



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

February 15, 2012

VIA ELECTRONIC MAIL

Mr. Joseph Aloisio
Sunday River Skiway Corporation
P.O. Box 4500
Newry, ME 04261
jaloisio@sundayriver.com

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0023361
Maine Waste Discharge License (WDL) Application #W007312-5C-F-R
Final Permit – Sunday River Skiway Corporation

Dear Mr. Aloisio:

Enclosed please find a copy of your **final** Maine MEPDES Permit/WDL which was approved by the Department of Environmental Protection. Please read the license and its attached conditions carefully. You must follow the conditions in the license 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 this matter, please feel free to contact me at (207) 287-7658 or via email at: phyllis.a.rand@maine.gov.

Sincerely,

Phyllis Arnold Rand
Division of Water Quality Management
Bureau of Land and Water Quality

Enclosure

Cc: Fred Gallant, DEP/SMRO Sandy Mojica, EPA Lori Mitchell, DEP/DMU



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

DEPARTMENT ORDER

IN THE MATTER OF

SUNDAY RIVER SKIWAY CORPORATION)	MAINE POLLUTANT DISCHARGE
BETHEL, OXFORD COUNTY)	ELIMINATION SYSTEM PERMIT
COMMERCIAL OVERBOARD DISCHARGE)	AND
ME0023361)	WASTE DISCHARGE LICENSE
W007312-5C-F-R)	RENEWAL
APPROVAL		

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

APPLICATION SUMMARY

Sunday River has applied to the Department for a renewal of Waste Discharge License (WDL) #W007312-5C-E-R, which was issued on February 28, 2007, and is due to expire on February 28, 2012. The 2/28/07 WDL authorized the monthly average discharge of up to 0.240 million gallons per day (MGD) of secondary treated sanitary wastewater from a commercial ski resort facility to the Androscoggin River, Class B, in Bethel, Maine.

PERMIT SUMMARY

This permitting action is similar to the 2/28/07 permitting action in that it is:

1. Carrying forward the monthly average discharge flow limit of 0.240 MGD and the daily maximum discharge flow limit of 0.306 MGD;
2. Carrying forward the technology-based, monthly average, weekly average and daily maximum concentration and mass limitations for biochemical oxygen demand (BOD₅) and total suspended solids (TSS);
3. Carrying forward the technology-based, daily maximum concentration limit of 1.0 mg/L for total residual chlorine (TRC);

PERMIT SUMMARY (cont'd)

4. Carrying forward the minimum monitoring frequency requirements for discharge flow, BOD₅, and TSS;
5. Carrying forward a requirement to achieve a minimum 30-day average of 85 percent removal for BOD₅ and TSS;
6. Carrying forward the daily maximum, technology-based concentration limitation of 0.3 mL/L for settleable solids;
7. Carrying forward the seasonal monthly average and daily maximum concentration limits for *Escherichia coli*;
8. Carrying forward the minimum monitoring frequency requirements for pH and TRC.

This permitting action is different from the 2/28/07 permitting action in that it is:

9. Revising the minimum monitoring frequency requirement for settleable solids from 5/Week to 3/Week based on Department Best Professional Judgment.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated February 15, 2012, and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 M.R.S.A. §464(4)(F), will be met, in that:
 - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - (b) Where high quality waters of the State constitute an outstanding natural resource, that water quality will be maintained and protected;
 - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
 - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment as defined in Maine law, 38 M.R.S.A., §414-A(1)(D).
5. The overboard discharge system was in continuing existence for the 12 months preceding June 1, 1987.
6. A subsurface wastewater disposal system could not be installed in compliance with the Maine Subsurface Waste Water Disposal Rules at the time the renewal application was accepted by the Department.
7. A publicly owned sewer line is not located on or abutting land owned or controlled by the permittee or is not available for the permittee's use.
8. The discharge is not located within the boundaries of a sanitary district or sewer district.

ACTION

THEREFORE, the Department APPROVES the above noted application of the SUNDAY RIVER SKIWAY CORPORATION to discharge a monthly average flow of up to 0.240 MILLION GALLONS PER DAY of secondary treated sanitary waste waters to the Androscoggin River, Class B, in Bethel, 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) (effective April 1, 2003)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: December 7, 2011

Date of application acceptance: December 12, 2011

This Order prepared by Phyllis Arnold Rand, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- The permittee is authorized to discharge **secondary treated sanitary and commercial waste waters from Outfall #001A** to the Androscoggin River at Bethel. Such discharges shall be limited and monitored by the permittee as specified below⁽¹⁾:

