STATE OF MAINE

Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patricia Aho
ACTING COMMISSIONER

September 12, 2011

Mr. David Ettinger
Plant Manager
Boralex Livermore Falls LP.
RR 1, Box 4300, Diamond Road
Livermore Falls, ME. 04254

Mr. Willam Parker
Environmental Manger
Boralex
P.O. Box 430
Fort Fairfield, ME. 04742

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0023710
Maine Waste Discharge License (WDL) #W007705-5S-F-R
Final Permit/WDL

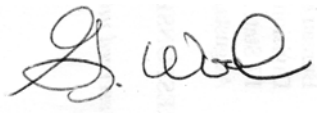
Dear Mr. Ettinger & Mr. Parker:

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

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

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

Sincerely,



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

Enc.
cc: Beth DeHaas, DEP/CMRO
Sandy Mojica, USEPA

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

DEPARTMENT ORDER

IN THE MATTER OF

BORALEX LIVERMORE FALLS LP		)	MAINE POLLUTANT DISCHARGE
LIVERMORE FALLS, ANDROSCOGGIN		)	ELIMINATION SYSTEM PERMIT
COUNTY, MAINE		)	
ELECTRICAL GENERATING STATION		)	AND
ME0023710		)	WASTE DISCHARGE LICENSE
W007705-5S-F-R	**APPROVAL**	)	**RENEWAL**

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, *et. seq*. and *Conditions of Licenses*, 38 M.R.S.A., Section 414-A *et seq*., and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of BORALEX LIVERMORE FALLS LP (Boralex/permittee hereinafter) with its supportive data, agency review comments, and other related material on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

Boralex has submitted a timely and complete application to the Department for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0023710/Maine Waste Discharge License (WDL) #W007705-5R-D-R (permit hereinafter), which was issued by the Department on December 13, 2006, and is due to expire on December 13, 2011. The permit authorized the discharge of miscellaneous waste waters including 138,000 gallons per day (gpd) of cooling tower and boiler blowdown, 6,000 gpd of demineralization system ion exchange regeneration water and unspecified quantity of floor washdown waters and storm water runoff from a fuel storage area associated with a biomass fired electrical generating facility to the Androscoggin River, Class C, in Livermore Falls, Maine.

PERMIT SUMMARY

This permitting action is carrying forward all the terms and conditions of the 12/13/06 permitting action except that this permit:

1. Revises the requirements of the monitoring of storm water discharged from for Outfalls SW001, SW002 and SW003 to be consistent with the requirements in the Department's most current Multi-Sector General Permit for storm water.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated July 26, 2011, 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., Section 464(4)(F), will be met, in that:

    a. Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;

    b. Where high quality waters of the State constitute an outstanding 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 quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.

4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

ACTION

THEREFORE, the Department APPROVES the above noted application of BORALEX LIVERMORE FALLS LP to discharge up to a daily maximum of 175,000 gallons per day of cooling tower blowdown, boiler blowdown, demineralization system ion exchange regeneration water, cooling water, cooling tower mist and storm water runoff from its biomass electrical generating station in Livermore Falls to the Androscoggin River, Class C, 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.

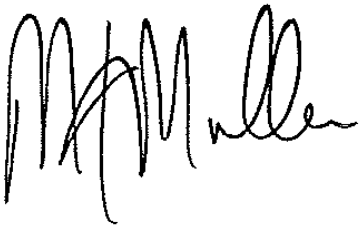
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.

3. This permit becomes effective upon the date of signature below and expires at midnight five (5) years thereafter. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of the this permit, the terms and conditions of the this permit and all subsequent 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: July 22, 2011

Date of application acceptance: July 26, 2011



This permit is digitally signed by Michael Mullen on behalf of Acting Commissioner Patricia Aho. It is digitally signed pursuant to 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date.
2011.09.12 10:19:54 -04'00'

This Order prepared by Gregg Wood, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORINGREQUIREMENTS

1. Beginning effective date of this permit, the permittee is authorized to discharge **cooling tower blowdown, boiler blowdown, demineralization system ion exchange regeneration waters, and storm water** from **Outfall #001E** to the Androscoggin River. The discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	**Discharge Limitations**				**Minimum Monitoring Requirements**	
	Monthly Average as specified	**Daily Maximum** as specified	**Monthly Average** as specified	**Daily Maximum** as specified	**Measurement Frequency** as specified	**Sample Type** as specified
Flow [50050]	0.138 MGD [03]	0.175 MGD[03]	---	---	Continuous [99/99]	Meter[MT]
Temperature, °F [00011] *(Oct. 1 – May 31)*	---	---	---	90°F[15]	---	---
Temperature, °F [00011] *(June 1 – Sept. 30)*	---	---	---	90°F[15]	1/Month [01/30]	Grab [GR]
Free Available Chlorine**(1)** [50064]	---	---	0.2 mg/L [19]	0.5 mg/L [19]	1/Month[01/30]	Grab [GR]
Total Suspended Solids[00530]	34 lbs/day[26]	73 lbs/day[26]	30 mg/L[19]	50 mg/L[19]	1/Month [01/30]	Grab [GR]
Zinc (Total) [01092]	1.2 lbs/day [26]	1.4 lbs/day [26]	1.0 mg/L [19]	1.0 mg/L [19]	1/Month [01/30]	Grab [GR]
Oil and Grease [03582]	---	---	15 mg/L [19]	20 mg/L [19]	1/Month[01/30]	Grab [GR]
Chromium (Total) [01034]	0.23 lbs/day [26]	0.28 lbs/day [26]	0.20 mg/L [19]	0.20 mg/L [19]	1/Month [01/30]	Grab [GR]
pH [00400]	The pH shall be ≥ 6.0 and ≤ 9.0 at any time.**(2)**				1/Month [01/30]	Grab [GR]

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. Beginning the effective date of the permit, the permittee is authorized to discharge storm water runoff from **OUTFALLS SW001, SW002 and SW003** to adjacent wooded areas.

OUTFALL SW003 - Southwest of the facility. See **Attachment A** of the Fact Sheet
OUTFALL SW002 – Southwest of the facility. See **Attachment A** of the Fact Sheet.
OUTFALL SW001 – Northwesterly of the facility. See **Attachment A** of the Fact Sheet.

See **Attachment B** of the Fact Sheet attached to this permit for a site location map of the facility.

a. Storm Water Pollution Prevention Plan (SWPPP)

With respect to areas of the facility contributing storm water flow subject to this permit, the permittee shall develop, implement, maintain and annually update a Storm Water Pollution Prevention Plan (SWPPP) for the facility that is consistent with the SWPPP requirements established in Part V of the Department's *Multi-Sector General Permit Maine Pollutant Discharge Elimination System Stormwater Discharge Associated with Industrial Activity*, dated April 26, 2011. See **Attachment A** of this permit for as copy of the SWPPP requirements. The permittee shall maintain a copy of the SWPPP on-site for Department or USEPA staff inspection. **Within 30 days of any change** in design, construction, operation, maintenance, or any chemical spill at the facility which has or may have a significant effect on the amount of pollutants present in storm water, the permittee shall amend the SWPPP and note all changes.

b. Monitoring Requirements **(1)**

At a minimum frequency of once per calendar quarter, the permittee shall perform and document a visual examination of a storm water discharge at the end of the storm water conduit for each outfall (Outfalls #004, #005, #006, #007 and #008) in accordance with Department guidance document #DEPLW0768, *Standard Operating Procedure Guidelines for Visual Monitoring of Stormwater Associated with Industrial Activities, Instructions for Completing the Visual Monitoring Form and Visual Monitoring Form*) (all included as **Attachment B** of this permit).The permittee shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The permittee must maintain the visual examination reports on-site with the SWPPP for a minimum of three years from the observation date.

Footnotes: (1) Should less stringent monitoring requirements be adopted by the Department during the term of this permit, the permittee may a request a modification of the permit to incorporate the new monitoring requirements or the Department may initiate a modification of the permit pursuant to Special Condition I of this permit, after notice and opportunity for comment by Boralex Livermore Falls Inc, to incorporate less stringent storm water monitoring requirements.

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Sampling Location: Sampling for discharges from Outfall #001E shall be performed at a sample point located on the first floor of the Turbine Building prior to discharge to the final outfall pipe. The sample point is located after the final confluence of waste water and is representative of the water conditions at the final outfall structure. Any change in sampling location must be approved by the Department in writing.

Sampling – Sampling and analysis must be conducted in accordance with; a) methods approved in 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Human Services. Samples that are sent to another POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 or laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000).

All analytical test results shall be reported to the Department including results which are detected below the respective reporting limits (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.

Footnotes:

(1) **Free available chlorine** - Pursuant to 40 CFR, Part 423.12(b)(8), free available chlorine nor total residual chlorine may be discharged from any unit for more than two hours in any one day and not more than one unit in any plant may discharge free available chlorine nor total residual chlorine at any time unless the utility can demonstrate to the Department that the units cannot operate at or below this level of chlorination.

(2) **pH** - The pH of the discharge from all outfalls may be outside of the range of 6.0 - 9.0 standard units provided it is not more than 0.5 standard units outside of the background pH of the intake water for the facility or precipitation at the time of sampling or 0.5 standards units outside the limitation range of 6.0 -9.0 standard units. To determine compliance with this provision, the permittee must sample and document the ambient pH of the intake water or precipitation if a pH result of the discharge is reported outside of the range limitation of 6.0 - 9.0 standard units.

SPECIAL CONDITIONS

B. NARRATIVE EFFLUENT LIMITATIONS

1. There shall be no discharge of polychlorinated biphenyl compounds (PCB's).

2. 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.

3. 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.

4. 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.

5. Notwithstanding specific conditions of this permit, the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

C. METAL CLEANING WASTES

The chemical metal cleansing wastes generated when cleaning the heat recovery steam generator shall not be discharged and be transported off-site for proper disposal/treatment pursuant to all applicable federal, state, and local laws and regulations.

D. COOLING TOWER CLEANING WASTES

The cooling tower solids shall be removed for drying either on-site or off-site followed by proper disposal off-site pursuant to all applicable federal, state, and local laws and regulations.

E. MERCURY

All mercury sampling (1/Year) required by this permit or required to determine compliance with interim limitations established pursuant to Department rule Chapter 519, shall be conducted in accordance with EPA's "clean sampling techniques" found in EPA Method 1669, Sampling Ambient Water For Trace Metals At EPA Water Quality Criteria Levels. All mercury analysis shall be conducted in accordance with EPA Method 1631, Determination of Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Fluorescence Spectrometry. See **Attachment C,** *Effluent Mercury Test Report*, of this permit for the Department's form for reporting mercury test results.

SPECIAL CONDITIONS

F. NOTIFICATION REQUIREMENT

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

1. Any substantial change in the volume or character of pollutants being discharged.

2. For the purposes of this section, adequate notice shall include information on:

   a. The quality or quantity of waste water introduced to the waste water collection and treatment system; and

   b. Any anticipated impact from the change in the quality or quantity of the waste water to be discharged.

G. AUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on July 26, 2011, 2) the terms and conditions of this permit; and 3) only from the outfalls cited in this permit. Discharges of waste water from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5)(*Bypass*) of this permit.

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

By December 31 of each calendar year, the permittee shall provide the Department with a certification describing any of the following that have occurred since the effective date of this permit ***[PCS Code 95799]***: See **Attachment D** of the Fact Sheet for an acceptable certification form to satisfy this Special Condition.

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.

SPECIAL CONDITIONS

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

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.

I. 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 shall be postmarked by the thirteenth (13^{th}) day of the month or hand-delivered to a Department Regional Office such that the DMRs are received by the Department by the fifteenth (15^{th}) day of the month following the completed reporting period. A signed copy of the DMR and all other reports required herein shall be submitted, unless otherwise specified, to the Department's facility inspector at:

Department of Environmental Protection
Central Maine Regional Office
Division of Water Quality Management
17 State House Station
August, Maine 04333

Alternatively, if you are submitting an electronic Discharge Monitoring Report (eDMR), the completed eDMR must be electronically submitted to the Department by a facility authorized DMR Signatory not later than close of business on the 15^{th} 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 (13^{th}) 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 (15^{th}) 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 15^{th} day of the month following the completed reporting period.

SPECIAL CONDITIONS

J. REOPENING OF PERMIT FOR MODIFICATIONS

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

K. 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.

ATTACHMENT A

A. Stormwater Pollution Prevention Plan (SWPPP) Preparation. Each facility seeking coverage under this General Permit must prepare a SWPPP as described in Part III(A) prior to submitting a NOI for permit coverage. The SWPPP must be prepared in accordance with good engineering practices and identify potential pollutant sources which may reasonably be expected to affect the quality of stormwater discharges associated with industrial activity from the facility. The SWPPP must describe and ensure the implementation and maintenance of Best Management Practices (BMPs) and Control Measures as identified in this Part. Implementation of the SWPPP must reduce or eliminate polluted stormwater discharges associated with industrial activity, and assure compliance with this General Permit.

B. Control Measures. The permittee shall select, design, install and implement control measures (including BMPs) to address potential pollutant sources and any discharge(s) associated with industrial activity. Control measures must be evaluated in conjunction with monitoring to meet the terms and conditions of this General Permit. The selection of these control measures must be in accordance with good engineering practices, and the requirements of each Sector. (See Appendix A–AD.) The SWPPP must fully describe these control measures, including their implementation and maintenance schedules.

C. Non-Numeric Technology Based Effluent Limits. When developing control measures the following must be performed as applicable using the best practicable technology, best available technology, best control technology (BPT/BAT/BCT). The below listed Best Management Practices are considered limits of this General Permit which must be met for compliance. Additional Non-Numeric Technology Based Effluent Limits may also be

required as noted in the Sector specific requirements in Appendices A–AD. The methods utilized to meet these limits must be documented in the SWPPP:

1. The permittee shall minimize exposure of the manufacturing process, and material or product storage areas to stormwater (where practicable) by locating industrial activities and materials inside or by protecting them with storm resistant coverings. By eliminating the exposure of the manufacturing process, and material or product storage areas as required by Appendix AE, the facility may qualify for No Exposure Certification. The Department also encourages methods and designs which minimize or mitigate impervious area and reduce runoff.

2. The permittee shall perform good housekeeping procedures, and keep all exposed areas that are potential sources of pollutants clean and orderly. Implement at regular intervals, measures such as sweeping impervious areas, proper labeling of containers, and the storage of liquids within proper secondary containment.

3. The permittee shall regularly inspect, test, maintain and repair all industrial equipment, systems and BMPs to prevent situations that may result in leaks, spills or other releases of pollutants. If the permittee or Department inspector finds that a structural control measure(s) must be repaired or modified to ensure proper function, the permittee shall make the required repairs or modifications as quickly as possible, but no later than twelve (12) weeks from discovery unless otherwise authorized by the Department. Temporary control measures must be in place during this time to reduce or prevent discharges of pollutants. If a non-structural control measure is found to be deficient, the correction of the deficiency for that control measure must be initiated within five (5) days and completed no later than thirty (30) days from discovery. (See Part V(E).)

D. SWPPP Contents. The SWPPP must contain the following components:

1. Pollution Prevention Team. The SWPPP must identify the individual(s) (by name or title) whom comprise the facility's stormwater Pollution Prevention Team. The Pollution Prevention Team is responsible for assisting the facility/plant manager in developing, implementing, maintaining and revising the facility's SWPPP. Responsibilities of each team member must be listed.

