



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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

|                                |   |                           |
|--------------------------------|---|---------------------------|
| IRVING OIL TERMINALS INC.      | ) | MAINE POLLUTANT DISCHARGE |
| SEARSPORT, WALDO COUNTY, MAINE | ) | ELIMINATION SYSTEM PERMIT |
| BULK FUEL STORAGE FACILITY     | ) | AND                       |
| W001373-5S-G-R                 | ) | WASTE DISCHARGE LICENSE   |
| ME0002461                      | ) | <b>RENEWAL</b>            |
| <b>APPROVAL</b>                |   |                           |

In compliance with the applicable provisions of Pollution Control, 38 M.R.S. §§ 411 – 424-B, Water Classification Program, 38 M.R.S. §§ 464 – 470 and Federal Water Pollution Control Act, Title 33 U.S.C. § 1251, and applicable rules of the Department of Environmental Protection (Department) has considered the application of IRVING OIL TERMINALS INC. (Irving/permittee hereinafter), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

The permittee has submitted a complete application to the Department for the renewal of combination Maine Waste Discharge License (WDL) # W001373-5S-F-R /Maine Pollutant Discharge Elimination System (MEPDES) Permit # ME0021181 (permit hereinafter), which was issued by the Department on April 7, 2015, for a five-year term. The 4/7/15 permit authorized the discharge of treated storm water runoff and vehicle wash water up to a daily maximum flow rate of 2,038 gallons per minute (gpm) and hydrostatic test water up to a daily maximum flow rate of 7.35 million gallons per day to Long Cove (Penobscot Bay), Class SC. The previous permitting action included limitations and monitoring frequencies for several outfalls from which treated stormwater runoff was discharged. The Department has determined that outfalls carrying stormwater runoff are covered under the Multi Sector General Permit for Stormwater Associated with an Industrial Activity. Therefore, this permitting action only authorizes discharges of Hydrostatic Test Waters. See **Attachment A** of the Fact Sheet for a site location map.

**PERMIT SUMMARY**

This permitting action is carrying forward all the terms and conditions of the previous permitting action, except that it is;

1. Removing Limitations and Monitoring frequencies and all references related to stormwater discharges which the Department deems covered under the Multi Sector General Permit for Stormwater Associated with an Industrial Activity.

## CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated October 20, 2020, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 MRS Section 464(4)(F), will be met, in that:
  - a. Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - b. Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
  - c. Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - d. Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
  - e. Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

**ACTION**

THEREFORE, the Department APPROVES the application of IRVING OIL TERMINAL, INC., to discharge 7.35 MGD of hydrostatic test water from a bulk fuel storage and transfer facility to Long Cove (Penobscot Bay), Class SC, subject to the attached conditions and all applicable standards and regulations:

- 1.e “*Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*,” revised July 1, 2002, copy attached.e
- 2.e The attached Special Conditions, including any effluent limitations and monitoring requirements.e
- 3.e This permit and the authorization to discharge become effective upon the date of signaturee below and expire at midnight five (5) years from the effective date. If a renewal applicatione is timely submitted and accepted as complete for processing prior to the expiration of thise permit, the authorization to discharge and the terms and conditions of this permit and alle modifications and minor revisions thereto remain in effect until a final Department decisione on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5e M.R.S. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (June 9, 2018)]e

DONE AND DATED AT AUGUSTA, MAINE, THIS 21e DAY OF October, 2020.

COMMISSIONER OF ENVIRONMENTAL PROTECTION

BY: 

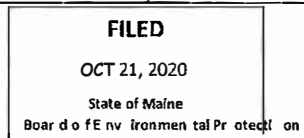
for Melanie Loyzim, Acting Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application October 10, 2019

Date of application acceptance October 16, 2019

Date filed with Board of Environmental Protection



This Order prepared by Rod Robert , BUREAU OF WATER QUALITY

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge hydrostatic test water to Long Cove (Penobscot Bay). Such discharges must be limited and monitored by the permittee as specified below:

