



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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

YORK WATER DISTRICT	)	MAINE POLLUTANT DISCHARGE
YORK, YORK COUNTY, MAINE	)	ELIMINATION SYSTEM PERMIT
ALGAECIDE DISCHARGE	)	AND
ME0002721	)	WASTE DISCHARGE LICENSE
W009119-5U-B-R	)	<b>RENEWAL</b>
<b>APPROVAL</b>		

In compliance with the provisions of *Pollution Control* 38 M.R.S. §§ 411-424-B, *Water Classification Program*, 38 M.R.S. §§ 464-470 and the *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, and applicable regulations, the Department of Environmental Protection (Department) has considered the application of the YORK WATER DISTRICT (YWD/permittee), with its supportive data, agency review comments, and other related material on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

On July 19, 2019 the permittee applied to the Department for the renewal of ME0002721 / WDL W009119-5U-A-N, a permit for the discharge of an algaecide (a pesticide by definition) to control the growth of algae in Chase's Pond located in York, Maine. Chase's Pond is a public drinking water supply for the customers within the boundaries of the YWD and the YWD extracts and treats water from the lake and supplies it to its customers for consumption via a network of piping infrastructure. Chase's Pond experiences episodic algal blooms that result in finished water being strongly objectionable with the taste being described as robustly metallic.

**PERMIT SUMMARY**

This permitting action carries forward all the terms and conditions of the previous permit.

## CONCLUSIONS

Based on the findings in the attached Fact Sheet, dated December 16, 2019, and subject to the terms and conditions of this permit, 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. § 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) 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. § 414-A(1)(D).

**ACTION**

Based on the findings and conclusions as stated above, the Department APPROVES the application of the YORK WATER DISTRICT to discharge an algaecide to Chase's Pond to control algal growth, SUBJECT TO THE ATTACHED CONDITIONS, including:

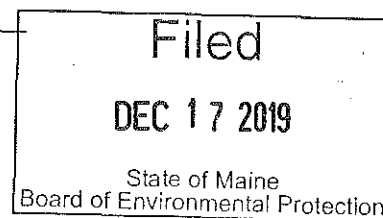
1. Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits," revised July 1, 2002, copy attached.
2. The attached Special Conditions, including effluent limitations and monitoring requirements.
3. This permit and the authorization to discharge become effective upon the date of signature below and expire at midnight five (5) years from the effective 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. § 10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (June 9, 2018)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 16 DAY OF December 2019.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: [Signature]  
For Gerald D. Reid, Commissioner



Date filed with Board of Environmental Protection \_\_\_\_\_

This Order prepared by Rod Robert, BUREAU OF WATER QUALITY

## **SPECIAL CONDITIONS**

### **A. NARRATIVE EFFLUENT LIMITATIONS**

1. The effluent must not contain a visible oil sheen, foam, or floating solids which would impair the usages 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 non-target aquatic life; or which would impair the usages designated for the classification of the receiving water.
3. The discharge must not impart color, taste, turbidity, toxicity, radioactivity or other properties which cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class.
4. Notwithstanding specific conditions of this permit, the discharge 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.

### **B. AUTHORIZED DISCHARGES**

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge License (WDL)/Maine Pollutant Discharge Elimination System (MEPDES) permit, accepted for processing on July 19, 2019; and 2) the terms and conditions of this permit. Discharges of waste water to a surface waterbody from any other point source are not authorized under this permit, and must be reported in accordance with Standard Condition D(1(f)) *Twenty-Four Hour Reporting* of this permit.

### **C. NOTIFICATION REQUIREMENTS**

**At least twenty-four (24) hours prior to the commencement of a discharge**, the permittee is required to notify the Department's compliance inspector to inform him/her of the discharge event(s). In accordance with Standard Condition D, the permittee must notify the Department of any substantial change (realized or anticipated) in the volume or character of pollutants being introduced into the receiving waters.

## **SPECIAL CONDITIONS**

### **D. OPERATORS RESPONSIBILITIES**

- 1. Operator** – For the purpose of this permit, means any entity associated with the application of pesticides which results in a discharge to Chase's Pond that meets either of the following two criteria:
  - (a) Applicator** – For the purpose of this permit is defined as any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities); or
  - (b) Decision maker** – For the purpose of this permit is defined as any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.

Operators must comply with all applicable statutes, regulations and other requirements including, but not limited to requirements contained in the labeling of pesticide products approved under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) labeling. Although the FIFRA label and labeling requirements are not effluent limitations, it is illegal to use a registered pesticide inconsistent with its labeling. If Operators are found to have applied a pesticide in a manner inconsistent with any relevant water-quality related FIFRA labeling requirements, the Department will presume that the effluent limitation to minimize pesticides entering the waters of the State has been violated under the MEPDES permit. The U.S Environmental Protection Agency (EPA) considers many provisions of FIFRA labeling such as those relating to application sites, rates, frequency, and methods, as well as provisions concerning proper storage and disposal of pesticide wastes and containers to be requirements that are necessary to protect water quality.

#### **2. Applicator Responsibilities**

- a. To meet the effluent limitations of this permit, all Applicators must implement the following conditions to minimize the discharge of algaecides to Chase's Pond through the use of Pest Management Measures (PMMs). For the purposes of this permit, PMMs are defined as any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate algaecide discharges to Chase's Pond.
- b. Use only the amount of algaecide and frequency of algaecide application necessary to control the target pest (in this case algae), using equipment and application procedures appropriate for this task.
- c. Maintain application equipment in proper operating condition, including requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges.
- d. Assess weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable federal requirements.

## **SPECIAL CONDITIONS**

### **D. OPERATORS RESPONSIBILITIES (cont'd)**

#### **3. Decision Makers Responsibilities**

##### **a. General**

1. To meet the effluent limitations in this permit, all Decision-makers must minimize the discharge of algaecide to Chase's Pond from the application of algaecide through the use of PMMs.
2. To the extent the Decision-maker determines the amount of algaecide or frequency of the application, the Decision-maker must use only the amount of algaecide and frequency of algaecide application necessary to control the target pest.

