-label or extra-label use, the necessity for the use in terms of the condition to be treated and the inability to utilize accepted drugs or approved methods, the duration of the use, the likely need of repeat treatments, and information on aquatic toxicity. If, upon review of information regarding the use of a drug pursuant to this section, the Department determines that significant adverse effects are likely to occur, it may restrict or limit such use.

11. THERAPEUTIC AGENTS (cont'd)

This permitting action does not authorize the discharge of drugs authorized by the USFDA pursuant to the Investigational New Animal Drug (INAD) program. As the INAD program typically involves the long-term study of drugs, their benefits and effects, the permittee is anticipated to be able to notify the Department of its intent to conduct, and provide information related to, such study. The permittee is required to provide notification to the Department for review and approval prior to the use and discharge of any drug pursuant to the INAD program. This notification must include information to demonstrate that the minimum amount of drug necessary to evaluate its safety, efficacy, and possible environmental impacts will be used. Notifications must also include an environmental monitoring and evaluation program that at a minimum describes sampling strategies, analytical procedures, evaluation techniques and a timetable for completion of the program. The program must consider the possible effects on the water column, benthic conditions and organisms in or uses of the surrounding waters. INAD related uses and discharges will be subject to Department review and approval. The Dead River facility indicates that the following therapeutic agents may be used at the Pierce Pond Township facility. These agents must be used pursuant to the requirements specified herein. With the planned significant reductions in fish on site, it is anticipated that therapeutant use will also be significantly reduced. The analyses below are based on previous use patterns with greater numbers of fish on site. Reduced levels of therapeutants in the future will mean greater dilution in the facility waste-stream than described.

Formalin: Dead River Hatchery does not utilize or discharge formalin at the Pierce Pond Township facility.

Sodium Chloride: Dead River Hatchery uses sodium chloride (NaCl, salt) for treatment of fungal infections or external parasites on fish as needed in the outside 12-foot diameter circular tanks only. For treatment, the water depth in each tank is reduced to 16-inches, which equates to a volume of approximately 1,120 gallons per treated tank. One 50-pound bag of salt is used per tank. To estimate a worst case scenario of effluent salt concentration, the Department used the unlikely scenario that all 10 outside tanks would be treated simultaneously, with a total of 500-pounds of salt. As the 12-foot diameter tanks discharge into the full facility waste-stream, the full facility discharge flow will dilute the salt prior to discharge to the receiving water. Using the recent average discharge of 1.5 MGD, the concentration in the final effluent can be calculated as follows:

500-lbs NaCl divided by 1.5 million gals divided by 8.34 lbs/gal = 40 ppm salt discharged.

The Department's Division of Environmental Assessment (DEP DEA) reports that sampling results in Maine marine waters indicate salinity levels of approximately 30 ppt or 30,000 ppm. The DEA further reports that freshwater instream NaCl levels of between 1 and 5 ppt (1,000 and 5,000 ppm) can potentially result in harm to freshwater aquatic life. The effluent concentrations calculated above would be subject to further dilution upon entering the receiving water. In that the effluent NaCl concentrations are anticipated to fall significantly below the 1,000 ppm level of concern, the Department is not establishing

11. THERAPEUTIC AGENTS (cont'd)

specific limitations or monitoring requirements for NaCl in this permitting action. Instead, use of NaCl shall be consistent with the use and record keeping requirements for therapeutic agents specified above. It should be noted that this is an extremely conservative calculation as it is unlikely that all tanks will be treated simultaneously.

Other Materials: Dead River Hatchery reports using no other therapeutic or medicinal agents.

12. DISINFECTING/SANITIZING AGENTS:

In this permitting action, the Department carries forward the requirement that the permittee must maintain records of all sanitizing agents and/or disinfectants used that have the potential to enter the waste-stream or receiving water, their volumes and concentrations as used and concentrations at the point of discharge, at the facility for a period of five years. This permitting action only authorizes the discharge of those materials applied for, evaluated by the Department, and either regulated or determined to be deminimus in this permitting action or in subsequent Department actions. The discharges of any other agents or waste products not specifically included in this permitting action are considered unauthorized discharges pursuant to Permit Special Condition C. The use and discharge of materials used now or incorporated in the future are subject to the conditions described in Permit Special Condition C, Unauthorized Discharges.