**ADMINISTRATIVE OUTFALL #003 - Hydrostatic test water<sup>(1)</sup>**

| Effluent Characteristic                           | Discharge Limitations                      |  |  |  | Monitoring Requirements                          |  |
|---|--|--|--|--|--|--|
|   | <u>Monthly<br/>Average</u><br>as specified | <u>Daily<br/>Maximum</u><br>as specified | <u>Monthly<br/>Average</u><br>as specified | <u>Daily<br/>Maximum</u><br>As specified | <u>Measurement<br/>Frequency</u><br>As specified | <u>Sample<br/>Type</u><br>as specified |
| Flow <sup>(2,3)</sup> [50050]                     | ---  | ---                                      | ---  | 7.35 MGD <sub>[03]</sub>                 | 1/Discharge [01/DS]                              | Measure [MS]                           |
| Total Suspended Solids <sup>(4)</sup><br>[00530]  | ---  | ---                                      | ---  | 50 mg/L [19]                             | 1/Discharge [01/DS]                              | Grab <sup>(5)</sup> [GR]               |
| Oil & Grease <sup>(6)</sup> [00552]               | ---  | ---                                      | ---  | 15 mg/L [19]                             | 1/Discharge [01/DS]                              | Grab <sup>(5)</sup> [GR]               |
| Total Residual Chlorine <sup>(7)</sup><br>[50060] | ---  | ---                                      | ---  | 13 ug/L [28]                             | 1/Discharge [01/DS]                              | Grab <sup>(5)</sup> [GR]               |

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

FOOTNOTES: See pages 5-6 of this permit for applicable footnotes.

## SPECIAL CONDITIONS

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

Footnotes:

**Sampling Locations:** Discharges from Outfall #003 must be sampled independently, prior to co-mingling with any other waste stream(s).

Outfall #003 (hydrostatic test water) samples for all parameters must be collected from the tank or piping prior to discharge directly to the receiving waters. The permittee must designate the physical location of the discharge as “#001” or “#002” on Discharge Monitoring Reports when reporting results from Outfall #003.

Sampling and analysis must be conducted in accordance with; a) methods approved in 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine’s Department of Health and Human Services. Samples that are analyzed in-house or sent to another POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended December 19, 2018)

- (1) The flow through the oil/water separator must consist of hydrostatic test water discharged through Outfall #003. The direct or indirect discharge of liquids from petroleum product pipelines, transport tanks, vessels or storage tanks through the oil/water separator is not authorized by this permit except as specified for Outfall #003. No chemical treatment such as dispersants, emulsifiers or surfactants may be added to the oil/water separator or any wastewater discharge stream contributing flow to the oil/water separator.
- (2) **Flow** - At no time must the flow through the oil/water separator exceed the design flow of the separator (1,019 gpm).

## SPECIAL CONDITIONS

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

Footnotes:

- (3) Flow measurement devices or calculated flow estimates via pump curves or tank volumes or other methods must be approved by the Department. Measurement of flow may be suspended upon approval from the Department in the event the permittee limits flow to the separator by installing a permanent constriction to prevent flows from exceeding the design capacity of the separator. The installation, replacement or modification of any flow measurement or constriction device requires prior approval by the Department. For the purposes of this permitting action, utilizing the strapping chart (a chart showing amount of material stored versus depth of material in tank) for Outfall #003 for measuring flow are approved by the Department.
- (4) **Total Suspended Solids (TSS)** – The monthly average concentration limitation of 50 mg/L for TSS is based on an average over the previous twelve-month period. For the purposes of this permitting action, the **twelve-month rolling average** calculation is based on the test results for the most recent twelve-month period. Months when there is no discharge are not to be included in the calculations
- (5) One grab sample for TSS, benzene and oil & grease analyses for each sampling event must be taken during the first hour of discharge.
- (6) Oil and grease monitoring is not required if the discharge of hydrostatic test water is from tanks and pipes that are gas-free as certified by a marine chemist. The test water is not required to be pretreated through the oil/water separator, provided the test water is municipal water or from some other source which does not contain oil and grease.
- (7) **Total residual chlorine (TRC)** - When using chlorinated hydrostatic test water, the total residual chlorine must be measured and limited as specified in the effluent limitations for hydrostatic test water.

For the purposes of this permit, compliance with the daily maximum limitation in this permit will be based on EPA's current minimum level (ML) of detection of 20 ug/L (0.02 mg/L). The permittee must utilize approved test methods that are capable of producing analytical results down to or below 20 ug/L. All analytical test results must be reported to the Department including results which are detected below the ML. Results reported below the RL will be considered to be in compliance with the permit. The Discharge Monitoring Reports will be coded with the RL of 20 ug/L such that detectable results reported below 20 ug/L but greater than the daily maximum water quality based limit established in this permit will not be recorded as violations of the permit.