2. Site Description. The SWPPP must include a narrative site description of the activities conducted at the site.

3. Site Map. The site map must include:

   a. Approximate drainage boundaries including directions of stormwater flow and outfall locations (use arrows to show flow path);

   b. Boundary of impervious surfaces;

waste product. If applicable, include an evaluation of how the quality and quantity of the stormwater flowing onto the facility from adjacent properties impacts the stormwater discharges from the permitted facility. For each separate area identified, the description must include:

a. Industrial activities area. A list of the activities (e.g., material storage, loading, access areas, equipment fueling and cleaning, cutting, grinding, or processing). Each drainage area must be described and include a prediction of the direction of flow and an estimate of the types of pollutants which may be present in the stormwater discharge. The flow of stormwater across the site must be clearly depicted on the site map;

b. Pollutants. A list of the associated pollutant(s) or pollutant parameter(s) (e.g., crankcase oil, iron, biochemical oxygen demand, pH, sediment, etc.) for each activity. The pollutant list must include all significant materials that have been handled, treated, stored or disposed of in a manner that may allow exposure to stormwater three (3) years prior to review of or development of the SWPPP; and

c. Method of on-site storage or disposal. A storage practice or disposal method must be detailed for all raw materials, intermediate materials, final products and waste materials. Waste materials must be handled in accordance with Maine's Solid Waste Management Rules.

5. Potential for Spills and Leaks. The permittee shall clearly identify areas where potential spills and leaks, may occur, along with the accompanying drainage points, and provide a list of spills and leaks that occurred during the three (3) year period prior to submitting a NOI or latest revision of the SWPPP for any area exposed to precipitation or area which drains to a stormwater conveyance.

   Spills and leaks include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under Clean Water Act (CWA) §311 (See 40 CFR 110 and 40 CFR 117.21), section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or 38 M.R.S.A. §§ 543, 550 and 1318-B. Unlicensed discharges of oil and hazardous matter are prohibited (See 38 M.R.S.A. §§ 543 & 1317-A). These discharges must be removed to the Commissioner's satisfaction (See 38 M.R.S.A. §§ 1318-B, 548, 568). Hazardous matter discharges must be reported (See 38 M.R.S.A. §§ 1318-B). Oil and hazardous matter have "safe harbor" incentives for reporting (See 38 M.R.S.A. §§ 550 & 1318).

6. Wastewater/Process Water Containment. The location of all wastewater or process water containment tanks must be clearly noted in the SWPPP

considered. If the permittee, agent or Department stormwater inspector determines that any of these BMPs are not appropriate or are inadequate to reduce or eliminate pollutants, an explanation of this determination along with corrective actions must be documented in the SWPPP. The BMP examples listed below are not intended to be a comprehensive list. The permittee is encouraged to keep abreast of new BMPs or new applications of existing BMPs to find the most cost effective means of permit compliance for the facility. If BMPs are planned at the facility which are not listed previously in the SWPPP (e.g., replacing a chemical with a less toxic alternative, adopting a new or innovative BMP, etc.), include an implementation timeline within this section of the SWPPP.

a. Non-Structural BMPs.

Good Housekeeping: The permittee shall keep all exposed areas free of materials which could contribute pollutants to stormwater discharges by performing good housekeeping measures such as sweeping, and proper material containment. Measures must include compliance with the Non-Numeric Technology Based Effluent limits noted in Part V(C) and the individual Sector requirements in Appendices A-AD.

Minimizing Exposure: Where practicable industrial materials and activities should be protected by a storm resistant shelter to prevent exposure to stormwater, or located in an area that does not discharge to a surface water or a MS4.

Preventive Maintenance: The permittee shall implement a preventive maintenance program which includes the timely inspection and maintenance of stormwater management devices, (e.g., cleaning oil/water separators, catch basins) as well as inspecting, testing, maintaining and repairing facility equipment and systems to avoid breakdowns or failures that may result in discharges of pollutants to surface waters.

Spill Prevention and Response Procedures: The permittee shall describe spill prevention and clean up procedures for spills or leaks. These procedures, and the necessary spill response equipment, must be made available to employees who may cause or encounter a spill or leak. Where appropriate, the permittee shall explain existing or planned material handling procedures, storage requirements, secondary containment, and equipment (e.g., diversion valves) in the SWPPP which are intended to minimize spills or leaks at the facility. Unlicensed discharges of oil and hazardous matter are prohibited (See 38 M.R.S.A. §§ 543 & 1317-A). These discharges must be removed to the Commissioner's satisfaction (See 38 M.R.S.A. §§ 1318-B, 548, 568). Hazardous matter discharges must be reported (See 38 M.R.S.A. §§ 1318-B).

These types of BMPs typically are used to divert, filter, reuse, or otherwise reduce pollutants in stormwater discharges from the site.

10. Other Controls. No solid materials, including floatable debris, may be discharged to waters of the State, except as authorized by a permit issued under section 404 of the Clean Water Act. Off-site vehicle tracking, or blowing, of raw, final, waste materials or sediments, and the generation of dust, must be minimized and documented in the SWPPP.

E. Maintenance. All BMPs identified in the SWPPP must be maintained in effective operating condition. If site inspections identify BMPs that are not operating effectively, maintenance must be performed before the next anticipated storm event, or as necessary, to maintain the continued effectiveness of stormwater controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and implemented as soon as practicable, but not later than twelve (12) weeks from the date of discovery unless authorized by the Department. The maintenance schedule and reason for delay must be documented in the SWPPP. The Department will take into account the size and cost of the project, the need to obtain supplies, construction timeframes, weather, the amount of pollution discharged and the condition of receiving waters in determining if a delay is acceptable. In the case of non-structural BMPs, the effectiveness of the BMP must be maintained by appropriate means (e.g., available spill response supplies, training, etc.). Maintenance and BMP follow up actions must comply with Part V(I)(3) of this General Permit.

F. Allowable Non-Stormwater Discharges. Allowable non-stormwater discharges are listed in Parts I(D) and (E). Except for flows from fire fighting activities, the permittee shall identify all sources of allowable non-stormwater discharge(s) in the SWPPP and include:

- Identification of each allowable non-stormwater source;
- The location where it is likely to be discharged; and
- Descriptions of appropriate BMPs for each source.

If mist blown from cooling towers is listed as an allowable non-stormwater discharge, the permittee shall specifically evaluate the potential for the discharge(s) to be contaminated by chemicals used in the cooling tower and determine that the levels of such chemicals would not cause or contribute to a violation of an applicable water quality standard.

G. Applicable State or Local Plans. The SWPPP must be consistent and updated with applicable state or local stormwater, waste disposal, sanitary sewer or septic system regulations to the extent these apply to the facility and are more stringent than the requirements of this General Permit.

H. Monitoring Frequency and Procedure Documentation. The SWPPP must document the procedures for conducting the three types of analytical

stormwater conveyances and outfalls for erosion, integrity and potential pollutants. Where discharge locations or outfalls are inaccessible, nearby downstream locations must be inspected if possible; and

f. The once per year Non-Stormwater Discharge Certification may be incorporated into one of the four Site Compliance Evaluations.

3. Site Compliance Evaluation Follow-up Actions. Based on the results of the Site Compliance Evaluation, the permittee shall:

a. Complete a Site Compliance Evaluation Report. This report summarizes the scope of the inspection as noted in Part V(I)(2) above. The permittee shall prepare a Site Compliance Evaluation Report upon completing the inspection. This report must include the name(s) or position(s) of personnel performing the inspection, the date(s) of the evaluation, and major observations relating to the implementation of the SWPPP. The inspection report(s) must identify any incidents of non-compliance and proposed or implemented follow-up action(s). Where an inspection report does not identify any incidents of non-compliance, the report must contain a certification that the facility is in compliance with the SWPPP and this General Permit. The Department has prepared a guidance checklist that may be used or modified for reporting.

b. Develop a Corrective Action Report (CAR). A Corrective Action Report is a description of actions, BMPs, site modifications or behaviors necessary to meet the terms and conditions of this General Permit. Two types of CARs may be generated.

c. Structural BMP Corrective Action Report. This CAR includes modification(s) or addition(s) and implementation of a structural BMP(s). If a noted deficiency is related to a structural BMP excluding routine maintenance, the permittee shall notify the regional stormwater inspector within fourteen (14) business days by phone, email or USPS. Notwithstanding the timeframes described above, the Department reserves the right to take enforcement actions for unpermitted discharges.

Note: If temporary stabilization measures are needed in emergency situations, a permittee may begin installation provided the addition of the BMP or stabilization measure is not in violation of State or Federal laws. The Department should be contacted with in 24 hours in these situations.

d. Non-Structural BMP Corrective Action Report. This CAR notes the addition or modification of a non-structural BMP(s) which must be developed, implemented and kept with the SWPPP.

otherwise; the circumstances leading to the release and actions taken in response to the release; and, the measures taken to prevent the recurrence of such releases.

5. Records of annual employee training, including topics covered, training date(s), and printed names and signatures of participating employees.

6. Documentation of maintenance and repairs of stormwater control measures, including dates of regular maintenance, discovery dates of areas in need of repair or replacement; repair date when control measure(s) returned to full function; and, the justification for any extended maintenance or repair schedules.

7. Documentation of inspections and monitoring data.

8. Description of any deviations from monitoring schedules.

9. Corrective Action Reports and summary of completed actions taken at the site, including event(s) and date(s) when problems were discovered and modifications occurred.

10. Documentation of monitoring exceedances and the facility's response including corrective actions; additional monitoring; documentation indicating the benchmark exceedance was due to natural background pollutant levels; or a finding of no further pollutant reductions were technologically, or economically, practicable, and achievable in light of best industry practice.

11. Documentation to support any determination that pollutants of concern are not expected to be present above natural background levels if the permittee discharges directly to impaired waters, and that such pollutants were not detected in the discharge or were solely attributable to natural background sources.

12. Documentation of the annual non-stormwater discharge certification.

K. Requirement to Maintain Updated SWPPP. The permittee shall amend the SWPPP within thirty (30) days of completion of any of the following:

1. A change in design, construction, operation, or maintenance at the facility that has a significant effect on the discharge or potential for discharge of pollutants from the facility including the addition or reduction of industrial activity;

2. Monitoring, inspections, or investigations by the permittee or by local, State, or Federal officials which determine the SWPPP is ineffective in eliminating or significantly minimizing pollutants from sources identified under Part V(D)(4), or is otherwise not achieving the general objectives of controlling pollutants in discharge(s) from the facility;

2. Approved watershed management plans. Participation in the implementation of a Department Approved Watershed Management Plan for discharges to impaired waters fulfills the requirement of Part VI.

B. Quarterly Visual Monitoring. All permittees covered under this General Permit, regardless of the facility's Sector of industrial activity are required to conduct quarterly visual monitoring. Visual monitoring requirements are waived if the facility is conducting Benchmark, Impaired Waters sampling and analysis, or Numeric Monitoring for Total Suspended Solids (TSS). Visual Monitoring must be resumed if Benchmark Monitoring, Numeric Monitoring or Impaired Waters sampling is ceased.

1. Visual Monitoring Documentation. The permittee shall perform and document a visual examination of a stormwater discharge associated with industrial activity from each outfall (except representative outfalls) on a quarterly basis. The visual examination must be made during daylight hours and normal operations. If no qualifying storm event occurs during an inspection cycle, or adverse weather prevents collecting a sample, the permittee shall document this in the SWPPP, and is excused from visual monitoring for that quarter. Visual monitoring must be performed during the next qualifying storm event. The permittee shall sign and certify the documentation in accordance with Part VIII (E). The visual monitoring event must be performed and documented according to procedures outlined in document DEPLW0768, Visual Monitoring of Stormwater Discharges Associated with Industrial Activity, available at:
http://www.maine.gov/dep/blwq/docstand/stormwater/multisector.htm#form

2. Qualifying storm event and visual examination procedures. A qualifying storm event is either precipitation, ice or snow melt that produces a measureable discharge at an outfall that occurs at least 72 hours from a previous qualifying storm event. A grab Sample must be collected within the first 60 minutes, but not more than 2.25 hours from the time stormwater begins to discharge from an outfall. The examination must document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution. The sample examination must be conducted in a well lit area. Laboratory analytical testing is not required for visual samples. The 72-hour storm interval is waived if the permittee can document that less than a 72-hour interval is representative for local storm events during the sampling period. The same individual should perform visual monitoring for the entire permit term.

C. Coal Pile Runoff Monitoring (Piles greater than 30 cubic yards). Monitoring must be conducted quarterly during a qualifying storm event. Discharges from coal piles are subject to numeric limits for total suspended solids (TSS)

b. If the pollutant of concern is detected, but at levels consistent with natural background pollutant levels, the permittee shall keep the following documentation of this discharge with the facility's SWPPP.

i) An explanation of why the presence of the pollutant causing the impairment is detected at the outfall;

ii) An explanation why the pollutant is not related to the activities at the facility; and

iii) Data or studies which link the presence of the pollutant causing the impairment to what can be considered natural background sources in the watershed.

c. If the presence of the pollutant causing the impairment is shown to be related to the facility and not due to natural background pollutant levels, the permittee shall determine the source of the pollutant. The permittee shall develop and implement a corrective action plan to reduce or eliminate the presence of the pollutant(s) in the stormwater discharge. This plan must be incorporated into the facility's SWPPP, and submitted to the Department within the first quarter of the second permit year, or the first quarter of the second year after submittal of the NOI. Sampling for the pollutant(s) must continue quarterly until the pollutant is no longer present or a determination on the discharge is made by the Department.

2. Monitoring and corrective actions for discharges to impaired waters ***with*** an EPA approved or established TMDL. No additional monitoring is required unless specified in the TMDL or requested by the Department.

If monitoring is required by the Department, and the results indicate the pollutant(s) that the TMDL addresses is present in the stormwater discharge in a quantity above the allowable allocation, the permittee shall develop and implement BMPs to meet the requirements of the TMDL. A corrective action plan must be developed and incorporated into the facility's SWPPP.

E. Monitoring Procedures for Discharges to Impaired Waters. The following applies only to facilities that have received notice from the Department that impaired waters monitoring is required. The notice will include the Department's decision, and reason for additional monitoring.

1. If a facility discharges to an impaired waterbody, the permittee shall perform quarterly monitoring at each outfall (except representative outfalls) that discharges to the impaired water for all pollutants for which the waterbody is impaired and for which a standard analytical method exists. (See 40 CFR part 136 for a list of approved methods.)

overall effectiveness of stormwater control measures, and to determine when additional corrective action(s) are required. Sectors A, B & N must perform quarterly benchmark monitoring from each outfall (except representative outfalls) that produces a stormwater discharge associated with an industrial activity.

Benchmark monitoring must be conducted during a qualifying storm event as defined in this General Permit. A grab sample must be collected between 60 minutes but not more than 2.25 hours from the time stormwater begins to discharge from an outfall. A grab sample(s) must be collected during daylight and normal operating hours. Department guidance and assistance is available for proper sampling techniques. Results must be summarized and reported in the Facility's SWPPP. Appropriate corrective actions must be initiated according to Part VI(G)(2) below if there is an exceedance.