	<u>Monthly Average</u> as specified	<u>Weekly Average</u> as specified	<u>Daily Maximum</u> as specified	<u>Monthly Average</u> as specified	<u>Weekly Average</u> as specified	<u>Daily Maximum</u> as specified	<u>Measurement Frequency</u> as specified	<u>Sample Type</u> as specified
Flow <i>[50050]</i>	0.240 MGD <i>[03]</i>	---	0.306 MGD <i>[03]</i>	---	---	---	Continuous <i>[99/99]</i>	Recorder <i>[RC]</i>
BOD₅ <i>[00310]</i>	60 lbs/day <i>[26]</i>	90 lbs/day <i>[26]</i>	100 lbs/day <i>[26]</i>	30 mg/L <i>[19]</i>	45 mg/L <i>[19]</i>	50 mg/L <i>[19]</i>	1/Week <i>[01/07]</i>	24-Hour Composite <i>[24]</i>
BOD₅ Percent Removal⁽²⁾ <i>[81010]</i>	---	---	---	85% <i>[23]</i>	---	---	1/Month <i>[01/30]</i>	Calculate <i>[CA]</i>
TSS <i>[00530]</i>	60 lbs/day <i>[26]</i>	90 lbs/day <i>[26]</i>	100 lbs/day <i>[26]</i>	30 mg/L <i>[19]</i>	45 mg/L <i>[19]</i>	50 mg/L <i>[19]</i>	1/Week <i>[01/07]</i>	24-Hour Composite <i>[24]</i>
TSS Percent Removal⁽²⁾ <i>[81011]</i>	---	---	---	85% <i>[23]</i>	---	---	1/Month <i>[01/30]</i>	Calculate <i>[CA]</i>
Settleable Solids <i>[00545]</i>	---	---	---	---	---	0.3 ml/L <i>[25]</i>	3/Week <i>[03/07]</i>	Grab <i>[GR]</i>
<i>E. coli</i> Bacteria⁽³⁾ (May 15 – Sept. 30) <i>[31633]</i>	---	---	---	64/100 mL ⁽⁴⁾ <i>[13]</i>	---	427/100 mL <i>[13]</i>	1/Week <i>[01/07]</i>	Grab <i>[GR]</i>
Total Residual Chlorine <i>[50060]</i>	---	---	---	---	---	1.0 mg/L <i>[19]</i>	5/Week <i>[05/07]</i>	Grab <i>[GR]</i>
pH <i>[00400]</i>	---	---	---	---	---	6.0 – 9.0 SU <i>[12]</i>	5/Week <i>[05/07]</i>	Grab <i>[GR]</i>

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 Page 6 of this permit for applicable footnotes.

SPECIAL CONDITIONS

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

FOOTNOTES:

1. **Sampling** – Sampling and analysis must be conducted in accordance with; a) methods approved by Title 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services. 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 (last amended 2/13/00). Laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of the *Maine Comprehensive and Limited Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000).

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

2. **BOD₅ and TSS Percent Removal** – The treatment facility shall maintain a minimum of 85 percent removal of biochemical oxygen demand and total suspended solids for all flows receiving secondary treatment. Compliance with the limitation is based on a twelve-month rolling average. Calendar monthly average percent removal values shall be calculated based on influent and effluent concentrations. The twelve-month rolling average calculation is based on the most recent twelve-month period when the influent concentrations are greater than or equal to 200 mg/L. The percent removal shall be waived when the twelve-month rolling average influent concentration is less than 200 mg/L.
3. **Bacteria Limits** – *E. coli* bacteria limits and monitoring requirements are seasonal and apply between May 15 and September 30 of each year. The Department reserves the right to require year-round bacteria limits to protect the health, safety and welfare of the public.
4. **Bacteria Reporting** – The monthly average *E. coli* bacteria limitation is a geometric mean limitation and sample results shall be reported as such.

SPECIAL CONDITIONS

B. ANNUAL DISCHARGE FEES

Pursuant to *Annual Waste Discharge License Fees*, 38 M.R.S.A. §353-B, the permittee is required to pay an applicable annual fee for discharges authorized by this permit. Failure to pay an annual fee within 30 days of the billing date of a license/permit is sufficient grounds for accruing interest charges, penalties or revocation of the license.

C. NARRATIVE EFFLUENT LIMITATIONS

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

D. TREATMENT PLANT OPERATOR

The person who has the management responsibility over the treatment facility must hold a **Maine Grade II** Waste Water Treatment Plant Operator Certificate or must be a Maine Registered Professional Engineer pursuant to *Sewerage Treatment Operators*, Title 32 M.R.S.A., Sections 4171 to 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.

E. AUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with the terms and conditions of this permit and only from Outfall #001A. Discharges of wastewater from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

SPECIAL CONDITIONS

F. NOTIFICATION REQUIREMENTS

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

1. Any substantial change in the characteristics of pollutants being introduced into the waste water collection and treatment system by a source introducing pollutants to the system at the time of permit issuance.
2. For the purposes of this section, adequate notice shall include information on:
 - a. The quality of waste water introduced to the waste water collection and treatment system; and
 - b. Any anticipated impact of the change in the quality of the waste water to be discharged from the treatment system.

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

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

- (a) Changes in the number or types of non-domestic wastes contributed directly or indirectly to the wastewater treatment works that may increase the toxicity of the discharge;
- (b) Changes in the operation of the treatment works that may increase the toxicity of the discharge; and
- (c) Changes in industrial manufacturing processes contributing wastewater to the treatment works that may increase the toxicity of the discharge.

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

- (d) Changes in storm water collection or inflow/infiltration affecting the facility that may increase the toxicity of the discharge.
- (e) Increases in the type or volume of hauled wastes accepted by the facility.

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

H. SITE EVALUATION FOR TRANSFERRED AND RENEWED PERMITS

Prior to permit transfer or transfer of the property occupying the permitted overboard discharge system, a site evaluation must be performed by a licensed site evaluator with experience in designing systems for the replacement of overboard discharge systems.

The Department may not grant approval for **permit transfer** if the site evaluation concludes that a non-discharging wastewater disposal system designed in compliance with the Maine Subsurface Waste Water Disposal Rules administered by the Maine Department of Health and Human Services, Division of Environmental Health, can be installed as a replacement system for the overboard discharge.

The Department may not grant approval for a **permit renewal** if the site evaluation concludes that a non-discharging wastewater disposal system can be installed as a replacement system for the overboard discharge and the Department has offered the permittee funding for the renewal of the discharge.