## **SPECIAL CONDITIONS**

### **B. NARRATIVE EFFLUENT LIMITATIONS**

1. The effluent must not contain a visible oil sheen, foam or floating solids at any time that would impair the uses designated for the classification of the receiving waters.
2. The effluent must not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the uses designated for the classification of the receiving waters.
3. The discharge must not cause visible discoloration or turbidity in the receiving waters which would impair the uses designated for the classification of the receiving waters.
4. Notwithstanding specific conditions of this license the effluent must not lower the quality of any classified body of water below such classification or lower the existing quality of any body of water if the existing quality is higher than the classification.

### **C. OIL/WATER SEPARATOR MAINTENANCE**

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

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

### **D. HYDROSTATIC TEST WATER**

Tanks and pipes being hydrostatically tested must be clean of product and all construction debris, including sandblasting grit, prior to testing and discharge through Outfall #003. The discharge must be dechlorinated if test results indicate that discharged water will violate water quality standards. Oil and grease monitoring is not required if the discharge of hydrostatic test water is from tanks and pipes that are gas-free as certified by a marine chemist. The test water is not required to be pretreated through the oil/water separator, provided the test water is municipal water or from some other source which does not contain oil and grease. The permittee must notify the Department of an intended discharge of hydrostatic test water at least three days, excluding weekends, prior to the discharge.

## **SPECIAL CONDITIONS**

### **E. 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 October 16, 2019; 2) the terms and conditions of this permit; and 3) only from Outfalls #003. Discharges of wastewater from any other point source are not authorized under this permit and must be reported in accordance with Standard Condition D(f)(1), *Twenty-Four-Hour Reporting*, of this permit.

### **F. REOPENING OF PERMIT FOR MODIFICATIONS**

Upon evaluation of the tests results in the Special Conditions of this permitting action, new site-specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at any time and with notice to the permittee, modify this permit to: (1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded; (2) require additional monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information such as mixing zone information/characteristics.

### **G. MONITORING AND REPORTING**

#### *Electronic Reporting*

*NPDES Electronic Reporting*, 40 C.F.R. 127, requires MEPDES permit holders to submit monitoring results obtained during the previous month on an electronic discharge monitoring report to the regulatory agency utilizing the USEPA electronic system.

Electronic DMRs submitted using the USEPA NetDMR system, must be:

1. Submitted by a facility authorized signatory; and
2. Submitted no later than **midnight on the 15<sup>th</sup> day of the month** following the completed reporting period.

Documentation submitted in support of the electronic DMR may be attached to the electronic DMR. Toxics reporting must be done using the Department toxsheet reporting form. An electronic copy of the Toxsheet reporting document must be submitted to your Department compliance inspector as an attachment to an email. In addition, a hardcopy form of this sheet must be signed and submitted to your compliance inspector, or a copy attached to your NetDMR submittal will suffice. Documentation submitted electronically to the Department in support of the electronic DMR must be submitted no later than midnight on the 15<sup>th</sup> day of the month following the completed reporting period.



## **SPECIAL CONDITIONS**

### **G. MONITORING AND REPORTING (cont'd)**

#### *Non-electronic Reporting*

If you have received a waiver from the Department concerning the USEPA electronic reporting rule, or are permitted to submit hardcopy DMR's to the Department, then your monitoring results obtained during the previous month must be summarized for each month and reported on separate DMR forms provided by the Department and **postmarked on or before the thirteenth (13<sup>th</sup>) 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<sup>th</sup>) day of the month** following the completed reporting period.

A signed copy of the DMR and all other reports required herein must be submitted to the Department assigned compliance inspector (unless otherwise specified) following address:

Department of Environmental Protection  
Eastern Maine Regional Office  
Bureau of Water Quality  
Division of Water Quality Management  
106 Hogan Road  
Bangor, Maine 04401

### **H. SEVERABILITY**

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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CONTENTS

