STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JANET T. MILLS
GOVERNOR

GERALD D. REID
COMMISSIONER

January 13, 2020

Mr. Brian Wright
Rogers Farm
77 Wright Road
Clinton, Maine 04927
thewrightplace@roadrunner.com

Sent via electronic mail
Delivery confirmation requested

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0037125
Maine Waste Discharge License (WDL) Application #W009036-5S-C-R
Finalized MEPDES Permit

Dear Mr. Wright:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL which was approved by the Department of Environmental Protection. Please read this permit and its attached conditions carefully. Compliance with this license will protect water quality.

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 287-1939.

Your Department compliance inspector copied below is also a resource that can assist you with compliance. Please do not hesitate to contact them with any questions.

Thank you for your efforts to protect and improve the waters of the great state of Maine!

Sincerely,

Aaron Dumont
Division of Water Quality Management
Bureau of Water Quality
ph: 207-287-1939

Enc.

ec: Jim Crowley, MEDEP
Pamela Parker, MEDEP
Lori Mitchell, MEDEP
Ellen Weitzler, USEPA
Alex Rosenberg, USEPA
Sandy Mojica, USEPA
Solanch Pastrana-Del Valle, USEPA
Marelyn Vega, USEPA
Richard Carvalho, USEPA
Shelley Puleo, USEPA

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

DEPARTMENT ORDER

IN THE MATTER OF

THE WRIGHT PLACE LLC. – ROGERS FARM	)	MAINE POLLUTANT DISCHARGE
CLINTON, KENNEBEC COUNTY, MAINE	)	ELIMINATION SYSTEM PERMIT
CONCENTRATED ANIMAL FEEDING OPERATION	)	AND
ME0037125	)	WASTE DISCHARGE LICENSE
W009036-5S-C-R **APPROVAL**	)	**RENEWAL**

In compliance with the applicable provisions of *Pollution Control*, 38 M.R.S. §§ 411-424-B, *Water Classification* Program, 38 M.R.S. §§ 464-470 and *Federal Water Pollution Control* Act, Title 33 U.S.C. § 1251, *et* seq., and applicable rules of the Department of Environmental Protection (Department), the Department has considered the application of the ROGERS FARM (permittee), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

The permittee has filed an application with the Department to renew combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0037125 and Maine Waste Discharge License (WDL) W009036-5S-B-R, (permit hereinafter) last issued by the Department on July 21, 2014, for a five-year term. The permit authorized the Rogers Farm to manage process wastewater and stormwater runoff that are generated by the operation of a concentrated animal feeding operation (CAFO) located in the Town of Clinton. The permittee is required to manage the facility such that there is no discharge of process wastewater to surface water during precipitation events that are less than a 24-hour, 25-year storm event.

PERMIT SUMMARY

This permitting action is different from the July 21, 2014 permit in that it amends the language in Special Condition C. *Nutrient Management Plan* to be consistent with other CAFO permits.

This permitting action is carrying forward the previously established requirements to implement and maintain Best Management Practices (BMPs) to prevent discharges to water of the State of Maine, and implement and keep current, an approved Nutrient Management Plan in accordance with Maine Department of Agriculture, Conservation and Forestry (DACF) *Nutrient Management Rules*, 01-001 C.M.R. 565 §6 (last amended July 3, 2018). On June 29, 2009, the DACF issued a Livestock Operation Permit (LOP) pursuant to *Nutrient Management Act*, 7 M.R.S. §4204 and §4205 respectively, which was updated on June 27, 2014, for the permittee's facility.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated January 7, 2020, and subject to the Conditions listed below, the DEP makes the following CONCLUSIONS:

1. Discharges, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.

2. Discharges, 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., 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 water of the State constitute an outstanding natural resource, that water quality will be maintained and protected;

   c. Where the standards of classification of the receiving water body are met or not met, the discharge will not cause or contribute to the failure of the water body to meet 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 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 the opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.

4. Discharges will be subject to effluent limitations that require application of best practicable treatment as defined in *Conditions of licenses*, 38 M.R.S. § 414-A(1)(D).

