



STATE OF MAINE
Department of Environmental Protection

JOHN ELIAS BALDACCI
GOVERNOR

David P. Littell
COMMISSIONER

May 17, 2010

Mr. James Sullivan
Vice President of Operation
Webber Oil Company
700 Main Street
Bangor, ME. 04401

RE: Maine Waste Discharge License (WDL) Application W000767-5S-E-R
Maine Pollutant Discharge Elimination System (MEPDES) Permit ME0022225
Final Permit/License

Dear Mr. Sullivan:

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

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "G. Wood".

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

Enc.

cc: Tanya Hovell, DEP/EMRO
Sandy Mojica, USEPA



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

DEPARTMENT ORDER

IN THE MATTER OF

WEBBER OIL COMPANY)	MAINE POLLUTANT DISCHARGE
BANGOR, PENOBSCOT COUNTY, MAINE)	ELIMINATION SYSTEM PERMIT
BULK FUEL STORAGE FACILITY)	AND
W000767-5S-E-R)	WASTE DISCHARGE LICENSE
ME0022225)	RENEWAL
APPROVAL)	

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

APPLICATION SUMMARY

The permittee has submitted a timely and complete application to the Department for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0022225/Maine Waste Discharge License (WDL) #W000767-5S-D-R, (permit hereinafter) which was issued by the Department on April 25, 2005, and is due to expire on April 25, 2010. The permit authorized the permittee to discharge treated storm water runoff and hydrostatic test waters to the Penobscot River, Class B, in Bangor, Maine.

PERMIT SUMMARY

This permitting action is carrying forward all the terms and conditions of the 4/25/05 permit.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated April 8, 2010, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

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

ACTION

THEREFORE, the Department APPROVES the application of WEBBER OIL COMPANY to discharge treated storm water runoff and/or hydrostatic test waters from a bulk fuel storage and transfer facility to the Penobscot River, Class B, subject to the attached conditions and all applicable standards and regulations:

1. *“Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits,”* revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit expires five (5) years from the date of signature below.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application April 2, 2010.
Date of application acceptance April 2, 2010.

This Order prepared by GREGG WOOD, BUREAU OF LAND & WATER QUALITY
ME0022225 2010 5/14/10

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

The permittee is authorized to discharge treated storm water runoff and/or hydrostatic test waters to the Penobscot River. Such treated waste water discharges shall be limited and monitored by the permittee as specified below.

OUTFALL #001 - Storm water runoff and/or hydrostatic test waters.

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly <u>Average</u> as specified	Daily <u>Maximum</u> as specified	Monthly <u>Average</u> as specified	Daily <u>Maximum</u> as specified	Measurement <u>Frequency</u> as specified	Sample <u>Type</u> as specified
Flow [50050]	---	---	---	115 gpm ⁽¹⁾ [78]	---	---
Total Suspended Solids [00530]	---	---	50 mg/L ⁽²⁾ [19]	100 mg/L [19]	1/ Quarter [01/90]	Grab ⁽³⁾ [GR]
Oil & Grease [00552]	---	---	---	15 mg/L [19]	1/Quarter [01/90]	Grab ⁽³⁾ [GR]

SPECIAL CONDITIONS

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

OUTFALL #002 - Hydrostatic test waters.

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average as specified	Daily Maximum as specified	Monthly Average as specified	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Flow (Total Gallons) [82220]	---	---	---	2.6 million gallons [57]	1/Discharge [01/DD]	Measure [MS]
Total Suspended Solids [00530]	---	---	---	50 mg/L [19]	1/Discharge [01/DD]	Grab [GR]
Oil & Grease ⁽⁴⁾ [00552]	---	---	---	15 mg/L [19]	1/Discharge [01/DD]	Grab [GR]
Total Residual Chlorine [50060]	---	---	---	19 ug/L ⁽⁵⁾ [28]	1/Discharge [01/DD]	Grab [GR]

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Footnotes:

Sampling Locations: Samples for all parameters shall be collected after the oil/water separator (or other location(s) approved by the Department) during the first hour of discharge.

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 shall be analyzed by a laboratory certified by the State of Maine's Department of Human Services. Samples that are sent to another POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 or laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000).