##### **b. Identify the Problem**

1. Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. human health, fisheries, recreation);
2. Identify target pest(s);
3. Identify possible factors causing or contributing to the pest problem (e.g., nutrients);
4. Establish any pest and site-specific action threshold(s). Action threshold is defined as the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current and/or past environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions

**c. Pest Management Options.** Prior to the first algaecide application that will result in a discharge to Chase's Pond, the Decision Maker must select and implement efficient and effective means of PMMs that minimize discharges resulting from the application of algaecide to control algae. In developing the PMM for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

1. No action
2. Prevention
3. Mechanical or physical methods
4. Cultural methods
5. Biological control agents
6. Pesticides

## **SPECIAL CONDITIONS**

### **D. OPERATORS RESPONSIBILITIES (cont'd)**

**d. Algaecide Use.** If an algaecide is selected to manage the algae, the Decision-maker must:

1. Conduct surveillance in an area that is representative of the pest problem prior to each algaecide application to assess the pest management area and to determine when the action threshold(s) is met; and
2. Reduce the impact on the environment and non-target organisms by applying the algaecide only when the action threshold has been met and at a dosage rate that minimizes effects to non-target organisms while remaining effective for target species.

### **E. WATER QUALITY-BASED EFFLUENT LIMITATIONS**

All Operators must control discharges as necessary to meet applicable numeric and narrative state water quality standards for any discharges authorized under this permit, with compliance required upon beginning such discharge.

If at any time an Operator becomes aware (e.g., through self-monitoring or by notification from the state or third party), or the State determines that the Operator's discharge causes or contributes to an excursion of any applicable water quality standard, the Operator must take appropriate corrective action(s) up to and including the ceasing of the discharge, if necessary.

### **F. MONITORING**

- a. Visual Monitoring Requirements for Pesticide Applicators** - During any algaecide application with discharges authorized under this permit, all Applicators must, when considerations for safety and feasibility allow, visually assess the area to and around where algaecides were applied for possible and observable adverse incidents (defined in Special Condition G(4)(b) of this permit) caused by application of algaecide, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.
- b. Visual Monitoring Requirements for all Operators** - During any Operator post-application surveillance of any algaecide application with discharges authorized under this permit, all Operators must visually assess the area to and around where algaecides were applied for possible and observable adverse incidents caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

See Special Condition H, *Recordkeeping And Reporting*, §a(10) of this permit for recordkeeping requirements.

## **SPECIAL CONDITIONS**

### **G. PESTICIDE DISCHARGE MANAGEMENT PLAN (PDMP)**

The YWD has submitted a Pesticide Discharge Management Plan (PDMP) as an exhibit in the application that was accepted for processing by the Department on August 19, 2014. The PDMP has been reviewed by the Maine Department of Environmental Protection, the Maine Department of Agriculture, Conservation and Forestry's Board of Pesticide Control, Maine Inland Fisheries and Wildlife and the Department of Health and Human Services. The plan has been deemed acceptable by all four entities.

The PDMP does not contain effluent limitations; the effluent limitations are specified in Special Conditions D and E of this permit. The PDMP documents how Decision-makers will implement the effluent limitations in Special Conditions D and E of this permit, including the evaluation and selection of PMMs to meet those effluent limitations in order to minimize discharges. In the PDMP, Decision-makers may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If Decision-makers rely upon other documents to comply with the effluent limitations in this permit, such as a pre-existing pest management plan, the Decision-maker must attach to the PDMP a copy of any portions of any documents that are used to document the implementation of the effluent limitations.

- a. Contents of the Pesticide Discharge Management Plan.** The PDMP must include the following elements:
- 1. Pesticide Discharge Management Team** - Decision-makers must identify all the persons (by name and contact information) that compose the team as well as each person's individual responsibilities, including:
    - a. Person(s) responsible for managing pests in relation to the pest management area.
    - b. Person(s) responsible for developing and revising the PDMP; and
    - c. Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements;



## **SPECIAL CONDITIONS**

### **G. PESTICIDE DISCHARGE MANAGEMENT PLAN (cont'd)**

2. **Problem Identification** - Decision-makers must document the following:
  - a. **Pest problem description.** Document a description of the pest problem at the pest management area, including identification of the target pest(s), source(s) of the pest problem, and source of data used to identify the problem.
  - b. **Action Threshold(s).** Describe the action threshold(s) for the pest management area, including data used in developing the action threshold(s) and method(s) to determine when the action threshold(s) has been met.
  - c. **General location map.** In the plan, include a general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) that identifies the geographic boundaries of the area to which the plan applies and location of Chase's Pond and;
  - d. **Water quality standards.** Document any water(s) identified as impaired by a substance which either is an active ingredient or a degradate of such an active ingredient.
3. **Pest Management Options Evaluation** - Decision-makers must document the evaluation of the pest management options, including combination of the pest management options, to control the target pest(s). Pest management options include the following: No action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, Decision-makers must consider the impact to water quality, impact to non-target organisms, feasibility, cost effectiveness, and any relevant previous PMMs.
4. **Response Procedures**
  - a. **Spill Response Procedures** - At a minimum, Decision-makers must have
    1. Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to waters of the State. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.
    2. Procedures for notification of appropriate facility personnel, emergency response agencies,

## **SPECIAL CONDITIONS**

### **G. PESTICIDE DISCHARGE MANAGEMENT PLAN (cont'd)**

- b. **Adverse Incident Response Procedures** – For the purposes of this permit means an unusual or unexpected incident that an Operator has observed upon inspection or of which the Operator otherwise become aware, in which:

- (1) There is evidence that a person or non-target organism has likely been exposed to a algaecide residue, and
- (2) The person or non-target organism suffered a toxic or adverse effect.

