



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

September 17, 2014

Mr. Michael Mains
Technical Manager
Penobscot Energy Recovery Company
P.O. Box 160
Orrington, Maine 04474
mmains@percwte.com

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0023230
Maine Waste Discharge License (WDL) Application #W006893-5O-H-R
Final Permit

Dear Mr. Mains:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL **renewal** which was approved by the Department of Environmental Protection. Please read this permit/license renewal 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 215-1579.

Sincerely,

Yvette M. Meunier
Division of Water Quality Management
Bureau of Land and Water Quality

Enc.

cc: Matt Young, DEP/EMRO
Sandy Mojica, USEPA
Olga Vergara, USEPA
Marelyn Vega, USEPA

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

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

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04679
(207) 764-0477 FAX: (207) 760-3143



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

DEPARTMENT ORDER

IN THE MATTER OF

PENOBSCOT ENERGY RECOVERY CO.) MAINE POLLUTANT DISCHARGE
ORRINGTON, PENOBSCOT COUNTY, MAINE) ELIMINATION SYSTEM PERMIT
INDUSTRIAL PROCESS WASTE WATER) AND
#ME0023230) WASTE DISCHARGE LICENSE
#W006893-5O-H-R) **APPROVAL**) **RENEWAL**

Pursuant to the provisions of *Pollution Control*, 38 M.R.S.A. §§ 411 – 424-B, *Water Classification Program*, 38 M.R.S.A. §§ 464 – 470 and *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, and applicable rules of the Department of Environmental Protection (Department), the Department has considered the application of the PENOBSCOT ENERGY RECOVERY COMPANY (PERC), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

On May 16, 2014, the Department accepted as complete for processing, a renewal application for Maine Pollutant Discharge Elimination System (MEPDES) #ME0023230 /Waste Discharge License (WDL) #W006893-5O-F-R, which was issued on August 26, 2009 for a five-year term. The 8/26/09 MEPDES permit authorized a daily maximum of 0.0255 million gallons per day (same as 22,500 gallons per day) of treated process wastewater (low volume wastewaters from boiler blowdown, cooling tower blowdown, reverse osmosis system reject water, ash handling water and miscellaneous operational wastewaters) via Outfall #001A and an unspecified quantity of stormwater runoff via Outfall #002A to the Penobscot River, Class SC, in Orrington, Maine.

PERMIT SUMMARY

This permitting action is carrying forward all the terms and conditions of the previous permitting action except it is:

1. Revising the minimum monitoring frequency requirements for flow, total suspended solids, oil and grease, effluent temperature, free available chlorine and pH based on the new non-discharge operating procedures of the facility;
2. Incorporating the interim mercury limits established by the Department for this facility pursuant to *Certain deposits and discharges prohibited*, 38 M.R.S.A. § 420 and *Waste discharge licenses*, 38 M.R.S.A. § 413 and *Interim Effluent Limitations and Controls for the Discharge of Mercury*, 06-096 CMR 519 (last amended October 6, 2001);
3. Revising the flow limitation;
4. Eliminating numeric limits and monitoring requirements for copper, iron, zinc and chromium;
5. Revising the acute, chronic and harmonic mean dilution factors based on new information about the Outfall #001A configuration and increased flow;

PERMIT SUMMARY (cont'd)

6. Eliminating the requirement to submit a Statement for Reduced/Waived Toxics Testing based on changes to the type and quantity of wastewater processed;
7. Eliminating the requirement to submit a Monitoring Waiver for Certain Guideline-Listed Pollutants based on new information; and
8. Revising the footnote for free available chlorine.

CONCLUSIONS

Based on the findings summarized in the attached Fact Sheet dated September 17, 2014, and subject to the special and standard conditions that follow, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(F), will be met, in that:
 - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - (b) Where high quality waters of the State constitute an outstanding natural resource, that water quality will be maintained and protected;
 - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
 - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in *Conditions of licenses*, 38 M.R.S.A. § 414-A(1)(D).

ACTION

Based on the findings and conclusions as stated above, the Department APPROVES the above noted application of PENOBSCOT ENERGY RECOVERY COMPANY (PERC) to discharge a daily maximum of 0.0750 million gallons per day (same as 75,000 gallons per day) of treated process wastewater (low volume wastewaters from boiler blowdown, cooling tower blowdown, reverse osmosis system reject water, ash handling water and miscellaneous operational wastewaters) via Outfall #001A and an unspecified quantity of stormwater runoff via Outfall #002A to the Penobscot River, Class SC, in Orrington, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit and the authorization to discharge become effective upon the date of signature below and expire at midnight five (5) years from the effective date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the authorization to discharge and the terms and conditions of this permit and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [Maine Administrative Procedure Act, 5 M.R.S.A. § 10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (amended August 25, 2013)]

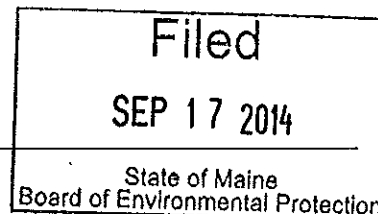
PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 17th DAY OF September 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
for PATRICIA W. AHO, Commissioner

Date filed with Board of Environmental Protection _____



Date of initial receipt of application: May 15, 2014

Date of application acceptance: May 16, 2014

This Order prepared by Yvette Meunier, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge treated low volume waste waters from boiler blowdown, cooling tower blowdown, reverse osmosis system reject water, ash handling water and miscellaneous operational waste waters from **Outfall #001A** to the Penobscot River at Orrington. Such discharges are limited and must be monitored by the permittee as specified below^(1,2):