13. MINIMUM TREATMENT TECHNOLOGY REQUIREMENT:

Between 2000 and 2002, eleven Maine fish hatcheries were evaluated to identify potential options for facility upgrades. All nine Maine Department of Inland Fisheries and Wildlife hatcheries were evaluated by FishPro Inc., while the two USFWS hatcheries were evaluated by the Freshwater Institute. Recommended wastewater treatment upgrades for each of the facilities included microscreen filtration of the effluent. In the previous permitting action, based on the information provided and Department BPJ, the Department required that the permittee shall provide minimum treatment technology for the Dead River facility that shall consist of treatment equal to or better than 60-micron microscreen filtration of the effluent, wastewater settling/clarification, removal of solids. This determination is being carried forward in this permitting action. Dead River Hatchery shall provide treatment and/or effluent quality equal to or better than the BPJ minimum treatment technology and shall comply with all effluent limitations, monitoring requirements, and operational requirements established in this permitting action. Additional treatment may be necessary to achieve specific water quality based limitations.

14. AMBIENT MACROINVERTEBRATE BIOMONITORING:

Based on limited available data and Department concerns with potential effects of the facility's effluent discharges on the aquatic life in Black Brook, the previous permitting action required the permittee to conduct ambient macroinvertebrate biomonitoring annually beginning calendar year 2006. Results were to be reported to the Department annually. The previous permitting action contained provisions for modification or discontinuance of the biomonitoring requirement if the receiving water was determined by the Department to be meeting criteria, standards, and designated uses for its assigned water quality class.

The permittee conducted the required sampling and submitted the results to the Department for review. The Department evaluated the results of the macro-invertebrate sampling and determined that 2006 data indicated that Black Brook was attaining Class A aquatic life standards below the discharge from the Dead River Hatchery facility. On June 27, 2007, pursuant to the conditions described above, the Department modified the MEPDES Permit / Maine WDL (#ME0110477 / #W-000905-5Q-C-R/D-T) to remove requirements for annual macroinvertebrate biomonitoring. The Department has no information that indicates that additional macroinvertebrate testing is required at this time.

15. SALMON GENETIC INTEGRITY AND HATCHERY ESCAPE PREVENTION:

The US Fish and Wildlife Service and the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) formally listed the Atlantic salmon as an endangered species on November 17, 2000. In that decision, the Gulf of Maine Distinct Population Segment (DPS) encompassed all naturally reproducing remnant populations of Atlantic salmon downstream of the former Edwards Dam site on the Kennebec River northward to the mouth of the St. Croix River. The watershed structure, available Atlantic salmon habitat, and abundance of Atlantic salmon at various life stages were best known for the following eight rivers: Dennys River, East Machias River, Machias River, Pleasant River, Narraguagus River, Ducktrap River, Sheepscot River, and Cove Brook. On June 15, 2009, the two agencies expanded the Gulf of Maine DPS to include salmon in the Penobscot, Kennebec, and Androscoggin Rivers and their tributaries. Two significant issues of concern regarding the rearing of salmon in Maine involve the genetic integrity of the salmon and escape prevention to avoid impacts on native fish.

On December 4, 2000, in regard to the Department's pending delegation to administer the NPDES Permit Program, USEPA Region I informed the Department that "*permits issued to freshwater hatcheries raising salmon will require that the facility be designed or modified to achieve zero escapement of fish from the facility*". The EPA also stated, "*The information contained in the* (US Fish and Wildlife and NOAA Fisheries) *Services' listing documents indicates that a remnant population of wild Atlantic salmon is present in...*" Maine waters "*...and that salmon fish farms and hatcheries are activities having a significant impact on the...*" Gulf of Maine Distinct Population Segment of Atlantic salmon "*...through, among other things, the escape of farmed and non-North American strains of salmon which may interbreed with the wild Maine strains, compete for habitat, disrupt native salmon redds, and*

15. SALMON GENETIC INTEGRITY AND HATCHERY ESCAPE PREVENTION (cont'd)

spread disease." "Based on this information, the Services have concluded that the escape of farm-raised salmon from fish farms and hatcheries is likely to significantly impair the growth, reproduction and habitat of wild salmon, thereby impairing the viability of the DPS." "EPA has analyzed current information, including these findings, and based on this information believes that this remnant population constitutes an existing instream use of certain Gulf of Maine rivers and considers that the above-described impacts to the population would be inconsistent with Maine's water quality standards. Assuming the information discussed above does not significantly change, EPA will utilize its authorities to ensure compliance with Maine water quality standards by ensuring that conditions to protect the remnant population of Atlantic salmon are included in NPDES permits for salmon fish farms and hatcheries, which are subject to regulation as concentrated aquatic animal production facilities." "In view of the substantial danger of extinction to the DPS described by the Services, it is EPA's view that proposed permits authorizing activities that would adversely affect the population, as described earlier in this letter, would be inconsistent with Maine's water quality standards and objectionable under the CWA."

