



STATE OF MAINE
Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patricia W. Aho
COMMISSIONER

June 11, 2012

Mr. Richard Hathaway
Bay Bridge Estates, LLC
2 Primrose Lane
Brunswick, Maine 04011

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0036811
Maine Waste Discharge License (WDL) Application #W002101-5B-F-M
Final Minor Revision

Dear Mr. Hathaway:

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "G. Wood".

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

Enc.

cc: William Johnson, DEP/CMRO
Lori Mitchell, 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

BAY BRIDGE ESTATES, LLC)	MAINE POLLUTANT DISCHARGE
MOBILE HOME PARK)	ELIMINATION SYSTEM PERMIT
OVERBOARD DISCHARGE)	AND
BRUNSWICK, CUMBERLAND COUNTY)	
ME0036811)	WASTE DISCHARGE LICENSE
W002101-5B-F-M)	MINOR REVISION
APPROVAL)	

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 a request by BAY BRIDGE ESTATES, LLC (BBE/permittee hereinafter) to modify Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0036811/Maine Waste Discharge License (WDL) #W002101-5B-E-R (permit hereinafter), which was issued by the Department on November 4, 2011, with its supportive data, agency review comments, and other related material on file and FINDS THE FOLLOWING FACTS:

REVISIONS REQUESTED

The BBE has requested the Department recalculate the dilution factors associated with the permitted discharged of up to 60,000 gallons per day (gpd) of secondary treated sanitary wastewater to the Androscoggin River, Class C, in Brunswick, Maine. The request is based on the fact that BBE has installed a new outfall pipe that extends out into the deepest point in the channel of the Androscoggin River at the point discharge. The design and location of the new outfall pipe were based on consultations with the Department during the MEPDES permit renewal in calendar year 2011. The BBE is requesting the Department increase the acute dilution factor from 5.4:1 to 53:1 and increase the chronic dilution factor from 9.7:1 to 632:1.

REVISIONS GRANTED

Pursuant to Special K, *Reopening of Permit for Modifications*, of the November 4, 2011, permit, the Department is granting the increase in the acute and chronic dilution factors to 53:1 and 632:1 respectively, as the design and location of the outfall is consistent with Department guidance provided during the 2011 permit renewal process. As a result of the new dilution factors, the November 4, 2011, permit must be modified to establish new surveillance and screening level whole effluent toxicity (WET) and analytical chemistry testing requirements as well a new daily maximum total residual chlorine (TRC) concentration limitation.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated June 8, 2012, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

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

ACTION

THEREFORE, the Department APPROVES the above noted request by BAY BRIDGE ESTATES, LLC to recalculate the dilution factors associated with the permitted discharged of up to 60,000 gallons per day (gpd) of secondary treated sanitary wastewater to the Androscoggin River, Class C, in Brunswick, Maine., SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits," revised July 1, 2002, copy attached to MEPDES permit #ME0036811/WDL #W002101-5B-E-R, issued on November 4, 2011.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit #ME0036811/WDL #W002101-5B-E-R, issued on November 4, 2011, not modified by this permitting action remain in effect and enforceable.
4. This minor revision becomes effective on the date of signature below and expires on November 4, 2016, concurrent with MEPDES permit #ME0036811/WDL #W002101-5B-E-R, issued on November 4, 2011. 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)].

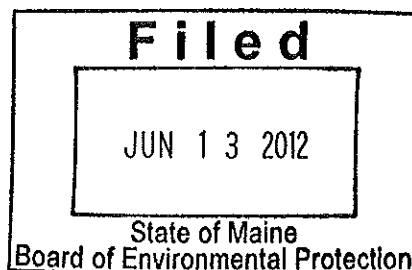
PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 11th DAY OF June 2012.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
For Patricia W. Aho, Commissioner

Date of initial receipt of application: June 6, 2012
Date of application acceptance: June 7, 2012



