STATE OF MAINE

Department of Environmental Protection

Paul R. Lepage
GOVERNOR

Patricia W. Aho
COMMISSIONER

November 2, 2012

Ms. Marjorie Stratton
Town Manager, Vinalhaven
P.O. Box 815, 19 Washington School Rd.
Vinalhaven, ME. 04863

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0102491
Maine Waste Discharge License (WDL) Application #W008146-6C-D-R
Final Permit

Dear Ms. Stratton:

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

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

If you have any questions regarding the matter, please feel free to call me at 287-7693.

Sincerely,

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

Enc.

cc: Denise Behr, DEP/CMRO
Sandy Mojica, USEPA

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

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF VINALHAVEN	)	MAINE POLLUTANT DISCHARGE
VINALHAVEN, KNOX COUNTY, MAINE	)	ELIMINATION SYSTEM PERMIT
PUBLICLY OWNED TREATMENT WORKS	)	AND
ME0102491	)	WASTE DISCHARGE LICENSE
W008146-6C-D-R **APPROVAL**	)	**RENEWAL**

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, § 1251, et seq. and *Conditions of licenses*, 38 M.R.S.A. § 414-A, et seq., and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of the TOWN OF VINALHAVEN (Town/permittee hereinafter), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

The Town has submitted a timely and complete application to the Department for the renewal of combination Waste Discharge License (WDL) #W008146-5L-B-R / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102491 (permit hereinafter), which was issued on November 15, 2007, for a five-year term. The 11/15/07 permit authorized the discharge of up to a monthly average flow of up to 0.129 million gallons per day (MGD) of secondary treated municipal wastewater from a publicly owned treatment works to the Atlantic Ocean, Class SB, in Vinalhaven, Maine.

PERMIT SUMMARY

This permitting action is carrying forward the terms and conditions of the previous permitting action.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated September 26, 2012, 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, *Classification of Maine waters*, 38 M.R.S.A.§ 464(4)(F), will be met, in that:

   (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;

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

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

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

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

4. The discharge will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S.A. § 414-A(1)(D).

ACTION

THEREFORE, the Department APPROVES the above noted application of the TOWN OF VINALHAVEN to discharge up to a monthly average flow of 0.129 million gallons per day of secondary treated municipal wastewater to the Atlantic Ocean, Class SB, in Vinalhaven, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

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

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

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

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 2ND DAY OF NOVEMBER, 2012.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
For Patricia W. Aho, Commissioner

Date of initial receipt of application: September 18, 2012.

Date of application acceptance: September 21, 2012.

Filed
NOV 5 2012
State of Maine
Board of Environmental Protection

Date filed with Board of Environmental Protection: _____

Order prepared by Gregg Wood, BUREAU OF LAND & WATER QUALITY
ME0102491 2012 11/2/12

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. Beginning the effective date of this permit, the permittee is authorized to discharge **secondary treated sanitary wastewater from Outfall #001A** to the Atlantic Ocean at Vinalhaven. Such discharges shall be limited and monitored by the permittee as specified below[1]:

Effluent Characteristic Requirements	Discharge Limitations						Minimum Monitoring	
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
	as specified	as specified	as specified	as specified	as specified	as specified	as specified	as specified
Flow *[50050]*	0.129 MGD *[03]*	---	Report MGD *[03]*	---	---	---	Continuous *[99/99]*	Recorder *[RC]*
BOD_5 *[00310]*	32 lbs./day *[26]*	48 lbs./day *[26]*	54 lbs./day *[26]*	30 mg/L *[19]*	45 mg/L *[19]*	50 mg/L *[19]*	1/Week *[01/07]*	24-Hour Composite *[24]*
BOD_5 Percent Removal[2] *[81010]*	---	---	---	85% *[23]*	---	---	1/Month *[01/30]*	Calculate *[CA]*
TSS *[00530]*	32 lbs./day *[26]*	48 lbs./day *[26]*	54 lbs./day *[26]*	30 mg/L *[19]*	45 mg/L *[19]*	50 mg/L *[19]*	1/Week *[01/07]*	24-Hour Composite *[24]*
TSS Percent Removal[2] *[81011]*	---	---	---	85% *[23]*	---	---	1/Month *[01/30]*	Calculate *[CA]*

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

Footnotes: See Pages 7 through 10 of this permit for applicable footnotes.

SPECIAL CONDITIONS

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

1. The permittee is authorized to discharge **secondary treated sanitary wastewater from Outfall #001A** to the Atlantic Ocean at Vinalhaven. Such discharges shall be limited and monitored by the permittee as specified below[1]:

Minimum Effluent Characteristic Requirements	Discharge Limitations						Monitoring	
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
	as specified	as specified	as specified	as specified	as specified	as specified	as specified	as specified
Settleable Solids *[00545]*	---	---	---	---	---	0.3 ml/L *[25]*	5/Week *[05/07]*	Grab *[GR]*
Fecal Coliform Bacteria[3] *[31616]* *May 15 – September 30*	---	---	---	200/100 ml[4] *[13]*	---	400/100 ml *[13]*	1/Week *[01/07]*	Grab *[GR]*
pH *[00400]*	---	---	---	---	---	6.0 – 9.0 SU *[12]*	5/Week *[05/07]*	Grab *[GR]*
Mercury (Total) [5] *[71900]*	---	---	---	28.3 ng/L *[3M]*	---	42.4 ng/L *[3M]*	1/Year *[01/YR]*	Grab *[GR]*

Footnotes: See Pages 7 through 10 of this permit for applicable footnotes.

SPECIAL CONDITIONS

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

2. ***SCREENING LEVEL*** - Beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (year 4 of the term of the permit) and every five years thereafter. [(1)].

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Whole Effluent Toxicity [(6)] **Acute – NOEL** *Mysidopsis bahia* (Mysid Shrimp) *[TDA3E]*	---	---	---	Report % *[23]*	1/Year *[01/YR]*	Composite *[CP]*
Chronic – NOEL *Arbacia punctulata* (Sea Urchin) *[TBH3A]*	---	---	---	Report % *[23]*	1/Year *[01/YR]*	Composite *[CP]*
Analytical Chemistry [(7)] *[51477]*	---	---	---	Report µg/L *[28]*	1/Quarter *[01/90]*	Composite/Grab *[CP]*
Priority Pollutants [(8)] *[51168]*	---	---	---	Report µg/L *[28]*	1/Year *[01/YR]*	Composite/Grab *[CP]*

Footnotes: **See Pages 7 through 10 of this permit for applicable footnotes.**

SPECIAL CONDITIONS

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

Footnotes:

1. **Sampling** – Sampling and analysis must be conducted in accordance with: a) methods approved in Title 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in Title 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 Human Services for waste water testing. Samples that are sent to another POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 or laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000).

   All analytical test results shall be reported to the Department including results which are detected below the respective reporting limits (RLs) specified by the Department or as specified by other approved test methods. See **Attachment A** of this permit for a list of the Department's RLs. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the RL achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL or reporting an estimated value ("J" flagged) is not acceptable and will be rejected by the Department. Reporting analytical data and its use in calculations must follow established Department guidelines specified in this permit or in available Department guidance documents.

2. **Percent Removal** – The treatment facility shall maintain a minimum of 85 percent removal of both biochemical oxygen demand and total suspended solids for all flows receiving secondary treatment. The percent removal shall be calculated based on influent and effluent concentration values. The percent removal shall be waived when the monthly average influent concentration is less than 200 mg/L.

3. **Bacteria Limits** – Fecal coliform bacteria limits and monitoring requirements are seasonal and apply between May 15 and September 30 of each year. The Department reserves the right to require bacteria limits to be in effect on a year-round basis to protect the health and welfare of the public.

4. **Bacteria Reporting** – The monthly average fecal coliform bacteria limitation is a geometric mean limitation and sample results shall be reported as such.

SPECIAL CONDITIONS

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

Footnotes:

5. **Mercury** – All mercury sampling (1/Year) required to determine compliance with interim limitations established pursuant to *Interim Effluent Limitations and Controls for the Discharge of Mercury*, 06-096 CMR 519 (last amended October 6, 2001) shall be conducted in accordance with EPA's "clean sampling techniques" found in EPA Method 1669, Sampling Ambient Water For Trace Metals At EPA Water Quality Criteria Levels. All mercury analyses shall be conducted in accordance with EPA Method 1631E, Determination of Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Fluorescence Spectrometry. See **Attachment B,** *Effluent Mercury Test Report*, of this permit for the Department's form for reporting mercury test results.