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]	---	0.075 MGD [03]	---	---	Daily When Discharging [DL/DS]	Meter [MT]
Total Suspended Solids (TSS) [00530]	5.6 lbs./day [26]	18.8 lbs/day [26]	30 mg/L [19]	100 mg/L [19]	1/Discharge Quarter ⁽³⁾ [01/DQ]	Grab [GR]
Oil & Grease [00552]	2.8 lbs./day [26]	3.8 lbs./day [26]	15 mg/L [19]	20 mg/L [19]	1/Discharge Quarter ⁽³⁾ [01/DQ]	Grab [GR]
Effluent Temperature [00011]	---	---	---	100°F [15]	1/Discharge Quarter ⁽³⁾ [01/DQ]	Grab [GR]
Free Available Chlorine [50064]	---	---	0.2 mg/L [19]	0.5 mg/L [19]	1/Discharge Quarter ⁽³⁾ [01/DQ]	Grab [GR]
pH (Std. Units) [00400]	---	---	---	6.0-9.0 SU [12]	1/Discharge Quarter ⁽³⁾ [01/DQ]	Grab [GR]
Mercury (Total) ⁽⁴⁾ [71900]	---	---	53.1 ng/L [3M]	79.7 ng/L [3M]	1/Year ⁽⁵⁾ [01/YR]	Grab [GR]

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

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

SPECIAL CONDITIONS

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

FOOTNOTES

1. **Sampling** – All effluent monitoring for Outfall #001A must be conducted from the sampling tap located after the MonoScour Recovery Filter, as to be representative of end-of-pipe effluent characteristics. Any change in sampling location must be approved by the Department in writing. The permittee must conduct sampling and analysis in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services for wastewater. Samples that are sent to a POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (effective April 1, 2010). 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 this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report.

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

2. **Priority Pollutants** – Pursuant to 40 CFR 423.13(d)(1), there must be no detectable levels of the 126 priority pollutants as specified in *Appendix A to Part 423 – 126 Priority Pollutants*.
3. **Discharge Event** – At least one sample must be collected and analyzed for each of these parameters during any calendar quarter that the facility discharges wastewater via Outfall 001A. If there is no discharge during a calendar quarter then the permittee must enter "NODI-C" on their monthly DMR.
4. **Mercury** – The permittee must conduct all mercury sampling required by this permit to determine compliance with interim limitations established pursuant to 06-096 CMR 519 in accordance with the USEPA's "clean sampling techniques" found in USEPA Method 1669, *Sampling Ambient Water For Trace Metals At EPA Water Quality Criteria Levels*. All mercury analysis must be conducted in accordance with USEPA Method 1631, *Determination of Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Fluorescence Spectrometry*. See **Attachment A** for a Department report form for mercury test results. Compliance with the monthly average limitation established in Special Condition A.1 of this permit will be based on the cumulative arithmetic mean of all mercury tests results that were conducted utilizing sampling Methods 1669 and analysis Method 1631E on file with the Department for this facility.

SPECIAL CONDITIONS

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

FOOTNOTES

5. **Mercury** – Mercury sampling is not required if the facility has not discharged during a calendar year. Under such an instance the permittee must report “NODI-9” on the monthly DMR or “N9” if the submittal is an electronic DMR for this parameter.

B. NARRATIVE EFFLUENT LIMITATIONS

1. The permittee must not discharge effluent that contains a visible oil sheen, foam or floating solids at any time which would impair the uses designated for the classification of the receiving waters.
2. The permittee must not discharge effluent that contains materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated for the classification of the receiving waters.
3. The permittee must not discharge wastewater that causes visible discoloration or turbidity in the receiving waters that causes those waters to be unsuitable for the designated uses and characteristics ascribed to their class.
4. The permittee must not discharge effluent that lowers the quality of any classified body of water below such classification, or lowers the existing quality of any body of water if the existing quality is higher than the classification.

C. AUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on May 16, 2014; 2) the terms and conditions of this permit; 3) via Outfall #001A; and 4) stormwater via Outfall #002A. Discharges of wastewater from any other point source(s) are not authorized under this permit, and must be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

D. TREATMENT PLANT OPERATOR

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

SPECIAL CONDITIONS

E. NOTIFICATION REQUIREMENT

In accordance with Standard Condition 6, the permittee must notify the Department of the following:

1. Any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system.
2. For the purposes of this section, adequate notice must include information on:
 - a. The quality or quantity of wastewater introduced to the wastewater collection and treatment system; and
 - b. Any anticipated impact of the change in the quantity or quality of the wastewater to be discharged from the treatment system.

F. MONITORING AND REPORTING

Monitoring results obtained during the previous quarter must be summarized for each quarter 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 the Department's Regional Office such that the DMRs are received by the Department on or before the fifteenth (15th) day of the month** following the completed reporting period. A signed copy of the DMR and all other reports required herein must be submitted to the Department assigned inspector (unless otherwise specified by the Department) at the following address:

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

Alternatively, if the permittee submits an electronic DMR (eDMR), the completed eDMR must be electronically submitted to the Department by a facility authorized DMR Signatory not later than close of business on the **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.

G. OPERATIONS AND MAINTENANCE (O&M) PLAN

The permittee must maintain a current written comprehensive Operation & Maintenance (O&M) Plan for the facility. The plan must provide a systematic approach by which the permittee must 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.