| SECTION | TOPIC   | PAGE |
|---------|---|------|
| A       | GENERAL PROVISIONS  |      |
| 1       | General compliance  | 2    |
| 2       | Other materials   | 2    |
| 3       | Duty to Comply  | 2    |
| 4       | Duty to provide information   | 2    |
| 5       | Permit actions  | 2    |
| 6       | Reopener clause   | 2    |
| 7       | Oil and hazardous substances  | 2    |
| 8       | Property rights   | 3    |
| 9       | Confidentiality   | 3    |
| 10      | Duty to reapply   | 3    |
| 11      | Other laws  | 3    |
| 12      | Inspection and entry  | 3    |
| B       | OPERATION AND MAINTENANCE OF FACILITIES                                   |      |
| 1       | General facility requirements   | 3    |
| 2       | Proper operation and maintenance  | 4    |
| 3       | Need to halt reduce not a defense   | 4    |
| 4       | Duty to mitigate  | 4    |
| 5       | Bypasses  | 4    |
| 6       | Upsets  | 5    |
| C       | MONITORING AND RECORDS  |      |
| 1       | General requirements  | 6    |
| 2       | Representative sampling   | 6    |
| 3       | Monitoring and records  | 6    |
| D       | REPORTING REQUIREMENTS  |      |
| 1       | Reporting requirements  | 7    |
| 2       | Signatory requirement   | 8    |
| 3       | Availability of reports   | 8    |
| 4       | Existing manufacturing, commercial, mining, and silvicultural dischargers | 8    |
| 5       | Publicly owned treatment works  | 9    |
| E       | OTHER PROVISIONS  |      |
| 1       | Emergency action - power failure  | 9    |
| 2       | Spill prevention  | 10   |
| 3       | Removed substances  | 10   |
| 4       | Connection to municipal sewer   | 10   |
| F       | DEFINITIONS   | 10   |

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**A. GENERAL PROVISIONS**

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

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

(a) They are not

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

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

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

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

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

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

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

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

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

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

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

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

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

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

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

### **B. OPERATION AND MAINTENANCE OF FACILITIES**

#### **1. General facility requirements.**

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

### **5. Bypasses.**

#### (a) Definitions.

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

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

#### (c) Notice.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

**6. Upsets.**

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**C. MONITORING AND RECORDS**

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

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

**3. Monitoring and records.**

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**D. REPORTING REQUIREMENTS**

**1. Reporting requirements.**

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



## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

- (g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this section.
- (h) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

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

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

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

- (a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - (i) One hundred micrograms per liter (100 ug/l);
  - (ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
  - (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
  - (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

**5. Publicly owned treatment works.**

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

**E. OTHER REQUIREMENTS**

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

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

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

**Maximum daily discharge limitation** means the highest allowable daily discharge.

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: November 2018

Contact: (207) 287-2452

### 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) an administrative process before the Board of Environmental Protection (Board); or (2) 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. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S. § 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. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 C.M.R. ch. 2.

#### **DEADLINE 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 more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

### INFORMATION APPEAL PAPERWORK MUST CONTAIN

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

1. *Aggrieved Status.* The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant 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.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing requirements that the appellant believes were not properly considered or fully addressed.
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 matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

### 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, and is made easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an 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 general questions regarding the appeal process.
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. Unless a stay of the decision is requested and granted, 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, and will provide 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, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. 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, the 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. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and 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. 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. § 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.

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**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.**

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

**FACT SHEET**

Date: **October 20, 2020**

PERMIT NUMBER: **ME0002461**  
LICENSE NUMBER: **W001373-5S-G-R**

NAME AND ADDRESS OF APPLICANT:

**IRVING OIL TERMINALS INC.  
52 Station Avenue  
Searsport, ME 04974**

COUNTY WHERE DISCHARGE OCCURS: **Waldo**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**Mack Point  
Searsport, ME 04974**

RECEIVING WATER AND CLASSIFICATION: **Long Cove (Penobscot Bay),  
Class SC**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Drake Bell  
(207) 548-2541  
Drake.Bell@irvingoil.com**

**1. APPLICATION SUMMARY**

- a. Application - The permittee has submitted a complete application to the Department for the renewal of combination Maine Waste Discharge License (WDL) # W001373-5S-F-R /Maine Pollutant Discharge Elimination System (MEPDES) Permit # ME0021181 (permit hereinafter), which was issued by the Department on April 7, 2015, for a five-year term. The 4/7/15 permit authorized the discharge of treated storm water runoff and vehicle wash water up to a daily maximum flow rate of 2,038 gallons per minute (gpm) and hydrostatic test water up to a daily maximum flow rate of 7.35 million gallons per day to Long Cove (Penobscot Bay), Class SC. The previous permitting action included limitations and monitoring frequencies for several outfalls from which treated stormwater runoff was discharged. The Department has determined that outfalls carrying stormwater runoff are covered under the Multi Sector General Permit for Stormwater Associated with an Industrial Activity. Therefore, this permitting action only authorizes discharges of Hydrostatic Test Waters. See Attachment A of the Fact Sheet for a site location map.

**1. APPLICATION SUMMARY (cont'd)**

- b. Source Description: The permittee's facility is engaged in the transfer (ship to shore), storage and distribution of refined petroleum products such as gasoline and distillate oils. The site has thirteen (13) above-ground storage tanks having a gross capacity of approximately 1,078,000 barrels (45,316,000 gallons) for gasoline and distillate oils. The facility is broken up into two tank farms, Tank Farm #1 and Tank Farm #3.