   The limitation in the monthly average column in table Special Condition A of this permit is defined as the arithmetic mean of all the mercury tests ever conducted for the facility utilizing sampling Methods 1669 and analysis Method 1631E.

6. **Whole Effluent Toxicity (WET) Testing** – Definitive WET testing is a multi-concentration testing event (a minimum of five dilutions bracketing the critical acute and chronic thresholds of 1.8% and 0.4%, respectively), which provides a point estimate of toxicity in terms of No Observed Effect Level, commonly referred to as NOEL or NOEC. A-NOEL is defined as the acute no observed effect level with survival as the end point. C-NOEL is defined as the chronic no observed effect level with survival, reproduction and growth as the end points. The critical acute and chronic thresholds were derived as the mathematical inverses of the applicable acute and chronic dilution factors of 56:1 and 225:1, respectively.

   a. **Screening level testing** – Beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (year 4 of the term of the permit) and every five years thereafter, the permittee shall conduct screening level WET testing at a minimum frequency of once per year (1/Year) using the mysid shrimp (*Mysidopsis bahia*) and sea urchin (*Arbacia punctulata*). Acute tests shall be conducted on the mysid shrimp; chronic tests shall be conducted on the sea urchin.

   b. **Surveillance level testing** – Pursuant to 06-096 CMR 530, surveillance level testing is waived for this facility.

   Test results must be submitted to the Department not later than the next Discharge Monitoring Report (DMR) required by the permit, provided, however, the permittee may review the toxicity reports for up to 10 business days after receiving the test results from the laboratory conducting the testing before submitting them. The permittee shall evaluate test results being submitted and identify to the Department possible exceedences of the critical acute and chronic water quality thresholds of 1.8% and 0.4%, respectively. See **Attachment C** of this permit for a copy of the Department's WET report form.

SPECIAL CONDITIONS

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

Footnotes:

Toxicity tests must be conducted by an experienced laboratory approved by the Department. The laboratory must follow procedures as described in the following USEPA methods manuals.

a. U.S. Environmental Protection Agency. 2002. *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, 5th ed. EPA 821-R-02-012. U.S. Environmental Protection Agency, Office of Water, Washington, D.C., October 2002 (the acute method manual).

b. U.S. Environmental Protection Agency. 2002. *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms*, 3rd ed. EPA 821-R-02-014. U.S. Environmental Protection Agency, Office of Water, Washington, D.C., October 2002 (the marine chronic method manual).

The permittee is also required to analyze the effluent for the parameters specified in the analytical chemistry section of the form in **Attachment A** of this permit each time a WET test is performed.

7. **Analytical Chemistry** – Refers to a suite of chemical tests in **Attachment A** of the permit.

   a. **Screening level testing** – Beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (year 4 of the term of the permit) and every five years thereafter, the permittee shall conduct analytical chemistry testing at a minimum frequency of once per calendar quarter (1/Quarter) for four consecutive calendar quarters.

   b. **Surveillance level testing** – Pursuant to 06-096 CMR 530, surveillance level analytical chemistry testing is waived for this facility.

8. **Priority Pollutant Testing –** Priority pollutant testing refers to analyses for a suite of chemicals listed in **Attachment A** of this permit. Screening level testing shall be conducted once per year (1/Year) beginning 12 months prior to expiration of the permit and every five years thereafter.

   a. **Screening level testing** – Beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (year 4 of the term of the permit) and every five years thereafter., the permittee shall conduct priority pollutant testing at a minimum frequency of once per year.

SPECIAL CONDITIONS

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

Footnotes:

b. **Surveillance level testing** – Surveillance level priority pollutant testing is not required pursuant to 06-096 CMR 530 (2)(D).

Analytical chemistry and priority pollutant testing shall be conducted on samples collected at the same time as those collected for whole effluent toxicity tests, when applicable, and shall be conducted using methods that permit detection of a pollutant at existing levels in the effluent or that achieve the most current minimum reporting levels of detection as specified by the Department.

Test results must be submitted to the Department not later than the next Discharge Monitoring Report (DMR) required by the permit, provided, however, that the permittee may review the toxicity reports for up to 10 business days of their availability before submitting them. The permittee shall evaluate test results being submitted and identify to the Department, possible exceedences of the acute, chronic or human health AWQC as established in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective October 9, 2005). For the purposes of DMR reporting, enter a "1" for yes, testing done this monitoring period or "NODI-9" (or "N9" on electronic DMR) for monitoring not required this period.

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 for 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 for the classification of the receiving waters.

3. The discharge shall not impart color, taste, turbidity, toxicity , radioactivity or other properties which cause those waters to be unsafe for the designated uses and characteristics ascribed to their classification.

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.

SPECIAL CONDITIONS

C. TREATMENT PLANT OPERATOR

The person who has the management responsibility over the treatment facility must hold a **Grade II** certificate (or higher) or must be a Maine Registered Professional Engineer pursuant to *Sewerage Treatment Operators*, Title 32 M.R.S.A., § 4171-4182 and *Regulations for Wastewater Operator Certification*, 06-096 CMR 531 (effective May 8, 2006). All proposed contracts for facility operation by any person must be approved by the Department before the permittee may engage the services of the contract operator.

D. AUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on September 21, 2012; 2) the terms and conditions of this permit; and 3) only from Outfall #001A. 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.

E. LIMITATIONS FOR INDUSTRIAL USERS

Pollutants introduced into the waste water collection and treatment system by a non-domestic source (user) shall not pass through or interfere with the operation of the treatment system. The licensee shall conduct an Industrial Waste Survey (IWS) at any time a new industrial user proposes to discharge within its jurisdiction, an existing user proposes to make a significant change in its discharge, or, at an alternative minimum, once every permit cycle. The IWS shall identify, in terms of character and volume of pollutants, any Significant Industrial Users discharging into the POTW subject to Pretreatment Standards under section 307(b) of the federal Clean Water Act, 40 CFR Part 403 (general pretreatment regulations) or *Pretreatment Program*, 06-096 CMR 528 (last amended March 17, 2008).

F. NOTIFICATION REQUIREMENTS

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

1. Any introduction of pollutants into the waste water collection and treatment system from an indirect discharger in a primary industrial category discharging process waste water; and

2. Any substantial change in the volume or character of pollutants being introduced into the waste water collection and treatment system by a source introducing pollutants to the system at the time of permit issuance.

SPECIAL CONDITIONS

F. NOTIFICATION REQUIREMENTS (cont'd)

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

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

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

G. 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 and postmarked on or before the thirteenth (13^{th}) day of the month or hand-delivered to a Department Regional Office such that the DMR's are received by the Department on or before the fifteenth (15^{th}) 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 compliance inspector (unless otherwise specified) at the following address:

Maine 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 submitting an electronic DMR (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 15^{th} day of the month following the completed reporting period. Hard Copy documentation submitted in support of the eDMR must be postmarked on or before the thirteenth (13^{th}) 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 (15^{th}) 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 15^{th} day of the month following the completed reporting period.

SPECIAL CONDITIONS

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

On or before December 31st of each year of the effective term of this permit ***[PCS Code 95799]***, the permittee shall provide the Department with statements describing the following:

a. Changes in the number or types of non-domestic wastes contributed directly or indirectly to the wastewater treatment works that may increase the toxicity of the discharge;

b. Changes in the operation of the treatment works that may increase the toxicity of the discharge; and

c. Changes in industrial manufacturing processes contributing wastewater to the treatment works that may increase the toxicity of the discharge.

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

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

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

The Department reserves the right to reinstate annual (surveillance level) testing or other toxicity testing if new information becomes available that indicates the discharge may cause or have a reasonable potential to cause exceedences of ambient water quality criteria/thresholds. See **Attachment D** of the attached Fact Sheet for an acceptable certification form to satisfy this Special Condition.

I. OPERATIONS AND MAINTENANCE (O&M) PLAN

The permittee 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.