Date filed with Board of Environmental Protection _____

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

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

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

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type ⁽⁵⁾
Flow <i>[50050]</i>	Report GPD <i>[07]</i>	---	60,000 GPD <i>[07]</i>	---	---	---	Continuous <i>[99/99]</i>	Measured <i>[MS]</i>
BOD ₅ <i>[00310]</i>	15 lbs./day <i>[26]</i>	23 lbs./day <i>[26]</i>	25 lbs./day <i>[26]</i>	30 mg/L <i>[19]</i>	45 mg/L <i>[19]</i>	50 mg/L <i>[19]</i>	2/Month <i>[02/30]</i>	Grab <i>[GR]</i>
BOD ₅ Percent Removal ⁽²⁾ <i>[81010]</i>	---	---	---	85% <i>[23]</i>	---	---	1/Month <i>[01/30]</i>	Calculate <i>[CA]</i>
TSS <i>[00530]</i>	15 lbs./day <i>[26]</i>	23 lbs./day <i>[26]</i>	25 lbs./day <i>[26]</i>	30 mg/L <i>[19]</i>	45 mg/L <i>[19]</i>	50 mg/L <i>[19]</i>	2/Month <i>[02/30]</i>	Grab <i>[GR]</i>
TSS Percent Removal ⁽²⁾ <i>[81011]</i>	---	---	---	85% <i>[23]</i>	---	---	1/Month <i>[01/30]</i>	Calculate <i>[CA]</i>
Settleable Solids <i>[00545]</i>	---	---	---	---	---	0.3 ml/L <i>[25]</i>	2/Week <i>[02/07]</i>	Grab <i>[GR]</i>
<i>E. coli</i> Bacteria ⁽³⁾ <i>[31633]</i>	---	---	---	126/100 ml ⁽³⁾ <i>[13]</i>	---	949/100 ml <i>[13]</i>	2/Month <i>[02/30]</i>	Grab <i>[GR]</i>
Total Residual Chlorine ⁽⁴⁾ <i>[50060]</i>	---	---	---	---	---	1.0 mg/L <i>[19]</i>	1/Day <i>[01/01]</i>	Grab <i>[GR]</i>
pH <i>[00400]</i>	---	---	---	---	---	6.0 – 9.0 SU <i>[12]</i>	2/Week <i>[02/07]</i>	Grab <i>[GR]</i>
The italicized numeric values bracketed in the table and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports.								

Footnotes: See page 5 of this permit for applicable footnotes.

SPECIAL CONDITIONS

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

Footnotes:

1. **Monitoring** – 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. See **Attachment A** of this permit for a list of the Department's RLs. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the RL achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL or reporting an estimated value ("J" flagged) is not acceptable and will be rejected by the Department. Reporting analytical data and its use in calculations must follow established Department guidelines specified in this permit or in available Department guidance documents.

2. **Percent Removal** – The treatment facility shall maintain a minimum of 85 percent removal of both BOD₅ and TSS for all flows receiving secondary treatment. The percent removal shall be calculated based on influent and effluent concentration values. The percent removal shall be waived when the monthly average influent concentration is less than 200 mg/L, and the permittee shall report "NODI-9" for this parameter on the monthly Discharge Monitoring Report (DMR).
3. **Bacteria Limits** – *E. coli* bacteria limits and monitoring requirements are seasonal and apply between May 15 and September 30 of each year. The monthly average *E. coli* bacteria limitation is a geometric mean limitation and sample results shall be reported as such. The Department reserves the right to impose year-round bacteria limits to protect the health, safety, and welfare of the public.
4. **Total residual chlorine** - Limitations and monitoring requirements are applicable whenever elemental chlorine or chlorine based compounds are being used to disinfect the discharge. The permittee shall utilize approved test methods that are capable of bracketing the limitations in this permit.

SPECIAL CONDITIONS

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

Footnotes:

5. **Samples Types** – Where grab sampling is specified, the applicant may choose to obtain a composite sample instead provided the alternate sampling is noted on the DMR.