Benchmark monitoring is not required if the facility is in compliance with and can demonstrate participation in the implementation of a Department Approved Watershed Management Plan. Benchmark Monitoring is not required from any outfalls subject to Impaired Waters sampling and analysis, or Numeric Monitoring for Total Suspended Solids (TSS). Benchmark Monitoring must be resumed if Numeric Monitoring or Impaired Waters sampling is ceased.

1. Collect a minimum of four (4) quarterly samples. The permittee shall calculate the average of each parameter from the quarterly samples to determine an average monitoring value for each parameter. If the average of the four (4) monitoring values of the quarterly samples for any parameter does ***not exceed*** the benchmark, the monitoring requirements are fulfilled for that parameter, for the **permit term**. Samples must be analyzed using procedures consistent with methods listed in 40 CFR Part 136. The use of an alternate method or benchmark parameter may be proposed by the permittee to the Department in writing. The Department will approve or deny the use of alternate methods or parameters on a case-by-case basis.

2. After collecting four (4) quarterly samples, if the average of the four (4) monitoring values of the quarterly samples of any parameter ***exceeds*** the benchmark, the permittee shall review the selection, design, and implementation of control measures and complete a corrective action report. Upon making any necessary modifications, the permittee shall continue quarterly monitoring for any parameter that has exceeded its benchmark four additional quarters.

3. If the average monitoring values of the subsequent quarterly samples of any parameter continues to exceed the benchmark, the permittee shall select, install and implement control measures including BMPs to address the selection and design considerations to meet the benchmark; or

ATTACHMENT B

Bureau of Land and Water Quality
Division of Watershed Management
Industrial Stormwater Program

Standard Operating Procedure
Guidelines For Visual Monitoring of Stormwater Discharges Associated With Industrial Activities.

1. **APPLICABILITY.** This Standard Operating Procedure (SOP) applies to all industrial facilities covered under the Maine Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity regardless of the facility's industrial sector code. All permitted facilities are required to perform quarterly visual monitoring of their stormwater discharges associated with industrial activity as part of their Stormwater Pollution Prevention Plans (SWPPP) in order to achieve compliance with the Multi-Sector General Permit.

2. **PURPOSE.** To provide guidelines for standardized methods for sample collection and visual examination of industrial stormwater discharges for indicators of stormwater pollution as defined in Part V of the Maine MSGP. To provide guidelines describing standardized methods of data recording and record keeping of all quarterly visual stormwater discharge monitoring data. These guidelines are described in Part 5 of the MSGP.

3. **DEFINITIONS.**

   3.1. Multi-Sector General Permit (MSGP) A general permit for Stormwater Discharges Associated with Industrial Activities. Authorizes the direct discharge of stormwater associated with industrial activity to waters of the State other than groundwater, provided the discharge meets the requirements stated in this permit. This permit is effective October 11, 2005 and expires October 11, 2010. It replaces EPA's MSGP for Industrial Activities issued October 30, 2000.

   3.2. SWPPP. Stormwater Pollution Prevention Plan. A plan developed and implemented by each industrial facility. It outlines sources of potential stormwater pollutants and the methods by which these pollutants will be reduced or prevented from entering waters of the State. The Plan identifies in writing a SWPPP team of facility personnel as well as a SWPPP team leader who is ultimately responsible for SWPPP implementation.

   3.3. GRAB SAMPLE. Sample of stormwater discharge taken as a single uninterrupted event (i.e., grabbed at one time) from a single stormwater outfall from the industrial facility. The sample may be collected manually or with an automatic sampler.

   3.4. OUTFALL. Any location such as a ditch, rill, pipe, storm drain, boat ramp, or detention pond exit where shallow concentrated flow of stormwater leaves an industrial facility.

   3.5. MEASURABLE STORM EVENT. Any storm event that yields at least 0.1 inch of precipitation.

4. RESPONSIBILITIES.

4.1. MONITORING PROGRAM IMPLEMENTATION. The schedule for performing visual examinations should be clearly documented in the facility's SWPPP. The permittee must perform and document a quarterly visual examination of industrial stormwater discharges from each outfall which discharges stormwater associated with industrial activity from the facility.

4.2. OUTFALL IDENTIFICATION. The permittee must identify each industrial stormwater outfall at the facility. All outfalls shall be clearly identified on the facility site map which is part of the facility's SWPPP and also listed in the written text of the SWPPP.

4.3. EMPLOYEE TRAINING. The permittee is responsible for ensuring that all facility personnel involved in stormwater sampling are properly trained to do so. Staff involved in sampling should:

a. Be familiar with the site map and outfall locations
b. Walk the site to physically identify each sampling location
c. Become familiar with local rainfall and drainage patterns
d. Learn proper procedures for measuring rainfall
e. Become competent with proper sample collection procedures

Personnel involved in sampling should also be trained in all facility safety procedures as they apply to stormwater sampling. Where practicable the same individual should carry out the collection and examination of discharges for the entire permit term. Written documentation signed by the SWPPP team leader certifying that all personnel involved in sampling have been properly trained should be maintained onsite with the SWPPP.

4.4. SAMPLE COLLECTION FREQUENCY. Visual examinations of industrial stormwater discharges must be performed once per monitoring quarter. If no measurable storm event resulted in discharge from the facility during a monitoring quarter, the permittee is excused from visual monitoring for that quarter provided the permittee documents in the monitoring records that no runoff occurred. Schedule of monitoring quarters is listed below.

- First: October 1 to December 31
- Second: January 1 to March 31
- Third: April 1to June 30
- July 1 to September 30

All other time specific sampling requirements are to be performed in accordance with the parameters outlined in the procedures section of this document.

4.5. RECORD KEEPING AND REPORTING. The permittee must maintain reports of all visual examinations conducted onsite with the SWPPP. The permittee is not required to submit visual examination results to DEP unless specifically asked to do so. Requirements for recording visual examination data are outlined in the procedures section of this document.

5. PROCEDURES

5.1. MEASURING RAINFALL. All facilities required to perform visual monitoring of industrial stormwater discharges should have a rain gauge on site for measuring rainfall. The rain gauge may be a standard rain gauge, tipping bucket gauge, weighing type gauge, float recording gauge, or any other National Weather Service approved device for measuring rainfall to the nearest 0.1 inch. To minimize measurement errors, the gauge should be placed on a level surface that is not windswept and is away from trees or buildings that might interfere with the path of rainfall. The gauge should be regularly inspected by sampling personnel to ensure that it is in good working order and capable of accurately measuring rainfall to the nearest 0.1 inch.

5.2. SAMPLE COLLECTION TIMING. A grab sample must be collected from each facility outfall once per monitoring quarter during a measurable storm event that occurs at least 72 hours from the previously measurable storm event. The 72 hour interval is waived when the preceding measurable storm did not yield a measurable discharge. During a measurable storm event, a grab sample for visual examination should be collected during the first 60 minutes or as soon thereafter as practicable, but not to exceed 2.25 hours of when runoff begins discharging from areas of exposed industrial activity. During monitoring quarters when snowmelt represents the only stormwater discharge, a grab sample must also be collected during periods of significant snowmelt within the first 60 minutes or as soon thereafter as practicable, but not to exceed 2.25 hours) of when snowmelt begins discharging from areas of exposed industrial activity. Stormwater runoff from employee parking lots, administration buildings, and landscaped areas that is not mixed with stormwater associated with industrial activity, or stormwater discharges to municipal sanitary sewers does not need to be sampled.

5.3. SAMPLE CONTAINER CLEANING AND PREPARATION. The facility should have an adequate supply of containers prepared for collection of industrial stormwater samples from each outfall prior to collecting samples for visual examination. All sample containers used for sampling for visual examination should be certified as clean and free of residue by the container manufacturer, or cleaned according to the following procedure.

5.3.1. Wash containers in a non-phosphate detergent and tap water wash.

5.3.2. Thoroughly fill and rinse containers with tap water at least three (3) times.

5.3.3. Store containers closed, and in an area free of dust and other potential sample contaminants.

5.3.4. If additional containers are needed to collect samples from less accessible outfalls (i.e. buckets which are attached to poles for reaching outfalls), these containers should also be cleaned and prepared as indicated above.

5.4. SAMPLE COLLECTION. Samples should be examined in clear glass or clear plastic container prepared and cleaned as indicated above, so that all visual monitoring criteria can be observed.

5.4.1. MANUAL GRAB SAMPLE COLLECTION. Manual grab samples should be collected by inserting a container under or downstream of a discharge with the container opening facing upstream, and with the opening of the container completely immersed under water, whenever possible. Small containers (ideally 250 ml to 750 ml or approximately 8 to 24 ounces in size) are recommended in order to be able to submerse the container opening under water while still collecting an adequate sample size to make a correct visual inspection. In most cases the sample container can be held in hand while the sample is collected. Less accessible outfalls may require the use of poles and buckets to collect grab samples. Take the grab from the horizontal and vertical center of the outfall. If sampling in a channel, (i.e., ditch, trench, rill) avoid stirring up bottom sediments. Avoid touching the inside of the container to prevent contamination. Transfer sample to a clear glass or plastic container if using another container such as a bucket to collect a sample from a less accessible location. If taking samples from multiple outfalls, label containers with outfall identification prior to taking samples. Make sure samples are securely capped until examination.

5.4.2. COLLECTION OF GRAB SAMPLES BY AUTOMATIC SAMPLER. Facilities which use automatic samplers for stormwater sampling may collect grab samples for visual examination by this method. Programming for collecting grab samples is specific to the type of automatic sampler. All facility personnel who collect stormwater samples using automatic samplers should be properly trained in operation of the sampler before doing so. Several different types of automatic samplers are available for stormwater sampling. However, the following guidelines should be followed when sampling regardless of the type of sampler used. All equipment must be properly cleaned, particularly the tubing and sample containers. Deionized water should be drawn through the sampler to remove any residuals prior to taking samples. Tubing should also be periodically replaced to avoid algae or bacterial growth. Additionally, a distilled/deionized water blank sample should be taken at each outfall sampled to determine if contamination of stormwater samples by the sampling equipment has occurred. Samplers should be used in exact accordance with the manufacturers' instructions. All sampler calibration and maintenance data should be kept on site with the SWPPP.

5.5. SAMPLE EXAMINATION. Visual examination of all grab samples collected must be performed within the first sixty (60) minutes (or as soon thereafter as practicable, but not to exceed 2.25 hours) of when the runoff or snowmelt begins discharging from the facility. Collect the samples and bring them to a well lit indoor area. Pour each sample into a separate 1 L polycarbonate plastic graduated Imhoff cone. The cone should have graduations that allow volume measurement to the nearest milliliter. Record the total sample volume to the nearest milliliter on the visual monitoring form. Examine the samples for the following criteria according to the instructions provided with the visual monitoring form: Foam, odor, clarity, floating solids, suspended solids, color, oil sheen, settled solids, and any other obvious indicators of stormwater pollution. Read the settled solids 1 hour after pouring the sample into the cone, this assures all solids are settled out of the water. Settled solids in the bottom of the cone should be measured to the nearest milliliter. It is also recommended that a sample of tap water be collected in the same type of container used to collect the samples and used as a comparison to aid in evaluating the samples for the criteria stated above.

*Note: Clear polycarbonate plastic Imhoff cones are available from several scientific supply companies. See section 6 for a list of suppliers.

5.6. SAMPLE DATA RECORDING. Record all sample data on the visual monitoring form (Attachment B) after examining the sample for all of the criteria listed in the instructions (Attachment A). The form should include the examination date and time, examination personnel, the nature of the discharge (i.e., rain or snowmelt), identification of outfall sampled, quality of the stormwater discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and any other obvious indicators of stormwater pollution), and probable sources of any observed contamination. The permittee must sign and certify the documentation in accordance with Part VII (E) of the Maine MSGP. All visual examination reports must be maintained on site with the SWPPP.

5.7. RECOMMENDATIONS FOR SOLVING SAMPLE LOCATION PROBLEMS. Consult guidelines listed below when it is necessary to sample an outfall located at a less than ideal location for sampling.

- PROBLEM: Sampling where stormwater comingles with process or non process water.
  RECOMMENDATION: Attempt to sample the stormwater discharge before it mixes with the non-stormwater discharge. If this is impossible, sample the discharge both during dry and wet weather and maintain a record of the visual examination data observed under both conditions on site with the SWPPP. This will provide an indication of the contribution of any observable contamination from each source.

- PROBLEM: Numerous small point channels make up an outfall from which it is difficult to collect a sample.

RECOMMENDATION: Impound channels or join their flow together by building a weir or digging a ditch to collect discharge at a low point for sampling. This artificial collection point should be lined with plastic to prevent infiltration and/or high levels of sediment.

- PROBLEM: Inaccessible discharge point (examples include underwater discharges or unreachable discharges (e.g., out of a cliff).
  RECOMMENDATION: Go up the pipe to sample (i.e., to the nearest manhole or inspection point). If these are not available, tap into the pipe, or sample at several locations upstream of the pipe if the pipe is the only outfall for the facility.

- PROBLEM: Managing multiple sampling sites to collect grab samples during the first 60 minutes of a measurable storm event.
  RECEMMONDATION: Have a sampling crew ready for mobilization when forecasts indicate a measurable storm event is likely to occur. If this is not possible, sample missed outfall locations during other measurable storm events.

- PROBLEM: Commingling of parking lot runoff with discharge associated with industrial activity.
  RECOMMENDATION: The combined runoff must be sampled at the discharge point as near as possible to the industrial activity or at the parking lot drain inlet if there is one.

- PROBLEM: Sampling in manholes
  RECOMMENDATION: Sample with a collection device on the end of a pole to reach stormwater. Personnel sampling in manholes should have confined space safety training if manhole has to be entered.

- PROBLEM: Run-on from other property.
  RECOMMENDATION: If possible, collect and examine a sample of the stormwater at the border of the property where the run-on occurs. Then, collect and examine a sample of the stormwater at a facility outfall downstream of the run-on point. Note any observable differences between the samples and maintain the documentation with the SWPPP.

- When confronted with other difficult sampling scenarios not addressed above, the permittee should consult DEP for guidance on how to best address the situation.

6. REFERENCES

6.1. GUIDANCE MANUAL FOR THE MONITORING AND REPORTING REQUIREMENTS OF THE NPDES MULTI-SECTOR STORM WATER GENERAL PERMIT
United States Environmental Protection Agency, Office of Water (EN-336), EPA 833-B-99-001(January, 1999)

6.2. NPDES STORM WATER SAMPLING GUIDANCE DOCUMENT
United States Environmental Protection Agency, Office of Water (EN-336), EPA 833-8-92-001 (July, 1992)

6.3. STATE OF MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION MULTI-SECTOR GENERAL PERMIT MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM STORMWATER DISCHARGE ASSOCIATED WITH INDUSTRIAL ACTIVITY
Maine Department of Environmental Protection, Bureau of Land and Water Quality, Waste Discharge License # W-008227-5Y-A-N (October 11, 2005)

***Notes: List of Vendors that Supply One Liter (1L) Clear Polycarbonate Imhoff Cones**

Forestry Suppliers Inc.
PO Box 8397
Jackson, MS 39284
(800) 752-8460
www.forestry-suppliers.com

Lab Safety Supply Inc.
PO Box 1368
Janesville, WI 53547-1368
(800) 356-0783
www.labsafety.com

Nalge Nunc International
International Dept.
75 Panorama Creek Dr.
Rochester, NY 14625
(800) 625-4327
www.nalgenelabware.com

Pollard Water
200 Atlantic Ave.
Hyde Park, NY 11040
800-437-1146
www.pollardwater.com

Standard Operating Procedure
Attachment A
Bureau of Land and Water Quality
Date: April 20, 2006
Doc num: DEPLW0768

Instructions for Completing the Visual Monitoring Form

1. Completely fill out all required information on the top of the visual monitoring form.

2. Pour the sample into a 1 L clear polycarbonate Imhoff cone. Record the total sample volume measured in the cone to the nearest milliliter. Evaluate the sample for the following parameters according to the following instructions.