ACTION

THEREFORE, the Department APPROVES the above noted application of ROGERS FARM., to discharge stormwater to Twelve Mile Brook, Class B, and manage process wastewater generated by the operation of a CAFO located in Clinton such that there are no discharge(s) to surface water at precipitation events that are less than a 24-hour, 25-year storm event. The CAFO is 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) after that date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of 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. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (amended June 9, 2018)].

DONE AND DATED AT AUGUSTA, MAINE, THIS 9 DAY OF January, 2020.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: _____
For GERALD D. REID, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: October 31, 2019.

Date of application acceptance: November 4, 2019.

Date filed with Board of Environmental Protection

Filed
JAN 09 2020
State of Maine
Board of Environmental Protection

This order prepared by Aaron A. Dumont, BUREAU OF WATER QUALITY

SPECIAL CONDITIONS

A. DEFINITIONS

1. Process-generated wastewater or wastewater means any wastewater directly or indirectly used in the operation of a feedlot for any or all of the following: spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits or other feedlot facilities, feed storage facilities, direct contact swimming, washing or spray cooling of animals; and dust control and any precipitation which comes in contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or direct products (e.g., milk). Wastewater also includes any precipitation that comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animal or direct products (e.g., milk).

2. Production area means that part of the facility that includes the animal confinement area. The manure storage area, the raw materials storage area and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins and areas within berms and diversions which separate uncontaminated storm water. The production area also includes the storage, handling, treatment, or disposal of mortalities.

3. Retention facility or retention structures or wastewater facility means all collection ditches, conduits and swales for the collection of runoff and wastewater, and all basins, ponds and lagoons used to store wastes, wastewater and manure.

4. Stormwater means stormwater runoff or snow melt runoff that does not come into contact or co-mingle with process wastewater.

B. DISCHARGE LIMITATIONS/ BEST MANAGEMENT PRACTICES

Each of the following minimum standards is designed to achieve the objective of preventing discharges of pollutants to water of the State of Maine from CAFOs and from land application activities under the operational control of the CAFO and must be included in the permittee's Nutrient Management Plan (NMP). Minimum standards or portions of minimum standards to be implemented on the effective date of the permit. In addition to these minimum standards, permittees are also required to comply with other applicable technology-based and water quality-based effluent limitations of this permit.

SPECIAL CONDITIONS

B. DISCHARGE LIMITATIONS/BEST MANGEMENT PRACTICES (cont'd)

1. Technology based effluent limitations − Production Area

   The permittee must implement the terms of the most current NMP approved by a certified nutrient management plan specialist including but not limited to:

   a. There may be no discharge of manure, liter, or process wastewater pollutants into water of the State from the production area except as provided below;

   Whenever precipitation causes an overflow of manure, litter or process wastewater, pollutants in the overflow may be discharged into water of the State provided;

   b. The production area is properly designed, constructed, operated and maintained to contain all manure, litter, process wastewater and the runoff and direct precipitation from the 24-hour, 25-year storm event that equates to 4.2 inches of rainfall. Discharges of process wastewater are prohibited unless the discharge is associated with a precipitation event that exceeds a 24-hour, 25-year storm event.

   c. The design storage volume is adequate to contain all manure, litter, and process wastewater accumulated during the storage period including, at a minimum, the following;

      1. The volume of manure, litter and process wastewater, and other wastes accumulated during the storage period.

      2. Normal precipitation less evaporation during the storage period.

      3. Normal runoff during the storage period.

      4. The direct precipitation from the 24-hour, 25-year storm event.

      5. The runoff from the 24-hour, 25-year storm event from the production area.

      6. Residuals solids after liquid has been removed.

      7. Necessary freeboard to maintain structural integrity.

      8. A minimum treatment volume, in the case of treatment lagoons.

      9. Installation of a depth marker in all open surface liquid impoundments. The depth marker must clearly indicate the minimum capacity necessary to contain the runoff and direct precipitation of the 24-hour, 25-year storm event. The marker must be visible from the top of the levee.

SPECIAL CONDITIONS

B. DISCHARGE LIMITATIONS/BEST MANAGEMENT PRACTICES (cont'd)

10. Weekly visible inspections of the manure, event and process wastewater impoundments noting the level as indicated by the depth marker installed in accordance with Section B(1)(c)(9) above.