Leading up to the 2000 listing and in review of MEPDES Permit / Maine WDLs for other fish hatchery and rearing facilities in Maine, the USFWS and NOAA Fisheries have advocated for genetic testing of Atlantic salmon housed at hatchery and rearing facilities to ensure that they are of North American origin, as well as employment of a fully functional Containment Management System (CMS) at facilities to prevent the escape of raised salmon or other species of concern in order to avoid impacts on native fish populations. The escape of reared fish also has the potential for transmission of diseases and pathogens to native fish populations. These issues are of particular concern for the Gulf of Maine DPS. The release or escape of certain species is also of concern to the Maine Department of Inland Fisheries and Wildlife (MDIFW), which manages fisheries resources in Maine.

Dead River Hatchery is a commercial rainbow trout hatchery and rearing facility that produces fish for private stocking. Dead River Hatchery does not raise Atlantic salmon and thus is not subject to salmon genetic testing requirements. Its rainbow trout eggs come from broodstock kept at the facility, originating from a known strain. Dead River Hatchery reports that effluent screens are in place at the outlets of the egg/fry troughs, broodstock tanks, outside rearing tanks, and raceways to prevent the escapement of fish. All screens are sized according to the size of the fish and are inspected regularly. Any escapees would have to elude these measures to enter the receiving water. The MDIFW reports that the receiving water and waters in its vicinity are managed for brook trout and landlocked salmon. However, MDIFW has indicated that they see no need for a CMS plan at Dead River Hatchery, as rainbow trout are already established in the brook and river downstream and because the presence of smallmouth bass below Grand Falls already impacts the agency's ability to manage the drainage below Flagstaff Dam for native species. Further, MDIFW regulates the species raised at hatcheries and rearing facilities in Maine through Cultivation Licenses issued by that agency.

15. SALMON GENETIC INTEGRITY AND HATCHERY ESCAPE PREVENTION (cont'd)

USFWS and NOAA Fisheries stated during development of the previous permitting action that they see no need to require a CMS plan at Dead River Hatchery from an endangered Atlantic salmon perspective, unless the facility raises salmon at some point in the future, as the facility is located outside the geographic range of the Gulf of Maine Distinct Population (Segment (DPS)) of Atlantic Salmon. Therefore, this permitting action does not require a CMS plan at this time, but advises Dead River Hatchery that if the facility ever intends to house Atlantic salmon or other species determined by USFWS, NOAA Fisheries, or MDIFW to be of risk to native salmon, other native species, or to aquatic habitats, it should submit plans for initiating genetic testing (salmon only) and/or a CMS for review and approval prior to introducing those species at the facility.

16. DISCHARGE IMPACT ON RECEIVING WATER QUALITY:

As permitted, based on the information available to date and best professional judgement, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of Black Brook to meet standards for Class B classification.

17. PUBLIC COMMENTS:

Public notice of this application was made in the Waterville Sentinel newspaper on or about December 13, 2010. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits 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.

18. DEPARTMENT CONTACTS:

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

Robert D. Stratton
Division of Water Quality Management
Bureau of Land and Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Telephone (207) 215-1579
Fax (207) 287-3435
email: Robert.D.Stratton@maine.gov