All analytical test results shall be reported to the Department including results which are detected below the respective reporting limits (RL's) specified by the Department or as specified by other approved test methods. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the detection limit achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL is not acceptable and will be rejected by the Department. For mass, if the analytical result is reported as <Y or if a detectable result is less than a RL, report a <X lbs/day, where X is the parameter specific limitation established in the permit. See **Attachment A** of this permit for a list of the Department's RL's.

- (1) **Flow** - The flow through the oil/water separators shall consist of storm water runoff and/or hydrostatic test waters only. The direct or indirect discharge of liquids from petroleum product pipelines, transport tanks, vessels or storage tanks through the oil/water separator is not authorized by this permit. No chemical treatment such as dispersants, emulsifiers or surfactants may be added to the oil/water separator or any waste water discharge stream contributing flow to the separator.

At no time shall the flow through the oil/water separators exceed the design flow of the separator (115 gpm). Measurement of flow is being suspended in this permitting action as the permittee has installed a permanent constriction to prevent flows from exceeding the design capacity of the separator.

- (2) **Total Suspended Solids (TSS)** – The monthly average concentration limitation of

50 mg/L for TSS is based on an average over the previous twelve-month period. Months when there is no discharge are not to be included in the calculations.

SPECIAL CONDITIONS

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

- (3) Storm water runoff from one significant storm event per calendar quarter shall be sampled for TSS and oil & grease. Significant storm event is defined as any event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable storm event. Suitable size and type of samples shall be collected in accordance with 40 CFR Part 136. Grab samples will be collected within the first hour (first flush) after the diked area(s) drainage area and/or pumpout has started. Separate aliquot samples shall be taken for the analysis for each parameter.
- (4) **Oil and grease** - Monitoring is not required if the discharge of hydrostatic test water is from tanks and pipes that are gas-free as certified by a marine chemist. The test water is not required to be pretreated through the oil/water separator, provided the test water is municipal water or from some other source which does not contain oil and grease.
- (5) **Total residual chlorine (TRC)** - When using chlorinated hydrostatic test water, the total residual chlorine shall be measured and limited as specified in the effluent limitations for hydrostatic test water.

For the purposes of this permit, compliance with the daily maximum limitation in this permit will be based on EPA's current minimum level (ML) of detection of 50 ug/L (0.05 mg/L). The permittee shall utilize approved test methods that are capable of producing analytical results down to or below 50 ug/L. All analytical test results shall be reported to the Department including results which are detected below the ML. Results reported below the RL will be considered to be in compliance with the permit. The Discharge Monitoring Reports will be coded with the RL of 50 ug/L such that detectable results reported below 50 ug/L but greater than the daily maximum water quality based limit established in this permit will not be recorded as violations of the permit.

If the permittee or agent for the permittee utilizes a water supply that has not been disinfected with elemental chlorine or chlorine based compounds for hydrostatically testing tanks and or piping, sampling for TRC is not required. For the purposes of reporting on the DMR in this instance, enter "**NODI-9**", *Monitoring Is Conditional/ Not Required This Monitoring Period*.

SPECIAL CONDITIONS

B. NARRATIVE EFFLUENT LIMITATIONS

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

C. OIL/WATER SEPARATOR MAINTENANCE

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

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

D. HYDROSTATIC TEST WATER

Tanks and pipes being hydrostatically tested must be clean of product and all construction debris, including sandblasting grit, prior to testing and discharge. The discharge must be dechlorinated if test results indicate that discharged water will violate water quality standards. Hydrostatic test water from tanks and pipes that are gas-free as certified in writing by a marine chemist need not be discharged through the oil/water separator. The written certification shall be kept onsite and available for inspection by Department and U.S.

Environmental Protection agency (EPA) personnel upon request. The permittee shall notify the Department of an intended discharge of hydrostatic test water at least three days, excluding weekends, prior to the discharge.

SPECIAL CONDITIONS

E. UNAUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on April 2, 2010; 2) the terms and conditions of this permit; and 3) only from Outfall #001. It is noted Outfall #002 is an administrative outfall that provides the permittee with a mechanism for reporting test results for the discharge of hydrostatic test waters. Discharges of waste water from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5)(*Bypass*) of this permit.