11. Daily inspections of all water lines, including drinking water and cooling lines.

12. Timely correction of any deficiencies that are identified in daily and weekly inspections.

2. Additional measures applicable to the production area.

a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities. - Store dry manure in production buildings or in storage facilities or otherwise store or modify the site (e.g. berms buffers) in such a way as to prevent polluted runoff (e.g., located on relatively flat land, away from water bodies, wetlands, and wells, and/or surrounded by a berm or buffer). Provide adequate storage capacity in the compost site for the typical quantity of manure generated over a 180-day period of time beginning December 1st of each year. Implement an operation and maintenance program that involves periodic visual inspection and maintenance of all manure storage and handling equipment and structures and all runoff management devices (e.g., cleaning separators, barnyards, catch basins, screens, annual calibration of land application equipment, maintenance of filter strips). These activities will minimize the possibility of discharges of pollutants to surface water of the State of Maine.

b. Handle and dispose of dead animals in a manner that prevents contamination of surface water and ground water of the State of Maine and complies with DAFRR *Rules For The Disposal of Animal Carcasses* 01-001 C.M.R. 211, (as corrected on February 2014).

c. Ensure that clean water is diverted, as appropriate, from the production area. Clean water includes, but is not limited to, rain falling on the roofs of facilities and runoff from adjacent land. Any clean water that is not diverted and comes into contact with raw materials, products or by-products including manure, litter, process wastewater, feed, milk or bedding materials is subject to effluent limitations in Section B(1) of this permit.

d. Prevent direct contact of confined animals with water of the State.

e. Prevent introduction of chemicals into manure and wastewater storage structures for purposes of disposal. Examples include pesticides, hazardous and toxic chemicals, and petroleum products/by-products.

SPECIAL CONDITIONS

B. DISCHARGE LIMITATIONS/BEST MANAGEMENT PRACTICES (cont'd)

3. Technology based limits – Land application areas

   a. Permittees that apply manure, litter or process wastewater to land under the permitted CAFO's ownership or operational control must implement the terms and conditions of the NMP as specified below. The NMP must be developed in accordance with the following requirements.

      1. Determination of application rates – Application rates for manure, litter or process wastewater must minimize phosphorus and nitrogen transport from the fields to surface water in compliance with technical standards for nutrient management established by DAFRR in 01-001 C.M.R. 565.

      2. Manure and soil sampling – Manure must be analyzed at least once annually for nitrogen and phosphorus content. Soil must be analyzed at least once every five years. The results of the analyses must be used in the determining application rates for manure, litter and process wastewater.

      3. Inspection of land application equipment – Equipment used for land application of manure, litter or process wastewater must be periodically inspected for leaks.

      4. Land application setback requirements − Provide and maintain buffer strips or other equivalent practices near feedlots, manure storage areas, and land application areas that are sufficient to minimize discharge of pollutants to surface water of the State of Maine (e.g., soil erosion and manure and wastewater). These practices may include, but are not limited to, residue management, conservation crop rotation, grassed waterways, strip cropping, vegetative buffers, forested riparian buffers, terracing, and diversion.

      5. Record Keeping Requirements – Complete on-site records including the site specific NMP requirements must be maintained to document implementation of all required land application practices. Such documentation must include the records specified for Soil and Manure/Wastewater Nutrient Analyses and Land Application.

      6. Prohibitions – There must be no discharge of manure, litter or process wastewater to water of the State as a result of manure, litter or process wastewater to land areas under the control of the permittee, except where it is agricultural storm water runoff. Where manure, litter or process wastewater has been applied in accordance with the terms and conditions of the NMP, a precipitation related discharge of manure, litter or process wastewater from land areas under the control of the permittee is considered to be an agricultural stormwater discharge.

SPECIAL CONDITIONS

B. DISCHARGE LIMITATIONS/BEST MANAGEMENT PRACTICES (cont'd)

7. Discharge(s) of stormwater must;

   a. Not contain a visible oil sheen, foam or floating solids in the receiving water at any time which would impair the usages designated for the classification of the receiving water.

   b. Not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated for the classification of the receiving water.

   c. Not cause visible discoloration or turbidity in the receiving water which would impair the usages designated for the classification of the receiving water.

   d. Notwithstanding specific conditions of this permit, discharges 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.