19. RESPONSE TO COMMENTS:

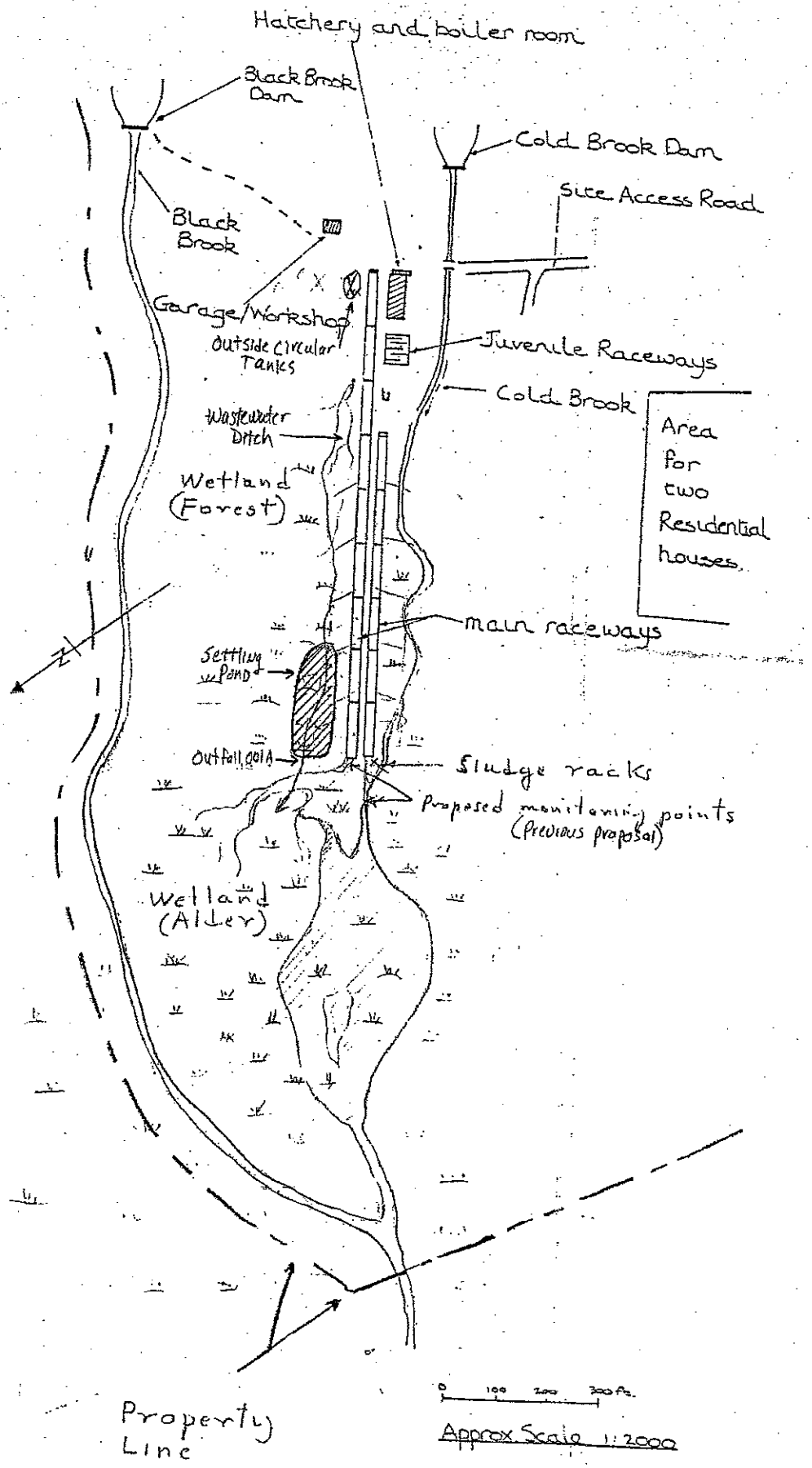
During the period of February 18, 2011 through March 21, 2011, the Department solicited comments on the proposed draft Maine Pollutant Discharge Elimination System Permit / Maine Waste Discharge License to be issued to the Dead River Fish Hatchery for the proposed discharge. The Department did not receive any comments that resulted in significant revisions to the permit. Therefore, no response to comments has been prepared.

ATTACHMENT A

(Facility Location Maps)