I. OPERATIONS AND MAINTENANCE (O&M) PLAN

This facility shall have a current written comprehensive Operation & Maintenance (O&M) Plan. The plan shall provide a systematic approach by which the permittee shall at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

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

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

J. WET WEATHER MANAGEMENT PLAN

The permittee shall maintain a Wet Weather Flow Management Plan to direct the staff on how to operate the facility effectively during periods of high flow. The Department acknowledges that the existing collection system may deliver flows in excess of the monthly average design capacity of the treatment plant during periods of high infiltration and rainfall. The plan shall include operating procedures for a range of intensities, address solids handling procedures (including septic tank wastes and other high strength wastes if applicable) and provide written operating and maintenance procedures during the events. **The licensee shall**

SPECIAL CONDITIONS

J. WET WEATHER MANAGEMENT PLAN (cont'd)

review the plan at least annually and record any necessary changes to keep the plan up-to-date. Any changes shall be submitted to the Department for review and approval.

K. MONITORING AND REPORTING

Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report (DMR) forms provided by the Department and **postmarked on or before the thirteenth (13th) day of the month or hand-delivered to 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 shall be submitted to the following address:

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

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

L. REOPENING OF PERMIT FOR MODIFICATIONS

Upon evaluation of any required test results, results of inspections and/or reporting required by the Special Conditions of this permitting action, additional site specific or any other pertinent information or test results obtained during the term of this permit, the Department may, at any time and with notice to the permittee, modify this permit to require additional monitoring, inspections and/or reporting based on the new information.

SPECIAL CONDITIONS

M. SEVERABILITY

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

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

FACT SHEET

February 15, 2012

PERMIT NUMBER: **ME0023361**
WASTE DISCHARGE LICENSE: **W007312-5C-F-R**

NAME AND ADDRESS OF APPLICANT:

**SUNDAY RIVER SKIWAY CORPORATION
P.O. BOX 4500
NEWRY, MAINE 04261**

COUNTY: **OXFORD**

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

**SUNDAY RIVER SKIWAY CORPORATION
155 SKIWAY ROAD
NEWRY, MAINE 04261**

RECEIVING WATER/CLASSIFICATION: **ANDROSCOGGIN RIVER/CLASS B**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **MR. JOSEPH ALOSIO, JR.**
(207) 824-3000
jaloisio@sundayriver.com

1. APPLICATION SUMMARY

Sunday River has applied to the Department for a renewal of Waste Discharge License (WDL) #W007312-5C-E-R, which was issued on February 28, 2007, and is due to expire on February 28, 2012. The 2/28/07 WDL authorized the monthly average discharge of up to 0.240 million gallons per day (MGD) of secondary treated sanitary wastewater from a commercial ski resort facility to the Androscoggin River, Class B, in Bethel, Maine.

2. PERMIT SUMMARY

- a. Terms and Conditions: **This permitting action is similar to the 2/28/07 permitting action in that it is:**
1. Carrying forward the monthly average discharge flow limit of 0.240 MGD and the daily maximum discharge flow limit of 0.306 MGD;
 2. Carrying forward the technology-based, monthly average, weekly average and daily maximum concentration and mass limitations for biochemical oxygen demand (BOD₅) and total suspended solids (TSS);

2. PERMIT SUMMARY (cont'd)

3. Carrying forward the technology-based, daily maximum concentration limit of 1.0 mg/L for total residual chlorine (TRC);
4. Carrying forward the minimum monitoring frequency requirements for discharge flow, BOD₅, and TSS;
5. Carrying forward a requirement to achieve a minimum 30-day average of 85 percent removal for BOD₅ and TSS;
6. Carrying forward the daily maximum, technology-based concentration limitation of 0.3 mL/L for settleable solids;
7. Carrying forward the seasonal monthly average and daily maximum concentration limits for *Escherichia coli*;
8. Carrying forward the minimum monitoring frequency requirements for pH and TRC.

This permitting action is different from the 2/28/07 permitting action in that it is:

9. Revising the minimum monitoring frequency requirement for settleable solids from 5/Week to 3/Week based on Department Best Professional Judgment.
- b. History: This section provides a summary of significant licensing/permitting actions and milestones that have been completed for the Sunday River Wastewater Treatment Facility.

May 10, 1994 – The USEPA issued National Pollutant Discharge Elimination System (NPDES) permit #ME0023361 to Sunday River for a five-year term. The 5/10/1994 NPDES permit superseded the initial NPDES permit issued on December 31, 1987.

January 12, 2001 – The Department received authorization from the USEPA to administer the NPDES permit program in Maine, excluding areas of special interest to Maine Indian Tribes.

June 3, 1996 – The Department issued WDL #W007312-5C-D-R to Sunday River for a ten-year term. The 6/3/1996 permit superseded WDL #W007312-67-C-R issued on August 14, 1990, WDL Modification #W007312-67-B-M issued on February 14, 1989, and WDL #W007312-41-A-N issued on April 8, 1987.

June 3, 1996 – The Department issued WDL #W007312-5C-E-R to Sunday River for a five-year term.

December 7, 2011 – Sunday River submitted a General Application to the Department for renewal of the 2/28/07 MEPDES permit. The application was accepted for processing on December 12, 2011 and was assigned WDL #W007312-5C-F-R / MEPDES #ME0023361.