4. Additional Measures

   a. Records – Identify specific records that will be maintained to document the implementation and management of Section B(1)(c)(1-12) of this permit.

   b. Transfer of manure – In cases where CAFO-generated manure, litter or process wastewater is sold or given away, the permittee must comply with the following conditions:

      1. Maintain records showing the date and amount of manure, litter or process wastewater that leaves the facility.

      2. Record the name and address of the recipient.

      3. Provide the recipients with representative information on the nutrient content of the manure, litter or process wastewater.

      4. The records must be retained on-site for a period of five-years and be submitted to the Department or U.S. Environmental Protection Agency (USEPA) upon request.

SPECIAL CONDITIONS

B. DISCHARGE LIMITATIONS/BEST MANAGEMENT PRACTICES (cont'd)

5. Notification of discharge(s):

   If, for any reason, there is a discharge of process wastewater from the facility to surface water, non-compliance with this permit or a discharge that may endanger human health or the environment, the permittee is required to make verbal notification (within 24 hours) and written notification (within 5 days) to the Department and the DACF entities listed in paragraph B(5)(e) below. In addition, the permittee must keep a copy of the notification submitted to the Maine Department and DACF together with the Nutrient Management Plan required by Special Condition C of this permit. The discharge notification must contain the following information:

   a. Description of the discharge: A description and cause of the discharge, including a description of the flow path to the receiving water body and an estimation of the flow and volume discharged.

   b. Time of the discharge: The period of discharge, including exact dates and times, and the anticipated time the discharge is expected to continue.

   c. Cause of the discharge: If caused by precipitation event(s), information from the onsite rain gauge required by Special Condition E(7) of this permit concerning the size of the precipitation event must be provided.

   d. Steps being taken to reduce, eliminate and prevent recurrence of the non-complying circumstances or discharges.

   e. Verbal notification must be made to the Department and DACF (contacts below) within 24-hours of the facility discharge. Written notification including the information required above must be received by the Department and DACF within five (5) calendar days of the discharge.

      Maine Department of Agriculture, Conservation and Forestry
      Attn: Nutrient Management Program Manager
      Division of Animal and Plant Health
      28 State House Station
      Augusta, Maine 04333-0028 Telephone: (207)-287-7608

      Maine Department of Environmental Protection
      Attn: Compliance Inspector
      Bureau of Water Quality
      Division of Water Quality Management
      17 State House Station
      Augusta, Maine 04333 Telephone: (207) 287-7826

SPECIAL CONDITIONS

B. DISCHARGE LIMITATIONS/BEST MANAGEMENT PRACTICES (cont'd)

6. Monitoring requirements for process water discharges: In the event of an overflow (or pre-planned emergency discharge) or any other discharge from storage tanks, storage bunkers, other wastewater storage structures or feed storage operations, the following actions must be taken:

   a. Analysis of the discharge: All discharges must be sampled and analyzed. Samples must, at a minimum, be analyzed for the following parameters:

Fecal coliform bacteria	Five-day biochemical oxygen demand (BOD_5)
Total suspended solids (TSS)	Total phosphorus as phosphorus
Ortho-phosphorus	Ammonia-nitrogen as nitrogen
Total kjeldahl nitrogen (TKN) as nitrogen	Nitrate & Nitrite as nitrogen
pH	

   b. Sampling procedures: Samples must consist of grab samples collected from the overflow or discharges from the retention structure. A minimum of one sample must be collected from the initial discharge (within 30 minutes or upon discovery). The sample must be collected and analyzed in accordance with USEPA approved methods for water analysis listed in 40 CFR 136. Samples collected for the purpose of monitoring must be representative of the monitored discharge. If more than one sample is collected during the discharge, the samples may be composited (with the exception of pH and fecal coliform bacteria) when analyzed for the parameters in Special Condition B(6)(a) above. Monitoring results must be submitted to the DACF and Department at the addresses in Special Condition B(5)(e) of this permit within 30 days of the discharge event.