The phrase toxic or adverse effects includes effects that occur within waters of the State on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the algaecide product label or otherwise not expected to be present) as a result of exposure to a algaecide residue, and may include:

- Distressed or dead juvenile and small fishes
- Washed up or floating fish
- Fish swimming abnormally or erratically
- Fish lying lethargically at water surface or in mustow water
- Fish that are listless or nonresponsive to disturbance
- Stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants
- Other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.)

The phrase, toxic or adverse effects, also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to waters of the State that are temporally and spatially related to exposure to a algaecide residue (e.g., vomiting, lethargy). At a minimum, Decision-makers must have:

1. Procedures for responding to any adverse incident resulting from algaecide applications;
2. Procedures for notification of the adverse incident, both internal to the Decision-maker's agency/organization and external. Contact information for state/federal permitting agency, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

## **SPECIAL CONDITIONS**

### **G PESTICIDE DISCHARGE MANAGEMENT PLAN (cont'd)**

5. **Signature Requirements-** Decision-makers must sign, date and certify the PDMP in accordance with Standard Conditions entitled, *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*," revised July 1, 2002,
- b. **Pesticide Discharge Management Plan Availability.** Decision-makers must retain a copy of the current PDMP, along with all supporting maps and documents, at the address provided in the application for this permit. The PDMP and all supporting documents must be readily available, upon request, and copies of any of these documents provided, upon request, to the State, federal, or local agencies governing discharges or pesticide applications within their respective jurisdictions.

### **H. RECORDKEEPING AND REPORTING**

#### **a. Decision makers**

1. Copy of the application submitted to the Department and any correspondence exchanged between the Decision-maker or Applicator and the Department specific to coverage under this permit;
2. Information on each treatment area to which algaecides are discharged, including a description of treatment area, including location and size of treatment area and identification of any waters of the State, either by name or by location, to which algaecide(s) are discharged;
3. Target pest(s) and explanation of need for pest control;
4. Description of pest management measure(s) implemented prior to the first algaecide application;
5. Company name and contact information for the pesticide applicator and documentation of equipment calibration;
6. Name of each algaecide product used including the U.S. Environmental Protection Agency (EPA) and State of Maine Department of Agriculture, Conservation and Forestry's Board of Pesticide Control's registration number;
7. Quantity of each algaecide product applied to each treatment area;
8. Algaecide application start date;
9. Algaecide application end date; and

## SPECIAL CONDITIONS

### H. RECORDKEEPING AND REPORTING (cont'd)

10. Whether or not visual monitoring and or ambient water quality monitoring was conducted during algacide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of algacides.

Should the Department require the permittee to conduct ambient water quality sampling to determine compliance with the terms and conditions of this permit, the 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 Human Services. Samples that are sent to a publicly owned treatment works licensed pursuant to *Waste discharge licenses*, 38 M.R.S. § 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 must 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. The Department's RL for total copper is 3 ug/L. If a non-detect analytical test result is below the respective RL, the concentration result must 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.

**Within 90 days following the discharge of the pesticide(s)**, the Decision maker must submit a report to the Department with documentation addressing items H(a)2-H(a)10 of this permit including a summary of any analytical test results associated with ambient water quality monitoring. The report must be submitted to the Department's compliance inspector at the following address:

Department of Environmental Protection  
Southern Maine Regional Office  
Bureau of Water Quality  
Division of Water Quality Management  
312 Canco Road  
Portland, Maine 04103

## **SPECIAL CONDITIONS**

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

In accordance with 38 M.R.S. § 414-A(5) and upon evaluation of the tests results or monitoring requirements specified in Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at 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.

### **J. 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  
AND  
MAINE WASTE DISCHARGE LICENSE**

**FACT SHEET**

Date: **December 16, 2019**

PERMIT NUMBER: **ME0002721**

LICENSE NUMBER: **W009119-5U-B-R**

NAME AND ADDRESS OF APPLICANT:

**YORK WATER DISTRICT  
86 Woodbridge Road, P.O. Box 447  
York, ME. 03909**

COUNTY: **York County**

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

**Chase's Pond  
York, Maine**

RECEIVING WATER(S)/CLASSIFICATION: **Chase's Pond/Class GPA**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER:

**Mr. Donald D. Neumann Jr., P.E.  
Superintendent  
York Water District  
Tel: 207-363-2265  
e-mail: [dneumann@yorkwaterdistrict.org](mailto:dneumann@yorkwaterdistrict.org)**

**1. APPLICATION SUMMARY**

- a. Application: - On July 19, 2019 the permittee submitted an application to the Department for the renewal of ME0002721 / WDL W009119-5U-A-N, a permit for the discharge of an algacide (a pesticide by definition) to control the growth of algae in Chase's Pond located in York, Maine. Chase's Pond is a public drinking water supply for the customers within the boundaries of the YWD and the YWD extracts and treats water from the lake and supplies it to its customers for consumption via a network of piping infrastructure. Chase's Pond has been experiencing episodic algal blooms that results in finished water being strongly objectionable with the taste being described as robustly metallic.

## 1. APPLICATION SUMMARY (cont'd)

The YWD is seeking renewed authorization to apply copper sulfate in a 15-acre area of Chase's Pond near the dam and the intake structure for the YWD. If warranted, the YWD is also seeking renewed authorization to treat the entire 171 acres of the pond. See **Attachment A** of this Fact Sheet for a map of the treatment area. In February 2010 and again in August 2011, Chase's Pond experienced algal blooms resulting in objectionable taste issues for its customers. The YWD's direct filtration treatment facility is not designed to treat for taste reduction as needed contact time is the limiting factor. The cost of an alternate treatment plant (complete conventional treatment) to address the taste issues during algal blooms is estimated to cost in excess of \$20,000,000.