Tank Farm #1 has six (6) storage tanks having a total capacity of 34,020,000 gallons with the largest tank having a volume of 7,350,000 gallons. Tank Farm #1 also has six loading bays that are covered by a canopy to minimize the quantity of precipitation coming into contact with minor quantities of product spilled during the loading of trucks. Hydrostatic test water generated in Tank Farm #1 is discharged to Long Cove via Administrative Outfall #003.

Tank Farm #3 has seven (7) storage tanks having a total capacity of 11,246,000 gallons with the largest tank having a volume of 4,620,000 gallons. Hydrostatic test water generated in Tank Farm #3 is discharged to Long Cove via Administrative Outfall #003.

In addition to tankage, there is an extensive above-ground and below-ground network of piping. It is noted Tank Farm #1 and Tank Farm #3 are associated with a much smaller bulk fuel storage and transfer facility referred to as, "Tank Farm #2" that is also owned and operated by Irving. Tank Farm #2 is located approximately 0.5 miles to the southwest of Tank Farms #1 and #3. Tank Farm #2 has two storage tanks with a total capacity of 5,670,000 gallons. A marine docking facility at Tank Farms #1 and #3 transfers product from ships and or barges to shore and a loading rack area. Product from the storage tanks is transferred to tanker trucks to be distributed to local fuel oil dealers and gasoline stations for distribution to the general public.

Each of the storage tanks is enclosed in an unlined area of earthen dikes composed of clay material with earthen walls. The diked areas are designed to contain the contents of the enclosed tanks plus an additional volume to contain any extinguishment chemicals or water and precipitation. The dikes are required by the Town of Searsport for safety to prevent product from spilling from one tank area to another or directly into a receiving waterbody, provide temporary containment in the event of a tank failure and isolate tanks in the event of a major fire in a tank. The total drainage area of the site contributing to the discharge from the facility is approximately 6.3 acres.

## 1. APPLICATION SUMMARY (cont'd)

Hydrostatic test water is used to test the structural integrity of the storage tanks. The test water is from tanks which have been washed and cleaned in preparation for repair and then cleaned before testing. The permittee has indicated that hydrostatic testing of its largest tank would discharge approximately 7.4 million gallons.

Outfalls #001 or #002 are designated as Administrative Outfall #003 when hydrostatic test water is discharged. As of this permitting cycle, Administrative Outfall #003 is now identified as the only outfall for hydrostatic test water. The discharge locations are shown in **Attachment A** of this Fact Sheet.

Sanitary wastewater generated by employees is conveyed to the Town of Searsport's wastewater treatment facility which is also regulated by the Department via a separate MEPDES permit/WDL.

- c. Wastewater treatment: The majority of wastewater discharged through Outfall #001 and Outfall #002 is storm water that is collected in the diked areas around the various tanks. All storm water that accumulates in the diked areas is inspected by facility personnel for evidence of oil prior to being discharged from the dike. If personnel determine that the storm water is contaminated by petroleum, measures are taken to recover the oil prior to being discharged from the dike. The diked areas are either manually drained by gravity or pumped out and conveyed to an oil/water separator where it receives best practicable treatment prior to discharge. The drain valves are kept closed for safety and must be opened each time a diked area is drained. The oil/water separators are cleaned annually and any recovered oily waste is disposed offsite via a State of Maine licensed waste handler. The permittee has indicated in the application for permit renewal that the oil/water separators are rated for 1,019 gallons per minute. This permit does not require further treatment of the hydrostatic test water unless dechlorination is required to protect water quality.

All waste streams described in this section are discharged to Long Cove through an outfall pipe designated as. Outfall #003, which is an administrative outfall designation for hydrostatic test water discharges.

## 2. PERMIT SUMMARY

- a. Terms & conditions: This permitting action is carrying forward all of the terms and conditions of the April 9, 2010.
- b. History: The most current/relevant licensing/permitting actions include:

*April 11, 1979* - The EPA issued NPDES permit #ME0002461 for a five-year term.

## **2. PERMIT SUMMARY (cont'd)**

*March 3, 2000* – The Department issued WDL #W001373-5S-C-R renewal for a five-year term.

*March 9, 2005* – The Department issued WDL #W001373-5S-D-R/ MEPDES permit #ME0002461 renewal for a five-year term.