2. PERMIT SUMMARY (cont'd)

- c. Source Description: The Sunday River Skiway Corporation (SRSC) owns and operates a recreational ski resort complex in Bethel, Maine. The ski resort consists of hotels, condominiums, single family dwellings, restaurants, base lodges, and light commercial establishments. Wastewater generated by these sources is treated at the Sunday River Wastewater Treatment Facility. A map created by the Department showing the location of the resort, treatment facility, and receiving water is included as Fact Sheet **Attachment A**. Based on information contained in the record, the treatment system was designed to treat an average of 0.240 million gallons of wastewater per day generated by existing and proposed developments at the resort. There are no significant industrial users connected to and no combined sewer overflow (CSO) points associated with the collection system. Based on information contained in the record, the wastewater treatment system utilizes a conventional gravity sewer collection system with 8 pump stations.

The 1996 license authorized Sunday River to receive a maximum of 2,000 gallons per day and a maximum of 30,000 gallons per month of transported wastes into the treatment system. Sunday River has not applied to the Department for authorization to receive or introduce into the treatment process transported wastes.

- d. Wastewater Treatment: The Sunday River Wastewater Treatment Facility provides a secondary level of wastewater treatment via three facultative lagoons operated in series. Each lagoon has a capacity of approximately 3.5 million gallons. A 3-inch Parshall flume is utilized for influent flow measurement. Treated effluent is seasonally disinfected with chlorine for compliance with the *E. coli* bacteria limits established for Class B waters and is conveyed to the Androscoggin River at Bethel at a depth of 4.28 feet below mean low water via an approximately 3-mile long, 8-inch diameter outfall pipe designated Outfall #001A in this permitting action.
- e. Replacement Options: Sunday River submitted documentation with the January 19, 2007 General Application indicating that replacement of the overboard discharge system with a subsurface wastewater disposal system is not feasible at this location. The site evaluation report completed by Buck Site Evaluators of West Paris, Maine, states that at the permitted flow of 240,000 gallons per day, the facility would require 19 acres of disposal field area. The licensed site evaluator determined that there is only approximately one-third of the necessary 19-acres of land area available for subsurface disposal. The site evaluation report states that suitable land area is limited due to the highly sloped soils characteristic of the mountain development, setbacks from water lines, public wells, streams, structures, and property lines. The report also states that the excessive hydraulic loading coming down the mountain slopes across the entire mountain range has the potential to wash out the disposal fields and impact down-gradient surface water resources. Therefore, the Department concurs with Sunday River that there are no viable subsurface disposal options available at this time.

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, *Certain deposits and discharges prohibited*, 38 M.R.S.A. §420 and *Surface Water Toxics Control Program*, 06-096 CMR 530 (effective October 9, 2005), require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584, 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

38 M.R.S.A. §467(1)(A)(1) classifies the Androscoggin River, main stem, from the Maine-New Hampshire boundary to its confluence with the Ellis River, which includes the reach at the point of Sunday River's discharge, as a Class B waterway. 38 M.R.S.A. §465(3) describes the standards for Class B waters.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2010 Integrated Water Quality Monitoring and Assessment Report, prepared pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, (also known as the "305b Report") lists a 31.0-mile reach of the Androscoggin River, main stem, above Rumford Point (Hydrologic Unit Code #ME0104000202/Waterbody ID #421R), which includes the receiving water at the point of discharge, as, "*Category 4-B: Rivers and Streams Impaired by Pollutants, Pollution Control Requirements Reasonably Expected to Result in Attainment*" and "*Category 5-D: Rivers and Streams Impaired by Legacy Pollutants.*" Impairment in this context refers to a statewide fish consumption advisory due to the presence of dioxin. The Department has no information at this time that the discharge from the Sunday River Wastewater Treatment Facility contains dioxin in quantities or concentrations that will cause or contribute to the failure of the receiving water to meet the designated uses of its ascribed classification.

In addition, the 305b Report lists all freshwaters in Maine as "*Category 4-A: Waters Impaired by Atmospheric Deposition.*" Impairment in this context refers to the designated use of recreational fishing due to elevated levels of mercury in some fish caused by atmospheric deposition. As a result, the State has established a fish consumption advisory for all freshwaters in Maine. Pursuant to *Certain deposits and discharges prohibited*, 38 M.R.S.A. §420 sub-§ (1-B)(B), "*a facility is not in violation of the ambient criteria for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to section 413 subsection 11.*" Further, *Interim Effluent Limitations and Controls for the Discharge of Mercury*, 06-096 CMR 519, states, "This rule does not apply to the following categories of licensees: combined sewer overflows, snow dumps, pesticide applications, and over board discharges licensed pursuant to 38 MRSA §413". The Sunday River Wastewater Treatment Facility is an overboard discharge system and is therefore categorically excluded from the requirements of 38 M.R.S.A. §420 and

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

06-096 CMR 519. The Department has no information at this time regarding effluent levels of mercury discharged from the Sunday River Wastewater Treatment Facility.

It is noted that while the discharge from Sunday River occurs miles above the Gulf Island Pond Dam in Lewiston/Auburn, Maine, the Report identifies an 8.19-mile reach of the Androscoggin River, main stem, upstream of the Gulf Island Dam (HUC #ME0104000208/Waterbody ID #424R) as, “*Category 4-A: Rivers and Streams with Impaired Use Other Than Mercury, TMDL Completed.*” Impaired use in this context refers to the results of algal blooms, BOD, dissolved oxygen, phosphorus and total suspended solids. Two segments of the Androscoggin River are on Maine’s 303(d) list as bodies of water that do not attain Class C water quality standards.