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 waste water 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.

SPECIAL CONDITIONS

I. OPERATIONS AND MAINTENANCE (O&M) PLAN (cont'd)

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

J. WET WEATHER MANAGEMENT PLAN

The permittee shall maintain a current written Wet Weather Management Plan to direct the staff on how to operate the facility effectively during periods of high flow. The Department acknowledges that the existing collection system may deliver flows in excess of the monthly average design capacity of the treatment plant during periods of high infiltration and rainfall. A specific objective of the plan shall be to maximize the volume of wastewater receiving secondary treatment under all operating conditions. The revised plan shall include operating procedures for a range of intensities, address solids handling procedures (including septic waste and other high strength wastes if applicable) and provide written operating and maintenance procedures during the events.

The permittee shall review their plan annually and record any necessary changes to keep the plan up-to-date.

K. REOPENING OF PERMIT FOR MODIFICATIONS

Upon evaluation of the tests results in the Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at 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.

L. 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 aspects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.

ATTACHMENT A

Maine Department of Environmental Protection

WET and Chemical Specific Data Report Form

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

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

Licensed Flow (MGD)	
Acute dilution factor	
Chronic dilution factor	
Human health dilution factor	
Criteria type: M(arine) or F(resh)	

Flow for Day (MGD)[1] _____ **Flow Avg. for Month (MGD)**[2] _____

Date Sample Collected _____ Date Sample Analyzed _____

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

Last Revision - April 25, 2012

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

FRESH WATER VERSION

Please see the footnotes on the last page.

			Effluent Limits, %			Receiving Water or Ambient	**Effluent Concentration** (ug/L or as noted)	Reporting Limit Check	Possible Exceedence [7]		
	WHOLE EFFLUENT TOXICITY		Acute	Chronic			WET Result, % Do not enter % sign		Acute	Chronic	
	Trout - Acute										
	Trout - Chronic										
	Water Flea - Acute										
	Water Flea - Chronic										
	WET CHEMISTRY										
	pH (S.U.) (9)					(8)					
	Total Organic Carbon (mg/L)					(8)					
	Total Solids (mg/L)										
	Total Suspended Solids (mg/L)										
	Alkalinity (mg/L)					(8)					
	Specific Conductance (umhos)										
	Total Hardness (mg/L)					(8)					
	Total Magnesium (mg/L)					(8)					
	Total Calcium (mg/L)					(8)					
	ANALYTICAL CHEMISTRY [3]										
	Also do these tests on the effluent with WET. Testing on the receiving water is optional	Reporting Limit	Effluent Limits, ug/L Acute[6]	Chronic[6]	Health[6]			Reporting Limit Check	Possible Exceedence [7] Acute	Chronic	Health
	TOTAL RESIDUAL CHLORINE (mg/L) (9)	0.05				NA					
	AMMONIA	NA				(8)					
M	ALUMINUM	NA				(8)					
M	ARSENIC	5				(8)					
M	CADMIUM	1				(8)					
M	CHROMIUM	10				(8)					
M	COPPER	3				(8)					
M	CYANIDE	5				(8)					
M	LEAD	3				(8)					
M	NICKEL	5				(8)					
M	SILVER	1				(8)					
M	ZINC	5				(8)					

Maine Department of Environmental Protection

WET and Chemical Specific Data Report Form

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

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

Maine Department of Environmental Protection

WET and Chemical Specific Data Report Form

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

BN	FLUORENE	5									
BN	HEXACHLOROBENZENE	5									
BN	HEXACHLOROBUTADIENE	5									
BN	HEXACHLOROCYCLOPENTADIENE	10									
BN	HEXACHLOROETHANE	5									
BN	INDENO(1,2,3-CD)PYRENE	5									
BN	ISOPHORONE	5									
BN	N-NITROSODI-N-PROPYLAMINE	10									
BN	N-NITROSODIMETHYLAMINE	5									
BN	N-NITROSODIPHENYLAMINE	5									
BN	NAPHTHALENE	5									
BN	NITROBENZENE	5									
BN	PHENANTHRENE	5									
BN	PYRENE	5									
P	4,4'-DDD	0.05									
P	4,4'-DDE	0.05									
P	4,4'-DDT	0.05									
P	A-BHC	0.2									
P	A-ENDOSULFAN	0.05									
P	ALDRIN	0.15									
P	B-BHC	0.05									
P	B-ENDOSULFAN	0.05									
P	CHLORDANE	0.1									
P	D-BHC	0.05									
P	DIELDRIN	0.05									
P	ENDOSULFAN SULFATE	0.1									
P	ENDRIN	0.05									
P	ENDRIN ALDEHYDE	0.05									
P	G-BHC	0.15									
P	HEPTACHLOR	0.15									
P	HEPTACHLOR EPOXIDE	0.1									
P	PCB-1016	0.3									
P	PCB-1221	0.3									
P	PCB-1232	0.3									
P	PCB-1242	0.3									
P	PCB-1248	0.3									
P	PCB-1254	0.3									
P	PCB-1260	0.2									
P	TOXAPHENE	1									
V	1,1,1-TRICHLOROETHANE	5									
V	1,1,2,2-TETRACHLOROETHANE	7									
V	1,1,2-TRICHLOROETHANE	5									
V	1,1-DICHLOROETHANE	5									
V	1,1-DICHLOROETHYLENE (1,1-dichloroethene)	3									
V	1,2-DICHLOROETHANE	3									
V	1,2-DICHLOROPROPANE	6									
V	1,2-TRANS-DICHLOROETHYLENE (1,2-trans-dichloroethene)	5									
V	1,3-DICHLOROPROPYLENE (1,3-dichloropropene)	5									
V	2-CHLOROETHYLVINYL ETHER	20									
V	ACROLEIN	NA									
V	ACRYLONITRILE	NA									
V	BENZENE	5									

Maine Department of Environmental Protection

WET and Chemical Specific Data Report Form

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

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

Notes:

(1) Flow average for day pertains to WET/PP composite sample day.

(2) Flow average for month is for month in which WET/PP sample was taken.

(3) Analytical chemistry parameters must be done as part of the WET test chemistry.

(4) Priority Pollutants should be reported in micrograms per liter (ug/L).

(5) Mercury is often reported in nanograms per liter (ng/L) by the contract laboratory, so be sure to convert to micrograms per liter on this spreadsheet.

(6) Effluent Limits are calculated based on dilution factor, background allocation (10%) and water quality reserves (15% - to allow for new or changed discharges or non-point sources).

(7) Possible Exceedence determinations are done for a single sample only on a mass basis using the actual pounds discharged. This analysis does not consider watershed wide allocations for fresh water discharges.

(8) These tests are optional for the receiving water. However, where possible samples of the receiving water should be preserved and saved for the duration of the WET test. In the event of questions about the receiving water's possible effect on the WET results, chemistry tests should then be conducted.

(9) pH and Total Residual Chlorine must be conducted at the time of sample collection. Tests for Total Residual Chlorine need be conducted only when an effluent has been chlorinated or residual chlorine is believed to be present for any other reason.

Comments:

ATTACHMENT B

Maine Department of Environmental Protection

Effluent Mercury Test Report

Name of Facility: _____ Federal Permit # ME _____

Pipe # _____

Purpose of this test:
- ☐ Initial limit determination
- ☐ Compliance monitoring for: year _____ calendar quarter _____
- ☐ Supplemental or extra test

SAMPLE COLLECTION INFORMATION

Sampling Date: ___ ___ _____ (mm dd yy) Sampling time: _____ AM/PM

Sampling Location:

Weather Conditions: _____

Please describe any unusual conditions with the influent or at the facility during or preceding the time of sample collection:

Optional test - not required but recommended where possible to allow for the most meaningful evaluation of mercury results:

Suspended Solids _____ mg/L Sample type: _____ Grab (recommended) or _____ Composite

ANALYTICAL RESULT FOR EFFLUENT MERCURY

Name of Laboratory: _____

Date of analysis: _____ **Result:** _____ **ng/L (PPT)**

Please Enter Effluent Limits for your facility

Effluent Limits: **Average =** _____ ng/L **Maximum =** _____ ng/L

Please attach any remarks or comments from the laboratory that may have a bearing on the results or their interpretation. If duplicate samples were taken at the same time please report the average.