   - **Foam:** This must be done first. Examine the sample for foam immediately after pouring it into the cone. Record foam results on the visual monitoring form as they most closely match one of the descriptions listed below.

     i. **None**-Most bubbles break down within ten (10) seconds of pouring; only a few large bubbles persist longer than ten (10) seconds.

     ii. **Moderate**-Many small bubbles are present but these bubbles persist for less than two (minutes) after pouring.

     iii. **High**-Many small bubbles are present and they persist longer than two (2) minutes after pouring.

3. Examine the sample for the following criteria after it has settled for ten (10) minutes. Record the results on the visual monitoring form as they most closely match the descriptions listed below.

   - **Color:** Record the best description of the sample color in the appropriate space on the visual monitoring form.

   - **Odor:** If sample has no odor other than natural rainwater or snowmelt write "normal" on the visual monitoring form. Note the presence of any of the following odors if detected: Gasoline, diesel, oil, solvents (WD-40, other petroleum products, etc.), landfill, fishy, glycol, any other unusual odors not normally present in clean runoff from the area sampled.

   - **Clarity:** Record sample clarity results as they most closely match one of the descriptions listed below.

     i. **Clear**-Sample doesn't filter out any light, can be seen through regardless of color.

     ii. **Cloudy**-Sample filters out some light; not clear but objects can still be identified when looking through the cone.

     iii. **Very Cloudy**-Sample filters out most light; objects are indiscernible when looking through the cone.

     iv. **Opaque**-Sample doesn't allow any light to pass through; objects cannot be seen when looking through the cone.

- **Floating Solids:** Give a general description of the type of floating solids present (wood chips, leaf debris, algae, etc) in the general comments section for each sample. Record results for amount floating solids present as they most closely match the descriptions listed below. Record amount data in the appropriate box on page 1 of the visual monitoring form.

    i. **None**- No floating solids present on the surface of the sample.

    ii. **Slight**-Only a few floating particles observed on the surface of the sample.

    iii. **Moderate**- Less than 20% of the surface of the sample is covered with floating solids.

    iv. **High**- More than 20% of the surface of the sample is covered with floating solids.

- **Settled Solids:** Give a general description of the type of settled solids present (sand, decayed plant matter, rust particles etc) in the general comments section for each sample. Allow settle for one hour. Measure the settled solids in the bottom of the cone to the nearest milliliter and record the results in the appropriate box on page 1 of the visual monitoring form.

- **Suspended solids:** In the general comments section for each sample, give a general description of the type of solids present if any are observed suspended below the sample surface. Record whether or not settled solids were present in the appropriate box on page 1 of the visual monitoring form.

- **Oil Sheen:** Record whether or not an oil sheen is present in the sample.

- **General Comments Section on Page 2:** Make sure you have described the type of floating, settled and suspended solids observed in the samples in the general comments section provided for each outfall sample. Also note the following conditions at each outfall during the time sampled: General volume of water and flow, algae (if any is present), odor, color, and any other unusual characteristics noticed at the sampling location. Record the number of days since the last known measurable storm or runoff event.

4. Ensure that all visual monitoring forms are filed on site with the Stormwater Pollution Prevention Plan (SWPPP) each time visual monitoring is done.

Standard Operating Procedure
Bureau of Land and Water Quality
Attachment B
Date: April 20, 2006
Doc num: DEPLW0768

Visual Monitoring Form

Facility Name _____

Facility Address _____

Rainfall (est. inches) _____

Sampler's Name _____

MSGP Permit Number _____

Time Since Last Measurable Storm (Hours) _____

OUTFALL NUMBER						
OBSERVATION TIME						
EST. TIME FROM ONSET OF RUNOFF						
DISCHARGE TYPE Rain or Snowmelt						
Sample Volume (ml)						
COLOR						
ODOR						
CLARITY						
FLOATING SOLIDS*						
SETTLED SOLIDS*						
SUSPENDED SOLIDS*						
FOAM						
OIL SHEEN						
Probable source of any observed contamination						

*Enter description of these criteria in the general comments section for each outfall on the back of this page.

Under penalty of law I certify that these statements are true and correct pursuant to the terms and conditions stated in the MPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity.

Sampler's Signature _____ Date _____

General Comments

In the comments section, enter physical description of floating, settled, and suspended solids for each outfall sampled. Enter general comments on the condition and appearance of each outfall in the comments section also as indicated in the instructions.	
Outfall 1	Comments:
Outfall 2	Comments:
Outfall 3	Comments:
Outfall 4	Comments:
Outfall 5	Comments:
Outfall 6	Comments:

ATTACHMENT C

Maine Department of Environmental Protection

Effluent Mercury Test Report

Name of Facility: _____ Federal Permit # ME _____

Pipe # _____

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

SAMPLE COLLECTION INFORMATION

Sampling Date: ___ ___ ___ (mm dd yy) Sampling time: _____ AM/PM

Sampling Location:

Weather Conditions: _____

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

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

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

ANALYTICAL RESULT FOR EFFLUENT MERCURY

Name of Laboratory: _____

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

Please Enter Effluent Limits for your facility

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

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

CERTIFICATION

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

By: _____ Date: _____

Title: _____

PLEASE MAIL THIS FORM TO YOUR ASSIGNED INSPECTOR

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND
MAINE WASTE DISCHARGE LICENSE

FACT SHEET

Date**: July 26, 2011**

PERMIT NUMBER: **ME0023710**
LICENSE NUMBER: **W007705-5S-F-R**

NAME AND ADDRESS OF APPLICANT:

BORALEX LIVERMORE FALLS LP
267 Diamond Road
Livermore Falls, Maine 04254

COUNTY: **Androscoggin County**

NAME AND ADRESS WHERE DISCHARGE OCCURS:

267 Diamond Road
Livermore Falls, Maine 04254

RECEIVING WATER/CLASSIFICATION: **Androscoggin River/Class C**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. David Ettinger**
Plant Manager
(207) 897-6592 ext. 2

1. APPLICATION SUMMARY

a. Application – Boralex Livermore Falls LP (Boralex/permittee hereinafter) has submitted a timely and complete application to the Department for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0023710/Maine Waste Discharge License (WDL) #W007705-5R-D-R (permit hereinafter), which was issued by the Department on December 13, 2006 and is due to expire on December 13, 2011. The permit authorized the discharge of miscellaneous waste waters including 138,000 gallons per day (gpd) of cooling tower and boiler blowdown, 6,000 gpd of demineralization system ion exchange regeneration water and unspecified quantity of floor washdown waters and storm water runoff from a fuel storage area associated with a biomass fired electrical generating facility to the Androscoggin River, Class C, in Livermore Falls, Maine. See **Attachment A** of this Fact Sheet for a location map.

1. APPLICATION SUMMARY (cont'd)

b. Source Description: Sources of waste water/storm water runoff are as follows:

Power Plant

Boralex operates a 39.6 megawatt steam electric power generating station that is fueled by various biomass wood fuels. Biomass fuel consists of Construction/Demolition Wood Debris (CDWD) and conventional wood fuel. CDWD consists of chipped wood demolition debris (including pallets) with painted, chemically treated, and wood mixed with roofing and other non-wood related demolition products. Non-wood related products are removed from the fuel such that the amount remaining is determined to be insignificant.

Biomass fuel is delivered by enclosed trailer truck to the facility. The facility's fuel receiving system consists of two truck dumpers and two receiving hoppers and an enclosed scalper/hog. Fuel is conveyed to the long-term fuel storage area by way of an enclosed conveyor, then transferred via fuel reclaiming equipment, additional covered conveyors and an enclosed boiler feed system to the boiler furnace.

The facility's ash removal system consists of an ash conditioning system, enclosed conveyors, and an enclosed ash storage area. Also, various auxiliary systems are installed to support proper operation of the boiler and turbine/generator system.

See **Attachment B** of this permit for a water balance diagram for this facility.

Storm water

The topography of the site promotes runoff drainage from the fuel storage pad into a lined detention pond located along the west side of the fuel storage pad before being pumped from the pond to the cooling tower as make-up water. The site is currently accessed by the Diamond Road. Slopes range from 2% to 26% and an approximate 27-foot change in elevation is realized from the southwest corner to the northeast corner of the site.

Sub-catchment 1 is the vegetated area located along the westerly edge of the facility. This area drains down the vegetated slope from the northwestern corner of the facility towards the southeast. The runoff is collected in a riprap drainage swale. Storm water leaves the property and discharges to a wooded area via a pipe measuring 20 inches in diameter and is designated as Outfall SW002. See Attachment A of this Fact Sheet.

1. APPLICATION SUMMARY (cont'd)

Sub-catchment 2 includes the fuel storage area and storage building roof. This area drains to the catch basin to the southwest corner of the pad. The leachate from the exposed fuel material travels in a southwesterly direction to the asphalt drainage swale which directs storm water into the detention pond via a widened riprap drainage swale. During extreme storm events, storm water may fill the lined detention pond and spill into the smaller dry pond. Should the wet pond fill, the wet pond emergency spillway is designated as Outfall SW003 and discharges to a wooded area. See **Attachment A** of this Fact Sheet.

Sub-catchment 3 is located to the east of the asphalt drainage ditch surrounding the fuel storage pad. Sub-catchment 3 includes most of the industrial operations on the site. Storm water leaves the property through Outfall SW001 and discharges to a wooded area which is located to the southwest corner of this area.

The outlet of the primary detention pond is pumped through the existing fire suppression system into the cooling tower where it is used as make-up water in the circulation water system. Hydrology analysis of the storm water generated during a 24-hour, 25-year storm events (assuming no wood fuel is being stored on the asphalt pad) indicates the emergency spillway for the wet pond will be active. With as little as 5% of the storage area used, a discharge over the spillway will not occur. According to facility personnel, the storage area is rarely vacant of wood fuel. Approximately 30% of the operations area of the facility property located in the northwest portion of the facility property drains through a system of swales and pipes to the unlined runoff detention pond located on the north edge of the facility property. The runoff accumulating in this pond normally infiltrates into the ground or evaporates.

Two portions of the property where operations take place drain away from the runoff detention pond. One area is the northwest corner comprising approximately 10% of the operations area of the facility. The area contains virtually all of the main access roadway used by suppliers to bring fuel oils, lubricants and chemicals to the facility. The second area is the southwest corner of the facility. This area includes approximately 10% of the area where operations take place. Passing through it is only a small portion of the facility access roadway. In this drainage area there is a small area drain that lies directly beneath the No. 2 fuel oil/urea/sulfuric acid/sodium hydroxide/emergency generator diesel fuel storage tank off-loading standpipes mounted on the east wall of the turbine/generator building. It is connected to the foundation drains that discharge into the runoff detention pond.

1. APPLICATION SUMMARY (cont'd)

A second pond, the fuel pad runoff holding pond is located in the southeast corner of the facility. This lined pond collects the runoff from the fuel pad and some surrounding areas which encompasses the remaining 50% of the facility area used for operations. Runoff from this holding pond is pumped to the cooling tower basin. Cooling tower blowdown is discharged to the municipal sewer system down stream of the facility sewage lift station. The overflow constructed at the top of the fuel pad runoff holding pond berm discharges to the ground which is sloped to a drain which discharges directly into the runoff detention pond located on the north edge of the facility property.

Therefore, approximately 80% of the area of the facility used for operation drains to two ponds. Runoff collected in these ponds can be held, under nearly all but extreme precipitation conditions, until oil accumulating on the surface of the water can be skimmed off and disposed. No means for detention of runoff from the other two areas is in place.

e. Treatment:

Power Plant

All of the plant floor drains in the turbine/generator building are directed to a 450-gallon oil/water separator. The oil/water separator has a design flow of 30 gpm with a 15 minute retention capacity. The oil/water separator removes sediment and floating pollutants (oil) from incoming water. Regular maintenance is required to remove accumulated debris. The oil/water separators will be maintained according to the Operations & Maintenance Manual provided with the separators, and records of inspections and maintenance activities will be kept in the facility's SWPPP.

Underflow from the oil/water separator flows to the turbine/generator building sump. One of two pumps lift the wastewater into a 10,000 gallon neutralization tank where its pH is adjusted (along with demineralizer regeneration wastewater) and then conveys the water into the cooling tower circulation return line. Blow down from the cooling tower joins several other wastewater flows and is discharged to the Androscoggin River through Outfall #001E via a corrugated metal pipe measuring 18 inches in diameter and extends out into the river approximately 20 feet. Also, oil used or held in equipment supporting the turbine generator rests inside minor containment structures which are designed to retain drips and minor leakage of oil. If a spill of oil were to occur, the oil would be collected in the oil/water separator.

Sulfuric acid is used for cooling tower water pH control. Sodium hydroxide is used for demineralizer regeneration and neutralization of the demineralizer regenerant and other wastewaters. Sodium hypochlorite is used for cooling tower water treatment.

1. APPLICATION SUMMARY (cont'd)

Storm water

No structural treatment systems other than detention ponds are in place to treat storm water runoff associated with industrial activities at the site. To the extent practical, best management practices (BMPs) are incorporated to limit the potential for contaminates entering storm water discharge.

2. PERMIT SUMMARY

a. Terms and Conditions - This permitting action carries forward all the terms and conditions of the 12/13/06 permitting action except that the requirements of the Storm Water Pollution Prevention Plan (SWPPP) have been modified to be consistent with the requirements in the Department's most current Multi-Sector General Permit for stormwater.

b. History: The most recent relevant regulatory actions include the following:

March 10, 1992 – The Department issued a new WDL to Northeast Empire Limited Partnership (NELP) for a five-year term. WDL #W007705-42-A-N authorized the discharge of miscellaneous non-process waste waters from a newly constructed biomass fueled electrical generating facility.

June, 1992 - NELP's Beaverwood facility commenced operations and began discharging to the Androscoggin River.

September 28, 1992 - The EPA issued NPDES permit #ME0023710 for a five-year term. The permit authorized the same discharge and contained the same numeric limitations and monitoring requirements contained in the 3/10/92 State WDL.

July 12, 2000 – The Department administratively modified the 3/10/92 WDL by establishing interim mean and maximum technology based concentration limitations of 25.0 ng/L and 37.5 ng/L, respectively for mercury.

December 28, 2000 – The Department issued WDL renewal #W007705-5R-B-R for a five-year term.

January 12, 2001 - The State of Maine received authorization from the EPA to administer the NPDES permit program in Maine.

May 8, 2002 – The Department transferred all permits and licenses issued by the Department for the Livermore Falls electrical generation facility to Boralex Livermore Falls Inc.

2. PERMIT SUMMARY (cont'd)

December 16, 2006 – The Department issued combination MEPDES permit #ME0023710/Maine WDL #W007705-5R-D- R for a five year term.