According to the total maximum daily load (TMDL) entitled, *Androscoggin River Total Maximum Daily Load Gulf Island Pond, Livermore Falls Impoundment, May, 2005*, prepared by the Department, Gulf Island Pond (GIP) does not attain Class C minimum and monthly average dissolved oxygen (DO) criteria in a four-mile segment directly above Gulf Island Dam, primarily in deeper areas of the water column from 30 to 80 feet of depth. In addition, algae blooms occur from excessive amounts of phosphorus discharged to the river flowing into the pond preventing attainment of the designated uses of water contact recreation. In addition to GIP, the Livermore Falls impoundment just below the International Paper (IP) Mill in Jay, Maine, does not attain Class C aquatic life criteria, as indicated by recent water quality evaluations utilizing macro-invertebrate sampling and the use of a linear discriminate modeling.

The TMDL identifies discharges from paper mills located in Berlin, New Hampshire, Rumford, Maine, and Jay, Maine as the major sources of most of the pollutants affecting GIP water quality. Municipal point sources are located in Berlin, New Hampshire, Gorham, New Hampshire, Bethel, Maine, Rumford-Mexico, Maine, and Livermore Falls, Maine. The MEPDES permits issued to the above listed facilities implement the conclusions and recommendations of the 2005 TMDL.

Component analysis and river modeling indicate that the municipal sources of total phosphorous and orthophosphate from the Berlin, Gorham, Bethel and Rumford-Mexico POTWs have a *de-minimis* contribution to algae growth in Gulf Island Pond. However, all municipal point sources are included in the TMDL. The component analysis of phosphorus loads discharged in 2004 indicates that paper mills are still the largest source of phosphorus and account for about 70% of the total phosphorous and 80% of the orthophosphate entering the pond. Gulf Island Dam contributes to non-attainment of DO criteria and the growth of algae blooms by creating an environment of low water movement and low vertical mixing within the water column. Modeling also indicates that the presence of the dam accounts for about 20% of the algae levels in Gulf Island Pond with the TMDL implemented. Non-attainment of Class C DO criteria in deeper portions of the pond is predicted by the water quality model, even if point source discharges are eliminated, due to sediment oxygen demand from natural and non-point sources of pollution. There are limited opportunities for the control of significant amounts of non-point source pollution given the relatively undeveloped nature of this large watershed.

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

Based on component analysis and river modeling, the Department concludes that the Sunday River Wastewater Treatment Facility is not a significant source causing or contributing to non-attainment of the receiving waters.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Best Practicable Treatment (BPT) - Overboard discharges may be permitted only where no technologically proven alternative exists. Overboard discharge treatment systems must be capable of meeting secondary treatment standards as described in 06-096 CMR 525, §3 and *Overboard Discharges: Licensing and Abandonment*, 06-096 CMR 596, §9, unless the Department finds that alternate limits are appropriate. After accepting a renewal application as complete for processing, the Department shall approve an overboard waste discharge license only if all of the following criteria are met:

- (1) A publicly owned sewer line is not located on or abutting land owned or controlled by the applicant or is not available for the applicant's use.
- (2) A subsurface wastewater disposal system cannot be installed in compliance with the Subsurface Rules, 10-144 CMR 241, on land owned or controlled by the applicant. Or, a subsurface wastewater disposal system can be installed on land owned or controlled by the applicant and the applicant is eligible for grant funding pursuant to 38 M.R.S.A § 411-A but no funding is available.
- (3) The discharge is not located within the boundaries of a sanitary or sewer district and the district has not agreed to service and maintain a holding tank at an annual fee that does not exceed those fees charged to other similar users of the district's services who are physically connected to the sewers of the district.
- (4) For a commercial overboard discharge such as Sunday River, the volume or quantity of waste water that is discharged does not exceed;
 - (a) the limit imposed by the previous license
 - (b) the volume equal to the actual or estimated volume produced by the facility connected to the overboard discharge system during the 12 months prior to June 1, 1987.
- (5) The receiving water is not:
 - (a) A Class GPA, AA, A, or SA water;
 - (b) A tributary to Class GPA water; or
 - (c) A waterbody with a drainage area of less than 10 square miles,

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

(6) The discharge meets the requirements of *Maine's Pollution Control Laws* 38 M.R.S.A. §414-A, and Maine's *Water Classification Laws* 38 M.R.S.A. §§ 464 to 469.

(7) The discharge receives best practicable treatment consistent with requirements in 06-096 CMR 596, §9.

- b. Flow: This permitting action is carrying forward a monthly average discharge flow limitation of 0.240 MGD based on the monthly average dry weather design capacity of the facility. This flow limitation was initially established in WDL #W007312-41-A-N issued on April 8, 1987, and NPDES permit #ME0023361 issued on December 31, 1987, and was based on the wastewater flow projections for existing and proposed build-out of the facility. The Department's record for this facility includes a document entitled, *Sunday River Ski Area Wastewater Flow Projections to Support Application for Wastewater Discharge License December 11, 1986*. The previous licensing action established a daily maximum (peak flow) discharge flow limitation of 0.306 MGD, which is being carried forward in this permitting action to assist in compliance evaluations.

A review of the monthly average flow data as reported on the Discharge Monitoring Reports submitted to the Department for the period December 14, 2008 – December 14, 2011 (#DMRS = 29) indicates the monthly average flow has ranged from 0.05 MGD – 0.15 MGD with an arithmetic mean of 0.11 MGD. The highest daily maximum flow value reported for said time period was 0.16 MGD.