SPECIAL CONDITIONS

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

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

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

H. STORMWATER ASSOCIATED WITH INDUSTRIAL ACTIVITY – PLANS AND MONITORING REQUIREMENTS

1. Stormwater Pollution Prevention Plan (SWPPP)

- a. With respect to the facility contributing stormwater flow subject to this permit, the permittee must develop, implement, maintain and annually update a Stormwater Pollution Prevention Plan (SWPPP) for the facility that is consistent with the SWPPP requirements established in Part V of the Department's *Multi-Sector General Permit for Stormwater Discharge Associated with Industrial Activity*, dated April 26, 2011, and Sector specific requirements included in Sector P of the Multi-Sector General Permit (MSGP). The permittee must maintain a copy of the SWPPP and associated records on-site for Department or USEPA staff inspection.
- b. Within 30 days of any change in design, construction, operation, maintenance, or any chemical spill at the facility which has or may have a significant effect on the amount of pollutants present in stormwater, the permittee must amend the SWPPP and note all changes.

2. At a minimum frequency of once per calendar quarter, the permittee must perform and document a visual examination of a stormwater discharge at the end of the stormwater conduit for Outfall #002A in accordance with Department guidance document #DEPLW0768, *Standard Operating Procedure Guidelines for Visual Monitoring of Stormwater Associated with Industrial Activities*, including associated attachments (*Instructions for Completing the Visual Monitoring Form*) and (*Visual Monitoring Form*) (all included as Attachment B of this permit). The permittee must document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution. The permittee must maintain the visual examination reports on-site with the SWPPP for a minimum of three years from the observation date.

3. Authorized stormwater discharge points.

Outfall No.	Description	Receiving Water and Location
#002A	Sedimentation Pond	Tributaries to Penobscot River, Class SC, Orrington

SPECIAL CONDITIONS

I. REOPENING OF PERMIT FOR MODIFICATION

In accordance with 38 M.R.S.A. § 414-A(5) and upon evaluation of the tests results or monitoring requirements specified in Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at any time and with notice to the permittee, modify this permit to: 1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded, (2) require additional monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

J. SEVERABILITY

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

ATTACHMENT A

Maine Department of Environmental Protection

Federal Permit # ME _____
Pipe # _____

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

SAMPLE COLLECTION INFORMATION

Sampling Date:

mm	dd	yy

 Sampling time: _____ AM/PM

Sampling Location:

Weather Conditions:

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

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

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

ANALYTICAL RESULT FOR EFFLUENT MERCURY

Name of Laboratory:

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

Please Enter Effluent Limits for your facility

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

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

CERTIFICATION

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

By: _____ Date: _____

Title: _____

PLEASE MAIL THIS FORM TO YOUR ASSIGNED INSPECTOR

ATTACHMENT B



Standard Operating Procedure
Bureau of Land and Water Quality
Attachment B
Date: April 20, 2006
Revised: February 1, 2012
Doc Number: DEPLW0768

Visual Monitoring Form

Facility Name: _____ Facility Address: _____ _____	Sampler's Name: _____ MSGP Permit Number: _____ 72 Hours Since last Measurable Storm? <input type="checkbox"/> Yes <input type="checkbox"/> No					
Measurable Discharge from outfall? <input type="checkbox"/> Yes <input type="checkbox"/> No						
Outfall Number						
Observation Time						
Est. Time from Onset of Runoff						
Discharge Type (rain, snow melt or ice melt)						
Sample Volume (ml)						
Color						
Odor						
Clarity						
Floating Solids*						
Settled Solid*						
Suspended Solid*						
Foam						
Oil Sheen						
Possible Source of Any Observed Contamination						
<p>*Enter a description of corresponding criteria for each outfall in the General Comments section of this document.</p> <p>Under penalty of law I certify that these statements are true and correct pursuant to the terms and conditions stated in the MPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity.</p> <p>Sample's Signature: _____ Date: _____</p>						



Standard Operating Procedure
Bureau of Land and Water Quality
Attachment B

Date: April 20, 2006

Revised: February 1, 2012

Doc Number: DEPLW0768

General Comments

In the comments section, enter physical description of floating, settled, and suspended solids for each outfall sampled. Enter general comments on the condition and appearance of each outfall in the comments section also as indicated in the instructions.

Outfall 1

Comments:

Outfall 2

Comments:

Outfall 3

Comments:

Outfall 4

Comments:

Outfall 5

Comments:

Outfall 6

Comments:

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

FACT SHEET

DATE: September 17, 2014

PERMIT NUMBER: #ME0023230

WASTE DISCHARGE LICENSE: #W006893-5O-H-R

NAME AND ADDRESS OF APPLICANT:
PENOBSCOT ENERGY RECOVERY COMPANY
P.O. BOX 160
ORRINGTON, MAINE 04476

COUNTY: PENOBSCOT

NAME AND ADDRESS WHERE DISCHARGE(S) OCCUR(S):
PENOBSCOT ENERGY RECOVERY COMPANY
29 INDUSTRIAL WAY
ORRINGTON, MAINE 04476

RECEIVING WATER CLASSIFICATION: PENOBSCOT RIVER /CLASS SC

COGNIZANT OFFICIAL CONTACT INFORMATION:
MR. MICHAEL MAINS, SUPERVISOR
(207) 285-4566 Ext 118
mmains@percwte.com

1. APPLICATION SUMMARY

Application: On May 16, 2014, the Department of Environmental Protection (Department) accepted as complete for processing, a renewal application for Maine Pollutant Discharge Elimination System (MEPDES) #ME0023230 /Waste Discharge License (WDL) #W006893-5O-F-R, which was issued on August 26, 2009 for a five-year term. The 8/26/09 MEPDES permit a daily maximum of up to 0.0255 million gallons per day (same as 22,500 gallons per day) of treated process waste water (low volume waste waters from boiler blowdown, cooling tower blowdown, reverse osmosis system reject water, ash handling water and miscellaneous operational waste waters) via Outfall #001A and an unspecified quantity of stormwater runoff via Outfall #002A to the Penobscot River, Class SC, in Orrington, Maine.