F. NOTIFICATION REQUIREMENT

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

1. Any substantial change in the volume or character of pollutants being introduced into the waste water collection and treatment system by a source introducing pollutants into the system at the time of permit issuance. For the purposes of this section, notice regarding substantial change shall include information on:
 - (a) the quality and quantity of waste water introduced to the waste water collection and treatment system; and
 - (b) any anticipated impact caused by the change in the quantity or quality of the waste water to be discharged from the treatment system.

G. REOPENING OF PERMIT FOR MODIFICATIONS

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

SPECIAL CONDITIONS

H. MONITORING AND REPORTING

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

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

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

I. 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 shall remain in full force and effect, and shall be construed and enforced in all aspects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.

ATTACHMENT A

**Maine Department of Environmental Protection
WET and Chemical Specific Data Report Form**

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

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

Licensed Flow (MGD) Flow for Day (MGD) ⁽¹⁾ Flow Avg. for Month (MGD) ⁽²⁾
 Acute dilution factor Date Sample Collected Date Sample Analyzed
 Chronic dilution factor
 Human health dilution factor
 Criteria type: M(marine) or F(fresh)

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

FRESH WATER VERSION

Please see the footnotes on the last page.

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

Maine Department of Environmental Protection
 WET and Chemical Specific Data Report Form
 This form is for reporting laboratory data and facility information. Official compliance reviews will be done by DEP.

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

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

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

Notes:

- (1) Flow average for day pertains to WET/PP composite sample day.
- (2) Flow average for month is for month in which WET/PP sample was taken.
- (3) Analytical chemistry parameters must be done as part of the WET test chemistry.
- (4) Priority Pollutants should be reported in micrograms per liter (ug/L).
- (5) Mercury is often reported in nanograms per liter (ng/L) by the contract laboratory, so be sure to convert to micrograms per liter on this spreadsheet.
- (6) Effluent Limits are calculated based on dilution factor, background allocation (10%) and water quality reserves (15% - to allow for new or changed discharges or non-point sources).
- (7) Possible Exceedence determinations are done for a single sample only on a mass basis using the actual pounds discharged. This analysis does not consider watershed wide allocations for fresh water discharges.
- (8) These tests are optional for the receiving water. However, where possible samples of the receiving water should be preserved and saved for the duration of the WET test. In the event of questions about the receiving water's possible effect on the WET results, chemistry tests should then be conducted.
- (9) pH and Total Residual Chlorine must be conducted at the time of sample collection. Tests for Total Residual Chlorine need be conducted only when an effluent has been chlorinated or residual chlorine is believed to be present for any other reason.

Comments:

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

FACT SHEET

Date: **April 8, 2010**

PERMIT NUMBER: **ME0022225**
LICENSE NUMBER: **W000767-5S-E-R**

NAME AND ADDRESS OF APPLICANT:

**WEBBER OIL COMPANY
700 Maine Street
Bangor, ME. 04401**

COUNTY: **Penobscot**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**700 Main Street
Bangor, Maine**

RECEIVING WATER AND CLASSIFICATION: **Penobscot River, Class B**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER:

**Mr. James Sullivan
Vice President of Operations
(207) 942-5501
Sullivan@webberenergy.com**

1. APPLICATION SUMMARY

- a. Application: Webber Oil Company has submitted a timely and complete application to the Department for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0022225/Maine Waste Discharge License (WDL) #W000767-5S-D-R, (permit hereinafter) which was issued by the Department on April 25, 2005, and is due to expire on April 25, 2010. The permit authorized the permittee to discharge treated storm water runoff and hydrostatic test waters to the Penobscot River, Class B, in Bangor, Maine. See **Attachment A** of this Fact Sheet for a location map of the Bangor facility.

1. APPLICATION SUMMARY (cont'd)

- b. Source description: The primary activities of Webber Energy Fuels is the retail sale of energy fuels including No. 2 fuel oil, kerosene, diesel, and propane. The base of operations is located at the Bangor Terminal, 700 Main Street, Bangor Maine. Other notable activities at the terminal include the receipt, transport, and storage of approximately 6.5 million gallons of energy fuels.