*April 9, 2010* – The Department issued WDL #W001373-5S-E-R/ MEPDES permit #ME0002461 renewal for a five-year term.

*September 3, 2014* – Irving Oil Terminals Inc. submitted a timely and complete application to renew the April 9, 2010, MEPDES permit/WDL.

*April 7, 2015* – The Department issued WDL #W001373-5S-F-R/ MEPDES permit #ME0002461 renewal for a five-year term.

## **3. CONDITIONS OF PERMITS**

*Conditions of licenses*, 38 M.R.S. § 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., § 420 and 06-096 CMR 530 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 February 16, 2020), 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**

*Classifications of estuarine and marine waters*, 38 M.R.S. §469 (C)(1) classifies Long Cove at the point of discharge as a Class SC waterway. 38 M.R.S.A §465 (B)(3) describes the classification standards for Class SC as waters that must be suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation and navigation and as habitat for fish and other estuarine and marine life. Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

## 5. RECEIVING WATER CONDITIONS

*The State of Maine 2016 Integrated Water Quality Monitoring and Assessment Report*, published by the Department lists Long Cove as a portion of Waterbody #722-24/Department of Marine Resources Area #33 in a table entitled “*Category 4-A: Estuarine and Marine Waters with Impaired Use, TMDL Completed.*” Current sampling of the 4.36 square mile area, indicated the presence of elevated fecal levels. The Department completed the TMDL in 2009 and it was approved by USEPA on September 28, 2009.

The report also lists the tidewaters of Searsport as “Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants.” All estuarine and marine waters capable of supporting American lobster are listed in Category 5-D for shellfish consumption due to elevated levels of PCBs and other persistent, bioaccumulating substances in the area.

## 6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Discharges from activities associated with bulk petroleum stations and terminal operations must satisfy best conventional technology (BCT) and best available technology (BAT) requirements and must comply with more stringent water quality standards if BCT and BAT requirements are not adequate. This permitting action is carrying forward numeric effluent limitations and/or monitoring requirements for petroleum constituents from the previous permitting action to ensure the discharges do not contribute to violations of the State's water quality standards.

This permit authorizes the discharge of hydrostatic test water by applying numeric effluent limitations which are within applicable water quality standards. The effluent parameters are discussed in more detail below.

### a. Hydrostatic test waters – Outfall #003

1. Flow – This permitting action carries forward a previously established flow limitation of 7.35 MGD which was based on the largest tank volume on the site.
2. Total Suspended Solids – The March 2005 permit established a daily maximum limit of 50 mg/L based on a Department BPJ of limits that are achievable given the tanks that are hydrostatically tested have been washed and cleaned in preparation for repair and testing. The only discharge that occurred during the previous five-year period was in June 2014 with a TSS value of <2.5 mg/L.
3. Oil & Grease: The March 2005 permitting action established a daily maximum concentration limit of 15 mg/L that is a Department BPJ of limits that are achievable given the tanks that are hydrostatically tested have been washed and cleaned in preparation for repair and testing.

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

4. Total residual chlorine (TRC): The March 2005 permit established a daily maximum TRC limit of 0.013 mg/L. The limitation is water quality based limitation that is equivalent to the acute ambient water quality criteria (AWQC) for marine waters given the lack of dilution (1:1) associated with the discharge as the pipe is exposed at mean low tide. The only discharge that occurred during the previous five-year period was in June 2014 with a TRC value of <1.1 mg/L.

Should the permittee utilize non-chlorinated water for hydrostatic testing purposes, TRC monitoring is not required when discharging.

## **7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY**

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

## **8. PUBLIC COMMENTS**

Public notice of this application was made in the *Bangor Daily News* on September 18, 2019. 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 must 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**

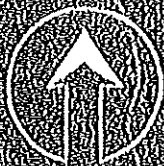
Additional information concerning this permitting action may be obtained from and written comments should be sent to:

Rodney Robert  
Division of Water Quality Management  
Bureau of Water Quality  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 email: [rodney.robert@maine.gov](mailto:rodney.robert@maine.gov) Tel: (207) 446-1875

## **10. RESPONSE TO COMMENTS**

During the formal thirty-day Proposed Draft period, through the issuance of this permit, the Department solicited comments from interested parties regarding the proposed discharge from Irving Oil Terminals Inc. in Searsport, Maine. The Department did not receive comments from the permittee, state, federal, or other interested parties that resulted in any substantive changes to the permit. Therefore, the Department has not prepared a Response to Comments.

# ATTACHMENT A



# IRVING OIL Searsport, Maine