2. PERMIT SUMMARY

- a. Terms and Conditions: This permitting action is carrying forward all the terms and conditions of the previous permitting actions except it is:
1. Revising the minimum monitoring frequency requirements for flow, total suspended solids, oil and grease, effluent temperature, free available chlorine and pH based on the new non-discharge operating procedures of the facility;
 2. Incorporating the interim mercury limits established by the Department for this facility pursuant to *Certain deposits and discharges prohibited*, 38 M.R.S.A. § 420 and *Waste discharge licenses*, 38 M.R.S.A. § 413 and *Interim Effluent Limitations and Controls for the Discharge of Mercury*, 06-096 CMR 519 (last amended October 6, 2001);
 3. Revising the flow limitation;
 4. Eliminating numeric limits and monitoring requirements for copper, iron, zinc and chromium;
 5. Revising the acute, chronic and harmonic mean dilution factors based on new information about the Outfall #001A configuration and increased flow;
 6. Eliminating the requirement to submit a Statement for Reduced/Waived Toxics Testing based on changes to the type and quantity of wastewater processed;
 7. Eliminating the requirement to submit a Monitoring Waiver for Certain Guideline-listed Pollutants based on new information; and
 8. Revising the footnote for free available chlorine.

- b. History: The most current relevant regulatory actions include:

June 27, 1986 – The U.S. Environmental Protection Agency (USEPA) issued National Pollutant Discharge Elimination System (NPDES) permit #ME0023230 to PERC for a five-year term.

January 12, 2001 – The Department received authorization from the USEPA to administer the NPDES permitting program in Maine, excluding areas of special interest to Maine Indian Tribes. From this point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) program, and MEPDES permit #ME0023230 has been utilized for this facility.

April 10, 2006 – The Department amended the 6/29/04 permit through the issuance of a fact sheet pursuant to the *Surface Water Toxics Control Program*. It is noted that the Department did not categorically include PERC in the toxics program; however the fact sheet specified minimum monitoring requirements (1/quarter) for total zinc that were equivalent to the frequency prescribed in the 6/29/04 permit.

2. PERMIT SUMMARY (cont'd)

August 26, 2009-- The Department issued combination MEPDES permit #ME0023230 / WDL #W006893-5O-F-R to PERC for a five-year term. The 6/29/04 permit superseded previous WDLs issued on June 29, 2004, March 18, 1999, January 24, 1986, and the June 27, 1986 NPDES permit issued by the USEPA.

February 6, 2012 – The Department issued permit modification #ME0023230/WDL#W006893-5O-G-M to incorporate the average and maximum concentration limits for total mercury.

May 15, 2014 – PERC submitted a timely and complete General Application to the Department for renewal of the August 26, 2009 MEPDES permit. The application was accepted for processing on May 16, 2014, and was assigned WDL # W006893-5O-H-R / MEPDES #ME0023230.

- c. Source Description: Penobscot Energy Recovery Company (PERC) is a 25.3-megawatt waste-to-energy electric power generating station fueled by municipal solid waste and is operated by ESOCO Orrington, LLC. The facility is located along the Penobscot River in Orrington, Maine. A map of the project area is included as **Attachment A** of this fact sheet.

Outfall #001A: The Power House waste streams, mainly floor drains, are combined in an equalization holding tank (EQH). Occasionally boiler blowdown or reverse osmosis (RO) reject water may be diverted to the EQH tank. Waste streams in the floor drains, including quench tank overflows, flow through an ash settling tank and an oil/water separator, then are pumped into the EQH tank. Cooling water blowdown may also be occasionally diverted into the wastewater system, but is pumped directly to the EQH tank.

Outfall #002A: The facility is located on a 610,300 square feet parcel (approximately 14 acres) of which approximately 8 acres is impervious area. The majority of stormwater runoff from the developed property is collected by roof drains, catch basins and drainage ditches, stored in a sedimentation pond and discharged to the Penobscot River.

- d. Wastewater Treatment: The treatment plant operates in batch mode. Wastewater is pumped from the EQH tank to a flash/floc tank. A coagulant is added in the flash tank. Caustic is also added in the flash tank to raise pH to optimize metal precipitation. A flocculant is added in the floc tank before the water flows into a lamella clarifier. Sludge is collected at the bottom of the lamella for collection and disposal in a special waste landfill. The clarified water from the lamella flows into the clarified water transfer tank (CWT) where it is pumped to the mono scour recovery filter (MSR). The effluent is filtered by the MSR. Acid is injected in the filter effluent for pH neutralization as it flows into the clear well compartment above the MSR. The final effluent overflows the clear well through a flow meter into a lift station. The effluent is then pumped from the lift station through Outfall #001A, which is a 3-inch diameter pipe submerged to a depth of approximately 0.7 feet at mean low water, to a tidally influenced segment of the Penobscot River.

The majority of stormwater runoff from the developed property is collected by roof drains, catch basins and drainage ditches. It flows through the ditches and culverts into a stormwater sedimentation pond. A riprap dam in front of the inlet prevents the water from short-circuiting into the outlet. This maximizes the settling time in the pond. The outlet structure of Outfall #002A consists of three vertical perforated pipes, ensuring that most of the time the discharge is below the pond surface. The

2. PERMIT SUMMARY (cont'd)

three pipes are connected by a culvert. Water flows out of the pond through the culvert into two tributary streams and then into the Penobscot River. Because the facility is situated on several ground water springs, ground water flows continuously into the sedimentation pond.

A schematic of the treatment system is included as **Attachment B** of this fact sheet.