The sizes of each of the bulk tanks and their contents is listed below:

<u>Tank No.</u>	<u>Contents</u>	<u>Capacity in bbls and (gallons)</u>	
AST # 1	No. 2 Fuel	10,000 bbls	420,000 gals
AST # 2	Diesel Fuel	10,000	420,000
AST # 3	Diesel Fuel	5,000	210,000
AST # 4	Diesel Fuel	5,000	210,000
AST # 6 ⁽¹⁾	Waste oil	238	10,000
AST # 7	Diesel Fuel	14,760	619,920
AST # 8	Kerosene	23,810	571,440
AST # 9	No. 2 Fuel	61,904	2,600,000
AST # 10	Kerosene	9,524	400,000
AST # 11	Kerosene	14,285	600,000
AST # 12	Additives	357	15,000
AST # 13	Additives	8.33	350
AST # 14	Additives	7.14	300
AST # 15	Additives	48	2,015

Footnotes:

- (1) Available for use but currently out of service.

Fuel is received at the facility by either barge vessel, tank truck, or pipeline from the adjacent Mobil facility. Fuel is delivered to customers in twenty-nine (29) different communities in the area. In order to effectively carry out terminal operations, Webber Energy Fuels employs a Safety and Environmental Manager, a General Manager (Operations), a Plant Supervisor and approximately 100 other technical and administrative positions. The site has one discharge outfall associated with operations at the facility; Outfall 001.

1. APPLICATION SUMMARY (cont'd)

Outfall 001 is associated with storm water collected within two containment areas (Containment Area A & B) and storm water collected at the loading island and the tank truck off-loading area. If necessary, storm water collected in Containment Area B is pumped to Containment Area A where it can be treated by an oil/water separator before being discharged from the site. Storm water from the loading island and tank truck off-loading area is also discharged into Containment Area A and treated by an oil/water separator before final discharge from the site. No vehicle washing or maintenance occurs at this site. When necessary, hydrostatic test water from bulk storage tanks in the containment areas may also be discharged via Outfall 001. There are no overflows, bypasses or emergency discharge locations associated with this outfall. Containment Area A contains (10) above-ground bulk storage tanks having a total gross capacity of approximately 131,117 barrels (5.5 million gallons); Containment Area B contains two (2) above ground bulk storage tanks having a total gross capacity of 23,809 barrels (1 million gallons); and the terminal office loading islands contain two additive tanks with a gross capacity of approximately 15.5 barrels (650 gallons). The base of Containment Area A is composed of a combination of asphalt and gravelly clay and the dike wall are a combination of gravelly clay, concrete and steel. The base and walls of Containment Area B are composed of gravelly clay. Both containment areas have sufficient capacity to contain the entire contents of the largest tank in the event of a structural failure.

The total drainage area of the site contributing to storm water discharge at Outfall 001 is 132,025 square feet; 98,097 square feet from Containment Area A and the loading islands and 33,928 square feet from Containment Area B. There are three major impervious surface areas at the site contributing approximately 53,392 square feet to storm water discharge. These areas are: 1) the paved sections near the loading islands, the tank truck off-loading area and the paved area within the Containment Area A. These sections account for approximately 31,341 square feet; 2) the concrete pad at the loading island and the concrete pad with Containment Area B. These pads account for approximately 1,474 square feet; and 3) the storage tanks within both containment areas. These tanks account for approximately 20,577 square feet.

- c. Waste water treatment – Outfall 001 discharges storm water collected at the loading islands, the tank truck off-loading areas, and Containment Area A & B. Containment Area B exists on site and houses two bulk storage tanks. Accumulated storm water within containment Area B is allowed to pond and dissipates by evaporation or is emptied into Containment Area A by pumps or ejectors that are manually activated when necessary. Hydrostatic test waters from any of the bulk storage tanks may also be discharged via

1. APPLICATION SUMMARY (cont'd)

Outfall 001. Containment Area A is partially constructed of an asphalt and earthen base with a combination of earthen, concrete and steel dike walls. Containment Area B is constructed of an earthen base and dike walls. Containment Area A & B houses bulk storage tanks along with associated transfer piping.

The facility site is graded such that most of the site drainage is collected in Containment Area A. Storm water that accumulates in Containment Area A is drained by gravity to the northeastern portion of the dike and into the oil/water separator sump. Accumulated storm water is then pumped from the sump into the oil/water separator by a manually controlled pump. After the water passes through the oil/water separator it then flows by gravity and is discharged via Outfall 001. Prior to activating the pump, accumulated water in Containment Area A is visually inspected for any presence of oil, or other contaminants. Pumping information is documented on an oil/water separator "Log" sheet at the time of each discharge. A copy of the "Log" sheet is maintained at the Bulk Plant Foreman's office. All drainage discharge from Containment Area A is conducted by authorized personnel in accordance with the "*Webber Oil Company Oil Water Separator Operations and Maintenance Plan*".