B. ANNUAL DISCHARGE FEES

Pursuant to Maine law, 38 M.R.S.A. §353-B, the permittee is required to pay an applicable annual fee for discharges authorized by this permit. Failure to pay an annual fee within 30 days of the billing date of a license/permit is sufficient grounds for revocation of the license, permit or privilege under Maine law, 38 M.R.S.A. §341-D, subsection 3.

C. NARRATIVE EFFLUENT LIMITATIONS

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

D. TREATMENT PLANT OPERATOR

The person who has the management responsibility over the treatment facility must hold a **Grade II** certificate (or higher) or must be a Maine Registered Professional Engineer pursuant to *Sewerage Treatment Operators*, Title 32 M.R.S.A., Sections 4171-4182 and *Regulations for Wastewater Operator Certification*, 06-096 CMR 531 (effective May 8, 2006). All proposed contracts for facility operation by any person must be approved by the Department before the permittee may engage the services of the contract operator.

E. PROHIBITION OF NON-DOMESTIC USERS

The wastewater collection and treatment system may not be used to collect, treat or discharge wastewater other than from domestic users.

SPECIAL CONDITIONS

F. NOTIFICATION REQUIREMENT

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

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

G. UNAUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on January 6, 2011, 2) the terms and conditions of this permit; and 3) only from Outfall #001. 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.

Discharges of a volume or quantity of wastewater that were not licensed as of June 1, 1987, are prohibited by this permit. Maine law, 38 M.R.S.A. §464(4)(6). Increases in the volume or quantity of wastewater discharged are not authorized by this permit.

H. SITE EVALUATION FOR TRANSFERRED AND RENEWED PERMITS

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

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

SPECIAL CONDITIONS

I. OPERATION & MAINTENANCE (O&M) PLAN

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

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

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

J. MONITORING AND REPORTING

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

Overboard Discharge Inspector
Department of Environmental Protection
Bureau of Land and Water Quality
Division of Water Quality Management
17 State House Station
Augusta, Maine 04333-0017

SPECIAL CONDITIONS

K. REOPENING OF PERMIT FOR MODIFICATIONS

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

L. 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.

M. 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 A** of this 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.

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.

ATTACHMENT A

CHAPTER 530(2)(D)(4) CERTIFICATION

MEPDES# _____ Facility Name _____

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

COMMENTS:

Name(print) _____

Signature _____ Date _____

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

This form may be used to meet the requirements of Chap 530(2)(D)(4). This Chapter requires all dischargers having waived or reduced Toxic testing to file a statement with the Department describing changes to the waste being contributed to their system as outlined above. As an alternative the discharger may submit a signed letter containing the same information.

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

Date: June 8, 2012

MEPDES PERMIT: ME0036811
WASTE DISCHARGE LICENSE: W002101-5B-F-M

NAME AND ADDRESS OF APPLICANT:

**BAY BRIDGE ESTATES, LLC
2 Primrose Lane
Brunswick, Maine 04101**

COUNTY: Cumberland

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**BAY BRIDGE ESTATES MOBILE HOME PARK
Bay Bridge Road
Brunswick, Maine 04011**

RECEIVING WATER / CLASSIFICATION: Androscoggin River/Class C

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: Mr. Richard Hathaway
Manager (207) 442-7224
e-mail:r-hathaway@comcast.net

1. MODIFICATION REQUESTED

- a. Request - Bay Bridge Estates LLC (BBE/permittee hereinafter) has requested the Department recalculate the dilution factors associated with the permitted discharged of up to 60,000 gallons per day (gpd) of secondary treated sanitary wastewater to the Androscoggin River, Class C, in Brunswick, Maine. The request is based on the fact that BBE has installed a new outfall pipe that extends out into the deepest point in the channel of the Androscoggin River at the point discharge. The design and location of the new outfall pipe were based on consultations with the Department during the MEPDES permit renewal in calendar year 2011. The BBE is requesting the Department increase the acute dilution factor from 5.4:1 to 53:1 and increase the chronic dilution factor from 9.7:1 to 632:1.