C. NUTRIENT MANAGEMENT PLAN

Upon issuance of this permit, the permittee is required to maintain and implement a Nutrient Management Plan prepared in accordance with the standards in 01-001 C.M.R. 565, §6 and *Protection of Environment* 40 CFR, §122.42(e) and 40 CFR §412.4. The Nutrient Management Plan must be updated at least once each year and must be approved by a certified nutrient management plan specialist at least every five years. The Nutrient Management Plans must be kept on-site and current at all times.

SPECIAL CONDITIONS

C. NUTRIENT MANAGEMENT PLAN (cont'd)

1) **Terms of the nutrient management plan** - The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined to be necessary to meet the requirements of this section. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater must include the fields available for land application; field-specific rates of application properly developed to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms must address rates of application using one of the following two approaches:

   (a) **Linear approach.** An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

      (1) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms must include: The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

      (2) Large CAFOs that use this approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; or

   (b) **Narrative rate approach.** An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:

SPECIAL CONDITIONS

C. NUTRIENT MANAGEMENT PLAN (cont'd)

(1) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms must include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields, the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

(2) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan must include realistic crop yield goals and the nitrogen and phosphorus recommendations for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied must be determined in accordance with the methodology described in paragraph C(1)(b)(1) of this section.

(3) For CAFOs using this approach, the following projections must be included in the nutrient management plan submitted to the Department and DACF, but are not terms of the nutrient management plan: The CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

SPECIAL CONDITIONS

C. NUTRIENT MANAGEMENT PLAN (cont'd)

(4) CAFOs that use this approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in paragraph C(1)(b)(1) of this section before land applying manure, litter, and process wastewater and must rely on the following data:

(a) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by paragraph C(1)(b)(1) of this section, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements; and

(b) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

Any changes to the NMP made after the date of signature of this permit must be submitted to the Department and DACF contacts in Special Condition B(5)(e) of this permit for review to determine whether the changes are substantial and whether the changes necessitate revisions to terms and or conditions of this permit. If revisions to the permit are necessary, this permit will be re-opened pursuant to Special Condition G, *Reopening of Permit For Modifications*, to incorporate applicable terms and conditions.

D. GENERAL FACILITY INSPECTIONS AND MONITORING

Inspection, monitoring and record keeping activities must be conducted in accordance with the following:

1. Employee Training: Where employees are responsible for work activities that relate to permit compliance, those employees must be regularly trained or informed of any information regarding the proper operation and maintenance of the facility and waste disposal. Training must include topics as appropriate such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary record keeping requirements, and spill response and clean up. The permittee is responsible for determining and providing the appropriate training frequency for different levels of personnel and maintain records of the training provided.

2. Record Keeping and Internal Reporting Procedures. Incidents such as spills or overflows, along with information describing the pollution potential and quantity of the discharge must be described in writing. Inspections and maintenance activities must be documented.

SPECIAL CONDITIONS

D. GENERAL FACILITY INSPECTIONS AND MONITORING (cont'd)

3. Visual Inspections. The permittee must inspect equipment and facility areas daily and during and subsequent to any rain event. Material handling areas must be inspected for evidence of, or the potential for, pollutants entering the drainage system. At a minimum of once every two weeks, visual inspections of all manure and runoff storage structures, handling and distribution systems, feed storage operations other process systems or controls, and buffer strips must be undertaken to ensure that all are in good condition and functioning properly.

4. Site Inspection. A complete inspection of the facility must be conducted by the farm manager and a report made documenting the findings of the inspection made at least once/year. The report must be kept on-site and made available to DACF, the Department and USEPA staff upon request.

5. Reports/Records. All inspection reports and other record keeping required by this permit must be kept current at all times and maintained at the facility for at least three (3) years.

6. Precipitation. The permittee must maintain a precipitation gauge at the facility and record the rainfall for each 24-hour period between April 1 and May 30 and October 1 through October 30 of each year or obtain daily precipitation records for said periods from other entities within a 25 mile radius of the farm.

7. Additional Monitoring Requirements

   Additional analysis: Upon request by the Department and or the DACF, the permittee may be required to conduct, collect, and analyze samples including but not limited to soils, surface water, ground water, and/or stored waste in a manner and frequency specified by the Department and or DACF.