3. CONDITIONS OF PERMIT

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 (last amended July 29, 2012), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

4. RECEIVING WATER QUALITY STANDARDS

Classification of estuarine and marine waters, 38 M.R.S.A. § 469(4)(B)(1) classifies the tidewaters of the Penobscot River as a Class SC water. *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B(3) describes the standards for classification of Class SC waterways.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2012 Integrated Water Quality Monitoring and Assessment Report (Report), prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists the Penobscot River in Orrington under the following categories:

“Category 4-B-1: Estuarine and Marine Waters Impaired by Pollutants – Pollution Control Requirements Reasonably Expected to result in Attainment.” The report lists 11.91 miles of the Penobscot River (waterbody ID # 722-45), which includes the reach at the point of discharge. Impairments in this context refer to the estuarine and marine water supporting the designated use of fishing due to elevated levels of toxins, PCBs and dioxin from industrial point sources and combined sewer outfalls that bioaccumulate in tissues of some fish and in lobster tomalley.

“Category 4-A: Estuarine and Marine Waters with Impaired Use, TMDL completed.” The Report lists 5.06 miles of the Penobscot River (waterbody ID # 722-25B), which includes the reach at the point of discharge. Impairments in this context refer to elevated fecals.

The Department has no information that the discharge from the PERC facility, as permitted, causes or contributes to the non-attainment status specified above.

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- a. Applicability of National Effluent Guidelines: The USEPA has promulgated effluent guidelines for the *Steam Electric Generating Point Source Category* at 40 CFR 423. PERC facility is fueled primarily with solid waste. Otherwise this facility is similar to fossil-fueled steam electric power generating plants. Therefore, the Department has made a best professional judgment determination to utilize the technology-based guidelines at 40 CFR 423 to establish technology-based effluent thresholds for the discharge via Outfall #001A.
- b. Flow: The previous permitting action established a daily maximum discharge flow limit of 0.0225 MGD (same as 22,500 gallons per day) which was considered representative of wastewaters historically generated at the facility. Recent modifications to the facility's wastewater treatment plant and wastewater processing now allow the facility to function as a zero discharge facility under normal operating conditions. Wastewater is typically only generated during maintenance or upset. Under these new operating conditions the permittee is requesting an increase in the daily maximum discharge flow limit to 0.0750 MGD, but not an increase in regulated pollutant loading; therefore the requirements of anti-backsliding and antidegradation are met and the Department is increasing the daily maximum discharge flow limit to 0.0750 MGD.

The Department reviewed 49 Discharge Monitoring Reports (DMRs) that were submitted for the period September 2009 – March 2014. A review of data indicates the following:

Flow

Value	Limit (MGD)	Range (MGD)	Mean (MGD)
Daily Maximum	0.0225	0.00 – 0.02	0.012

This permitting action is revising the minimum monitoring frequency requirements for flow to require monitoring and reporting of effluent flow to daily when discharging based on best professional judgment given the new operations described above.

- c. Dilution Factors: 06-096 CMR 530(4)(A)(2)(a) states that, "*For discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model.*" Based on new information regarding the current conditions of the outfall structure, this permitting action is establishing dilution factors based on a smaller diameter outfall pipe that terminates at a higher elevation above the mean low water, and an increased daily maximum discharge flow criterion of 0.075 MGD, dilution factors associated with the discharge as follow:

Acute = 36:1

Chronic = 300:1

Harmonic mean¹ = 879:1

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

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

- d. Total Suspended Solids (TSS): The previous permitting action established, and this permitting action is carrying forward, technology-based monthly average concentration and mass limits of 30 mg/L and 5.6 lbs./day, respectively, for TSS. The previous permitting action established, and this permitting action is carrying forward, technology-based daily maximum concentration and mass limits of 100 mg/L and 18.8 lbs./day, respectively, for TSS. The concentration limitations are based on the best practicable control technology currently available effluent guidelines promulgated at 40 CFR Part 423.12(b)(3) and are being carried forward in this permitting action.

The mass limitations were derived using the previously permitted flow of 22,500 gpd (0.0225 MGD) and the applicable concentration limits, as shown in the following example calculation:

$$\text{Monthly Average: } (30 \text{ mg/L})(8.34)(0.0225 \text{ MGD}) = 5.6 \text{ lbs./day}$$

The Department reviewed 17 DMRs that were submitted for the period September 2009 – March 2014 for TSS. A review of data indicates the following:

TSS

Value	Minimum	Maximum	Mean
Monthly Average/	0.3 lbs./day	0.40 lbs./day	0.137 lbs./day
Daily Maximum	1.10 mg/L	11.00 mg/L	3.224 mg/L

This permitting action is revising the minimum monitoring frequency to once per discharge quarter for TSS based on best professional judgment.

- e. Free Available Chlorine (FAC): The previous permitting action established, and this permitting action is carrying forward, daily maximum and monthly average concentration limits of 0.5 mg/L 0.2 mg/L, respectively, for FAC based on the best practicable treatment-based effluent guidelines promulgated at 40 CFR 423.12(b)(7). Typically, the Department establishes limitations for the discharge of total residual chlorine (TRC) to ensure that ambient water quality standards are maintained and that best practicable treatment technology is being applied to the discharge. In the case of the discharge from PERC and the effluent guidelines, this permitting action is carrying forward limitations for FAC to protect receiving water quality from the discharge of chlorine in toxic amounts. Department permitting actions impose the more stringent of either water quality-based limitations for TRC or best practicable treatment-based limitations for FAC.