It is noted that the monthly average discharge flow limitation established in this permit is equivalent to that established in the previous NPDES permit issued on May 10, 1994 (5/10/94 NPDES permit).

- c. Dilution Factors: Dilution factors associated with the permitted discharge flow of 0.240 MGD from the facility were derived in accordance with *Surface Water Toxics Control Program*, 06-096 CMR 530 §4.A, and were calculated as follows:

$$\text{Acute } \frac{1}{4} \text{ 1Q10} = 398 \text{ cfs}^{(1)} \Rightarrow \frac{(398 \text{ cfs})(0.6464) + 0.240 \text{ MGD}}{0.240 \text{ MGD}} = 1,073:1$$

$$\text{Acute: 1Q10} = 1,593 \text{ cfs} \Rightarrow \frac{(1,593 \text{ cfs})(0.6464) + 0.240 \text{ MGD}}{0.240 \text{ MGD}} = 4,291:1$$

$$\text{Chronic: 7Q10} = 1,593 \text{ cfs} \Rightarrow \frac{(1,593 \text{ cfs})(0.6464) + 0.240 \text{ MGD}}{0.240 \text{ MGD}} = 4,291:1$$

$$\text{Harmonic Mean} = 2,129 \text{ cfs} \Rightarrow \frac{(2,129 \text{ cfs})(0.6464) + 0.240 \text{ MGD}}{0.240 \text{ MGD}} = 5,735:1$$

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

Footnote:

⁽¹⁾ 06-096 CMR 530 (4)(B)(1) states that analyses using numeric acute criteria for aquatic life must be based on ¼ of the 1Q10 stream design flow to prevent substantial acute toxicity within any mixing zone. The 1Q10 is the lowest one-day flow over a ten-year recurrence interval. The regulation goes on to say that where it can be demonstrated that a discharge achieves rapid and complete mixing with the receiving water by way of an efficient diffuser or other effective method, analyses may use a greater proportion of the stream design, up to including all of it. Based on information provided by the permittee as to the configuration and location of the outfall pipe, the Department has made the determination that the discharge does not receive rapid and complete mixing with the receiving water; therefore, the default stream flow of ¼ of the 1Q10 is applicable in acute statistical evaluations pursuant to 06-096 CMR 530 (4)(B)(1).

- d. Biochemical Oxygen Demand (BOD₅) and Total Suspended Solids (TSS): The previous permitting action established, and this permitting action is carrying forward, technology-based monthly and weekly average BOD₅ and TSS concentration limits of 30 mg/L and 45 mg/L, respectively, based on secondary treatment requirements of *Effluent Guidelines and Standards*, 06-096 CMR 525(3)(III) (effective January 12, 2001). This permitting action is carrying forward technology-based daily maximum BOD₅ and TSS concentration limits of 50 mg/L based on a Department best professional judgment (BPJ) of best practicable treatment (BPT).

06-096 CMR 523(6)(f) states that all pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass. This permitting action is carrying forward the monthly average, weekly average and daily maximum BOD₅ and TSS mass limits based on calculations using the average design flow for the facility of 0.240 MGD and the appropriate concentration limits as follows:

Monthly Average Mass Limit: (30 mg/L)(8.34 lbs/gallon)(0.240 MGD) = 60 lbs/day

Weekly Average Mass Limit: (45 mg/L)(8.34 lbs/day)(0.240 MGD) = 90 lbs/day

Daily Maximum Mass Limit: (50 mg/L)(8.34 lbs/day)(0.240 MGD) = 100 lbs/day

A review of the discharge data as reported on the permittee's Discharge Monitoring Reports (DMRs) submitted to the Department for the period December 14, 2008 – December 14, 2011 indicate the following:

BOD₅ concentration (#DMRs = 29)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Compliance
Monthly Average	30	2 – 70	11	97%
Daily Maximum	50	2 – 70	11	97%

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)**TSS concentration (#DMRs = 29)**

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Compliance
Monthly Average	30	2 – 26	8	100%
Daily Maximum	50	2 – 35	11	100%

BOD₅ mass (#DMRs = 29)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)	Compliance
Monthly Average	60	1 – 21	8	100%
Daily Maximum	100	1 – 29	11	100%

TSS mass (#DMRs = 29)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)	Compliance
Monthly Average	60	1 – 23	6	100%
Daily Maximum	100	1 – 40	10	100%

This permitting action is carrying forward the requirement to achieve a minimum 30-day average removal of 85 percent for BOD₅ and TSS pursuant to 06-096 CMR 525(3)(III)(a&b)(3). Compliance with the limitation is based on a twelve-month rolling average. Calendar monthly average percent removal values shall be calculated based on influent and effluent concentrations. The twelve-month rolling average calculation is based on the most recent twelve-month period when the influent concentrations are greater than or equal to 200 mg/L. The percent removal shall be waived when the twelve-month rolling average influent concentration is less than 200 mg/L.

This permitting action is carrying forward a minimum monitoring frequency requirement of once per week for BOD₅ and TSS based on best professional judgment.

- e. Settleable Solids: This permitting action is carrying forward a technology-based daily maximum concentration limit of 0.3 mL/L for settleable solids.

A review of the discharge data as reported on the permittee's Discharge Monitoring Reports submitted to the Department for the period December 14, 2008 – December 14, 2011 (#DMRs = 29) indicate the permittee has been in compliance with the settleable solids limitation 100% of the time during said reporting period and an average daily maximum settleable solids of 0 mL/L. Based on the permittee's excellent compliance history, this permitting action is reducing the settleable solids minimum monitoring frequency requirement from five times per week to three times per week, based on Department Best Professional Judgment.