E. ANNUAL REPORTING REQUIREMENTS

1. **On or before December 31st of each year *(ICIS code PR003)*** the permittee must submit [to the addresses in Section B(5)(e)] an annual report to the Department and DACF that at a minimum, includes the following information;

   a. The number and type of animals, whether in open confinement or housed under roof.

   b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons).

   c. Estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons).

   d. Total number of acres of land application covered by the NMP.

SPECIAL CONDITIONS

E. ANNUAL REPORTING REQUIREMENTS (cont'd)

e. Total number of acres under the control of the permittee that were used for land application of manure, litter and process wastewater in the previous 12 months.

f. Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months including date, time, and approximate volume.

g. A statement indicating whether the current version of the CAFO NMP was developed by a certified nutrient management planner.

h. Actual crops planted and actual yields of each field for the preceding 12 months.

i. Results of all samples of manure, litter and process wastewater for nitrogen and phosphorus content for manure, litter and process wastewater that was land applied.

j. Results of calculations conducted in accordance with Linear Approach or Narrative Rate Approach.

k. Amount of manure, litter and process wastewater applied to each field during the preceding 12 months.

F. FACILITY CLOSURE

The following conditions must apply to the closure of lagoons and other earthen or synthetic lined basins and manure, litter and process wastewater storage and handling structures:

a. Closure of Lagoons and Other Surface Impoundments

1. No lagoon or other earthen or synthetic lined basin may be permanently abandoned.

2. Lagoons or other earthen or synthetic lined basins must be maintained at all times until closed in compliance with this section.

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SPECIAL CONDITIONS

F. FACILITY CLOSURE (cont'd)

3. All lagoons or other earthen or synthetic lined basins must be properly closed if the permittee ceases operation. In addition, any lagoon or other earthen or synthetic lined basin that is not in use for a period of 12 consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either 1) maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or 2) removes manure and wastewater to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic or earthen liner. In either case, the permittee must notify the Department and DACF of the action taken and must conduct routine inspections, maintenance and record keeping as though the structure were in use. Before restoration or use of the structure, the permittee must notify the Department and DACF and provide the opportunity for inspection.

4. All closure of lagoons and other earthen or synthetic basins must be consistent with *Discontinuance of Wastewater Treatment Lagoons,* 06-096 C.M.R. 550. Consistent with that standard, the permittee must remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittee's NMP, unless otherwise authorized by the Department and DACF.

5. Unless otherwise authorized by the Department or USEPA, completion of the closure of the lagoon(s) and other earthen or synthetic lined basins must occur as promptly as practicable after the permittee ceases to operate or, if the permittee has not ceased operations, 12 months from the date on which the use of the structure ceased, unless the lagoons or basins are being maintained for possible future use in accordance with the requirements above.

b. Closure Procedures for Other Manure, Litter or Process Wastewater Storage and Handling Structures

1. No other manure, litter or process wastewater storage and handling structure must be abandoned. Closure of all such structures must occur as promptly as practicable after the permittee has ceased to operate, or, if, the permittee has not ceased to operate, within 12 months after the date on which the use of the structure ceased. To close a manure, litter or process wastewater storage and handling structure, the permittee must remove all manure, litter, or process wastewater and dispose of it in accordance with the permittee's NMP, or document its transfer from the permittee's facility in accordance with off-site transfer requirements specified in this permit, unless otherwise authorized by the Department and DACF.

SPECIAL CONDITIONS

G. REOPENING OF PERMIT FOR MODIFICATIONS

In accordance with 38 M.R.S. § 414-A(5) and upon evaluation of the test results required by the 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 limitations 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.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

AND

MAINE WASTE DISCHARGE LICENSE

INTERNAL DRAFT FACT SHEET

Date: **January 7, 2020**

PERMIT NUMBER: **ME0037125**
LICENSE NUMBER: **W009036-5S-C-R**

NAME AND ADDRESS OF APPLICANT:

Rogers Farm
C/O The Wright Place
77 Wright Road
Clinton, Maine 04927

COUNTY: **Kennebec County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

Rogers Road
Clinton, Maine 04927

RECEIVING WATER/CLASSIFICATION: **Twelve Mile Brook/Class B**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Brian Wright**
thewrightplace@roadrunner.com
(207)-426-9697

1. APPLICATION SUMMARY

a. Application: The Rogers Farm (permittee), has filed a timely application with the Department of Environmental Protection (Department) to renew combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0037125 and Maine Waste Discharge License (WDL) W009036-5S-C-R, (permit hereinafter) last issued by the Department on July 21, 2014, for a five-year term. The permit authorized The Rogers Farm to manage process wastewater and stormwater runoff that are generated by the operation of a concentrated animal feeding operation (CAFO) located in the Town of Clinton. The permittee is required to manage the facility such that there is no discharge of process wastewater to surface water during precipitation events that are less than a 24-hour, 25-year storm event.

1. APPLICATION SUMMARY (cont'd)

b. Source description: The Rogers Farm has been identified as a medium CAFO as the facility has approximately 600 heifers and pollutants are discharged into water of the State that originate outside of and pass over, across, or through or otherwise come into direct contact with the animals confined in the operation. The animals are confined on a year-round basis in numerous large barns with open-air side walls and fully covered with roofs. All stormwater runoff and wastewater generated in the vicinity of the barns and milking parlor are directed to a National Resource Conservation Service (NRCS) designed manure waste storage facility. The manure pit is an earthen bermed structure that has a total capacity of approximately 417,000 cubic feet (cf) for 180 days of storage. The working capacity of the pit takes into consideration annual precipitation, evaporation, a 24-hour 25-year storm events and the ability to maintain at least 1.0 feet of freeboard. See **Attachment B** of this fact Sheet for a layout of the farm.

Inspections by DACF, DEP and the USEPA indicates storm water runoff is conveyed to Twelve Mile Brook via a drainage swale that meanders through a pasture between the storage pit and heifer barn. Twelve Mile Brook is located approximately 200 feet east of the heifer barn. The DACF has made a determination that the manure storage facility is designed and capable of capturing a 25 year, 24-hour rainfall event. Manure is spread on various fields owned and or leased by The Wright Place or the Rogers Farm as permitted by the Nutrient Management Law.

2. PERMIT SUMMARY

a. Terms & conditions: This permitting action is different from the July 21, 2014 permit in that it amends the language in Special Condition C. *Nutrient Management Plan* to be consistent with other CAFO permits.

This permitting action is carrying forward the previously established requirements to implement and maintain Best Management Practices (BMPs) to prevent discharges to water of the State of Maine, and implement and keep current, an approved Nutrient Management Plan in accordance with Maine Department of Agriculture, Conservation and Forestry (DACF) *Nutrient Management Rules*, 01-001 C.M.R. 565 §6 (last amended July 3, 2018). On June 29, 2009, the DACF issued a Livestock Operation Permit (LOP) pursuant to *Nutrient Management Act*, 7 M.R.S. §4204 and §4205 respectively, which was updated on July 3, 2018, for the permittee's facility.

b. History: The most recent relevant permitting/license and regulatory events include:

April, 1997 – Nutrient Management Act, 7 M.R.S., chapter 747 was enacted.

December 1998 – The Maine DACF adopted regulation Chapter 565, *Nutrient Management Rules*. It is noted the regulation was last amended on February 17, 2001.

2. PERMIT SUMMARY

June 8, 2000 – The Maine DEP and DACF entered into a Memorandum of Agreement entitled, *Coordination of the Maine Livestock Operating Permit Program and the Maine Pollutant Discharge Elimination System Permit Program in Regards to Concentrated Animal Feeding Operations*. The purpose of the agreement is intended to 1) establish a collaborative process between the DEP and DACF so as to better coordinate review of CAFOs, and 2) clarify the roles and responsibilities of the two agencies in regard to the permitting of CAFOs under DACF Livestock Operations Permit (LOP) program and DEP's MEPDES permit program.

January 12, 2001 − The State of Maine received authorization from the U.S. Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) permitting program in Maine. From that date forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) permitting program.