ATTACHMENT B

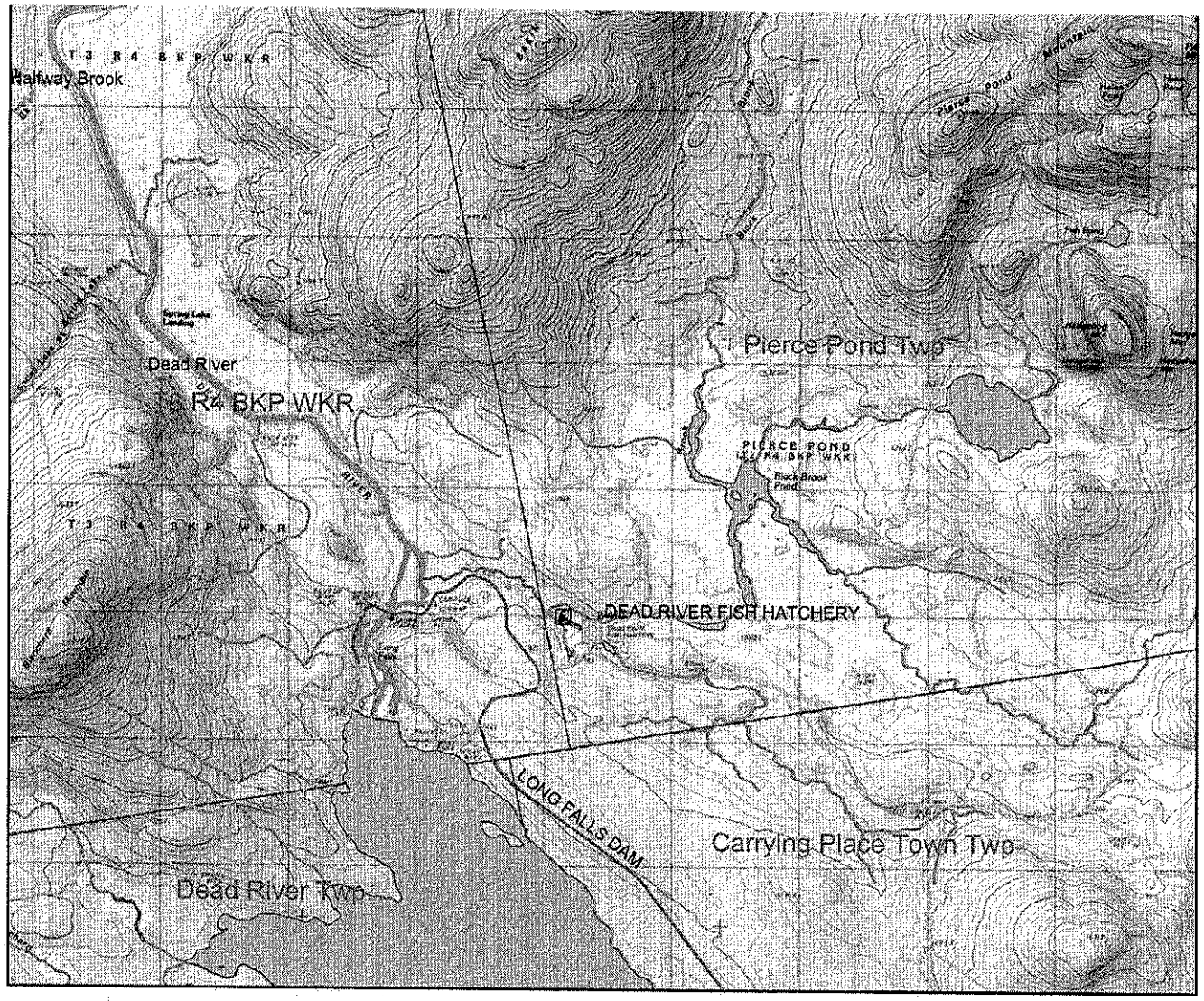
(Facility Site Plans)



2005 site plan

→ water flow

X = Pools + Tanks not being used



Legend

Rivers
- AA
- A
- B
- C

Streams
- AA
- A
- B
- C

- Ponds and Lakes
- Wastewater_Facilities
- Wastewater_Outfalls

Roads

JURISDICTION
- Town Road
- Town Road - Summer
- Town Road - Winter
- State-aided Highway
- State Highway
- Toll Highway
- Private Road
- Reservation Road
- Seasonal Parkway

N

Miles
0 0.2 0.4 0.8 1.2 1.6

Dead River Fish Hatchery
Pierce Pond Township, Maine

Map created by:
Bob Stratton
Division of Water Quality Management
Maine Department of Environmental Protection

DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE OF MAINE

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

CONTENTS

A. GENERAL PROVISIONS

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

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

(a) They are not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. OPERATION AND MAINTENACE OF FACILITIES

1. General facility requirements.

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

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

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

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

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

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

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

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

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

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

5. Bypasses.

(a) Definitions.

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

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

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

(c) Notice.

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

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

(d) Prohibition of bypass.

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

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

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

6. Upsets.

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

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

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

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

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

C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

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

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

(c) Records of monitoring information shall include:

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

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

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

D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

(f) Twenty-four hour reporting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Publicly owned treatment works.

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

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

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

E. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004 **Contact: (207) 287-2811**

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.

7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.

3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

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

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

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

ADDITIONAL INFORMATION

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

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