June 22, 2011 – Boralex submitted a timely and complete application to the Department to renew the 12/16/11 MEPDES permit/WDL.

3. CONDITIONS OF PERMITS

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

4. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A., §467(1)(A)(2) states that the Androscoggin River at and below the point of discharge from the Boralex facility is classified as a Class C waterway. Maine law, 38 M.R.S.A., §465(4) describes the classification standards for Class C waters as follows;

A. Class C waters must be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; agriculture; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; navigation; and as a habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class C water may be not less than 5 parts per million or 60% of saturation, whichever is higher, except that in identified salmonid spawning areas where water quality is sufficient to ensure spawning, egg incubation and survival of early life stages, that water quality sufficient for these purposes must be maintained. In order to provide additional protection for the growth of indigenous fish, the following standards apply.

(1) The 30-day average dissolved oxygen criterion of a Class C water is 6.5 parts per million using a temperature of 22 degrees centigrade or the ambient temperature of the water body, whichever is less, if:

4. RECEIVING WATER QUALITY STANDARDS (cont'd)

(a) A license or water quality certificate other than a general permit was issued prior to March 16, 2004 for the Class C water and was not based on a 6.5 parts per million 30-day average dissolved oxygen criterion; or

(b) A discharge or a hydropower project was in existence on March 16, 2005 and required but did not have a license or water quality certificate other than a general permit for the Class C water. This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004.

(2) In Class C waters not governed by subparagraph (1), dissolved oxygen may not be less than 6.5 parts per million as a 30-day average based upon a temperature of 24 degrees centigrade or the ambient temperature of the water body, whichever is less. This criterion for the water body applies to licenses and water quality certificates issued on or after March 16, 2004. The department may negotiate and enter into agreements with licensees and water quality certificate holders in order to provide further protection for the growth of indigenous fish. Agreements entered into under this paragraph are enforceable as department orders according to the provisions of sections 347-A to 349.

Between May 15th and September 30th, the number of Escherichia coli bacteria of human and domestic animal origin in Class C waters may not exceed a geometric mean of 126 per 100 milliliters or an instantaneous level of 236 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. The board shall adopt rules governing the procedure for designation of spawning areas. Those rules must include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

C. Discharges to Class C waters may cause some changes to aquatic life, except that the receiving waters must be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community. This paragraph does not apply to aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species.

5. RECEIVING WATER QUALITY CONDITIONS

The 2010 Integrated Water Quality Monitoring and Assessment Report, [often referred to as the 305(b) Report] prepared by the Department pursuant to Section 305(b) of the Clean Water Act, lists the Androscoggin River main stem in the following tables entitled:

Category 4-A: Rivers and Streams with Impaired Use, TMDL Completed, Water Impaired by Atmospheric Deposition of Mercury

Category 4-A: Rivers and Streams With Impaired Use Other Than Mercury, TMDL Completed

Category 4-B: Rivers and Streams Impaired by Pollutants – Pollution Control Requirements Reasonably Expected to Result in Attainment

Category 5-D: Rivers and Streams Impaired by Legacy Pollutants

Category 4-A: Rivers and Streams with Impaired Use, TMDL Completed, Water Impaired by Atmospheric Deposition of Mercury states all freshwaters in the State of Maine are impairment by atmospheric deposition of mercury: a regional scale TMDL has been approved. Maine has a fish consumption advisory for fish taken from all fresh waters due to mercury. Many waters, and many fish from any given waters, do not exceed the action level for mercury. However, because it is impossible for someone consuming a fish to know whether the mercury level exceeds the action level, the Maine Department of Human Services decided to establish a statewide advisory for all fresh waters that recommends limits on consumption. Maine has already instituted statewide programs for removal and reduction of mercury sources. For a more in-depth discussion on mercury discharges from the Boralex facility see Section 6(j) of this Fact Sheet.

Category 4-A: Rivers and Streams With Impaired Use Other Than Mercury, TMDL Completed, states that an 8.19 mile Class C segment of the main stem of the Androscoggin River upstream of the Gulf Island Pond Dam is impaired by algae blooms and low dissolved oxygen levels caused by phosphorus loadings and biochemical oxygen demand and total suspended solids loadings. The May 2005 final TMDL prepared by the Department contains the following italicized text:

Gulf Island Pond does not attain Class C minimum and monthly average dissolved oxygen 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 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. [It is noted the Livermore Falls impoundment is approximately 3 miles upstream of the Boralex discharge.]

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

The pollutants of concern are carbonaceous biochemical oxygen demand (BOD), ortho-phosphorus (ortho-P), total phosphorus (total-P), and total suspended solids (TSS). Reduction of phosphorus is needed to eliminate algae blooms in Gulf Island Pond. Reduction of carbonaceous BOD, TSS, and phosphorus, is needed to improve dissolved oxygen levels to attainment of Class C criteria. In addition, an instream oxygen injection system currently located five miles above Gulf Island Dam needs to be re-designed to provide additional amounts of oxygen in other areas of the pond.

TSS and algae contribute to sediment oxygen demand, a major source of oxygen depletion in the deeper areas of Gulf Island Pond. The 2002 Modeling Report investigated the importance of sediment oxygen demand, oxygen injection, and paper mill BOD input levels upon the model prediction of dissolved oxygen. Sediment oxygen demand (SOD) was found to be the most important since the model prediction of DO changed the most within given percentages of change for SOD. Varying oxygen injection rates resulted in the second largest response to model prediction of DO and the amounts input for the paper mill BOD inputs resulted in the lowest response of the model DO. This is a useful exercise in showing that reducing pollutants that contribute to SOD (algae, TSS) and oxygen injection are more efficient cleanup actions than reducing paper mill BOD. TSS also is the major cause of non-attainment of Class C aquatic life criteria in the Livermore Falls impoundment.

In orders issued by the Board of Environmental Protection (BEP) on February 7, 2008, the impairment issues cited above were addressed by establishing lower BOD limits and more stringent total and ortho-phosphorus limits for the Rumford Paper Company mill in Rumford and the Verso Androscoggin mill in Jay. In addition, the Gulf Island Pond Partnership upgraded the oxygen injection system that was placed in Gulf Island Pond back in 1992. In preparing the May 2005 TMDL, the Department determined that the discharge from the Boralex facility was not causing or contributing to the impairments cited above.

Category 4-B: Rivers and Streams Impaired by Pollutants – Pollution Control Requirements Reasonably Expected to Result in Attainment lists 140 miles of the Class C section of the Androscoggin River as impaired for fishing (consumption) due to the presence of dioxin. The report states with the receiving waters are expected to attain compliance with standards by 2020 as both mills on the river have not detected dioxin or furan compounds in their bleach plant waste streams and each mill has passed the above/below test for fish tissue sampling. The Department has no information that the Boralex facility is discharging dioxin that is or would cause or contribute to said impairment.

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

Category 5-D: Rivers and Streams Impaired by Legacy Pollutants states the 71.6 miles of the Class C section of the Androscoggin River from Rumford to the Gulf Island Pond Dam is impaired due to the presence of polychlorinated biphenyls (PCBs). The Department has no information that the Boralex facility is discharging PCBs that are or would cause or contribute to said impairment.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

The Boralex facility is subject to the National Effluent Guidelines for the Steam Electric Power Generating Point Source Category found at 40 Code of Federal Regulation (CFR) Part 423. Applicable sections of 40 CFR Part 423 include:

40 CFR §423.12(b)(3):	Limits TSS, oil & grease from low volume waste sources
40 CFR §423.12(b)(7):	Limits free available chlorine, in cooling tower blowdown
40 CFR §423.13(d)(1):	Limits total chromium and total zinc in cooling tower blowdown

Historically (prior to 2000), WDL's and federal NPDES permits differed in alpha-numeric designations of the individual outfalls. The alpha-numeric designations for the internal waste streams and final discharge point were as follows:

001A – Cooling Tower Blowdown, Floor Washdown Waters - Internal waste stream
001B – Ion-Exchange Treatment System Backwash – Internal waste stream
001D – Fuel Storage Area Storm Water Run-off – Internal Waste Stream
001E – Combined Waste Waters – Final outfall that conveys waste waters from 001A, 001B, and 001D to the Androscoggin River.

To simplify monitoring the discharge and reporting test results required, the previous permit only require monitoring of Outfall 001E. Being that the non-process waste waters are co-mingled with the storm water runoff from the fuel storage pad prior to discharge, the previous permitting action established mass limitations to restrict the pollutant loading for the non-process waste waters equal to the levels in the historical licensing/permitting actions. It is noted the individual internal waste streams were indirectly limited by mass as each waste stream was limited by flow and concentration. The previous permitting action established the most stringent concentration limit for each parameter established in the historical licensing/permitting action.

For a history on establishing limitations and monitoring requirements in the previous permitting action, see **Attachment C** of this Fact Sheet.

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

This permitting action is establishing monthly average and daily maximum mass and or concentration limits for Outfall #001E as follows.

a. Flow: The previous permitting action established monthly average and daily maximum dry weather flow limits of 0.138 MGD and 0.175 MGD, respectively that are being carried forward in this permitting action. A review of the monthly Discharge Monitoring Report (DMR) data for the period January 2007 – October 2010 indicates the facility has been in compliance with the limitation 100% of the time as dry weather flows from Outfall #001E have been reported as follows;

Flow (DMRs=46)

Value	Limit (MGD)	Range (MGD)	Mean (MGD)
Monthly Average	0.138	0.00696 – 0.010	0.018
Daily Maximum	0.175	0.017 – 0.0608	0.032

b. Dilution Factors: Dilution factors associated with the discharge from the permittee's facility were derived in accordance with freshwater protocols established in Department Rule Chapter 530, *Surface Water Toxics Control Program*, November 2005. With a monthly average dry weather (excludes storm water contribution) permit flow limitation of 0.138 MGD, the dilution factors for the waste waters discharged from the facility can be calculated as follows:

$$\text{Dilution Factor} = \frac{(\text{River Flow in cfs})(\text{Conversion Factor})}{\text{Plant Flow in MGD}}$$

$$\text{Acute Dilution}^{(1)} = \frac{(433\ \text{cfs})(0.6464)}{(0.138\ \text{MGD})} = 2{,}028{:}1$$

$$\text{Chronic Dilution} = \frac{(1{,}730\ \text{cfs})(0.6464)}{(0.138\ \text{MGD})} = 8{,}103{:}1$$

$$\text{Harmonic Dilution} = \frac{(3{,}197\ \text{cfs})(0.6464)}{(0.138\ \text{MGD})} = 14{,}975{:}1$$

Footnote:

(1)-Chapter 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 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 flow, up to including all of it. Being that the final outfall pipe only extends out into the receiving water approximately 20 feet, the Department has made the determination that ¼ of the 1Q10 stream flow is applicable.

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

c. Temperature:

The previous permitting action established a year-round daily maximum limit of 90°F but only established seasonal monitoring (1/Month) from June 1 – September 30, the most critical time for impacts to the receiving waters. See **Attachment C** of this Fact Sheet for a discussion on the Department's rules regarding thermal discharges and calculations relating to the impact (lack thereof) of the thermal discharge on the Androscoggin River.

A review of the monthly Discharge Monitoring Report (DMR) data for the period January 2007 – October 2010 indicates the facility has been in compliance with the limitation 100% of the time as summertime discharge temperatures from Outfall #001E have been reported as follows;

Temperature (DMRs=16)

Value	Limit (ºF)	Range (ºF)	Mean (ºF)
Daily Maximum	90	56.53 – 72.96	61.1

d. Free Available Chlorine (FAC): The previous permitting action established technology based monthly average and daily maximum concentration limits pursuant to federal regulation, 40 CFR, §423.12(b)(7) as follows:

Monthly Average	Daily Maximum
0.2 mg/L	0.5 mg/L

This permitting action is carrying forward said limitations along with the monitoring frequency of 1/Month. A review of the monthly Discharge Monitoring Report (DMR) data for the period April 2007 – October 2010 indicates the facility has been in compliance with the limitation 100% of the time as values for Outfall #001E have been reported as follows;

Free available chlorine (DMRs=43)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Monthly Average	0.2	0.02 – 0.18	0.09
Daily Maximum	0.5	0.08 - 0.50	0.21

e. Total Suspended Solids (TSS): The previous permitting action established technology based monthly average and daily maximum concentration limits pursuant to federal regulation, 40 CFR, §423.12(b)(3) as follows:

	Monthly Average	Daily Maximum
001E	30 mg/L	50 mg/L

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

Department rule 06-096 CMR Chapter 523 Section 6.f. states in part " *all pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass."* Therefore, the previous permitting action established monthly average and daily maximum mass limits for TSS based on the concentration limits cited above and the previous license flow limits of 0.138 MGD as a monthly average and 0.175 MGD as a daily maximum. The calculations are as follows:

Monthly Average: (30 mg/L)(8.34)(0.138 MGD) = 34 lbs/.day

Daily Maximum: (50 mg/L)(8.34)(0.175 MGD) = 73 lbs/day

A review of the monthly Discharge Monitoring Report (DMR) data for the period April 2007 – October 2010 indicates the facility has been in compliance with the limitation 99% of the time as concentration and mass values for Outfall #001E have been reported as follows;

TSS Concentration (DMRs=43)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	<1 - 95	10
Daily Maximum	50	<1 - 95	10

TSS Mass (DMRs=43)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	34	0.18 – 13.9	1.8
Daily Maximum	73	0.18 – 13.9	1.8

f. Zinc (Total): The previous permitting action established technology based monthly average and daily maximum concentration limits of 1.0 mg/L pursuant to 40 CFR, 423.13(d)(1) as follows:

	Monthly Average	Daily Maximum
001E	1.0 mg/L	1.0 mg/L

Pursuant to Department rule 06-096 CMR Chapter 523 Section 6.f, and to be consistent with the methodology for regulating TSS, the previous permitting action established monthly average and daily maximum mass limits for zinc based on the concentration limits cited above and the previous permit flow limits of 0.138 MGD as a monthly average and 0.165 MGD as a daily maximum. The calculations are as follows:

Monthly Average: (1.0 mg/L)(8.34)(0.138 MGD) = 1.2 lbs/.day
Daily Maximum: (1.0 mg/L)(8.34)(0.165 MGD) = 1.4 lbs/day

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

The concentration and mass limits for total zinc are being carried forward in this permitting action. A review of the monthly Discharge Monitoring Report (DMR) data for the period April 2007 – October 2010 indicates the facility has been in compliance with the limitation 100% of the time as concentration and mass values for Outfall #001E have been reported as follows;

Zinc Concentration (DMRs=43)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	1.0	0.023 – 0.193	0.069
Daily Maximum	1.0	0.023 – 0.193	0.069

Zinc Mass (DMRs=43)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	1.2	0.0034 – 0.145	0.015
Daily Maximum	1.4	0.0034 – 0.145	0.015

g. Oil & Grease – Special Condition A, Effluent Limitations and Monitoring requirements in the previous permitting action established technology based monthly average and daily maximum concentration limits as follows:

	Monthly Average	Daily Maximum
001E	15 mg/L	15 mg/L

Text in the Fact Sheet of the previous permitting action describing the derivation of the oil & grease limitations was not consistent with the limis in the table of Special Condition A of the permit. The Fact Sheet stated: "*The concentration limits was based on a Department best professional judgment of the level at which an oil sheen will be visible and is consistent with other permitting actions for like discharges of storm water runoff.*"

To be consistent with the methodology of establishing the most stringent limit(s) associated with the previous licensed internal waste streams, this permitting action is establishing a daily maximum technology based concentration limit of 15 mg/L. No mass limits are being established in this permitting action due to the nature of the pollutant."