CERTIFICATION

I certifiy that to the best of my knowledge the foregoing information is correct and representative of conditions at the time of sample collection. The sample for mercury was collected and analyzed using EPA Methods 1669 (clean sampling) and 1631 (trace level analysis) in accordance with instructions from the DEP.

By: _____ Date: _____

Title: _____

PLEASE MAIL THIS FORM TO YOUR ASSIGNED INSPECTOR

ATTACHMENT C

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
WHOLE EFFLUENT TOXICITY REPORT
MARINE WATERS

Facility Name _____ MEPDES Permit # _____

Pipe # _____

Facility Representative _____ Signature _____

By signing this form, I attest that to the best of my knowledge that the information provided is true, accurate, and complete.

Facility Telephone # _____ Date Collected _____ (mm/dd/yy) Date Tested _____ (mm/dd/yy)

Chlorinated? _____ Dechlorinated? _____

Results — **% effluent**

	mysid shrimp	sea urchin
A-NOEL		
C-NOEL		

Effluent Limitations

A-NOEL	
C-NOEL	

Data summary

	mysid shrimp % survival	sea urchin % fertilized
QC standard	>90	>70
lab control		
receiving water control		
conc. 1 (%)		
conc. 2 (%)		
conc. 3 (%)		
conc. 4 (%)		
conc. 5 (%)		
conc. 6 (%)		
stat test used		

place * next to values statistically different from controls

Salinity Adjustment

brine	
sea salt	
other	

Reference toxicant

	mysid shrimp A-NOEL	sea urchin C-NOEL
toxicant / date		
limits (mg/L)		
results (mg/L)		

Comments _____

Laboratory conducting test

Company Name _____ Company Rep. Name (Printed) _____

Mailing Address _____ Company Rep. Signature _____

City, State, ZIP _____ Company Telephone # _____

Report WET chemistry on DEP Form "ToxSheet (Marine Version), March 2007."

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
MAINE WASTE DISCHARGE LICENSE

Draft FACT SHEET

September 26, 2012

PERMIT NUMBER: **ME0102491**
WASTE DISCHARGE LICENSE: **W008146-6C-D-R**

NAME AND ADDRESS OF APPLICANT:

TOWN OF VINALHAVEN
P.O. Box 815
Vinalhaven, ME. 04863

COUNTY: **Knox County**

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

Sands Road
Vinalhaven, ME. 04863

RECEIVING WATER/CLASSIFICATION: **Atlantic Ocean/Class SB**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Ms. Marjorie Stratton, Town Mgr.**
E-mail: mstratton@townofvinalhaven.org
Tel: (207) 863-2042

Mr. Stephen Cox, Contract Operator
Maine Water Company
P.O. Box 310, West Rockport, Maine
E-mail: scox@mainewater.com
Tel: (207) 287-1643

1. APPLICATION SUMMARY

a. Application: The Town of Vinalhaven (Town/permittee hereinafter) has submitted a timely and complete application to the Department for renewal of combination Waste Discharge License (WDL) #W008146-5L-B-R / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0102491 (permit hereinafter), which was issued on November 15, 2007, for a five-year term. The 11/15/07 permit authorized the discharge of up to a monthly average flow of 0.129 million gallons per day (MGD) of secondary treated municipal wastewater from a publicly owned treatment works (POTW) to the Atlantic Ocean, Class SB, in Vinalhaven, Maine. See **Attachment A** of this Fact Sheet for a location map.

1. APPLICATION SUMMARY (cont'd)

b. Source Description: The permittee treats waste waters from a total of 450 equivalent users (approximately 351 connections) on the island of Vinalhaven. The collection system consists of the following ten (10) pump stations: 1) Sand Street; 2) High Street; 3) Town Garage; 4) Chestnut Street; 5) School Street; 6) Indian Creek; 7) Lane's Island; 8) Leo's Lane; 9) Fire Station; and 10) Sewer Plant. The system also has 20 grinder pump stations that serve private residences but are the responsibility of the Town. Emergency power for the pumps stations listed as 1-8 in this fact sheet is provided by a portable back-up generator. The Fire Station and Sewer Plant pump stations each have dedicated back-up generators. The flow from pump stations 2-8 is pumped to the Fire Station pump station, which is then pumped to the Sewer Plant pump station and to the treatment plant. The Sands Street pump station pumps directly to the Sewer Plant pump station. There are no combined sewer overflow (CSO) points or industrial users associated with the collection system. The permittee has not applied for, and is not authorized to accept transported wastes.

c. Wastewater Treatment: Influent is conveyed to a splitter box which evenly distributes the flow to six (6) treatment trains operated in parallel. Each treatment train utilizes two 8,000-gallon septic tanks where the waste water will receive primary treatment (clarification). The waste water is then conveyed to two random-packed trickling media reactors (per train) for biological treatment. The waste water enters the media units from the top of the structure and trickles down over the media to a reservoir in the bottom of the system.

Waste water from the reservoir is pumped back to the headworks and mixed with incoming primary treated waste water from the septic tanks. The wastewater is aerated with outside air that is drawn into the system via venturi injectors. The waste water is sprayed over the media and trickles down to the reservoir for another cycle. Once the desired level of treatment is achieved, the treated wastewater is conveyed from the trickling filter unit to one of three decant settling basins. See **Attachment B** of this Fact Sheet for a schematic of the waste water treatment facility. From the settling basins, the final effluent is conveyed for discharge to the Atlantic Ocean via a six-inch diameter force main pipe flowing to an eight-inch diameter gravity line that extends offshore approximately 330 feet to a multi-port diffuser. The diffuser ports are spaced ten feet on center and have approximately 20 feet of water over the diffuser at mean low water and approximately 28 feet over the diffuser at mean high water.

2. PERMIT SUMMARY

a. Terms and Conditions: This permitting action is carrying forward the terms and conditions of the previous permitting action.

2. PERMIT SUMMARY (cont'd)

b. History: This section provides a summary of the most recent significant licensing and permitting actions completed for the Vinalhaven facility.

November 25, 2002 – The Department issued a new combination WDL / MEPDES permit to the Town for the Vinalhaven Wastewater Treatment Plant ("permittee"), a new POTW constructed on Vinalhaven Island. The permittee commenced operation in September 2004.

April 10, 2006 – The Department amended the 11/25/02 permit to incorporate testing requirements of 06-096 CMR 530.

November 15, 2007 – The Department issued combination Waste Discharge License #W008146-5L-B-R /MEPDES Permit #ME0102491 for a five-year term.

February 6, 2012 – The Department initiated a minor revision of the 11/15/07 permit by reducing the monitoring frequency for total mercury from 2/Year to 1/Year pursuant to Maine law, 38 M.R.S.A §420 sub-§1-B(F), revised on September 28, 2011.

September 18, 2012 – The permittee submitted a timely application for renewal of combination MEPDES permit #ME0102491 / WDL #W008146-5L-B-R. The Department accepted the application as complete on September 21, 2012, and assigned WDL# W008146-6C-D-R.

3. CONDITIONS OF PERMITS

Conditions of Licenses, 38 M.R.S.A. §414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, *Certain Deposits and Discharges Prohibited,* 38 M.R.S.A. §420 and *Surface Water Toxics Control Program*, 06-096 CMR 530 (effective October 9, 2005), require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective October 9, 2005), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

4. RECEIVING WATER QUALITY STANDARDS

Classification of marine and estuarine waters, 38 M.R.S.A. § 469 classifies all estuarine and marine waters lying within the boundaries of the State and which are not otherwise classified as Class SB waters. The marine waters at the point of discharge are not otherwise classified by 38 M.R.S.A. § 469 and are thus Class SB waters. Standards for *classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B(2) describes the standards for Class SB waters as follows;

4. RECEIVING WATER QUALITY STANDARDS (cont'd)

Class SB waters must be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat must be characterized as unimpaired.

The dissolved oxygen content of Class SB waters must be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration.