- f. Escherichia coli Bacteria: *Standards for the Classification of Fresh Surface Waters*, 38 M.R.S.A., §465(2), establishes monthly average and daily maximum ambient water quality based *E. coli* thresholds of 64 colonies/100 mL and 236 colonies/100 mL, respectively. However, the Department has developed an alternative approach to calculating daily maximum limits that considers the dilution of the receiving water for

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

freshwater dischargers. Based on this approach, the Department has determined that any facility in Class B waters with a dilution of at least 1.1:1 would carry forward their existing end-of-pipe daily maximum *E. coli* limitation of 427 colonies/100mL. The permittee has an acute dilution of 1,073:1. Therefore, this permitting action is carrying forward the monthly average and daily maximum *E. coli* bacteria limits of 64 colonies/100 mL and 427 colonies/100 mL, respectively, from the previous permitting action.

A review of the discharge data as reported on the permittee's Discharge Monitoring Reports (DMRs) submitted to the Department for the period December 14, 2008 – December 14, 2011 indicate the following:

***E. coli* bacteria (#DMRs = 7)**

Value	Limit (col/100 mL)	Range (col/100 mL)	Mean (col/100 mL)	Compliance
Monthly Average	64	0 – 32	6	100%
Daily Maximum	427	0 – 75	20	100%

- f. Total Residual Chlorine: Limitations on TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. Department licensing/permitting actions impose the more stringent of either a water quality-based or BPT based limit. End-of-pipe acute and chronic water quality based concentration thresholds may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	Modified A & C Dilution Factors	Calculated	
			Acute Threshold	Chronic Threshold
0.019 mg/L	0.011 mg/L	1,073:1 (Mod. A) 4,291:1 (C)	20.4 mg/L	47.2 mg/L

The Department has established a daily maximum BPT limitation of 1.0 mg/L for facilities that disinfect their effluent with elemental chlorine or chlorine-based compounds. For facilities that dechlorinate the discharge in order to meet water quality based thresholds, the Department has established daily maximum and monthly average BPT limits of 0.3 mg/L and 0.1 mg/L, respectively. The permittee does not have to dechlorinate the effluent to achieve compliance with water quality based limitations.

The daily maximum technology based effluent TRC concentration limitation of 1.0 mg/L is more stringent than either calculated water quality based threshold and is therefore being carried forward in this permitting action. This permitting action is carrying forward the TRC measurement frequency of five times per week from the previous permitting action.

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

A review of the discharge data as reported on the permittee's Discharge Monitoring Reports (DMRs) submitted to the Department for the period December 14, 2008 – December 14, 2011 indicate the following:

Total Residual Chlorine (#DMRs = 7)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Compliance
Daily Maximum	1.0	0.4 – 0.9	0.7	100%

- g. pH: This permitting action is carrying forward the pH range limit of 6.0 –9.0 standard units (SU), considered by the Department as BPT for secondary treated wastewater pursuant to 06-096 CMR 525(3)(III)(c). A review of the discharge data as reported on the permittee's Discharge Monitoring Reports (DMRs) submitted to the Department for the period December 14, 2008 – December 14, 2011 (#DMRs = 29) indicate the pH results ranged from 7.3 SU – 8.9 SU. The permittee was in 100% compliance with the pH limitations. This permitting action carrying forward the pH minimum monitoring frequency of five times per week from the previous permitting action.
- h. 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 and 06-096 CMR 584 set forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters. WET, priority pollutant and analytical chemistry testing as required by 06-096 CMR 530 are included in this permit in order to fully characterize the effluent. This permit also provides for reconsideration of effluent limits and monitoring schedules after evaluation of toxicity testing results. The monitoring schedule includes consideration of results currently on file, the nature of the wastewater, existing treatment and receiving water characteristics.

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

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

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

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

06-096 CMR 530 (1)(D) specifies the criteria to be used in determining the minimum monitoring frequency requirements for WET, priority pollutant and analytical chemistry testing. The chronic dilution factor associated with the discharge from the Sunday River Wastewater Treatment Facility is 4,291:1 and the facility is authorized to discharge less than 1.0 MGD. Therefore, this facility is considered a Level IV facility for purposes of toxics testing. 06-096 CMR 530 §2.D provides, with certain conditions, that routine testing for Level IV dischargers is waived. The Department is making a best professional judgment that the Sunday River facility qualifies for waived routine toxics testing under the provisions of 06-096 CMR 530 based on available chronic dilution, permitted discharge flow rate, and lack of information to support that the discharge contains toxic pollutants in toxic amounts.

Special Condition G, *06-096 CMR 530 §(2)(D)(4) Statement for Reduced/Waived Toxics Testing*, of this permitting action requires the permittee to file an annual certification with the Department. This permit provides for reconsideration of testing requirements, including the imposition of certain testing, in consideration of the nature of the wastewater discharged, existing wastewater treatment and receiving water characteristics.