1. APPLICATION SUMMARY (cont'd)

- b. Source Description: Bay Bridge Estates, LLC owns and operates the Bay Bridge Mobile Home Park, a private residential establishment, on Bay Bridge Road in Brunswick, Maine. The mobile home park consists of approximately 493 mobile homes on approximately 135 acres of land. Sanitary wastewater generated by 201 of the 493 mobile home units is conveyed to a subsurface wastewater disposal system. Sanitary wastewater generated by the remaining 292 homes is the source of wastewater that is the subject of this permit.
- c. Wastewater Treatment: BBE provides a secondary level of wastewater treatment via three sand filter bed treatment systems. Raw wastewater is conveyed from the eastern portion of the park to one 20,000-gallon capacity septic tank for primary treatment. Supernatant from this tank is pumped to sand filter bed #1. Raw wastewater is conveyed from the western portion of the park to four 13,000-gallon capacity septic tanks for primary treatment. Supernatant from these tanks are transferred to a valving station for redistribution to filter beds #2 and #3 via three pump stations. Sand filter bed #1 is approximately 35 years old and measures 100-feet by 170-feet (17,000 square feet). Bed #2 is approximately 25 years old and measures 100-feet by 200-feet (20,000 square feet). Bed #3 is approximately 15 years old and measures 111-feet by 240-feet (26,640 square feet) but was rehabilitated in 2004. Secondary treated effluent from the three filter beds flows via a 6-inch diameter polyvinyl chloride (PVC) effluent pipe to a 3,000-gallon capacity chlorine contact chamber for seasonal disinfection using sodium hypochlorite. At the time of the November 4, 2011, permit renewal, the final effluent was conveyed to the Androscoggin River via a 6-inch diameter outfall pipe designated as Outfall #001. The outfall pipe extended approximately 180 feet into the receiving waters to a depth of approximately two feet at mean low water conditions.

In the winter of 2011/2012, the BBE contracted with Wright Pierce consulting engineers to design and relocate the outfall pipe with the goal of attaining at least a 500:1 dilution factor so the discharge would be categorized as a Level IV facility rather than a Level I facility pursuant to Department rule 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*. The new outfall was constructed in the spring of 2012 consists of a 3-inch diameter force main extending out into the deepest portion of the channel of the river with the end of the force main fitted with a 5-port diffuser to increase the velocity and the dispersion of the effluent into the receiving water. The Department has determined the design and location of the outfall is consistent with Department guidance provided during the 2011 permit renewal process.

2. MODIFICATIONS GRANTED

Pursuant to Special K, *Reopening of Permit for Modifications*, of the November 4, 2011, permit, the Department is granting the increase in the acute and chronic dilution factors to 53:1 and 632:1 respectively. As a result of the new dilution factors, the November 4, 2011, permit must be modified to establish new surveillance and screening level whole effluent toxicity (WET) and analytical chemistry testing requirements as well a new daily maximum total residual chlorine (TRC) concentration limitation. All other terms and conditions of the November 4, 2011, permit remain in effect and enforceable.

3. CONDITIONS OF PERMIT

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. §469 classifies the main stem of the Androscoggin River from its confluence with the Ellis River to a line formed by the extension of the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction, which includes the river at the point of discharge, as Class C waters. Maine law, 38 M.R.S.A. §465(4) describes the 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