Discharges to Class SB waters may not cause adverse impact to estuarine and marine life in that the receiving waters must be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There may be no new discharge to Class SB waters that would cause closure of open shellfish areas by the Department of Marine Resources. For the purpose of allowing the discharge of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety, the department (DEP) *may find that the discharged effluent will not cause adverse impact to estuarine and marine life as long as the materials and methods used provide protection for nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this paragraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.*

5. RECEIVING WATER QUALITY CONDITIONS

A document entitled, *2010 Integrated Water Quality Monitoring and Assessment Report* (also known as the "305B Report") prepared by the Department pursuant to Section 305(b) of the Federal Water Pollution Control Act lists the estuarine and marine waters at Vinalhaven (Waterbody ID#722-13) as, "*Category 4-A: Estuarine and Marine Waters with Impaired Use, TMDL Completed.*" The source of the impairment is elevated fecal coliform bacteria counts. The Report states, "*A TMDL is complete, but there is insufficient new data to determine if attainment has been achieved. Note: Bacteria may impair either recreational uses (swimming) or shellfish consumption uses, or both. Shellfish consumption impairments only apply to waters naturally capable of supporting the shellfish-harvesting use (i.e., waters of high enough salinity for propagation of shellfish.)*" On September 28, 2009, the USEPA approved the Department's *Maine Statewide Bacteria TMDL (Total Maximum Daily Loads)*, dated August 2009, for fresh, marine and estuarine waters impaired by bacteria.

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

In addition, all estuarine and marine waters of the State are listed as, *"Category 5-D: Estuarine and Maine Waters Impaired by Legacy Pollutants."* Impairment in this context refers to the estuarine and marine waters partially supporting the designated use of fishing and harvesting of shellfish due to elevated levels of mercury, PCBs, dioxin, and other persistent bioaccumulating substances in tissues of some fish and in lobster tomalley.

The Maine Department of Marine Resources (MeDMR) assesses information on shellfish growing areas to ensure that shellfish harvested are safe for consumption. The MeDMR has authority to close shellfish harvesting areas wherever there is a pollution source, a potential pollution threat, or poor water quality. The MeDMR traditionally closes shellfish harvesting areas if there are known sources of discharges with unacceptable bacteria levels (instream thresholds established in the National Shellfish Sanitation Program) or maintains shellfish harvesting closure areas due to lack of updated information regarding ambient water quality conditions. In addition, the MeDMR prohibits shellfish harvesting in the immediate vicinity of all wastewater treatment outfall pipes as a precautionary measure in the event of a failure in the treatment plant's disinfection system. Thus, shellfish harvesting area #34-C is closed to the harvesting of shellfish due to insufficient or limited ambient water quality data to determine that the area meets the standards in the National Shellfish Sanitation Program. The shellfish closure area is identified on the map included as Fact Sheet **Attachment C**. The Department is making the determination that compliance with the fecal coliform bacteria and other secondary wastewater treatment limits established in this permitting action ensure that the discharge of secondary treated wastewater from the permittee will not cause or contribute to the failure of the receiving waters to meet the standards of its designated classification.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

a. Flow: This permitting action is carrying forward a monthly average discharge flow limit of 0.129 MGD from the previous permitting action.

A review of the DMR data for the period January 1, 2008 – April 20, 2012 indicates the following:

Flow

Value	Limit (MGD)	Range (MGD)	Average (MGD)	Number of DMRs	Compliance
Monthly Average	0.129	0.02 – 0.04	0.026	51	100%
Daily Maximum	Report	0.03 – 0.08	0.046	51	N/A

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

b. Dilution Factors: 06-096 CMR 530(4)(A)(2)(a) states that, *"For discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model."* Based on the configuration of Outfall #001A and a discharge flow limit of 0.0129 MGD, dilution factors associated with the discharge of secondary treated waste waters are as follows:

Acute = 56.0:1 Chronic = 225.0:1 Harmonic mean[1] = 675.0:1

c. Biochemical Oxygen Demand (BOD_5) and Total Suspended Solids (TSS): This permitting action is carrying forward the monthly average and weekly average technology-based concentration limits of 30 mg/L and 45 mg/L, respectively, for BOD_5 and TSS based on the secondary treatment requirements specified at *Effluent Guidelines and Standards*, 06-096 CMR 525(3)(III) (effective January 12, 2001), and a daily maximum concentration limit of 50 mg/L, which is based on BPJ of BPT for secondary treated municipal wastewater. The technology-based monthly average, weekly average and daily maximum mass limits of 32 lbs/day, 48 lbs/day, and 54 lbs/day established in the previous permitting action for BOD_5 and TSS are also being carried forward in this permitting action.

This permitting action is carrying forward a 30-day average percent removal requirement of 85 percent for BOD_5 and TSS as required pursuant to 06-096 CMR 525(3)(III)(a&b)(3).

The previous permitting action required 2/Week TSS testing through December 2008 due to a history of exceedences. This permitting action is carrying forward a 1/Week TSS and BOD_5 minimum monitoring frequency requirement as the permittee has shown compliance for both parameters. The monitoring frequency is based on Department guidance for facilities with a permitted flow limit between 0.1 MGD – 0.5 MGD.

A review of the DMR data for the period January 1, 2008 – April 20, 2012 indicates the following:

BOD_5 Mass

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)	Number of DMRs	Compliance
Monthly Average	32	1 – 6	2	51	100%
Weekly Average	48	1 – 13	4	51	100%
Daily Maximum	54	1 – 21	4	51	100%

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

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

BOD_5 Concentration

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Number of DMRs	Compliance
Monthly Average	30	3 – 28	11	51	100%
Weekly Average	45	2 – 62	19	51	94%
Daily Maximum	50	4 – 62	19	51	96%

TSS Mass

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)	Number of DMRs	Compliance
Monthly Average	32	1 – 7	3	51	100%
Weekly Average	48	1 – 21	4	51	100%
Daily Maximum	54	1 – 21	4	51	100%

TSS Concentration

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Number of DMRs	Compliance
Monthly Average	30	3 – 21	14	51	100%
Weekly Average	45	6 – 38	18	51	100%
Daily Maximum	50	6 – 38	18	51	100%

d. Settleable Solids: This permitting action is carrying forward a technology-based daily maximum concentration limit of 0.3 ml/L for settleable solids, which is considered a best practicable treatment limitation (BPT) for secondary treated wastewater.

A review of the DMR data for the period January 1, 2008 – April 20, 2012 (number of DMRs = 51) indicates the that the daily maximum settleable solids has ranged from <0.2 mL/L to 0.2 mL/L with an arithmetic mean of 0.2 mL/L (100% compliance).

This permitting action is carrying forward the settleable solids minimum monitoring frequency requirement of five times per week from the previous permitting action.

e. Fecal Coliform Bacteria: The previous permitting action established seasonal (May 15 – September 30 of each year) monthly average (geometric mean) and daily maximum (instantaneous) fecal coliform bacteria limitations of 200 colonies / 100 ml and 400 colonies / 100 ml, respectively, based on best professional judgment of best practicable treatment for this discharge. The previous permitting action stated,

> *The Department has not established BPT limitations for ultra-violet disinfection systems. Therefore, this permitting action is establishing a seasonal monthly average and daily maximum limits of 200 colonies/100 ml and 400 colonies/100 ml respectively, based on a Department best professional judgment of the level of treatment expected for the ultra-violet disinfection system being*

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

designed for the facility. In establishing the limits, the Department consulted with the Maine Department of Marine Resources and considered the standards in the National Shellfish Sanitation Program and the large dilution factors associated with the discharge and considered information provided by manufacturers of ultra-violet disinfection systems. After two seasons of use, the Department will evaluate the bacteria test results and may reconsider establishing more stringent limits based on the actual performance of the system.

A review of the DMR data for the period January 1, 2008 – April 20, 2012 indicates the following:

Fecal coliform bacteria

Value	Limit (#col/100 mL)	Range (#col/100 mL)	Arith. Mean (#col/100 mL)	Number of DMRs	Compliance
Monthly Average	200	2 – 120	16	20	100%
Daily Maximum	400	2 – 900	89	20	95%

Results reported as "less than" (<) and "greater than" (>) were considered present at the detection limits for calculation purposes.