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

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

8. PUBLIC COMMENTS

Public notice of this application was made in the *Bethel Citizen* newspaper on or about November 2, 2011. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

9. DEPARTMENT CONTACTS

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

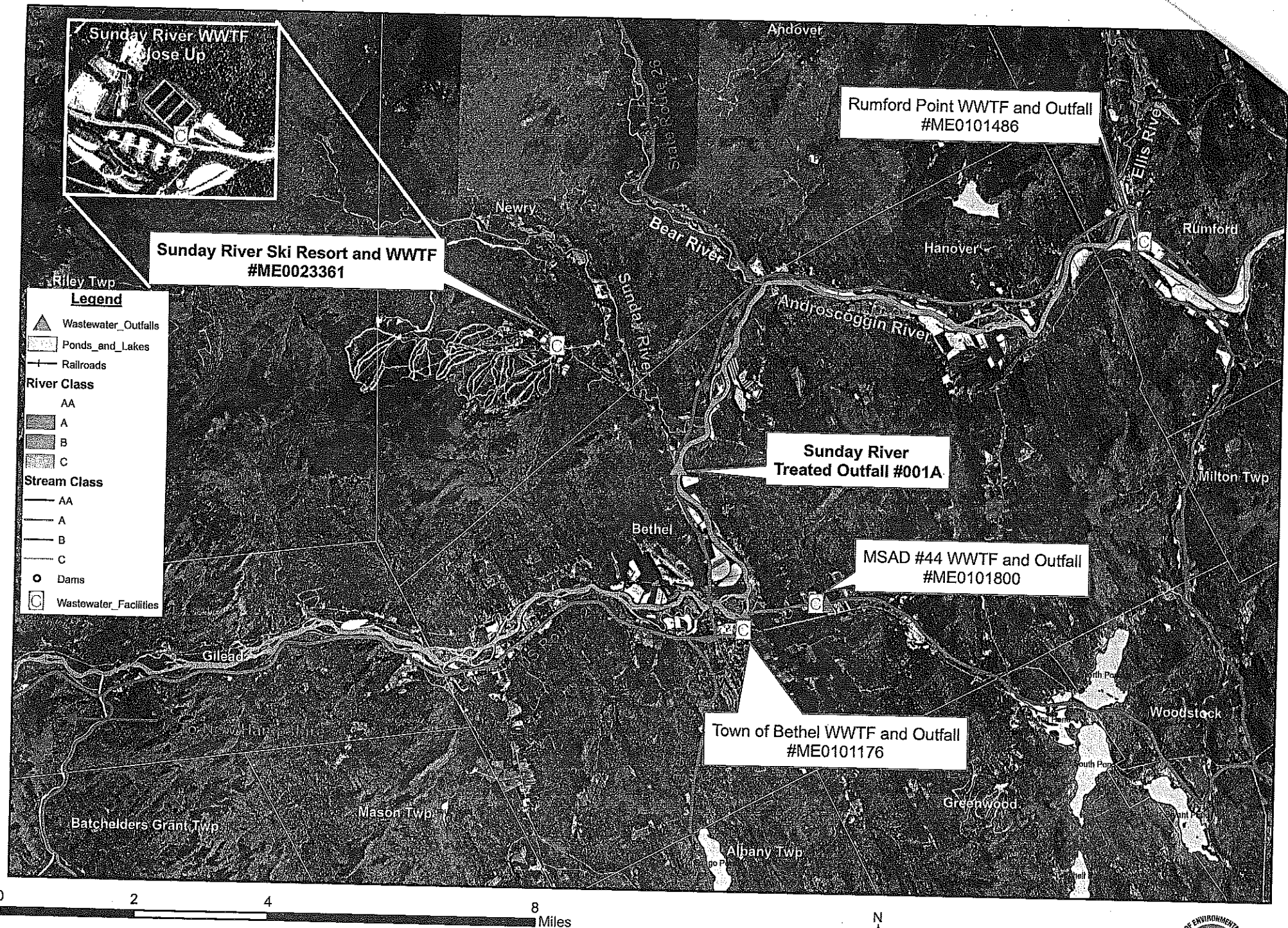
Phyllis Arnold Rand
Division of Water Quality Management
Bureau of Land & Water Quality
Department of Environmental Protection
17 State House Station

Augusta, Maine 04333-0017 Tel: (207) 287-7658 Fax: (207) 287-3435
e-mail: phyllis.a.rand@maine.gov

10. RESPONSE TO COMMENTS

During the period of January 13, 2012, through the issuance date of the permit, the Department solicited comments on the proposed draft permit to be issued to the permittee. The Department did not receive comments from the permittee, state or federal agencies or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

ATTACHMENT A



Sunday River Wastewater Treatment Facility at Bethel, Maine

Map created by MDEP
November 20, 2006



ATTACHMENT B

CHAPTER 530.2(D)(4) CERTIFICATION

MEPDES# _____

Facility Name _____

Since the effective date of your permit have there been:	NO	YES (Describe in Comments)
1. changes in the number or types of non-domestic wastes contributed directly or indirectly to the wastewater treatment works that may increase the toxicity of the discharge?		
2. changes in the operation of the treatment works that may increase the toxicity of the discharge?		
3. changes in industrial manufacturing processes contributing wastewater to the treatment works that may increase the toxicity of the discharge?		

COMMENTS:

Name(print) _____

Signature _____ Date _____

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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A. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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

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

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

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

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

5. Bypasses.

(a) Definitions.

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

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

(c) Notice.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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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.

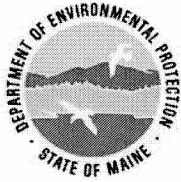
Septage means, for the purposes of this permit, any waste, refuse, effluent sludge or other material removed from a septic tank, cesspool, vault privy or similar source which concentrates wastes or to which chemicals have been added. Septage does not include wastes from a holding tank.

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 Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

II. APPEALS TO MAINE SUPERIOR COURT

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

ADDITIONAL INFORMATION

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

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