- (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 State of Maine 2010 Integrated Water Quality Monitoring and Assessment Report, prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists an 8.5-mile reach of the Androscoggin River, main stem, from the Brunswick Dam to the Brunswick-Bath boundary (Hydrologic Unit Code #ME0104000210 / Waterbody ID #426R) as, “*Category 4-B: Rivers and Streams Impaired by Pollutants – Pollution Control Requirements Reasonably Expected to Result in Attainment.*” Impairment in this context refers to the designated use of fishing and a fish consumption advisory due to the presence of dioxin in fish tissues. The Report lists all of Maine’s fresh waters as, “*Category 4A Waters Impaired by Atmospheric Deposition of Mercury.*” Impairment in this context refers to a statewide fish consumption advisory due to elevated levels of mercury in some fish tissues. The Department has no information at this time that the discharge from the BBE causes or contributes to the impairment status of the receiving waterbody. It is noted the EPA has approved a regional Total Maximum Daily Load (TMDL) for mercury.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Dilution Factors: Dilution factors associated with the permitted discharge flow of 60,000 gpd from the BBE facility were derived in accordance with Department rule, 06-096 CMR, Chapter 530 Section 4.A Surface Water Toxics Control Program. Based on the design and location of the new outfall pipe, dilution factors were calculated by the Department as follows:

Acute: 53:1 Chronic: 632:1 Harmonic Mean: 1,896:1

- b. Total Residual Chlorine (TRC): The November 4, 2011, permitting action established a daily maximum concentration limit of 1.0 mg/L for TRC upon issuance of the permit and then established a more stringent daily maximum concentration limit of 0.1 mg/L beginning May 15, 2012. The more stringent limit was based on the acute and chronic dilution factors (5.4:1 and 9.7:1 respectively) established in the November 4, 2011, permit.

The Fact Sheet of the November 4, 2011, permit contained the following italicized text: *Limitations on TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either a water quality-based or BPT-based limit. With new dilution factors as determined in section 6(b) of this Fact Sheet, end-of-pipe (EOP) water quality-based concentration thresholds for TRC may be calculated as follows:*

<i>Acute (A)</i>	<i>Chronic (C)</i>	<i>A & C</i>	<i>Acute</i>	<i>Chronic</i>
<u>Criterion</u>	<u>Criterion</u>	<u>Dilution Factors</u>	<u>Threshold</u>	<u>Threshold</u>
0.019 mg/L	0.011 mg/L	5.4:1 (A)	0.10 mg/L	0.11 mg/L
		9.7:1 (C)		

Example calculation: (0.019 mg/L)(5.4) = 0.10 mg/L

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

To meet the water quality based thresholds calculated above, the permittee will have to dechlorinate the effluent prior to discharge. In April of 1999, the Department established a new daily maximum BPT limitation of 0.3 mg/L for facilities that need to dechlorinate their effluent unless calculated water quality based thresholds are lower than 0.3 mg/L. In the case of BBE, the calculated daily maximum water quality based threshold is lower than 0.3 mg/l, thus the water quality based limit 0.10 mg/L is imposed. As for the monthly average limitation, the Department's BPT limitation is 0.1 mg/L. Being that the calculated daily maximum water quality based limit is equal to the BPT limit of 0.1 mg/L, the monthly average BPT limit of 0.1 mg/L is imposed in this permit.

With new dilution factors as determined in section 6(a) of this Fact Sheet, end-of-pipe (EOP) water quality-based concentration thresholds for TRC may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A & C Dilution Factors	Acute Threshold	Chronic Threshold
0.019 mg/L	0.011 mg/L	53:1 (A) 632:1 (C)	1.0 mg/L	7.0 mg/L

Example calculation: $(0.019 \text{ mg/L})(53) = 1.0 \text{ mg/L}$

Therefore, this minor revision is establishing the Department BPT daily maximum concentration limit of 1.0 mg/L.

- h. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry 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* (toxics rule) sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected and narrative and numeric water quality criteria are met. 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.

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

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

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

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

Department rule Chapter 530 (1)(D) specifies the criteria to be used in determining the minimum monitoring frequency requirements for WET, priority pollutant and analytical chemistry testing. The November 4, 2011, permit contained the following italicized text:

Based on the Chapter 530 criteria, the permittee's facility falls into the Level I frequency category as the facility has a chronic dilution factor of <20:1. Chapter 530(1)(D)(1) specifies that routine screening and surveillance level testing requirements are as follows:

Surveillance level testing – Beginning upon issuance of the permit and lasting through 12 months prior to permit expiration.