This permitting action is carrying forward the seasonal monthly average and daily maximum effluent bacteria limitations consistent with the best professional judgment determination that was made by the Department as documented above. Bacteria limits are seasonal and apply between May 15 and September 30 of each year, however, the Department reserves the right to require bacteria limits to be in effect on a year-round basis to protect the health and welfare of the public.

This permitting action is carrying forward the minimum monitoring frequency requirement for fecal coliform bacteria of once per week based on Department guidance for POTWs permitted to discharge between 0.1 and 0.5 MGD.

f. Total Residual Chlorine (TRC): The previous permitting action did not establish effluent limitations for TRC as the facility does not utilize chlorine or chlorine-based compounds for effluent disinfection.

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

g. pH: This permitting action is carrying forward a technology-based pH limit of 6.0 – 9.0 standard units (SU), which is based on 06-096 CMR 525(3)(III). This permitting action is carrying forward the minimum monitoring frequency requirement of five times per week from the previous permitting action.

A review of the DMR data for the period January 1, 2008 – April 20, 2012 (number of DMRs = 51) indicates the daily maximum pH range was 6.9 – 8.8 (100% compliance). This permitting action is carrying forward the pH minimum monitoring frequency of 5/Week from the previous permitting action.

h. Oil and Grease (O&G): The previous permitting action established a one-year, seasonal (June 1 – September 30, 2008 only) daily maximum concentration monitoring and reporting requirement for O&G due to potential issues at the facility caused by fats, oils and grease in the influent wastewater generated by a seafood processing facility that has since been shutdown.

A review of the DMR data for the period January 1, 2008 – April 20, 2012 indicates the following:

Oil and Grease Concentration

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Number of DMRs	Compliance
Weekly Average	Report	2 – 3	2	4	N/A

Based on the permittee's test results, this permitting action is not establishing oil and grease monitoring requirements.

Mercury: Pursuant to Maine law, 38 M.R.S.A. §420 and Department rule, 06-096 CMR Chapter 519, *Interim Effluent Limitations and Controls for the Discharge of Mercury*, the Department issued a *Notice of Interim Limits for the Discharge of Mercury* to the permittee on January 27, 2009, thereby administratively modifying WDL#W002749 by establishing interim monthly average and daily maximum effluent concentration limits of 28.3 nanograms per liter [parts per trillion (ppt)] and 42.4 ppt respectively, and a minimum monitoring frequency requirement of four tests per year for mercury. The interim mercury limits were scheduled to expire on October 1, 2001. However, effective June 15, 2001, the Maine Legislature enacted Maine law, 38 M.R.S.A. §413, sub-§11 specifying that interim mercury limits and monitoring requirements remain in effect. It is noted that the mercury effluent limitations had not been incorporated into Special Condition A, *Effluent Limitations And Monitoring Requirements*, of the previous permit as the limits and monitoring frequencies were regulated separately through Maine law, 38 M.R.S.A. §413 and Department rule Chapter 519.

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

Maine law 38 M.R.S.A., §420 1-B,(B)(1) states that a facility is not in violation of the AWQC for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to section 413, subsection 11. A review of the Department's data base for the period November 2007 through the present indicates the permittee has been in compliance with the interim limits for mercury (with the exception of a test result of 48 ng/L) as results have been reported as follows;

Mercury (n = 18)

Value	Limit (ng/L)	Range (ng/L)	Mean (ng/L)
Average, Maximum	28.3/42.4	6 - 48	16.6

Pursuant to Maine law 38, M.R.S.A. §420, sub-§1-B, ¶F, the 2/6/12 permitting modification reduced the monitoring frequency for mercury from 4/Year to 1/Year given the permittee had maintained at least 5 years of mercury testing data. The limitations of 28.3 ng/L and 42.4 ng/L along with a monitoring frequency of 1/Year are being carried forward in this permitting action.

i. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing:
38 M.R.S.A., §414-A and §420, prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. *Surface Water Toxics Control Program,* 06-096 CMR 530, and *Surface Water Quality Criteria for Toxic Pollutants,* 06-096 CMR 584, set forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters. WET, priority pollutant and analytical chemistry testing as required by 06-096 CMR 530 are included in this permit in order to fully characterize the effluent. This permit also provides for reconsideration of effluent limits and monitoring schedules after evaluation of toxicity testing results. The monitoring schedule includes consideration of results currently on file, the nature of the wastewater, existing treatment and receiving water characteristics.

WET monitoring is required to assess and protect against impacts upon water quality and designated uses caused by the aggregate effect of the discharge on specific aquatic organisms. Priority pollutant and analytical chemistry testing is required to assess the levels of individual toxic pollutants in the discharge, comparing each pollutant to acute, chronic, and human health AWQC as established in 06-096 CMR 584. Acute WET tests are performed on invertebrate species mysid shrimp (*Mysidopsis bahia*); chronic WET tests are performed on sea urchin (*Arbacia punctulata*).

06-096 CMR 530 establishes four categories of testing requirements based predominantly on the chronic dilution factor. The categories are as follows:

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

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

Based on the criteria, the permittee falls into the Level III frequency category as the permittee has a chronic dilution factor ≥100:1 but <500:1.

06-096 CMR 530(2)(D)(1) specifies that routine screening and surveillance level testing requirements are as follows:

Routine Screening level testing – Beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (year 4 of the term of the permit) and every five years thereafter.

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

Routine Surveillance level testing – Beginning upon issuance of this permit and lasting through 24 months prior to permit expiration and commencing again 12 months prior to permit expiration and lasting through permit expiration (Years 1,2,3 and 5 of the term of the permit).

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

06-096 CMR 530 §(3)(E) states, "*For effluent monitoring data and the variability of the pollutant in the effluent, the Department shall apply the statistical approach in Section 3.3.2 and Table 3-2 of USEPA's "Technical Support Document for Water Quality-Based Toxics Control" (USEPA Publication 505/2-90-001, March, 1991, EPA, Office of Water, Washington, D.C.) to data to determine whether water-quality based effluent limits must be included in a waste discharge license. Where it is determined through this approach that a discharge contains pollutants or WET at levels that have a reasonable potential to cause or contribute to an exceedence of water quality criteria, appropriate water quality-based limits must be established in any licensing action.*"

06-096 CMR 530 (3) states, "*In determining if effluent limits are required, the Department shall consider all information on file and effluent testing conducted during the preceding 60 months. However, testing done in the performance of a Toxicity Reduction Evaluation (TRE) approved by the Department may be excluded from such evaluations.*"

06-096 CMR, Chapter 530 states "*Dischargers in Levels III and IV may be waived from conducting surveillance testing for individual WET species or chemicals provided that testing in the preceding 60 months does not indicate any reasonable potential for exceedence as calculated pursuant to section 3(E)*".

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

WET evaluation

On September 25, 2012, the Department conducted a statistical evaluation on the most recent 60 months of the permittee's WET data. The evaluation showed that the discharge did not exceed or have a reasonable potential to exceed the critical acute or chronic AWQC thresholds of 1.8% and 0.4%, respectively (the mathematical inverses of the acute and chronic dilution factors of 56:1 and 225:1, respectively). As a result, the permittee qualifies for the 06-096 CMR, Chapter 530 waiver from surveillance level WET testing for the first three years of the term of the permit.

Pursuant to 06-096 CMR 530 (1)(D), screening level WET testing is being carried forward as follows:

Screening level testing – Beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (year 4 of the term of the permit) and every five years thereafter.

Level	WET Testing
III	1/Year

06-096 CMR 530(2)(D)(4) states, *"all dischargers having waived or reduced testing must file statements with the Department on or before December 31 of each year describing the following.*

a. *Changes in the number or types of non-domestic wastes contributed directly or indirectly to the wastewater treatment works that may increase the toxicity of the discharge;*

b. *Changes in the operation of the treatment works that may increase the toxicity of the discharge; and*

c. *Changes in industrial manufacturing processes contributing wastewater to the treatment works that may increase the toxicity of the discharge."*

This permitting action is carrying forward Special Condition G, *06-096 CMR 530 Statement for Reduced/Waived Toxics Testing*, pursuant to 06-096 CMR 530(2)(D)(4). It is noted, however, that if future testing indicates the discharge exceeds critical water quality thresholds, this permit will be reopened in accordance with Special Condition J, *Reopening of Permit For Modifications,* to establish effluent limitations and monitoring requirements as necessary.