The algae of concern is primarily flagellated golden algae *Uroglena americana* that breaks up easily, releasing taste and odor compounds not removed by filtration. To date, the *Uroglena americana* in Chase's Pond is not a health concern as it is not a toxin producer. Other problematic golden algae of concern, but in more moderate numbers, include *Uroglenopsis*, *Synura*, *dinobryon* and *Mallomonas*. Golden algae has been most abundant in Chase's Pond since calendar years 2010. The YWD and their consultant are concerned that as Chase Pond ages, blooms will become more frequent and with the continued water quality degradation, there may also be the possibility of increased health risks associated with increased disinfection byproducts and the potential of not being able to meet future maximum system demands.

The YWD uses a two tiered approach to treatment of the pond. Primary treatment consists of installation of an engineered circulation system (oxygenation and mixing) to the 15-acre area near the intake. The air to water circulation system rests six to eight inches off the pond floor where the presence of iron and phosphorus from low oxygen conditions and associated bacteria are thought to promote and provide refuge for the golden algae during times of limited food. The circulation system releases a column of bubbles allowing an exchange of gases and oxygen which inhibits nutrients and metals releases from the bottom sediments and aids in the degradation of organic compounds present, and over time, reduces the bottom organic layer in the bottom of the pond.

Until the circulation system becomes operational and fully effective, the YWD is seeking authorization to treat no more than a large enough area necessary to interrupt a bloom cycle. The hope is that with installation and optimization of the pond circulation/oxygenation system that use of copper sulfate will not be needed, however, the Water District will carry this permit due to the unpredictable nature of the algae present. Control of the algae can be achieved at very low levels of copper at which risk to animal and aquatic life is minimal and the risk to YWD customers is negligible. The need for the copper sulfate application will be determined through microscopic examination of pond samples when compared to the application threshold action level specified in the approved PDMP. For non-winter application, the permittee proposes to dissolve copper sulfate crystals in pond water in a mix tank on board an application vessel. In winter conditions when ice is present in the pond, the application will be conducted via pumping through holes in the ice but when the circulation/oxygenation system has been installed, sub-surface drip line application lines attached to the circulation/oxygenation system lines near the bottom of the pond will be used with mixing from the circulation/oxygenation system. The in-pond target concentration in the treatment area(s) is

## 1. APPLICATION SUMMARY (cont'd)

between 0.02 mg/L and 0.07 mg/L with a maximum of 0.1 mg/L. An application resulting in an in-pond concentration of up to 0.10 mg/L would potentially provide water with no appreciable *Uroglena* for approximately 50 days. Repeated treatment would be necessary if there was regrowth or more rapid movement of *Uroglena* into the target area from other parts of the waterbody. Water quality monitoring for dissolved oxygen, pH, and copper as well as visual monitoring will be conducted at first daily then periodically after each treatment at the intervals specified in the PDMP to determine when the pond has returned to pre-treatment conditions.

The Department has received a letter of support for the treatment of Chase's Pond from Maine's DHHS, Division of Environmental Health provided: 1) the copper sulfate used in the application must be certified to meet NSF/ANSI Standard 60, 2) the chemical application must be less than 0.1 ppm as copper, 3) the intake must be inactive during application and, 4) intake water must be monitored for copper levels before and after application. Consultants for the YWD have made a best professional judgment that an application dosing of 0.05 mg/L is more likely but the final dosing will depend on real time lab assays and actual algal assemblage.

The Department has also received a letter from Maine's Department of Inland Fisheries and Wildlife (DIFW) stating that if administered as proposed in the permittee's Pesticide Discharge Management Plan (PDMP), the interim strategy to address water quality concerns via the one time use of copper sulfate is not anticipated to have long term impacts on Chase's Pond's fishery resources.

## 2. 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, be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S. § 420 and *Surface Waters Toxics Control Program*, 06-096 CMR 530 (effective March 21, 2012), 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 July 29, 2012), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

## 3. RECEIVING WATER STANDARDS

*Standards for Classification of Fresh Surface Waters* 38 M.R.S., §465-1(A) classifies Chase's Pond as a Class GPA waterbody and describes the standards for classification of Class GPA waterbodies as follows; Class GPA must be the sole classification of great ponds and natural ponds and lakes less than 10 acres in size.



### 3. RECEIVING WATER STANDARDS (cont'd)

- A. Class GPA waters must be of such quality that they are suitable for the designated uses of drinking water after disinfection, recreation in and on the water, fishing, agriculture, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other aquatic life. The habitat must be characterized as natural.
- B. Class GPA waters must be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters must have a stable or decreasing trophic state, subject only to natural fluctuations and must be free of culturally induced algal blooms that impair their use and enjoyment. The number of *Escherichia coli* bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 29 per 100 milliliters or an instantaneous level of 194 per 100 milliliters.
- C. There may be no new direct discharge of pollutants into Class GPA waters. The following are exempt from this provision:
  - (1) Chemical discharges for the purpose of restoring water quality approved by the department;
  - (2) Aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species;
  - (3) Storm water discharges that are in compliance with state and local requirements and
  - (4) Discharges of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that provide for protection of non-target species. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department must notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.

Discharges into these waters licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist. Materials may not be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage may flow or leach into those waters, except as permitted pursuant to section 480-C. A change of land use in the watershed of a Class GPA water body may not, by itself or in combination with other activities, cause water quality degradation that impairs the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters.

#### 4. TERMS AND CONDITIONS

*Applications for Licenses*, 38 M.R.S., §414-A(1-A) states as follows;

- 1-A. *License for copper sulfate applications in public water supplies.* The commissioner may issue licenses to treat public water supplies with copper sulfate or related compounds. The commissioner may not issue more than 2 consecutive licenses for the same body of water.
  - A. A license may only be issued if the Department of Human Services, Division of Health Engineering has determined that:
    - (1) An abundant growth of algae producing taste or odor exists to such a degree that the water supply is in danger of becoming unhealthful or unpalatable.
    - (2) The abundance of algae is a sporadic event. For purposes of this section, "sporadic" means occurring not more than 2 years in a row; and
    - (3) The algae cannot effectively be controlled by other methods.
  - B. Any license issued under this subsection is for one application or series of applications not to exceed 6 months, as provided in the terms of the license.
  - C. The commissioner must impose all conditions necessary to meet the requirements of this section and all other relevant provisions of law.