The facility loading islands adjacent to the Terminal Office are sloped to direct flow toward drains located at the eastern and northern edges of the pad. Runoff from the pads flows through a primary oil/water separator, located at the loading islands, and then through the oil/water separator located within Area A, prior to being discharged to the Penobscot River.

Truck off-loading ports are located at the rear of the Terminal Office (into UST #1), at the 15,000 gallon-additive tank (AST #12) and the eastern edge of Area A. Off-loading ports at UST #1 and AST #12 is located within Containment Area A. Flows from the eastern edge off-loading port are directed toward a catch basin that drains into Area A.

Within the containment areas all tanks and pipelines are completely enclosed and under normal operations petroleum products do not come into contact with storm water. Storm water from the loading islands and off-loading areas is more likely to come into contact with miscellaneous drips and leaks that occur in these areas. This water is treated by an oil/water separator within Containment Area A prior to off-site discharge. In addition, stormwater from the loading islands is treated by two oil/water separators; one at the island and one in Containment Area A. During normal maintenance, repairs and upgrades of tanks and pipelines the potential for miscellaneous drips and spills may occur. The facility currently maintains an EPA Spill Prevention Control and

1. APPLICATION SUMMARY (cont'd)

Countermeasure (SPCC) Plan which includes provisions to minimize the potential for oil to be discharged into navigable waters of the United States from the site. All storm water that accumulates in Containment Area A is inspected by facility personnel for evidence of oil prior to being discharged from the dike. If personnel determine that the storm water is contaminated by petroleum, measures are taken to recover the oil prior to being discharged from the dike. As noted, all water discharged from the Containment Area A & B is further treated by an oil/water separator before final discharge from the facility.

In addition to the oil/water separators, the sump in Containment Area A is lined with a geotextile/riprap to prevent erosion from a 4 inch diameter outlet pipe from the loading island. Also, a channel exists in Containment Area A which receives concentrated flow which is directed to the sump. This channel is lined with a geotextile/riprap to prevent erosion of the underlying clayey/silty material within the containment area.

The facility also employs a number of non-structural control measures which assist to prevent contaminants from being discharged from the site. Significant non-structural control measure examples include: 1) a Federal oil Spill Prevention Control and Countermeasure (SPCC) Plan; 2) *Oil Water Separator Operations and Maintenance Plan*; and 3) annual Spring cleaning of the loading islands, drains, catch basins and oil/water separators.

The flow through the oil/water separator in Containment Area A is controlled by the sump pump which has a throttle valve preset to limit the flow into the separator to 115 gpm. Flow is measured each time the pump is activated to confirm that the throttle valve setting is in the correct position to limit the flow amount to 115 gpm. Both oil/water separators are cleaned once per year and any recovered oily waste is disposed off site at a State of Maine licensed waste handler.

For the purposes of this permitting action, the Department has established an administrative outfall designated as Outfall #002 for reporting sampling results for the discharge of hydrostatic test waters.

2. PERMIT SUMMARY

- a. Terms and conditions - This permitting action is carrying forward all the terms and conditions of the 4/25/05 permit.
- b. History – The most current relevant regulatory actions include the following:

January 8, 1976 – The EPA issued NPDES permit #ME0022225 for a five-year term.

June 2, 2000 – The Department issued WDL #W000767-5S-C-R renewal for a five-year term.

2. PERMIT SUMMARY (cont'd)

April 25, 2005 – The Department issued combination MEPDES permit #ME0022225/WDL #W000767-5S-D-R, for a five year term.

April 2, 2010 – Webber Energy Fuels submitted a timely and complete application to the Department for the renewal of the 4/25/05 MEPDES permit.

3. CONDITIONS OF PERMITS

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

4. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A., Article 4-A §467(7)(A)(7) classifies the Penobscot River at the point of discharge as a Class B waterway. Maine law, 38 M.R.S.A., Article 4-A, §465(3) describes the classification standards for Class B waters.