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

Chemical Evaluation

06-096 CMR 530 §4(C), states "*The background concentration of specific chemicals must be included in all calculations using the following procedures. The Department may publish and periodically update a list of default background concentrations for specific pollutants on a regional, watershed or statewide basis. In doing so, the Department shall use data collected from reference sites that are measured at points not significantly affected by point and non-point discharges and best calculated to accurately represent ambient water quality conditions." The Department shall use the same general methods as those in section 4(D) to determine background concentrations. For pollutants not listed by the Department, an assumed concentration of 10% of the applicable water quality criteria must be used in calculations.* The Department has very limited information on the background levels of metals in the water column in the Atlantic Ocean. Therefore, a default background concentration of 10% of the applicable water quality criteria is being used in the calculations of this permitting action.

06-096 CMR 530 4(E), states, "*In allocating assimilative capacity for toxic pollutants, the Department shall hold a portion of the total capacity in an unallocated reserve to allow for new or changed discharges and non-point source contributions. The unallocated reserve must be reviewed and restored as necessary at intervals of not more than five years. The water quality reserve must be not less than 15% of the total assimilative quantity*". Therefore, the Department is reserving 15% of the applicable water quality criteria in the calculations of this permitting action.

On September 25, 2012, the Department conducted a statistical evaluation on the most recent 60 months of chemical-specific tests results on file with the Department for the permittee in accordance with the statistical approach outlined in the beginning of this section. The statistical evaluation indicates that the discharge from the permittee does not exceed or exhibit a reasonable potential to exceed any applicable AWQC criteria for the parameters tested to date. As a result, the permittee qualifies for the 06-096 CMR, Chapter 530 waiver from surveillance level analytical chemistry testing for the first three years of the term of the permit.

This permitting action is carrying forward Special Condition G, *06-096 CMR 530 Statement for Reduced/Waived Toxics Testing*, pursuant to 06-096 CMR 530(2)(D)(4). It is noted, however, that if future testing indicates the discharge exceeds critical water quality thresholds, this permit will be reopened in accordance with Special Condition J, *Reopening of Permit For Modifications,* to establish effluent limitations and monitoring requirements as necessary.

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

Pursuant to 06-096 CMR 530 (2)(D)(1), screening level testing is being carried forward as follows:

Screening level testing – Beginning 24 months prior to permit expiration and lasting through 12 months prior to permit expiration (year 4 of the term of the permit) and every five years thereafter.

Level	Priority pollutant testing	Analytical chemistry
III	1 per year	1 per quarter

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the water body to meet standards for Class SB classification.

8. PUBLIC COMMENTS

Public notice of this application was made in The Wind newspaper on or about September 19, 2012. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses,* 06-096 CMR 522 (effective January 12, 2001).

9. DEPARTMENT CONTACTS

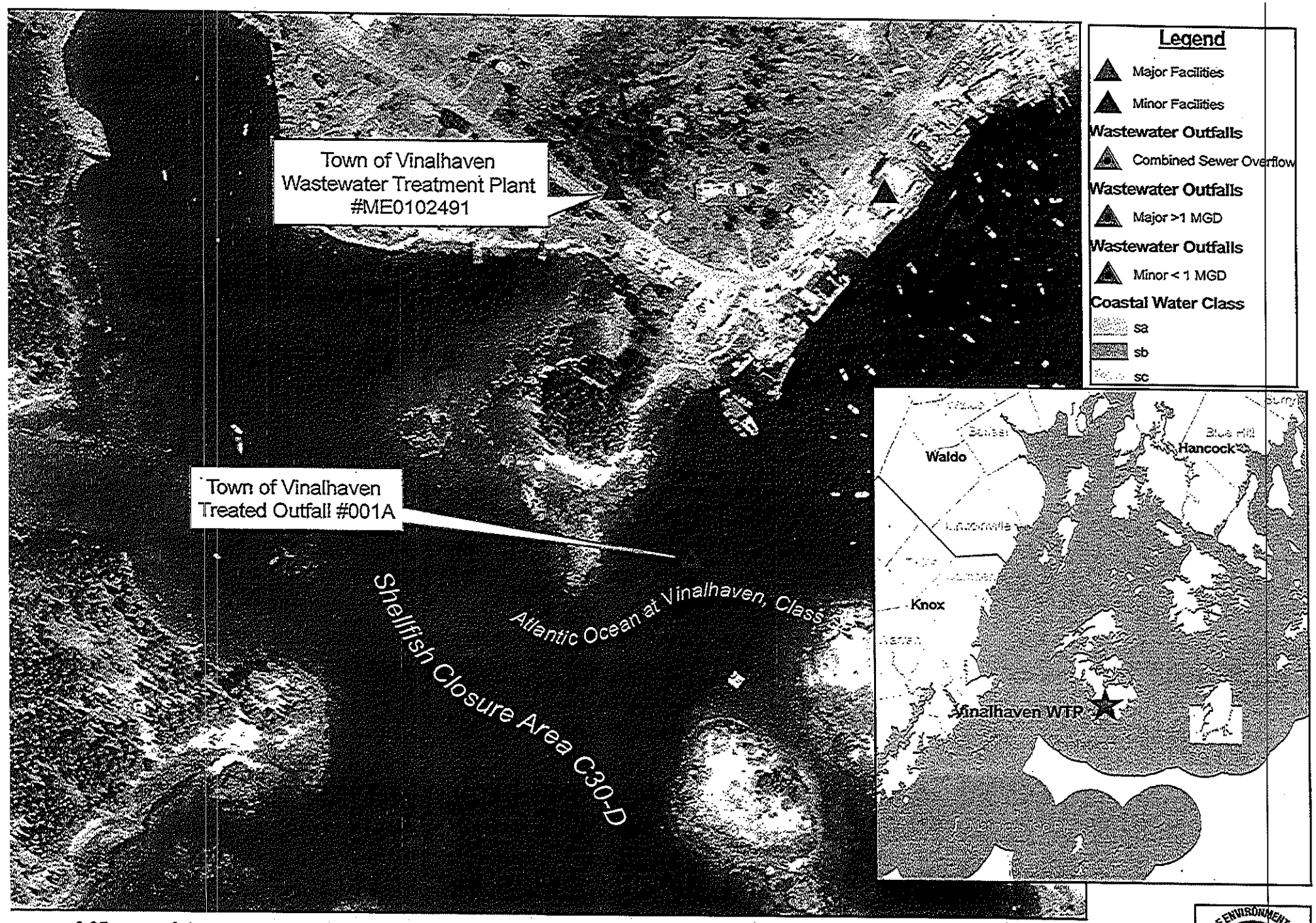
Additional information concerning this permitting action may be obtained from, and written comments sent to:

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

10. RESPONSE TO COMMENTS

During the period September 26, 2012 through the issuance date of the permit the Department solicited comments on the proposed draft permit for the permittee's facility. The Department did not receive comments from the permittee, state or federal agencies or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