06-096 CMR, Chapter 514, *Regulations Concerning the Use of Aquatic Pesticides*, states as follows:

1. Definition. An aquatic pesticide is any substance (including biological agents) applied in, on or over the waters of the State or in such a way as to enter those waters for the purpose of inhibiting the growth or controlling the existence of any plant or animal in those waters.
2. Criteria for Approving a License to Use Aquatic Pesticides
  - A. Except as provided in 38 M.R.S. Section 362-A, no permit for aquatic pesticide use will be issued for a pesticide which is not registered for the intended use by the United States Environmental Protection Agency and the Maine Department of Agriculture.
  - B. No permit for aquatic pesticide use will be issued unless the applicant or agent for the applicant is certified and licensed in aquatic pest control by the Maine Board of Pesticides Control.
  - C. A permit for aquatic pesticide use will be issued only if the applicant provides adequate protection for non-target species.

#### 4. TERMS AND CONDITIONS (cont'd)

- D. A permit for aquatic pesticide use will be issued only if the applicant can demonstrate a significant need to control the target species and that pesticide control offers the only reasonable and effective means to achieve control of the target species. Demonstration of significant need may include, but not be limited to, health risk, economic hardship, or loss of use.
- E. In addition to paragraphs (A) through (D), any discharge of aquatic pesticides, alone or in combination with all other discharges, must meet all other applicable requirements of Maine's waste discharge laws including, but not limited to, the provisions of 38 M.R.S. Sections 464 and 465.

For the purposes of this permit, the term pesticide means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer, except that the term "pesticide" must not include any article that is a "new animal drug" within the meaning of section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321(x)) bearing or containing a new animal drug. The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). For purposes of the preceding sentence, the term "critical device" includes any device that introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term "semi-critical device" includes any device that contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body [FIFRA Section 2(u)].

The term "pesticide" applies to algacides, insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA).

- A. **Applicators & Decision Makers** - In this permit, all Operators are classified as either "Applicators" or "Decision-makers" or both. An Applicator is an entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to waters of the State. A Decision-maker is an entity with control over the decision to perform pesticide applications, including the ability to modify those decisions that result in discharges to water of the State. As such, more than one Operator may be responsible for compliance with this permit for any single discharge from the application of pesticides.

#### 4. TERMS AND CONDITIONS (cont'd)

This permit delineates the non-numeric effluent limitations into tasks that Department expects the Applicator to perform and tasks the Decision-maker to perform. In doing so, the permit assigns the Applicator and the Decision-maker different responsibilities.

1. **Applicators' Responsibilities** - Special Condition D(2) of this permit contains the general technology-based effluent limitations that *all* Applicators must perform. These effluent limitations are generally preventative in nature, and are designed to minimize pesticide discharges into waters of the State. All Applicators are required to minimize the discharge of pesticides to waters of the State by doing the following:

- a. **To the extent not determined by the Decision-maker, use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for this task.**

It is illegal to use a pesticide in any way prohibited by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) labeling. Also, use of pesticides must be consistent with any other applicable state or federal laws. To minimize the total amount of pesticide discharged, Operators must use only the amount of pesticide and frequency of pesticide application necessary to control the target pest. Using only the amount of pesticide and frequency of pesticide application needed ensures maximum efficiency in pest control with the minimum quantity of pesticide. Using only the amount and frequency of applications necessary can result in cost and time savings to the user. To minimize discharges of pesticide, Operators should base the rate and frequency of application on what is known to be effective against the target pest.

- b. **Maintain pesticide application equipment in proper operating condition, including requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges.**

Common-sense and good housekeeping practices enable pesticide users to save time and money and reduce the potential for unintended discharge of pesticides to waters of the State. Regular maintenance activities should be practiced and improper pesticide mixing and equipment loading should be avoided. When preparing the pesticides for application be certain that they are mixed correctly and prepare only the amount of material that is needed. Carefully choose the pesticide mixing and loading area and avoid places where a spill will discharge into Waters of the State. Some basic practices Operators should consider are:

- Inspect pesticide containers at purchase to ensure proper containment;
- Maintain clean storage facilities for pesticides;
- Regularly monitor containers for leaks;
- Rotate pesticide supplies to prevent leaks that may result from long term storage; and
- Promptly deal with spills following manufacturer recommendations.

#### 4. TERMS AND CONDITIONS (cont'd)

To minimize discharges of pesticides, Applicators must ensure that the rate of application is calibrated (i.e. nozzle choice, droplet size, etc.) to deliver the appropriate quantity of pesticide needed to achieve greatest efficacy against the target pest. Improperly calibrated pesticide equipment may cause either too little or too much pesticide to be applied. This lack of precision can result in excess pesticide being available or result in ineffective pest control. When done properly, equipment calibration can assure uniform application to the desired target and result in higher efficiency in terms of pest control and cost. It is important for Applicators to know that pesticide application efficiency and precision can be adversely affected by a variety of mechanical problems that can be addressed through regular calibration. Sound maintenance practices to consider are:

- Choosing the right spray equipment for the application.
- Ensuring proper regulation of pressure and choice of nozzle to ensure desired application rate.
- Calibrating spray equipment prior to use to ensure the rate applied is that required for effective control of the target pest.
- Cleaning all equipment after each use and/or prior to using another pesticide unless a tank mix is the desired objective and cross contamination is not an issue.
- Checking all equipment regularly (e.g., sprayers, hoses, nozzles, etc.) for signs of uneven wear (e.g., metal fatigue/shavings, cracked hoses, etc.) to prevent equipment failure that may result in inadvertent discharge into the environment.
- Replacing all worn components of pesticide application equipment prior to application.

**c. Assess weather conditions (e.g. temperature, precipitation, and wind speed) in the treatment area to ensure application is consistent with all applicable federal requirements.**

Weather conditions may affect the results of pesticide application. Applicators must assess the treatment area to determine whether weather conditions are suitable for pesticide application.