The intent of the previous permitting action was to establish both the monthly average and daily maximum concentration limits for oil & grease at 15 mg/L. The discrepancy is being eliminated in this permit as Special Condition A of this permit list both concentration limits as 15 mg/L.

A review of the monthly Discharge Monitoring Report (DMR) data for the period April 2007 – October 2010 indicates the facility has been in compliance with the limitation 100% of the time as concentration values for Outfall #001E have been reported as follows;

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

Oil & grease Concentration (DMRs=43)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	15	<5.0 – 5.6	2.5
Daily Maximum	15	<5.0 – 5.6	2.5

h. Chromium (Total): The previous permitting action established technology based monthly average and daily maximum concentration limits of 0.20 mg/L pursuant to 40 CFR, 423.12(b)(6) as follows:

	Monthly Average	Daily Maximum
001E	0.20 mg/L	0.20 mg/L

Pursuant to Department rule 06-096 CMR Chapter 523 Section 6.f, and to be consistent with the methodology for regulating other pollutants that can be expressed in mass, the previous permitting action established monthly average and daily maximum mass limits for total chromium based on the concentration limits cited above and the permitted flow limits of 0.138 MGD as a monthly average and 0.165 MGD as a daily maximum. The calculations are as follows:

Monthly Average: (0.20 mg/L)(8.34)(0.138 MGD) = 0.23 lbs/.day

Daily Maximum: (0.20 mg/L)(8.34)(0.165 MGD) = 0.28 lbs/day

A review of the monthly Discharge Monitoring Report (DMR) data for the period April 2007 – October 2010 indicates the facility has been in compliance with the limitation 100% of the time as concentration and mass values for Outfall #001E have been reported as follows;

Chromium Concentration (DMRs=43)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	0.2	0.007 – 0.196	0.064
Daily Maximum	0.2	0.007 – 0.196	0.064

Chromium Mass (DMRs=43)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	0.23	0.003 – 0.0468	0.014
Daily Maximum	0.28	0.003 – 0.0468	0.014

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

i. pH - The previous permitting action established technology based pH range limitations as follows:

	Daily Maximum
001E	6.0 - 9.0 SU

The limits were based on a Department best professional judgment of pH levels associated with storm water runoff. It is noted the limitations were footnoted such that that discharges may be outside the 6.0-9.0 standard unit range if due to the intake make-up water and or precipitation. The limitations and footnotes are being carried forward in this permitting action.

A review of the DMR data for the period January 2007 –May 2010 indicates the permitee has been in compliance with the pH limitations 100% of the time in said period as pH values have ranged from 7.54 standard units (su) to 8.97 su.

j. Whole effluent toxicity (WET) & priority pollutant (PP) testing – Maine law, 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. Department rule, 06-096 CMR Chapter 530, *Surface Water Toxics Control Program* sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected and narrative and numeric water quality criteria are met. Department rule 06-096 CMR Chapter 584, Surface *Water Quality Criteria for Toxic Pollutants*, sets forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

WET, priority pollutant and analytical chemistry testing, as required by Chapter 530, is being taken into consideration in the preparation of this permit. 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 water flea (*Ceriodaphnia dubia*) and vertebrate brook trout (*Salvelinus fontinalis*). Chemical-specific monitoring is required to assess the levels of individual toxic pollutants in the discharge, comparing each pollutant to acute, chronic, and human health water quality criteria. Analytical chemistry refers to a suite of chemical tests for ammonia-nitrogen, total aluminum, total cadmium, total chromium, total copper, total hardness (fresh water only), total lead, total nickel, total silver, total zinc, total arsenic, total cyanide and total residual chlorine.

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

Department rule Chapter 530.2.A specifies dischargers subject to the requirements of this rule are as follows, *"[a]ll licensed dischargers of industrial process wastewater or domestic wastes discharging to surface waters of the State…."* Chapter 530 Section 2.B. categorizes dischargers subject to the toxics rule into one of four levels (Levels I through IV). Level IV dischargers are *"[t]hose dischargers having a chronic dilution factor of at least 500 to 1 and a permitted flow of less than 1 million gallons per day."* The chronic dilution factor associated with the discharge from the Boralex facility is 8,103 to 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. Chapter 530 Section 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 Boralex facility qualifies for waived routine toxics testing under the provisions of Department rule Chapter 530 based on available chronic dilution, permitted discharge flow rate, and historical WET and chemical specific testing information to support that the discharge does not contain toxic pollutants in toxic amounts.

Department rule Chapter 530 Section 2.D.4. states, *"[a]ll dischargers having waived or reduced testing must file statements with the Department on or before December 31 of each year 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."

This permitting action is formally establishing the notification requirement in this permitting action as Special Condition G, *06-096 CMR 530(2)(D)(4) Statement For Reduced/Waived Toxics Testing*, pursuant to Chapter 530 Section 2.D.4. See **Attachment D** of the Fact Sheet for an acceptable certification form to satisfy this Special Condition. 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.

In addition to the waiver provided by Chapter 530, the facility has already demonstrated the discharges associated with this facility do not exceed or have a reasonable potential to exceed critical ambient water quality thresholds for acute, chronic or human health criteria. See the discussion in **Attachment C** of this Fact Sheet for a discussion regarding this matter.

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

k. Mercury: Pursuant to Maine law, 38 M.R.S.A. §420 and Department rule, 06-096 CMR Chapter 519, *Interim Effluent Limitations and Controls for the Discharge of Mercury*, the Department issued a *Notice of Interim Limits for the Discharge of Mercury* to the permittee on July 12, 2000, thereby administratively modifying WDL#W007705-42-A-N by establishing interim monthly average and daily maximum effluent concentration limits of 25.0 parts per trillion (ppt) and 37.5 ppt, respectively, and a minimum monitoring frequency requirement of two tests per year for mercury. The interim mercury limits were scheduled to expire on October 1, 2001. However, effective June 15, 2001, the Maine Legislature enacted Maine law, 38 M.R.S.A. §413, sub-§11 specifying that interim mercury limits and monitoring requirements remain in effect. It is noted that the mercury effluent limitations have not been incorporated into Special Condition A, *Effluent Limitations And Monitoring Requirements*, of this permit as the limits and monitoring frequencies are regulated separately through Maine law, 38 M.R.S.A. §413 and Department rule Chapter 519. The interim mercury limits remain in effect and enforceable and modifications to the limits and/or monitoring frequencies will be formalized outside of this permitting document pursuant to Maine law, 38 M.R.S.A. §413 and Department rule Chapter 519.

Maine law 38 M.R.S.A., §420 1-B,(B)(1) states that a facility is not in violation of the AWQC for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to section 413, subsection 11. A review of the Department's database for the previous 60-month period indicates mercury test results reported have ranged from 5.6 ppt to 37.5 ppt with an arithmetic mean (n=19) of 13.8 ppt.

Storm Water – Outfalls 006 and 007

The Fact Sheet of the previous permitting action stated the following, "On May 18, 2005, the Department issued a Draft Position Paper for industrial facility monitoring (including Sector O, Steam Electric Generation Facilities) which states that for storm water discharges associated with industrial activities "*DEP is currently shifting its emphasis from analytical monitoring to pollution prevention, visual monitoring, and a DEP facility inspection program*". As a result the Department is not requiring Boralex to monitor for specific pollutants in this permitting action provided that BMPs and housekeeping measures are in place to avoid spills, leaks and other pathways that would allow pollutants to contaminate groundwater and stormwater. The Boralex facility maintains a stormwater pollution prevention plan (SWPPP) which discusses BMPs and housekeeping practices utilized at the facility to reduce the potential for contaminates coming into contact with stormwater."

To be consistent with the SWPPP requirements in the Department's April 2011 Multi-Sector General Permit (MSGP), this permitting action is modifying Special Condition A(2) accordingly.

8. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

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

9. PUBLIC COMMENT

Public notice of this application was made in the local newspaper on or about June 29, 2011. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

10. DEPARTMENT CONTACTS

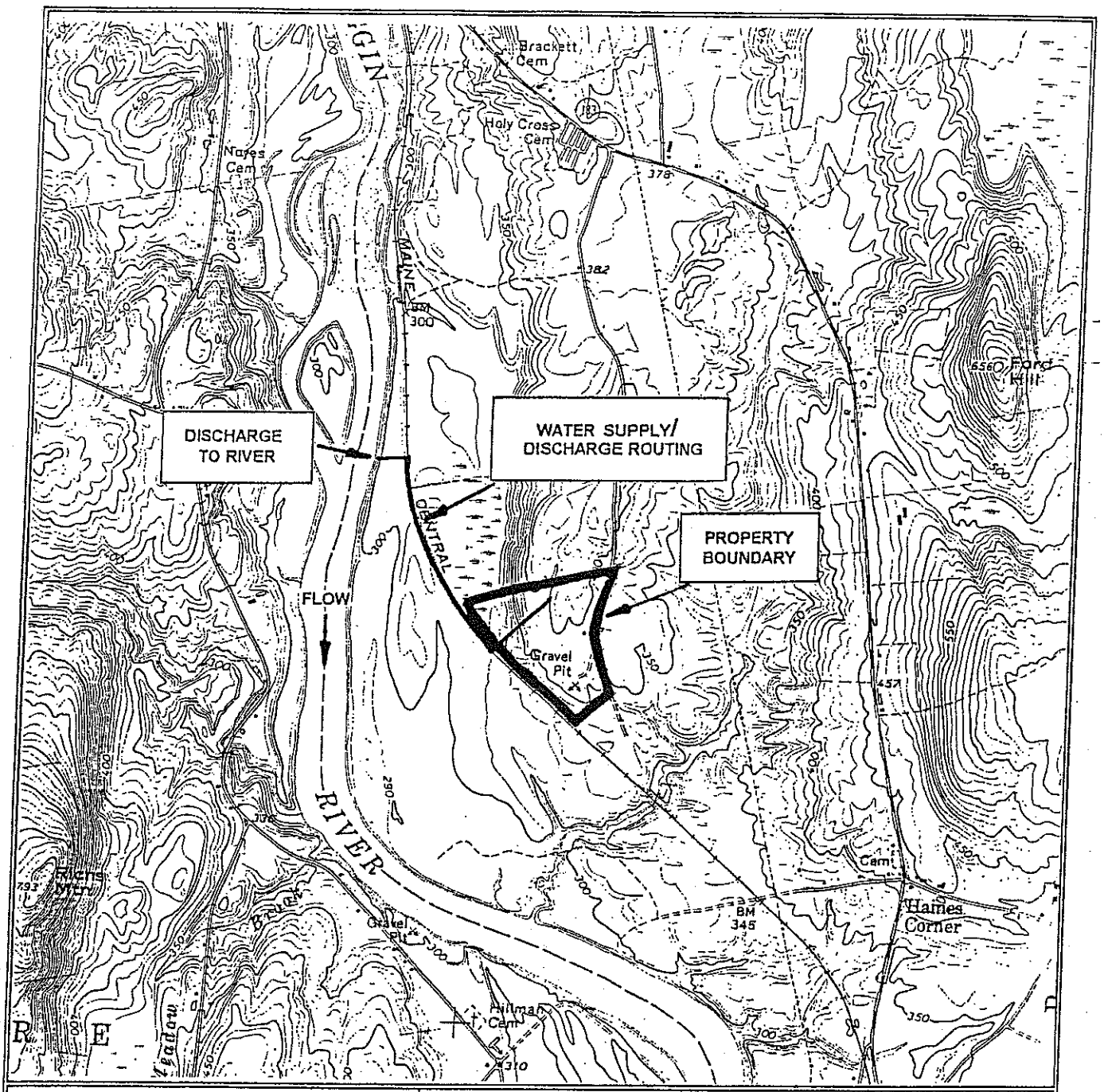
Additional information concerning this permitting action may be obtained from and written comments should be sent to:

Gregg Wood
Division of Water Quality Management
Bureau of Land and Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone (207) 287-7693
e-mail: gregg.wood@maine.gov

11. RESPONSE TO COMENTS

During the period of July 26, 2011, through the issuance date of the permit/license, the Department solicited comments on the proposed draft permit/license to be issued for the discharge(s) from the permittee's facility. 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



Scale: 1-Inch = 2,000 Feet

Site map prepared and adapted from a HMM Associates map & a topographic map of the Livermore Falls, Maine Quadrangle issued by the U.S. Geological Survey, 1967.