5. RECEIVING WATER CONDITIONS

During the summers of 1997, 2001 and 2007, the Department conducted ambient water quality monitoring in the Penobscot River from Millinocket to the tide waters of Bucksport. The Department is scheduled to perform a comprehensive evaluation of the data collected and calibrate an existing model of the river in calendar year 2010 and if necessary, prepare a total maximum daily load (TMDL) for segments of the river not attaining the standards of their assigned classification(s). If the evaluation and modeling runs determine that at full permitted discharge limits the discharge from the Webber facility is causing or contributing to the non-attainment, this permit will be re-opened per Special Condition G, *Reopening of Permit For Modifications*, to impose more stringent limitations to meet water quality standards.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

a. Outfall #001 – Storm water and/or hydrostatic test waters

Discharges from activities associated with bulk petroleum stations and terminal operations must satisfy best conventional technology (BCT) and best available technology (BAT) requirements and must comply with more stringent water quality standards if BCT and BAT requirements are not adequate. On October 25, 2005, the Department promulgated through its General Permit for Storm Water Discharge Associated with Industrial Activity, that the minimum BAT/BCT requirement for storm water discharges associated with industrial activity is a Storm Water Pollution Prevention Plan (SWPPP). In the 2/25/05 permitting action the Department made the determination that the permittee did not engage in activities that are defined as “industrial activity”, and therefore did not require the preparation of a SWPPP. The permittee has indicated there are no new activities on site that would change the status for the requirement for a SWPPP. The Department is carrying forward the numeric effluent limitations and or monitoring requirements from the previous MEPDES permitting and WDL action for petroleum constituents to ensure the discharge(s) do not contribute to violations of the State's water quality standards. The effluent parameters for each waste stream are discussed in more detail below. The sections are arranged according to the effluent characteristic(s) being regulated.

1. Flow - Typically, the treatment technology for storm water runoff employed by bulk storage petroleum terminals is an oil/water [O/W] separator. This device uses gravity to separate the lower-density oils from water; resulting in an oil phase above the oil/water interface and a heavier particulate (sludge) phase on the bottom of the O/W separator. It follows that the sizing of O/W separators is based on the following design parameters: water-flow rate, density of oil to be separated, desired percentage removal of oil, and the operating temperature range.

The previous permitting action established a daily maximum flow limit of 115 gpm that was based on information supplied by the permittee as to the design capacity of the O/W separator. The permittee has indicated this value remains representative of the design capacity and flow conveyed to the separator is controlled by the sump pump which has a throttle valve preset to limit the flow into the separator. Therefore, the daily maximum flow limit is being carried forward in this permitting action but a requirement to measure discharge flow is not being incorporated into the permit due to the flow control measure installed.

2. Total Suspended Solids (TSS) – This permitting action is carrying forward the daily maximum TSS concentration limit of 100 mg/L based on an EPA Region I BPJ determination that the technology guidelines promulgated at 40 CFR Part 423—*Steam Electric Power Generating Point Source Category* for point source discharges of low-volume waste water were appropriate to control the discharge of sediment particles and oils from bulk storage petroleum terminals in the region.

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

a. Outfall #001 – Storm water and/or hydrostatic test waters

This permitting action is carrying forward the twelve-month rolling averaging period requirement for compliance with the monthly average TSS concentration limit of 50 mg/L based on the Department’s BPJ.

As stated in footnote #2 of Special Condition A, *Effluent Limitations and Monitoring Requirements*, the 12-month rolling averaging period is based on the most recent twelve months with sampling data. Months where no discharge takes place are excluded (i.e., do not figure in a zero) in the calculation.

The quarterly DMR data for the period January 2005 to December 2009 indicates the facility has been in compliance with the limitations 99% of the time and reported TSS values as follows:

Outfall #001

TSS concentration (DMRs=45)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
12 Month average	50	11 - 26	18
Daily Maximum	100	1.5 – 220	16

Only one violation (200 mg/l in October 2009) of the daily maximum concentration limit has been reported during said period.

3. Oil and Grease (O&G) – The previous permitting action contained a daily maximum concentration limit of 15 mg/L based on Department best professional of BPT for the discharge from a properly operated and maintained oil/water separator.

The quarterly DMR data for the period January 2005 to December 2009 indicates the facility has been in compliance with the limitations 99% of the time and reported oil & grease values as follows:

Oil & Grease concentration (n=8)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Daily Maximum	15	<1.0 – 33	2.0

Only one violation (33 mg/l in August 2008) of the daily maximum concentration limit has been reported during said period.