- 2. Decision-makers' Responsibilities** Special Condition D(3) of this permit contains the effluent limitations that Decision-makers must perform. The permit requires the Decision-makers, to the extent Decision-makers determine the amount of pesticide or frequency of pesticide application, to minimize the discharge of pesticides to waters of the State from the application of pesticides, through the use of Pest Management Measure (PMMs), by using only the amount of pesticide and frequency of pesticide application necessary to control the target pest. For the purposes of this permit PMMs are defined as any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to waters of the State.

#### 4. TERMS AND CONDITIONS (cont'd)

Decision-makers are required to meet technology-based effluent limitations that are based on integrated pest management principles. The permit is requiring certain Decision-makers to also comply with different technology-based effluent limitation than Applicators because they are considered the Best Available Technology Economically Achievable for these Operators. These requirements are aimed at reducing discharge of pesticides to waters of the State and lessening the adverse effects of pesticides that are applied. These requirements are divided into three different sections:

- Identify the problem,
- Pest management options
- Pesticide use.

Prior to each application or series of applications, Decision-makers must identify the problem prior to pesticide application, consider using a combination of chemicals and non-chemical Pest Management Measures, and perform surveillance before pesticide application to reduce environmental impacts. This permit is requiring these additional technology-based effluent limitation requirements from Decision-makers and not the Applicators because the measures necessary to meet these requirements are within the control of the Decision-makers, not the Applicators.

Integrated pest management, as defined in FIFRA, is a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks. Integrated pest management is not a single pest control method but, rather, a series of pest management evaluations, decisions and controls. A more detailed description of each specific requirement is as follows;

- a. **Identify the Problem** - Decision-makers are required to identify the pest problem, identify the target pest, and establish an action threshold. Understanding the pest biology and ecology will provide insight into selecting the most effective and efficient Pest Management Measures (pesticidal or non-pesticidal methods), and in developing an action threshold. For the purposes of this permit, action threshold is defined as the point at which pest populations or environmental conditions cannot be tolerated necessitating that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold helps determine both the need for control actions and the proper timing of such actions. It is a predetermined pest level that is deemed to be unacceptable. Action thresholds, often expressed as number of pests per unit area, can vary by pest, by site, and by season. As Operators gain insight and experience into specific pest management settings, the action levels can be revised up or down. To identify the problem at a treatment area, Decision-makers may use existing data to meet the conditions of this permit or use relevant historical site data.

#### 4. TERMS AND CONDITIONS (cont'd)

- b. Pest Management Options** - Decision-makers are required to implement efficient and effective means of PMMs that most successfully minimize discharges to waters of the State resulting from the application of pesticides. Decision-makers must evaluate both pesticide and non-pesticide methods. Decision-makers must consider and evaluate the following options: no action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides. In the evaluation of these options, Decision-makers must consider impacts to water quality, impacts to non-target organisms, feasibility, and cost effectiveness. Combinations of various management options are frequently the most effective PMM.
- c. Pesticide Use** - Decision-makers are required to conduct pest surveillance in an area that is representative of the pest problem and reduce the impact on the environment. Pest surveillance is important to properly time the need for pest control. To reduce the impact on the environment and non-target organisms, Operators are required to only apply pesticide when the action threshold has been met. As noted earlier, action thresholds help determine both the need for control actions and the proper timing of such actions.

#### B. Pesticide Discharge Management Plan (PDMP)

Distinct from the technology-based or water quality-based effluent limitation provisions in the permit, Special Condition G of this permit requires Decision-makers to maintain a PDMP to document the implementation of Pest Management Measures being used to comply with the effluent limitations set forth in this permit. In general, Special Condition G requires that the following be documented in the PDMP:

- Pesticide discharge management team information;
- Problem identification;
- Pest management options evaluation;
- Response procedures pertaining to spills and adverse incidents;
- Documentation to support eligibility considerations under other federal laws, and

The PDMP must be kept up-to-date and modified whenever necessary to document any corrective actions as necessary to meet the effluent limitations in this permit.

The requirement to prepare a PDMP is not an effluent limitation because it does not restrict quantities, rates, and concentrations of constituents that are discharged. Instead, the requirement to develop a PDMP is a permit "term or condition" authorized under Sections 402(a)(2) and 308 of the Clean Water Act. The PDMP requirements set forth in the permit are terms or conditions because the Operator is documenting information on how it is complying with the effluent limitations (and inspection and evaluation requirements) contained elsewhere in the permit. Thus, the requirement to develop a PDMP and keep it updated is no different than other information collection conditions, as authorized by section 402(a)(2), in other permits. Failure to have a PDMP is a violation of the permit.

#### 4. TERMS AND CONDITIONS (cont'd)

While Special Condition D of the permit requires the Operator to select PMMs to meet the effluent limitations in this permit, the PMMs themselves described in the PDMP are not effluent limitations because the permit does not impose on the Operator the obligation to comply with the PDMP; rather, the permit imposes on the Operator the obligation to meet the effluent limitations prescribed in Special Conditions D, E, and F. Therefore, the Operator is free to change as appropriate the PMMs used to meet the effluent limitations contained in the permit. This flexibility helps ensure that the Operator is able to adjust its practices as necessary to ensure continued compliance with the permit's effluent limitations. However, the permit also contains a recordkeeping condition that requires that the PDMP be updated with any such changes in the Operator's practices. See Special Condition H. Thus, if an Operator's on-the-ground practices differ from what is in the PDMP, this would constitute a violation of the permit's recordkeeping requirement to keep the PDMP up-to-date, and not per se a violation of the permit's effluent limitations, which are distinct from the PDMP. The Department recognizes, however, that because the PDMP documents how the Operator is meeting the effluent limitations contained in the permit, not following through with actions identified by the Operator in the PDMP as the method of complying with the effluent limitations in the permit is relevant to evaluating whether the Operator is complying with the permit's effluent limitations.