<i>Level</i>	<i>WET Testing</i>	<i>Priority pollutant testing</i>	<i>Analytical chemistry</i>
<i>I</i>	<i>2 per year</i>	<i>None required</i>	<i>4 per year</i>

Screening level testing – Beginning 12 months prior to permit expiration and lasting through permit expiration and every five years thereafter.

<i>Level</i>	<i>WET Testing</i>	<i>Priority pollutant testing</i>	<i>Analytical chemistry</i>
<i>I</i>	<i>4 per year</i>	<i>1 per year</i>	<i>4 per year</i>

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

A review of the data on file with the Department indicates that to date, the permittee has never conducted any WET, analytical chemistry or priority pollutant testing. Therefore, beginning calendar year 2012, the permittee shall commence surveillance level testing as cited above. The permittee shall conduct said testing for the first four years of the term of the permit. Beginning 12 months prior to permit expiration, the permittee shall increase the monitoring frequency as indicated on page 11 of this Fact Sheet. Once five years of monitoring has been conducted, the Department will conduct a statistical evaluation in accordance with the methodology established in Department rule Chapter 530, to determine if the test results indicate the discharge exceeds or has a reasonable potential to exceed applicable ambient water quality criteria (AWQC) or ambient water quality thresholds and establish applicable limitations and or monitoring requirements if necessary.

With the new dilution factors established by this minor revision, the facility is now characterized as a Level IV facility pursuant to Department rule Chapter 530 as the chronic dilution factor associated with the discharge is >500:1 and the permitted flow is less than one million gallons per day. Chapter 530(1)(D)(1) specifies that routine screening and surveillance level testing requirements are as follows:

Surveillance level testing – Beginning upon issuance of the permit and lasting through 12 months prior to permit expiration.

Level	WET Testing	Priority pollutant testing	Analytical chemistry
IV	1 per year*	None required*	1 per year*

Screening level testing – Beginning 12 months prior to permit expiration and lasting through permit expiration and every five years thereafter.

Level	WET Testing	Priority pollutant testing	Analytical chemistry
IV	1 per year*	1 per year*	4 per year*

*These routine testing requirements for Level IV are waived, except that the Department shall require an individual discharger to conduct testing under the following conditions.

- (a) The discharger's permit application or information available to the Department indicate that toxic compounds may be present in toxic amounts; or
- (b) Previous testing conducted by the discharger or similar dischargers indicates that toxic compounds may be present in toxic amounts.

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

Additionally, new or substantially changed dischargers assigned to Level IV must conduct testing during the first two years of the discharge. Further testing is waived provided the testing done does not indicate any reasonable potential for exceedance as calculated pursuant to section 3(E).

Chapter 530 (2)(D) states:

- (4) All 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.

Therefore this minor revision is establishing Special Condition M, *06-096 CMR 530(2)(D)(4) Statement For Reduced/Waived Toxics Testing* of this permitting action requires the permittee to file an annual certification with the Department.

It is noted however, that if future WET testing results indicates the discharge exceeds critical water quality thresholds this permit will be reopened pursuant to Special Condition L, *Reopening of Permit For Modification*, of this permit to establish applicable limitations and monitoring requirements and require the permittee to submit a toxicity reduction evaluation (TRE) pursuant to Department rule, Chapter 530(3)(c).

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

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

8. DEPARTMENT CONTACTS

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

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

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

CONTENTS

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

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

A. GENERAL PROVISIONS

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

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

(a) They are not

- (i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
- (ii) Known to be hazardous or toxic by the licensee.

(b) The discharge of such materials will not violate applicable water quality standards.

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

5. Bypasses.

(a) Definitions.

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

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

(c) Notice.

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

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

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D(1)(f), below. (24-hour notice).

(d) Prohibition of bypass.

(i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (c) of this section.

(ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (d)(i) of this section.

6. Upsets.

(a) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph D(1)(f), below. (24 hour notice).

(iv) The permittee complied with any remedial measures required under paragraph B(4).

(d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

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

C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

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

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

D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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