End-of-pipe acute and chronic water quality based concentration thresholds for TRC may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A & C Dilution Factors	Calculated	
			Acute Threshold	Chronic Threshold
0.013 mg/L	0.0075 mg/L	36:1 (A) 300:1 (C)	0.5 mg/L	2.3 mg/L

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

The BPT-based daily maximum concentration limitations for FAC are more stringent than the water quality-based limitations for TRC and are therefore being carried forward in this permitting action.

This permitting action is revising the minimum monitoring frequency requirement to once per discharge quarter for FAC based on Department best professional judgment.

40 CFR 423.12(b)(8) states:

Neither free available chlorine nor total residual chlorine may be discharged from any unit for more than two hours in any one day and not more than one unit in any plant may discharge free available or total residual chlorine at any one time unless the utility can demonstrate to the Regional Administrator or State, if the State has NPDES permit issuing authority, that the units in a particular location cannot operate at or below this level of chlorination.

However, the permittee has demonstrated that because of the chloramine residuals in the water supplied to the facility by the Bangor Water District and the sodium hypochlorite PERC adds to the cooling tower as a disinfectant they cannot operate at or below this level of chlorination at all times. Therefore, this requirement is being waived.

The Department reviewed 17 DMRs that were submitted for the period September 2009 – March 2014. A review of data indicates the following:

Free available chlorine

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Monthly Average	0.2	0.00 – 0.01	0.01
Daily Maximum	0.5	0.00 - 0.01	0.01

- f. Oil & Grease (O&G): The previous permitting action established, and this permitting action is carrying forward, technology-based monthly average concentration and mass limits of 15 mg/L and 2.8 lbs./day, respectively, for O&G. The previous permitting action also established and this permitting action is carrying forward, technology-based daily maximum concentration and mass limits of 20 mg/L and 3.8 lbs./day, respectively, for O&G. The concentration limitations are based on the best practicable treatment-based effluent guidelines promulgated at 40 CFR 423.12(b)(3). The mass limitations were derived using the previous permitted flow of 0.0225 MGD and the applicable concentration limits, as shown in the following example calculation:

$$\text{Monthly Average: } (15 \text{ mg/L})(8.34)(0.0225 \text{ MGD}) = 3.8 \text{ lbs./day}$$

The Department reviewed 16 DMRs that were submitted for the period September 2009 – March 2014. A review of data indicates the following:

O&G

Value	Minimum	Maximum	Mean
Monthly Average /	0.01 lbs./day	0.12 lbs./day	0.048 lbs./day
Daily Maximum	1.0 mg/L	3.9 mg/L	1.3 mg/L

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

This permitting action is revising the minimum monitoring frequency requirement to once per discharge quarter for O&G based on Department best professional judgment.

- g. Temperature: The previous permitting action established, and this permitting action is carrying forward, a year-round daily maximum effluent temperature limitation of 100°F to ensure that the discharge complies with the requirements of *Regulations Relating to Temperature*, 06-096 CMR 582 (last amended February 18, 1989). The limit has been in effect since at least issuance of the April 2, 1992 WDL and was based on a joint best professional judgment by the Department and the permittee and is considered representative of the discharge.

06-096 CMR 582(5) states:

No discharge of pollutants must cause the monthly mean of the daily maximum ambient temperatures in any tidal body of water, as measured outside the mixing zone, to be raised more than 4 degrees Fahrenheit, nor more than 1.5 degrees Fahrenheit from June 1 to September 1. In no event must any discharge cause the temperature of any tidal waters to exceed 85 degrees Fahrenheit at any point outside a mixing zone established by the Board.

With an acute dilution factor of 36:1 and a permitted flow of 0.075 MGD the assimilative capacity of the receiving water is 2.7 MG.

Assimilative capacity for June 1 through September 1

The assimilative capacity of the Penobscot River (thermal load that would cause the river to increase by 1.5°F from June 1 through September 1) at the critical 7Q10 low flow can be calculated as follows:

$$(2,700,000 \text{ gal})(1.5^{\circ}\text{F})(8.34 \text{ lbs./gallon}) = 0.033 \times 10^9 \text{ BTU/day}$$

Assimilative capacity for September 2 through May 31

The assimilative capacity of the Penobscot River (thermal load that would cause the river to increase by 4.0°F from September 2 through May 31) at the critical 7Q10 low flow can be calculated as follows:

$$(2,700,000 \text{ gal})(4.0^{\circ}\text{F})(8.34 \text{ lbs./gallon}) = 0.090 \times 10^9 \text{ BTU/day}$$

With a daily maximum effluent temperature limitation of 100°F, the discharge from PERC will comply with the instantaneous temperature limit of 85°F established by 06-096 CMR 582. The calculation is as follows:

$$(75,000 \text{ gal})(100^{\circ}\text{F} - 85^{\circ}\text{F})(8.34 \text{ lbs./gallon}) = 0.009 \times 10^9 \text{ BTU/day}$$

Thus, the maximum effluent temperature limitation of 100°F is sufficiently stringent to ensure that under maximum discharge conditions and critical 7Q10 low flow conditions, the discharge will not cause or contribute to violations of the temperature criteria established by 06-096 CMR 582.

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

The Department reviewed 12 DMRs that were submitted for the period September 2009 – March 2014. A review of data indicates the following:

Temperature

Value	Minimum	Maximum	Mean
Daily Maximum	67°F	82°F	74°F

This permitting action is revising the minimum monitoring frequency to once per discharge quarter for temperature based on best professional judgment.

- h. pH: The previous permitting action established a pH range limitation of 6.0 to 9.0 standard units (SU) for all waste streams with the exception of once-through cooling waters pursuant to 40 CFR 423.12(b)(1). *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(A)(5) prohibits the Department from issuing a permit for any discharge that would cause the pH of any fresh waters to fall outside the range of 6.0 – 8.5 SU. Therefore, this permitting action is extending the applicable pH range limitation to include all discharges from Outfall #001A, including once-through cooling waters.