NORTHEAST EMPIRE LIMITED PARTNERSHIP I POWER PROJECT OUTFALL LOCATION

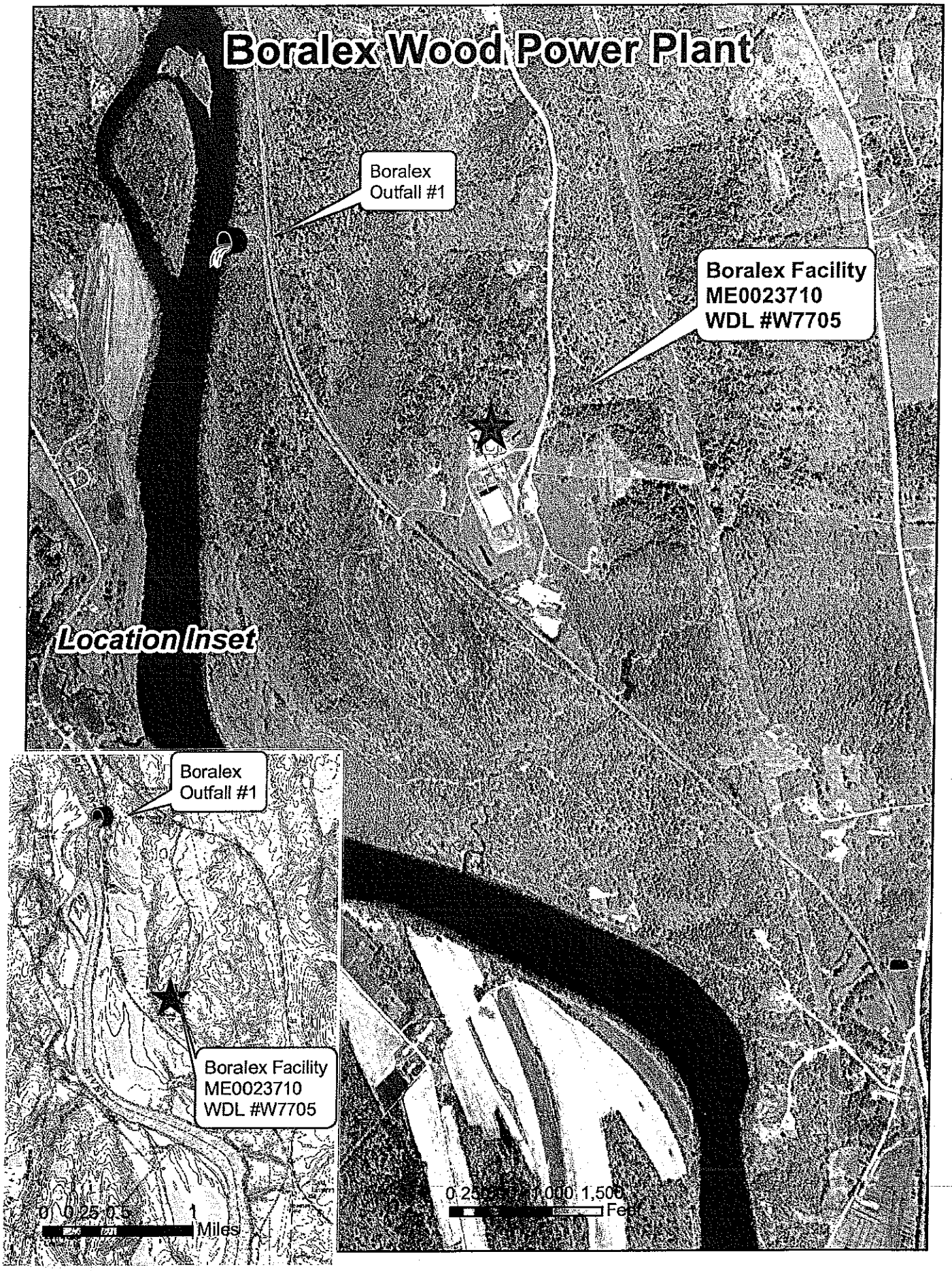
Livermore Falls, Maine

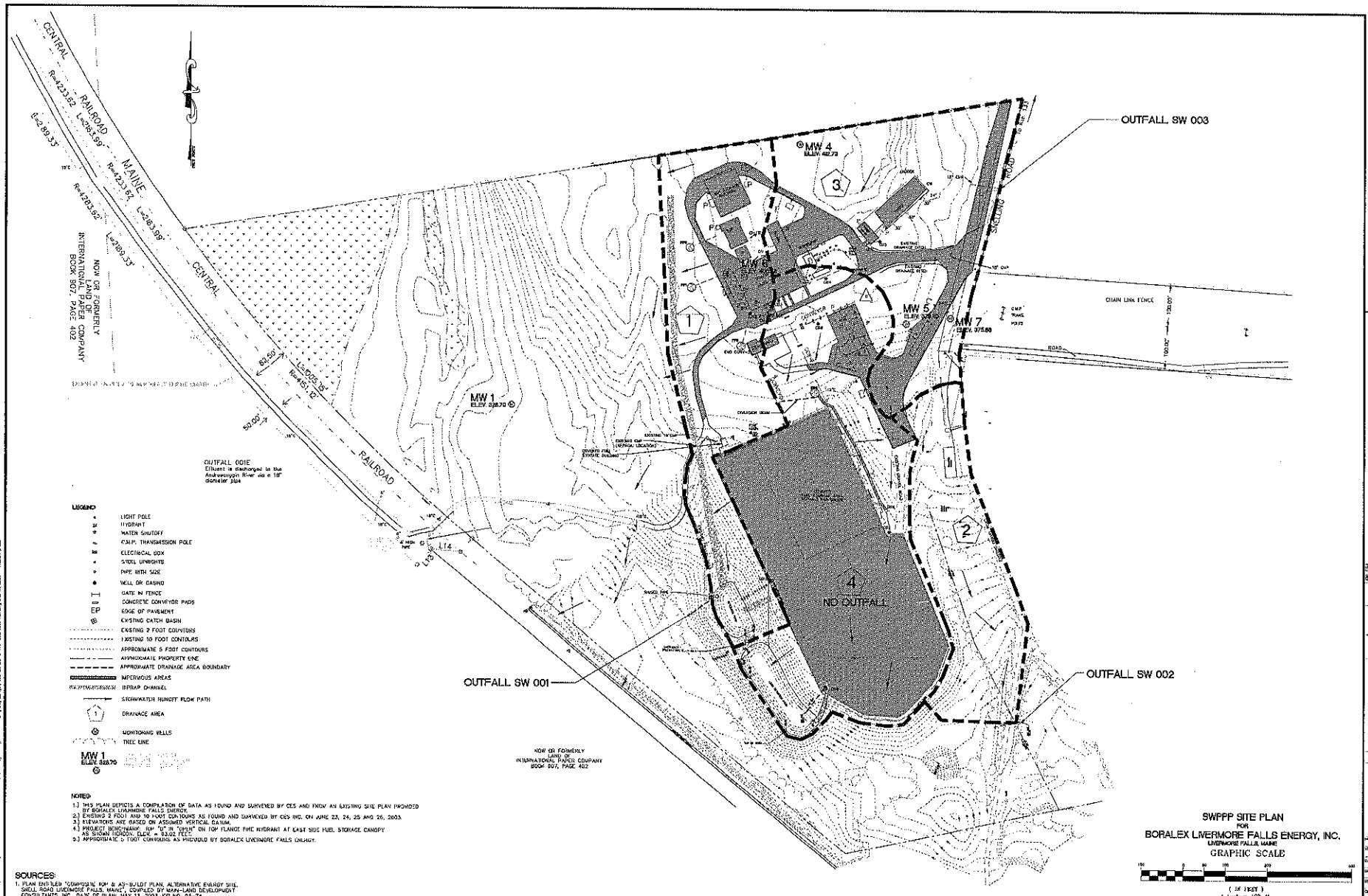
PROJECT #:	120
DRAWN BY:	BWT
CHECKED BY:	JEH
DATE:	June 1998

HILLIER & ASSOCIATES, INC.

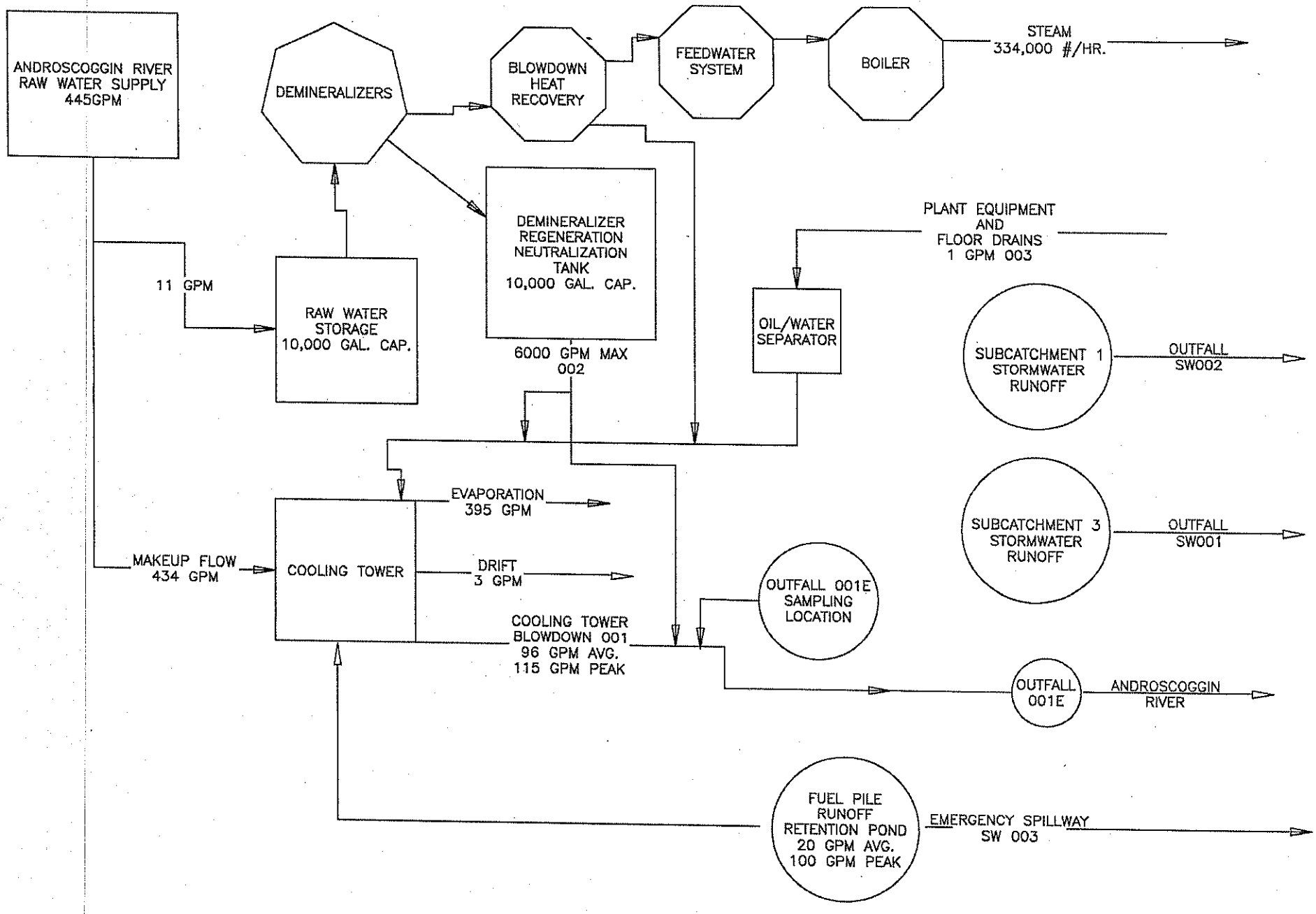
45 MEMORIAL CIRCLE - AUGUSTA, MAINE

Tel: 207 626-0613 Fax: 207 622-6346


Boralex Wood Power Plant
Boralex Outfall #1
Boralex Facility
ME0023710
WDL #W7705
Location Inset
Boralex Outfall #1
Boralex Facility
ME0023710
WDL #W7705
0 0.25 0.5 1 Miles
0 250 500 1,000 1,500
Feet


OUTFALL SW 003
OUTFALL SW 002
OUTFALL SW 001
MW 1
MW 4
MW 5
MW 7
NO OUTFALL
CENTRAL MAINE RAILROAD
OUTFALL 001E
Effluent is discharged to the Androscoggin River via a 18" diameter pipe
NOW OR FORMERLY LAND OF INTERNATIONAL PAPER COMPANY BOOK 907, PAGE 402
CHAIN LINK FENCE
ROAD
LEGEND
LIGHT POLE
HYDRANT
WATER SHUTOFF
C.M.P. TRANSMISSION POLE
ELECTRICAL BOX
STEEL UPRIGHTS
PIPE WITH SIZE
WELL OR CASING
GATE IN FENCE
CONCRETE CONVEYOR PADS
EP EDGE OF PAVEMENT
EXISTING CATCH BASIN
EXISTING 2 FOOT COUNTORS
EXISTING 10 FOOT CONTOURS
APPROXIMATE 5 FOOT CONTOURS
APPROXIMATE PROPERTY LINE
APPROXIMATE DRAINAGE AREA BOUNDARY
IMPERVIOUS AREAS
RIPRAP CHANNEL
STORMWATER RUNOFF FLOW PATH
DRAINAGE AREA
MONITORING WELLS
TREE LINE
MW 1 ELEV 328.70
NOTES:
1.) THIS PLAN DEPICTS A COMPILATION OF DATA AS FOUND AND SURVEYED BY CES AND FROM AN EXISTING SITE PLAN PROVIDED BY BORALEX LIVERMORE FALLS ENERGY.
2.) EXISTING 2 FOOT AND 10 FOOT CONTOURS AS FOUND AND SURVEYED BY CES INC. ON JUNE 23, 24, 25 AND 26, 2003.
3.) ELEVATIONS ARE BASED ON ASSUMED VERTICAL DATUM.
4.) PROJECT BENCHMARK: RIM "U" IN "OPEN" ON TOP FLANGE FIRE HYDRANT AT EAST SIDE FUEL STORAGE CANOPY AS SHOWN HEREON. ELEV. = 03.02 FEET.
5.) APPROXIMATE 5 FOOT CONTOURS AS PROVIDED BY BORALEX LIVERMORE FALLS ENERGY.
SOURCES:
1. PLAN ENTITLED "COMPOSITE ROM & AS-BUILT PLAN, ALTERNATIVE ENERGY SITE, SNELL ROAD LIVERMORE FALLS, MAINE", COMPILED BY MAIN-LAND DEVELOPMENT CONSULTANTS, INC., DATE OF PLAN: MAY 13, 2003 JOB NO. 03-74.
2. PLAN ENTITLED "BEAVERWOOD POWER PROJECT LIVERMORE FALLS, MAINE GROUNDWATER CONTOURS", PREPARED BY HMM ASSOCIATES, INC., DATED APRIL 1991.
3. PLAN UNTITLED "EXISTING SITE PLAN OF BORALEX LIVERMORE FALLS", PREPARED BY CES, INC. DATED JUNE 30, 2003.
SWPPP SITE PLAN
FOR
BORALEX LIVERMORE FALLS ENERGY, INC.
LIVERMORE FALLS, MAINE
GRAPHIC SCALE
(IN FEET)
1 inch = 100 ft.
CES INC
BORALEX LIVERMORE FALLS
LIVERMORE FALLS, MAINE
SWPPP SITE PLAN
1 | DRAINAGE AREA REV | 12/9/08 | PR | RH
0 | DRAINAGE AREAS | 7/14/08 | PR | RH
NO. | DESCRIPTION | DATE | DESIGN BY | DRAWN BY
HORIZONTAL SCALE: 1"=100'
VERTICAL SCALE:
DATE: 7/14/08
DRAWN BY: PR
ORIGINAL BY:
DESIGNED BY: PR
APPROVED BY:
DWG TITLE:
JOB NUMBER: 4695.1
DRAWING NUMBER: 3 of 4

ATTACHMENT B



Simplified Water Supply and Drains Schematic
flow rates assume summer conidtions

EXHIBIT 8

ATTACHMENT C

ATTACHMENT C

The text that follows is from WDL #W007705-5R-B-R issued by the Department on December 28, 2000.

5. *EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS:*

Both the previous State WDL and federal NPDES permit made the determination that the NELP facility was subject to the National Effluent Guidelines for the Steam Electric Power Generating Point Source Category found at 40 code of federal regulation (CFR) Part 423. As a result, both documents regulated various internal waste streams as well as the final outfall to the Androscoggin River.

The previous WDL and federal NPDES differed in alpha-numeric designations of the individual outfalls. For the purposes of this licensing action, the alpha-numeric designations in the previous State WDL are being carried forward in this licensing action. They are as follows:

001A – Cooling Tower Blowdown - Internal waste stream
001B – Ion-Exchange Treatment System Backwash – Internal waste stream
001C – Floor Washdown Waters – Internal waste stream
001D – Fuel Storage Area Storm Water Run-off – Internal Waste Stream
001E – Combined Waste Waters – Final outfall that conveys waste waters from 001A, 001B, 001C and 001D to the Androscoggin River.

Effluent limitations for each outfall listed above were derived as follows:

***Outfall #001A** – Cooling Tower Blowdown/Internal waste stream – Best practicable treatment (BPT) effluent limitations for boiler blowdown and cooling tower blowdown were established pursuant to 40 CFR Part 423.15(j).*

<u>Free available chlorine, total chromium, total zinc and pH</u> - The limits for free available chlorine, chromium, zinc and pH and applicable footnotes in the previous licensing action are best practicable treatment (technology based) limits and are being carried forward in this licensing action. A review of the Discharge Monitoring Report (DMR) data for each parameter for the period 1992 to the present indicates 100% compliance with the exception of two minor violations of the chromium limits in June of 1999. As a result, the Department is reducing the monitoring frequencies for each parameter as follows:

Chlorine – Reduce from 1/Day to 1/Week.
Chromium & Zinc – Reduce from 2/Month to 1/Month
pH - Reduce from 1/Day to 2/Week.