ATTACHMENT A

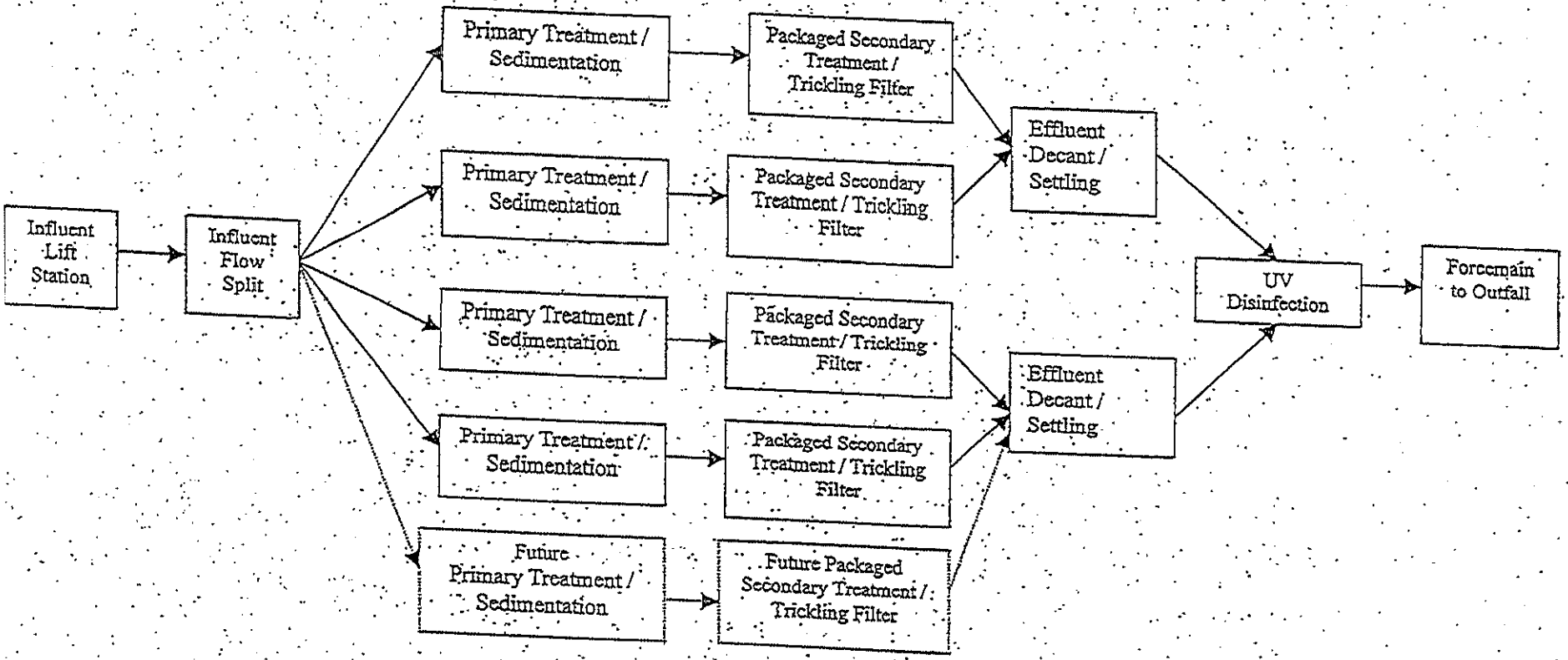


Vinalhaven, Maine

Map created by Maine DEP
August 23, 2007

ATTACHMENT B

Vinalhaven Wastewater Treatment Plant Process Flow Diagram



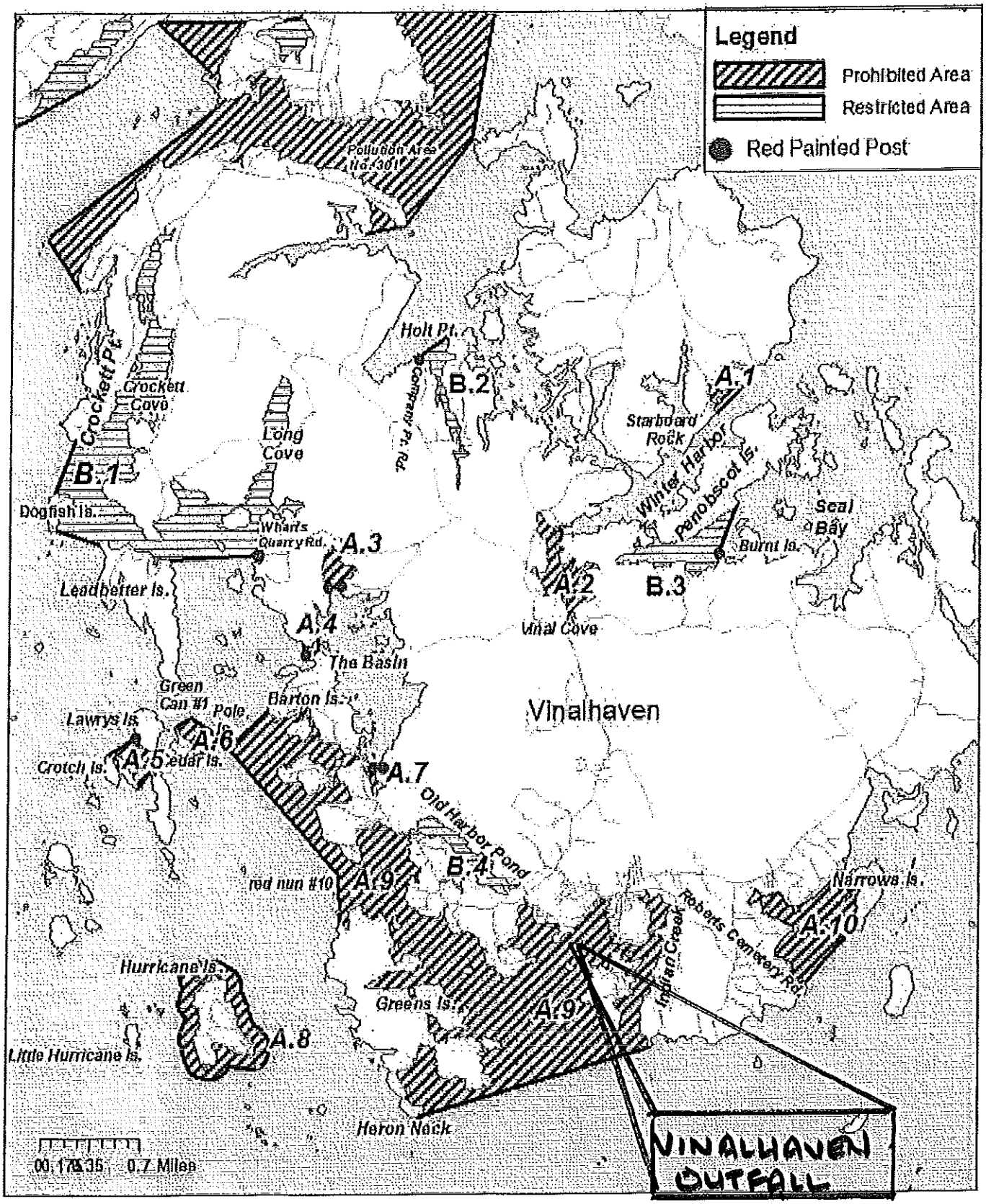
ATTACHMENT C

Maine Department of Marine Resources

Pollution Closed Area No. 34-C

Vinalhaven

2/13/2012



ATTACHMENT D

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHAPTER 530.2(D)(4) CERTIFICATION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
Commissioner

MEPDES#_____Facility Name_____

Since the effective date of your permit, have there been;		NO	YES Describe in comments section
1	Increases in the number, types, and flows of industrial, commercial, or domestic discharges to the facility that in the judgment of the Department may cause the receiving water to become toxic?	☐	☐
2	Changes in the condition or operations of the facility that may increase the toxicity of the discharge?	☐	☐
3	Changes in storm water collection or inflow/infiltration affecting the facility that may increase the toxicity of the discharge?	☐	☐
4	Increases in the type or volume of hauled wastes accepted by the facility?	☐	☐

COMMENTS:

Name (printed): _____

Signature: _____ Date: _____

This document must be signed by the permittee or their legal representative.

This form may be used to meet the requirements of Chapter 530.2(D)(4). This Chapter requires all dischargers having waived or reduced toxic testing to file a statement with the Department describing changes to the waste being contributed to their system as outlined above. As an alternative, the discharger may submit a signed letter containing the same information.

Scheduled Toxicity Testing for the next calendar year

Test Conducted	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
WET Testing	☐	☐	☐	☐
Priority Pollutant Testing	☐	☐	☐	☐
Analytical Chemistry	☐	☐	☐	☐
Other toxic parameters [1]	☐	☐	☐	☐

Please place an "X" in each of the boxes that apply to when you will be conducting any one of the three test types during the next calendar year.

[1] This only applies to parameters where testing is required at a rate less frequently than quarterly.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD, SUITE 6
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) 764-0477 FAX: (207)760-3143

web site: www.maine.gov/dep

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 Department Licensing Decision

Dated: March 2012 **Contact: (207) 287-2811**

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

Other Considerations in Appealing a Decision to the Board

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

What to Expect Once You File a Timely Appeal with the Board

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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.