A review of the effluent pH data as reported on the DMRs submitted to the Department for the period September 2009– March 2014 indicates that the facility has been in compliance with the pH range limitation 100% of the time during said period.

This permitting action is revising the minimum monitoring frequency requirement to once per discharge quarter for pH based on Department best professional judgment.

Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing

In the previous permitting action the Department limited the following metals: copper, iron, zinc and chromium in the event that metal cleaning waste streams associated with activities such as boiler tube cleaning would be present. In lieu of an applicable National Effluent Guideline the Department used best professional judgment to apply best practicable treatment pursuant to 40 CFR 423.12(b)(5) [equivalent to the best available technology guidelines at 40 CFR 423.13(e)] to limit copper and iron. The Department also used best professional judgment to limit zinc and chromium pursuant to the best available technology-based guidelines at 40 CFR 423.13(d)(1).

PERC facility has only used metal cleaning chemicals once since the commencement of operations. The metal cleaning wastes were collected and shipped off site to be treated at a facility capable of treating the wastes properly. PERC has indicated that should metal cleaning activities become necessary in the future, the wastewaters associated with the activities will be once again be collected and treated by a third party. Furthermore, recent modifications to the facility's wastewater treatment plant and wastewater processing now allow the facility to function as a zero discharge facility under normal operating conditions. Wastewater is typically only generated during maintenance or upset.

Therefore, the Department concludes that PERC does not exhibit metals related impacts and this permitting action is eliminating limits and monitoring requirements for copper, iron, zinc and chromium. Elimination of the numeric limitations for metals complies with the anti-backsliding provision at 40 CFR 122.44(l)(2)(i)(B)(1).

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

i. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing:

38 M.R.S.A., §414-A and §420, prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. 06-096 CMR 530, *Surface Water Toxics Control Program* (toxics rule) sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected and narrative and numeric water quality criteria are met. 06-096 CMR 584, *Surface Water Quality Criteria for Toxic Pollutants*, sets forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

The previous permitting action categorized the facility as a Level IV discharger based on their chronic dilution factor and permitted flow, and was therefore subject to toxics testing pursuant to 06-096 CMR 530. However, the requirement was waived of the routine testing requirements for a Level IV facility as the facility had demonstrated through previous testing and application information that there are no toxic compounds present in toxic amounts. This waiver required the facility to submit annual statements with the Department on or before December 31 of each year describing to maintain the waiver pursuant to 06-096 CMR 530(2)(D)(4).

06-096 CMR 530 (2)(A) specifies the dischargers subject to the rule as:

All licensed dischargers of industrial process wastewater or domestic wastes discharging to surface waters of the State must meet the testing requirements of this section. Dischargers of other types of wastewater are subject to this subsection when and if the Department determines that toxicity of effluents may have reasonable potential to cause or contribute to exceedences of narrative or numerical water quality criteria.

Based on the changes to the treatment process and best professional judgment the Department finds that PERC does not discharge industrial process wastewater or domestic wastes as defined by 06-096 CMR 530. Further, 40 CFR 423.13(d)(1) and Special Condition A of this permit specify that there must be no detectable levels of the 126 priority pollutants as specified in *Appendix A to Part 423 – 126 Priority Pollutants*. The Department has no information at this time that the discharge from PERC contains toxic compounds in toxic amounts and is not requiring the facility to perform WET, priority pollutant, or analytical chemistry testing. However, in accordance with Special Condition J, *Reopening of Permit For Modifications*, of this permit, the Department reserves the right to reopen this permit at any time, and with notice to the permittee, to establish toxics testing requirements pursuant to 06-096 CMR 530 based on new information regarding the sources or characterization of wastewater discharged via Outfall #001A.

- j. Stormwater Associated with Industrial Activity: The previous permitting action authorized the discharge of stormwater via only Outfall #002A and established, as Special Condition J.1 of the 8/26/09 permit, a requirement for PERC to develop and maintain a Storm Water Pollution Prevention Plan (SWPPP).

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

On April 26, 2011, the Department issued *Multi-Sector General Permit Maine Pollutant Discharge Elimination System Stormwater Discharge Associated with Industrial Activity* (MSGP). *Sector O – Steam Electric Generating Facilities* of the 4/26/11 MSGP applies to the discharge of stormwater from the PERC facility, and to be consistent with the terms and conditions of the 4/26/11 MSGP, all requirements thereof are incorporated into this permit through Special Condition J and Attachment B of the permit.

Special Condition J of the permit requires quarterly visual monitoring for observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution from each outfall point. These observations must be performed in accordance with Department guidance document #DEPLW0768, *Standard Operating Procedure Guidelines for Visual Monitoring of Stormwater Associated with Industrial Activities*, including associated Attachments A (*Instructions for Completing the Visual Monitoring Form*) and B (*Visual Monitoring Form*) (all included as Attachment B of the permit).

- k. Mercury: Pursuant to *Certain deposits and discharges prohibited*, 38 M.R.S.A. § 420 and *Waste discharge licenses*, 38 M.R.S.A. § 413 and *Interim Effluent Limitations and Controls for the Discharge of Mercury*, 06-096 CMR 519 (last amended October 6, 2001), the Department issued a *Notice of Interim Limits for the Discharge of Mercury* to the permittee thereby administratively modifying WDL W000683-47-C-R by establishing interim monthly average and daily maximum effluent concentration limits of 14.6 parts per trillion (ppt) and 22.0 ppt, respectively, and a minimum monitoring frequency requirement of four (4) tests per year for mercury. It is noted the limitations have been incorporated into Special Condition A, *Effluent Limitations And Monitoring Requirements*, of this permit.