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

b. Hydrostatic Test Water (Outfall #002 - Administrative)

The permittee has indicated that hydrostatic testing of pipelines and tanks with water is no longer the practice at the Bangor facility. Pipelines are tested utilizing fuel product and tanks are tested via X-rays, eliminating the need for discharging hydrostatic test waters. However, the permittee would like to retain the option to do so. Therefore, the authorization to discharge hydrostatic test waters is being carried forward in this permitting action in accordance with the following conditions:

1. Flow – The previous permitting action limited the flow of hydrostatic test waters to 2,600,000 gallons per discharge event which is equivalent to the largest tank volume on the farm. The limit is being carried forward in this permitting action. A review of the DMR data for the period January 2005 – December 2009 indicates the permittee has not discharge hydrostatic test waters so there are no reported values for flow or any of the parameters that follow.
2. Total Suspended Solids – The previous permitting action established a daily maximum limit of 50 mg/L based on a Department BPJ of limits that are achievable given the tanks that are hydrostatically tested have been washed and cleaned in preparation for repair and testing. The limitation is being carried forward in this permitting action.
3. Oil & Grease: The previous permitting action established a daily maximum concentration limit of 15 mg/L that is a Department BPJ of limits that are achievable given the tanks that are hydrostatically tested have been washed and cleaned in preparation for repair and testing. The limitation is being carried forward in this permitting action.
4. Total residual chlorine (TRC): The previous permitting action established a daily maximum TRC limit of 19 ug/L. The limitation is based on the Department's acute criteria maximum concentration (CMC) of 19 ug/L for fresh waters. The limitation does not take into consideration dilution in the receiving water due to the fact that the outfall pipe does not have a diffuser and is above the high and low water marks. A chronic limit is not specified because the discharge is not a continuous discharge.

Compliance with the daily maximum limitation will be based on EPA's minimum level (ML) of detection of 50 ug/L (0.05 mg/L). All analytical test results shall be reported to the Department including results which are detected below the ML of 0.05 mg/L.

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

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

8. PUBLIC COMMENTS

Public notice of this application was made in the Bangor Daily News newspaper on March 29, 2010. The Department receives public comment on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

9. DEPARTMENT CONTACTS

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

Gregg Wood
Division of Water Quality Management
Bureau of Land and Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
Electronic mail: gregg.wood@maine.gov

Telephone (207) 287-7693

10. RESPONSE TO COMMENTS

During the period of April 8, 2010, through the issuance date of this permit, the Department solicited comments on the proposed draft permit to be issued for the discharge from the Webber Oil Company facility. The only comments received were from the permittee's consultant, CES, Inc. in an electronic mail message dated April 22, 2010. As a result, the Department has prepared a response to comments as follows:

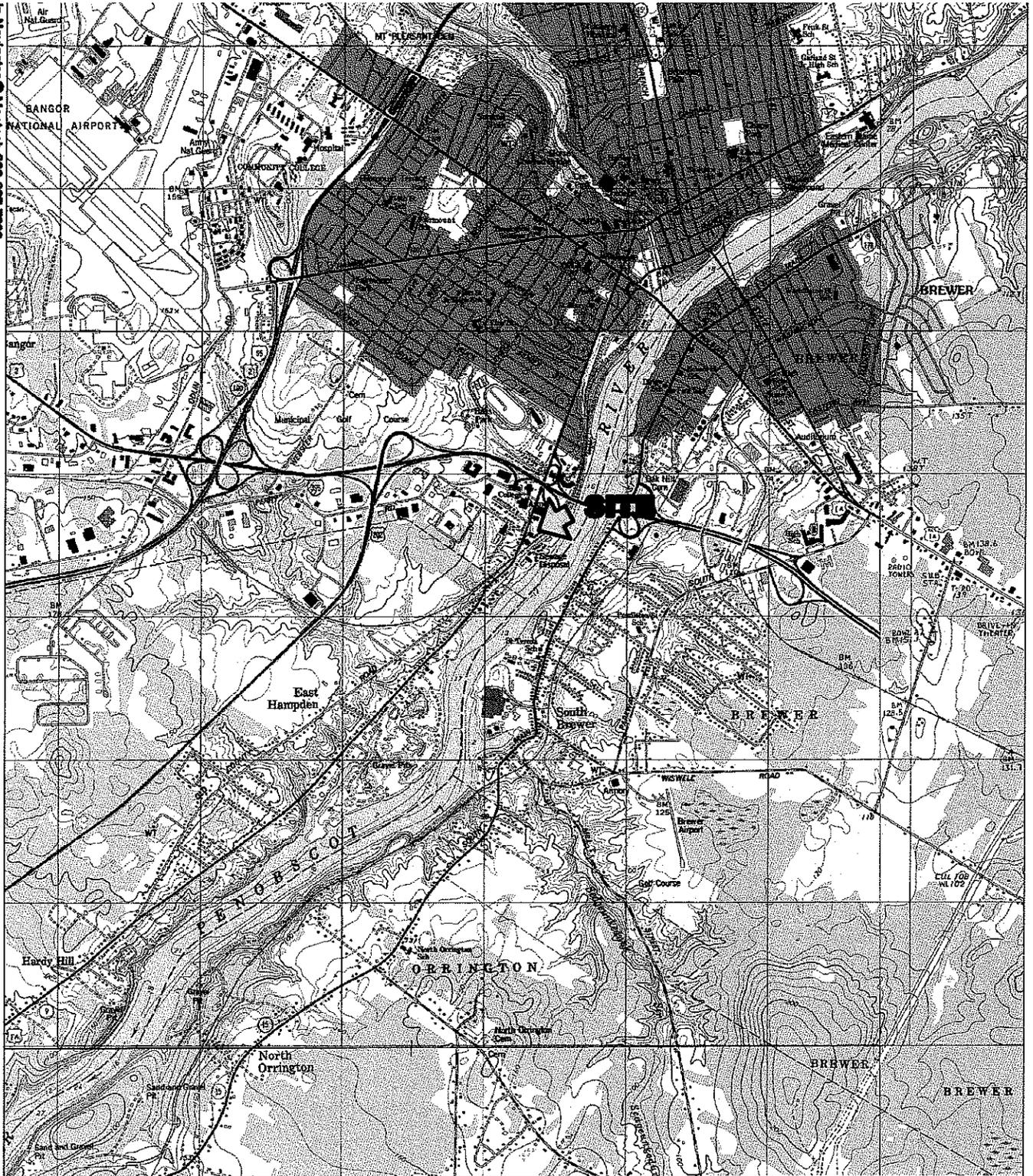
Comment #1: The permittee questioned the Department's inclusion of Special Condition G, *Storm Water Pollution Prevention Plan (SWPPP)* and the requirement for visual monitoring of the storm water discharge(s) given the facility is not subject to the requirements of the Department's Multi-Sector Storm water General Permit as there are no "industrial activities" that warrant preparation of a SWPPP.

10. RESPONSE TO COMMENTS

Response #1: The 4/8/10 draft permit should not have included a special condition to require the preparation of a SWPPP and conduct visual monitoring of the discharges. Page 7 of the Fact Sheet of the 4/25/05 permit states in part, “*The Department has made the determination that the permittee does not engage in activities that are defined as “industrial activity”, therefore is not requiring the preparation of a SWPPP.*” The permittee has indicated no new activities are being conducted on-site since issuance of the 4/25/05 permit that would change the status for the requirement for a SWPPP. Therefore, the Department has deleted the special condition in the final permit that requires the permittee prepare a SWPPP and conduct visual monitoring of the discharges.

ATTACHMENT A

In Navigator © Maptech 800-827-7236



SOURCE:
U.S.G.S. TOPOGRAPHIC QUADRANGLE
BANGOR
@ 1:24,000



CES INC
WEBBER OIL COMPANY
700 MAIN STREET
LOCATION MAP

03/31/10
4075.10

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

CONTENTS

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

A. GENERAL PROVISIONS

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

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

- (a) They are not
 - (i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
 - (ii) Known to be hazardous or toxic by the licensee.
- (b) The discharge of such materials will not violate applicable water quality standards.

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

5. Bypasses.

- (a) Definitions.
 - (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
 - (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.
- (c) Notice.
 - (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

6. Upsets.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit.

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

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

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

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

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

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

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

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

(i) One hundred micrograms per liter (100 ug/l);

(ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or

(iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

II. APPEALS TO MAINE SUPERIOR COURT

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

ADDITIONAL INFORMATION

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

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