Operators must comply with all applicable statutes, regulations and other requirements including, but not limited to requirements contained in the labeling of pesticide products approved under Federal Insecticide, Fungicide, and Rodenticide Act labeling ("FIFRA labeling"). Although the FIFRA label and labeling requirements are not effluent limitations, it is illegal to use a registered pesticide inconsistent with its labeling. If Operators are found to have applied a pesticide in a manner inconsistent with any relevant water-quality related FIFRA labeling requirements, the Department will presume that the effluent limitation to minimize pesticides entering the waters of the State has been violated under the permit. The Department considers many provisions of FIFRA labeling -- such as those relating to application sites, rates, frequency, and methods, as well as provisions concerning proper storage and disposal of pesticide wastes and containers -- to be requirements that affect water quality.

If an Applicator applies a pesticide at higher than the allowable rate, which results in excess product being discharged into waters of the State, the Department would find that this application was a misuse of the pesticide under the FIFRA label and because of the misuse; the Department might also determine that the effluent limitation that requires the Operator to minimize discharges of pesticide products to waters of the State was also violated, depending on the specific facts and circumstances. Therefore, pesticide use inconsistent with certain FIFRA labeling requirements could result in the Operator being held liable for permit or water quality violations as well as a FIFRA violation.



#### 4. TERMS AND CONDITIONS (cont'd)

1. **Contents of the PDMP** - The PDMP prepared under this permit must meet specific requirements in Special Condition G of the permit. Generally, Decision-makers must document the following:

- A pesticide discharge management team;
- A description of the pest management area and the pest problem;
- A description of pest management options evaluation;
- Response procedures for spill response and adverse incident response; and
- Any eligibility considerations under other federal laws.

- a. **Pesticide Discharge Management Team** - The permit requires that a qualified individual or team of individuals be identified to manage pesticide discharges covered under the permit. Identification of a pesticide discharge management team ensures that appropriate persons (or positions) are identified as necessary for developing and implementing the plan. Inclusion of the team in the plan provides notice to staff and management (i.e., those responsible for signing and certifying the plan) of the responsibilities of certain key staff for following through on compliance with the permit's conditions and limits.

The pesticide discharge management team is responsible for developing and revising the PDMP, implementing and maintaining the Pest Management Measures to meet effluent limitations, and taking corrective action where necessary. Team members should be chosen for their expertise in the relevant areas to ensure that all aspects of pest management are considered in developing the plan. The PDMP must clearly describe the responsibilities of each team member to ensure that each aspect of the PDMP is addressed. The Department expects most Decision-makers will have more than one individual on the team, except for those with relatively simple plans and/or staff limitations. The permit requires that team members have ready access to any applicable portions of the PDMP and the permit.

- b. **Problem Identification** - This section includes the pest problem description, action threshold(s), a general location map, and water quality standards.

1. **Pest Problem Description** - The permit requires that the PDMP include a description of the pest problem at the pest management area. A detailed pest management area description assists Decision-makers in subsequent efforts to identify and set priorities for the evaluation and selection of Pest Management Measures taken to meet effluent limitations set forth in Special Conditions D & E and in identifying necessary changes in pest management. The description must include identification of the target pest(s), source of the pest problem, and source of data used to identify the problem. The permit allows use of historical data or other available data (e.g., from another similar site) to identify the problem at the site. If other site data is used, the permittee must document in

#### 4. TERMS AND CONDITIONS (cont'd)

this section why data from the site is not available or not taken within the past year and explain why the data is relevant to the site. Additionally, the pest management area descriptions should include any sensitive resources in the area, such as unique habitat areas, rare or listed species, or other species of concern that may limit pest management options.

2. **Action Threshold(s)** - The permit requires that the PDMP include a description of the action threshold(s) established for the target pest, including a description of how they were determined and method(s) to determine when the action threshold(s) has been met. An action threshold is a level of pest prevalence (or other indicator) at which an Operator takes action to reduce the pest population.
  3. **General Location Map** - The PDMP must also contain a general location map of the site that identifies the geographic boundaries of the area to which the plan applies and location of Chase's Pond
- c. **Description of Pest Management Measures Options Evaluation** - The permit requires that the PDMP include a description of the Pest Management Measures implemented to meet the applicable technology-based or water quality-based effluent limitations. The description must include a brief explanation of the Pest Management Measures used at the site to reduce pesticide discharge, including evaluation and implementation of the six management options (no action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides). Decision-makers must consider impact to non-target organisms, impact to water quality, feasibility, and cost effectiveness when evaluating and selecting the most efficient and effective means of Pest Management Measures to minimize pesticide discharge to waters of the State.
1. **No Action** - No action is to be taken, although pest problem has been identified. This may be appropriate in cases where, for example, available pest management options may cause secondary or non-target impacts that are not justified, no available controls exist, or the pest population is stable at a level that does not impair water body uses.
  2. **Prevention** - Preventing introductions of possible pest is the most efficient way to reduce the threat of nuisance species. Identifying primary pathways of introduction and actions to cut off those pathways is essential to prevention. Through a better understanding of the transportation and introduction of pest, private entities and the public have the necessary knowledge to assist in local pest control by reducing conditions that encourage the spread of pest in their immediate surroundings. Increasing public awareness of algae, its impacts, and what individuals can do to prevent proliferation is critical for prevention.