38 M.R.S.A. § 420(1-B)(B)(1) provides that a facility is not in violation of the AWQC for mercury if the facility is in compliance with an interim discharge limit established by the Department. A review of the Department's data base for the period February 2009 through October 2013 indicates the permittee has been in compliance with the interim limits for mercury as results have been reported as follows;

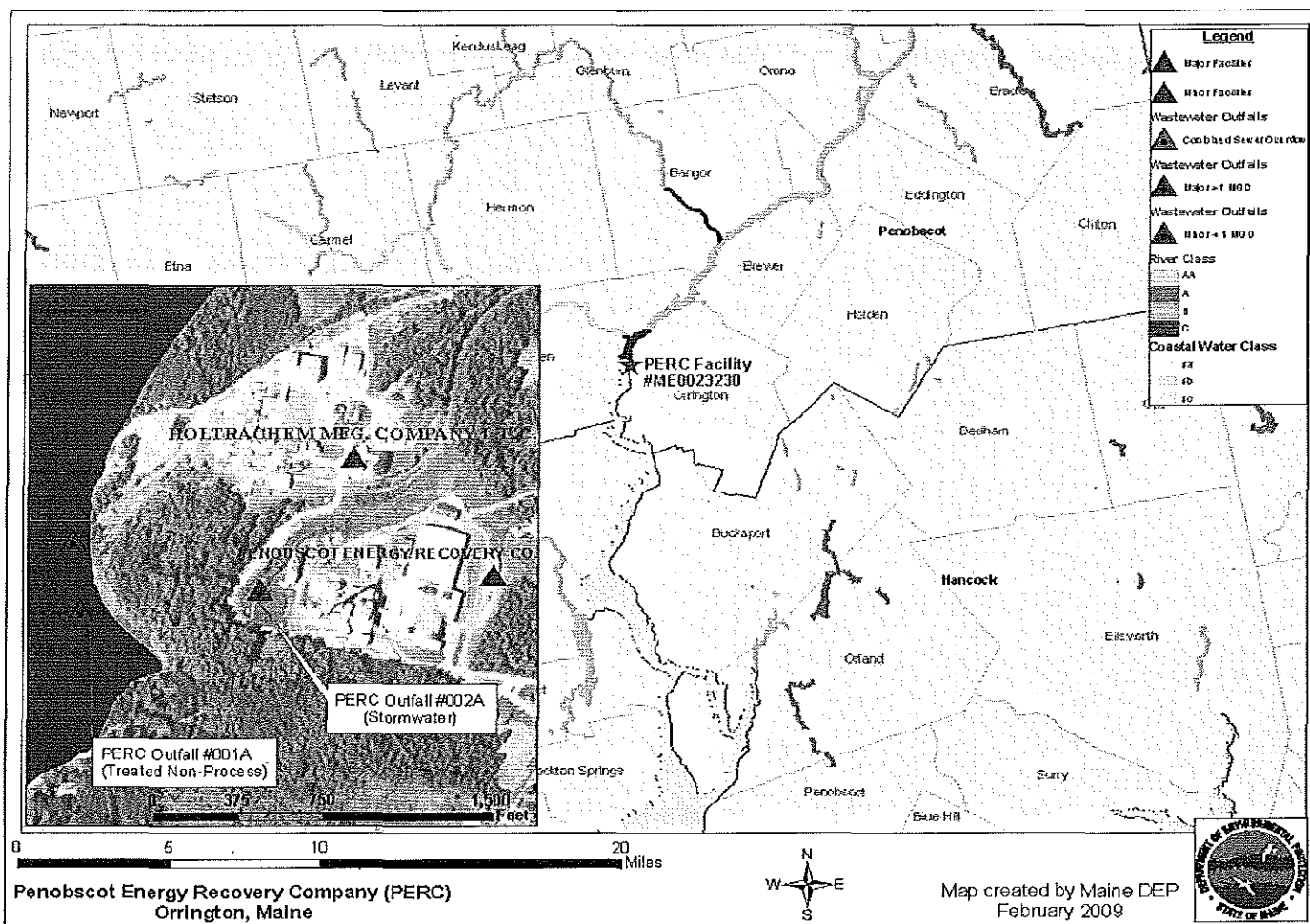
Mercury

Value	Limit (ng/L)	Range (ng/L)	Mean (ng/L)
Average	14.6	2.20 – 5.86	5.8
Daily Maximum	22.0		

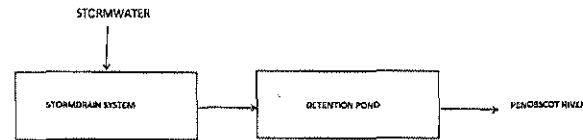
Pursuant to 38 M.R.S.A. § 420(1-B)(F), the Department issued a minor revision on February 6, 2012 to the May 25, 2009 permit thereby revising the minimum monitoring frequency requirement from four times per year to once per year given the permittee has maintained at least 5 years of mercury testing data. In fact, the permittee has been monitoring mercury at a frequency of 4/Year since June 2000 or 11 years.

Pursuant to 38 M.R.S.A. § 420(1-B)(F), this permitting action is carrying forward the 1/Year monitoring frequency established in the February 6, 2012 permit modification. It is noted, however, that mercury sampling is not required if the facility has not discharged during a calendar year.

ATTACHMENT A



ATTACHMENT B

PENOBSCOT ENERGY RECOVERY COMPANY
WATER BALANCE 2014

C. Quasidit overflow from ash drag, clean in address and eliminate during 2014.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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.

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

6. Upsets.

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

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C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

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

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D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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