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

Flow - The monthly average and daily maximum flow limits of 0.138 MGD and 0.165 MGD respectively, in the previous licensing action were based on flow rates provided by the licensee in 1992 and are being carried forward in this licensing action. A review of the Discharge Monitoring Report (DMR) flow data for the period 1992 to the present indicates 100% compliance with the flow limits and are representative of the potential discharge from this outfall. The previous WDL required the licensee to continuously monitor the flow for Outfall #001A and this requirement is being carried forward in this licensing action.

Temperature: - The previous license established a daily maximum temperature limit of 83 °F as a technology based limit derived from the licensee's original design calculations. Since commencement of operations in 1992, the limit has only been violated on one (July of 1999) but the data indicates the facility is operating at or about 83°F on a regular basis. Being that the final outfall (#001E) has a daily maximum temperature limit of 90°F and federal regulations do not require a limitation on this internal waste stream, this licensing action is removing the temperature limit and monitoring requirement for this outfall.

Total Suspended Solids (TSS) – The previous license did not establish limitations or monitoring requirements for TSS for this outfall. However, the licensee has requested that Outfall #001C in the previous licensing action be eliminated as all equipment drains and plant floor drains generating waste waters associated with Outfall #001C pass through an oil/water separator prior to being conveyed to the cooling tower basin. All waste waters discharged from the cooling tower basin (predominately cooling tower blowdown) are regulated via Outfall #001A. The Department concurs that elimination of Outfall #001C is appropriate but parameters with BPT limitations listed in federal regulations for Outfall #001C that are not listed for Outfall #001A must be included in the limitations page for Outfall #001A.

Therefore, this licensing action is establishing a monthly average and daily maximum concentration limits of 30 mg/L and 100 mg/L respectively, for TSS based on BPT cited in the federal regulations. The previous license established a monitoring frequency of 2/Month for Outfall #001C. A review of the DMR data for Oufall #001C for the period 1995 to the present indicates discharge values consistently an order of magnitude lower than the aforementioned limitations. Therefore, this licensing action is reducing the monitoring frequency from 2/Month to 1/Month.

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

Oil & Grease – The previous licensing action did not establish limitations or monitoring requirements for Oil & Grease for this outfall. For the same reasons cited in the description for TSS limits above (elimination of Outfall #001C), this licensing action is establishing a monthly average and daily maximum concentration limit of 15 mg/L and 20 mg/L respectively, based on BPT cited in the federal regulations. The previous license established a monitoring frequency of 2/Month for Outfall #001C. A review of the DMR data for the period 1995 to the present indicates discharge values consistently being reported as <4 mg/L. Therefore, this licensing action is reducing the monitoring frequency from 2/Month to 1/Month.

Priority Pollutants – Priority pollutant testing required by the previous State WDL and federal NPDES was imposed due to the fact that the facility was a new facility and the constituents of the discharge were unknown. NELP conducted six priority pollutant scans between 1993 and 1994. The Department conducted an evaluation on the aforementioned tests results in accordance with the statistical approach outlined in EPA's March 1991 document entitled Technical Support Document (TSD) for Water Quality Based Toxics Control, Chapter 3.3.2 and Maine Department of Environmental Protection Guidance, July 1998, entitled Toxicity Program Implementation Protocols. The evaluation indicates the discharge does not exceed or have a reasonable potential to exceed ambient water quality criteria (AWQC) for any of the parameters tested. Therefore, the Department has made a best professional judgment to remove the requirement for future priority pollutant testing.

***Outfall #001B** - Ion-Exchange Treatment System Backwash/Internal waste stream. Pursuant to*
Federal regulation 40 CFR Part 423.11(b), ion exchange water treatment waste waters are defined as low volume waste sources. Federal regulation 40 CFR Part 423.12(b) establishes BPT limitations for low volume waste streams:

Flow - The previous licensing action established a daily maximum flow limit of 6,000 gpd. A review of the DMR flow data for the period 1995 to the present indicates 100% compliance with the flow limits. However, the licensee has requested an increase in the flow limit to 10,000 gpd based on the capacity and historic operation of the treatment system. The water use schematic (Attachment A of this license) indicates that the tank used to neutralize the backwash waters (batch process) prior to discharge has a capacity of 10,000 gallons. Historically, NELP has neutralized the 10,000 gallon batch but limited the discharge volume to 6,000 gpd to maintain compliance with the State WDL and federal NPDES permit. There is no water quality or BPT justification for limiting the discharge to 6,000 gpd. Therefore, this licensing action is establishing a daily maximum flow limitation of 10,000 gpd.

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

Total Suspended Solids (TSS) – The previous license established monthly average and daily maximum concentration limits of 30 mg/L and 100 mg/L respectively, for TSS based on BPT limits cited in the federal regulations. The previous license established a monitoring frequency of 2/Month. The limits are being carried forward in this licensing action. A review of the DMR data for the period 1995 to the present indicates discharge values consistently an order of magnitude lower than the aforementioned limitations. Therefore, this licensing action is reducing the monitoring frequency from 2/Month to 1/Month.

Oil & Grease – The previous license established a monthly average and daily maximum concentration limit of 15 mg/L and 20 mg/L respectively, based on BPT limits cited in the federal regulations. The previous license established a monitoring frequency of 2/Month. The limits are being carried forward in this licensing action. A review of the DMR data for the period 1995 to the present indicates discharge values consistently be reported as <4 mg/L. Therefore, this licensing action is reducing the monitoring frequency from 2/Month to 1/Month.

pH - The previous license established a pH range limit of 6.0 – 9.0 standard units based on BPT limits cited in the federal regulations. The previous license established a monitoring frequency of 2/Month. The limits are being carried forward in this licensing action. A review of the DMR data for the period 1995 to the present indicates discharge values have never been violated but do fluctuate such that results at both ends of the range have been reported. This licensing action is carrying forward the monitoring frequency from 2/Month.

***Outfall #001C** - Floor Washdown Waters – Internal waste stream. Pursuant to federal regulation 40 CFR Part 423.11(b), floor washdown waters are defined as low volume waste sources also. Federal regulation 40 CFR Part 423.12(b) establishes BPT limitations for low volume waste streams. The previous licensing action established a monthly average flow limit of 1,500 gpd, and monthly average and daily maximum BPT limits for TSS, Oil & Grease and pH similar to the limits in Outfall #001B described above.*

The licensee has requested the Department delete the limitations and monitoring requirements for Outfall #001C. The licensee has indicated that all equipment drains and plant floor drains generating waste waters associated with this outfall pass through an oil/water separator prior to being conveyed to the cooling tower basin. All waste waters discharged from the cooling tower basin (predominately cooling tower blowdown) are regulated via Outfall #001A. The modification request is acceptable to the Department but federal regulations require Outfall #001A be regulated for TSS and Oil & Grease in adition to the BPT limits established for the cooling tower and boiler blowdown waste stream. Outfall #001A is already being limited and monitored for flow and pH.

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

***Outfall #001D** – Fuel Storage Area Storm Water Run-off/Internal Waste Stream. Pursuant to Federal regulation 40 CFR Part 423.11(b), there are no BPT limitations for Fuel Storage Area Storm Water Run-off. The 9/92 NPDES permit indicates the limitations for TSS, Oil & Grease and pH were based on a best professional judgment (BPJ).*

Flow: The previous licensing action establish a "Report" requirement for flow. Given the nature of the discharge (storm water runoff) and that it is highly variable, limiting the flow is not necessary. The "Report" requirement is being carried forward in this licensing action.

TSS: The previous license established a daily maximum concentration limit of 50 mg/L based on a BPJ. The previous license established a monitoring frequency of 1/Month. The limits are being carried forward in this licensing action. A review of the DMR data for the period 1995 to the present indicates discharge values consistently reported at an order of magnitude lower than the aforementioned limitations. Given the nature of the materials precipitation comes in contact with, this licensing action is retaining the monitoring frequency of 1/Month.

Oil & Grease – The previous license established a daily maximum concentration limit of 15 mg/L based on a BPJ. The previous license established a monitoring frequency of 1/Quarter. The limits are being carried forward in this licensing action. A review of the DMR data for the period 1995 to the present indicates discharge values consistently be reported at or about 6 mg/L. Given the nature of the materials precipitation comes in contact with, this licensing action is retaining the monitoring frequency of 1/Quarter.

pH - The previous license established a pH range limit of 6.0 – 9.0 standard units based on a BPJ. A footnote in the license states that the discharge may be outside the 6.0-9.0 standard unit range if due to natural precipitation. The previous license established a monitoring frequency of 1/Month. The limits are being carried forward in this licensing action. A review of the DMR data for the period 1995 to the present indicates discharge values have never been violated but do fluctuate such that results at both ends of the range have been reported. This licensing action is carrying forward the monitoring frequency from 1/Month.

It is noted that in the autumn of 1997, NELP began accepting fuels such as railroad ties, telephone poles and pressure treated which are known to contain heavy metals, dioxin/furan and phenol compounds. Between January 1999 and the present, NELP sampled the storm water run-off pond for metals and semi-volatile compounds on ten different occasions and polychlorinated dibenzo-p-dioxins (PCDD) and polychlorinated dibenzofurans (PCDF) on one ocassion (April 2000) at the request of the Department's Bureau of Remediation and Waste Management (BRWM). The tests were conducted to demonstrate that the chemical characteristics of storm water run-off from the fuel pile(s) before and after accepting railroad ties and telephone poles remained unchanged. The test

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

results were evaluated and found to contain slightly higher levels of metals such as cadmium, copper and lead and semi-volatiles such as pentachlorophenol and phenanthrene. However, when the test results were evaluated after being diluted by the 7Q10 and ¼ 1Q10 low flows of the Androscoggin River when discharged through Outfall #001E, the discharge does not exceed or have a reasonable potential to exceed ambient water quality criteria (AWQC) for any of the pollutants evaluated. No chlorinated dibenzo-p-dioxins (CDD) were detected in the April 2000 sampling event.

***Outfall #001E** - Combined Waste Waters – Final outfall that conveys waste waters from 001A, 001B, (formerly) 001C and 001D to the Androscoggin River.*

Flow: The previous licensing action establish a "Report" requirement for flow. Given the nature of the discharge and that it is highly variable, limiting the flow is not necessary. A review of the DMR data for the period 10/95 to the present indicates the monthly average flow has averaged approximately 18,000 gpd with the daily maximum flows ranging from a low of 15,000 gpd to a high of 97,000 gpd. The "Report" requirement is being carried forward in this licensing action.

Temperature: - The previous license established a daily maximum temperature limit of 90 °F as a technology based limit derived from the licensee's original design calculations. A review of the DMR data for the period 10/95 to the present indicates the temperature of this waste stream has never exceeded 80 °F. To comply with Department Regulation Chapter 582, the flow and temperature of the discharge must be regulated such that during the summer period June 1 – September 30, the discharge does not change the receiving water temperature by more than 0.5°F as a weekly rolling average. The mass balance thermal calculations below indicate that if the Androscoggin River at the point of discharge was at 7Q10 low flow conditions (1,720 cfs or 1,112 MGD) and at a critical temperature of 66°F and the plant was operating at a daily maximum licensed dry weather flow of 175,000 gpd and the daily maximum licensed temperature of 90° F for an entire week, the ΔT in the receiving water would be approximately 0.004°F:

$$(\text{Plant flow})(\text{Discharge Temp}) + (7Q10\ \text{flow})(\text{RW Temp}) = (\text{Total flow})(\text{RW Temp})$$

$$(0.175\ \text{MGD})(90°F) + (1{,}112\ \text{MGD})(66°F) = (1{,}112.175\ \text{MGD})(X°F)$$

$$X = 66.004°F$$

Being that the discharge pipe from the NELP facility only extends out into the receiving water approximately 20 feet, the Department characterizes this as a bank outfall that does not receive rapid and complete mixing with the receiving waters. Department regulation Chapter 530.5, Surface Water Toxics Control Program, authorizes the Department to make best professional judgment determinations as to what portion of the receiving water

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

is applicable for discharges that do not receive rapid and complete mixing with the receiving water. Because the true mixing characteristics haven't been determined, it is difficult to determine what portion of the 7Q10 river flow is applicable at this facility. Therefore, to determine compliance with Chapter 582, Regulations Relating To Temperature, the Department has manipulated the calculation above to back calculate the threshold receiving water flow that would comply with Chapter 582. The thermal load needed to change 1,112 MGD by 0. 5°F is 4.64 x 10^9 BTU's. The calculation is as follows:

$$(1{,}112{,}000{,}000\ gal)(8.34)(0.5°F) = 4.64 \times 10^9\ BTU's$$

The thermal load from the NEPL facility is 3.5 x 10^9 BTU's. The calculation is as follows:

$$(175{,}000\ gal)(8.34)(90°F - 66°F) = 3.5 \times 10^7\ BTU's$$

Therefore, the flow in the receiving water would only need to be 0.76% of the 7Q10 or 8.4 MGD based on the following calculation:

$$\frac{3.5 \times 10^7\ BTU's}{4.637 \times 10^9\ BTU's} = 0.000755 \text{ or } 0.76\% \quad \Rightarrow (1{,}112\ MGD)(0.76) = 8.4\ MGD$$

It is the Department's best professional judgment that the discharge is receiving rapid and complete mixing with at least 0.76% of the 7Q10 receiving water flow and that the discharge complies with Department regulation Chapter 582.

Based on the insignificance of the potential thermal impact on the receiving water during the winter months (October 1 – May 31), this licensing action is eliminating all monitoring and reporting requirements for temperature between October 1 and May 31. The monitoring frequency of 1/Day in the previous licensing action is being reduced to 1/Week during the period June 1 and September 30 of each calendar year. The limitations will remain in effect on a year round basis and remain enforceable year round.

pH - The previous license established a pH range limit of 6.0 – 9.0 standard units based on BPT limits cited in the federal regulations. A footnote in the license states that the discharge may be outside the 6.0-9.0 standard unit range if due to natural precipitation. The previous license established a monitoring frequency of 1/Month. The limits are being carried forward in this licensing action. A review of the DMR data for the period 1995 to the present indicates discharge values have never been violated and are consistently between 8.4 and 8.7 standard units. This licensing action is carrying forward the monitoring frequency from 1/Month.

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

Whole Effluent Toxicity (WET) testing: Special Condition E of the previous WDL licensing action required NELP to conduct four WET tests on Outfall 001E (final outfall). The licensee conducted 5 tests in 1993, 1 test in 1994 and one test in 1997. Like the priority pollutant scans, the WET tests were statistically evaluated and the results of that evaluation indicate that the discharge does not exceed or have a reasonable potential to exceed ambient water quality thresholds – acute 0.06%, chronic 0.015% (mathematical inverse of the dilution factors). Therefore, the Department has made a best professional judgment to remove the requirement for future WET testing.

ATTACHMENT D

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.

CONTENTS

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).

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 if 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 MAINTENACE 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

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.

(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.

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.

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

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).

(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.

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 contaminates 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.

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.

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.