#### 4. TERMS AND CONDITIONS (cont'd)

3. **Mechanical or Physical Methods** - Mechanical control techniques will vary depending on the pest. Mechanical and biological controls will be the appropriate method in some cases, or a part of a combination of methods. In some instances, the need for chemical pesticide use in and adjacent to the affected habitat can be reduced or virtually eliminated with proper execution of Pest Management Measures.
4. **Cultural Methods** - Cultural techniques include water-level drawdown.
5. **Biological Control Agents** - Biological control of algae may be achieved through the introduction of diseases, predators, or parasites. While biological controls generally have limited application for control of weeds and algae, the Operator should fully consider this option in evaluating pest management options.
6. **Pesticides** - Aquatic herbicides are chemicals specifically formulated for use in water to kill or control aquatic plants. Aquatic herbicides are sprayed directly onto floating or emergent aquatic plants as well as plants at or near the water's edge or are applied to the water in either a liquid or pellet form. Systemic herbicides are capable of killing the entire plant. Contact herbicides cause the parts of the plant in contact with the herbicide to die back, leaving the roots alive and able to regrow. Non-selective, broad spectrum herbicides will generally affect all plants that they come in contact with. Selective herbicides will affect only some plants.

All six management options may not be available for the treatment area. However, the PDMP must include documentation of how the six management options, including combination of these options, were evaluated prior to selecting a site-specific Pest Management Measures.

#### 5. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has made a determination based on a best professional judgment that 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 GPA classification.

#### 6. PUBLIC COMMENTS

Public notice of this application was made in the *York Weekly* on or about July 24, 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).

## **7. DEPARTMENT CONTACTS**

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

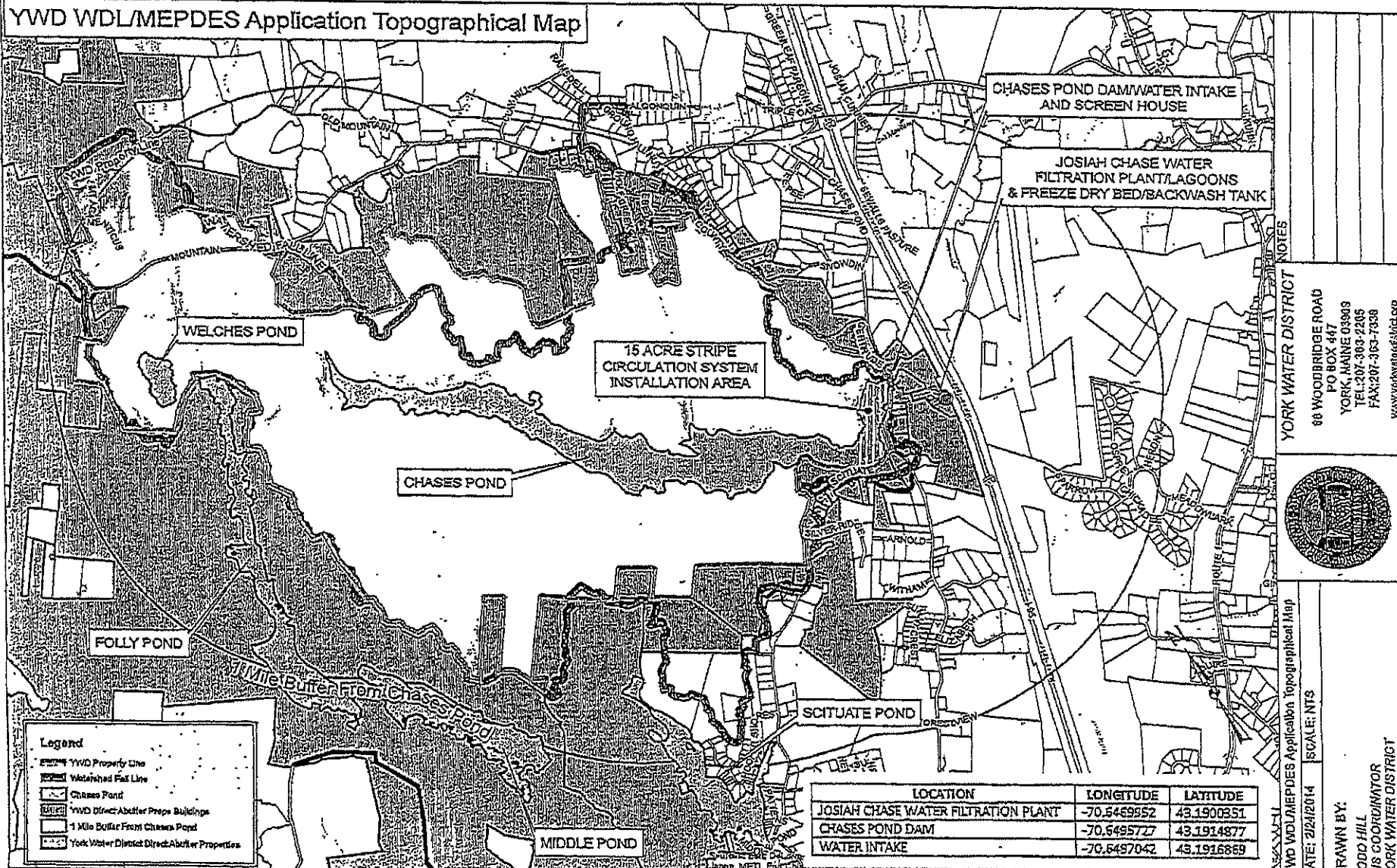
Rod Robert  
Division of Water Quality Management  
Bureau of Water Quality  
Department of Environmental Protection  
7 State House Station  
Augusta, Maine 04333-0017  
e-mail: [rodney.robert@maine.gov](mailto:rodney.robert@maine.gov)  
Telephone (207) 446-1875

## **8. RESPONSE TO COMMENTS**

During the period of November 14, 2019 through the issuance date of the permit/license, the Department solicited comments on the proposed draft permit/license to be issued for the discharge from The York Water District. 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

# YWD WDL/MEPDES Application Topographical Map



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

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MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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

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**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.

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

**6. Upsets.**

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

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**C. MONITORING AND RECORDS**

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

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

**3. Monitoring and records.**

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

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**D. REPORTING REQUIREMENTS**

**1. Reporting requirements.**

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

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

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

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

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

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

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

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

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

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

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

#### 5. Publicly owned treatment works.

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

#### E. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



# DEP INFORMATION SHEET

## Appealing a 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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