November 25, 2005 – Personnel from Maine DACF, Maine DEP and the EPA conducted an on-site inspection at the Wright Place. The primary objective of the site inspection was to determine whether the farm is considered a CAFO pursuant to Department rule Chapter 521, *Applications For Waste Discharge Licenses,* §6. The inspection determined that the farm was a large CAFO that required a MEPDES permit.

February 2, 2009 − The Rogers Farm submitted an application to the DEP and DACF or a new MEPDES permit and LOP. The application materials contained a Nutrient Management Plan "NMP" prepared by a certified planner. The NMP is being reviewed by the DACF for approval.

May 8, 2009-The Department issued MEPDES permit #ME0037125/WDL W009036-5S-A-N for a five-year term.

July 21, 2014 – The Department issued MEPDES permit ME0037125 and Maine WDL W009036-5S-B-R for a five-year term.

October 31, 2018 – The permittee submitted a complete application to renew ME0037125/W009036-5S-B-R.

3. CONDITIONS OF PERMITS

Conditions of licenses, 38 M.R.S. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require the application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving water attain the State water quality standards as described in Maine's Surface Water Classification System.

3. CONDITIONS OF PERMITS (cont'd)

In addition, *Certain deposits and discharges prohibited*, 38 M.R.S. § 420 and Department rule *Surface Water Toxics Control Program*, 06-096 C.M.R. 530 (effective March 21, 2012), require the regulation of toxic substances so as not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 C.M.R. 584 (effective July 29, 2012), and ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface water are maintained and protected.

4. RECEIVING WATER QUALITY STANDARDS

Classification of major river basins, 38 M.R.S. § 467(4)(H)(2) classifies Twelve Mile Brook as Class B waters. *Standards for classification of fresh surface waters*, 38 M.R.S. § 465(3) describes the standards for Class B waters.

This permitting action does not authorize the permittee to discharge process wastewater directly to Twelve Mile Brook under any circumstances. Special Condition B(1) of this permit prohibits any discharge of process waters unless the discharge is associated with a precipitation event that exceeds a 25-year, 24-hour storm event.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2016 Integrated Water Quality Monitoring and Assessment Report (Report), prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists Twelve Mile Brook, at Clinton, (Integrated Report Assessment Unit ID ME0103000309_329R02) as, "Category 3: Rivers and Streams with Insufficient Data or Information to Determine if Designated Uses are Attained (One or More Uses may be Impaired).

The Report lists all of Maine's fresh waters as, "Category 4-A: 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 Report states, "All freshwaters are listed in Category 4A (TMDL Completed) due to USEPA approval of a Regional Mercury TMDL." Maine has a fish consumption advisory for fish taken from all freshwaters due to mercury. 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 Health and Human Services decided to establish a statewide advisory for all freshwater fish that recommends limits on consumption. The Department has no information that the discharge from the permittee, as conditioned, causes or contributes to non-attainment of applicable Class B water quality standards.

6. APPLICABLE LAWS, RULES AND/OR REGULATIONS (cont'd)

a. Pursuant to Section 502(14) of the federal Water Pollution Control Act (Clean Water Act), CAFO's are defined as point source dischargers.

a. *Waste discharge licenses* 38 M.R.S. §413 states that "No person may directly or indirectly discharge or have cause to be discharged any pollutant without first obtaining a license therefor from the department."

c. *Applications For Waste Discharge Licenses*, 06-096 C.M.R. 521 §6(a) states "Permit requirement. Concentrated animal feeding operations are point sources subject to the NPDES permit program. The Department will consult with the Department of Agriculture and all applications for concentrated animal feeding operations in order to consolidate permitting requirements where feasible." It is noted the rule references federal regulations found at 40 CFR Part 122.23 requiring CAFO's to obtain a federal NPDES permit. However, given that the USEPA has authorized the State of Maine to administer the NPDES permit program in Maine, MEPDES permits will be issued to CAFO's.

06-096 C.M.R. 521§6(b)(3)-Appendix B establishes the criteria for determining a CAFO. The Wright Way is categorically considered a CAFO as the facility that has at least 500 heifers and 70 mature dry cows.

d. *Feedlots Point Source Category* 40 CFR Part 412, establishes effluent limitations and guidelines representing best practicable control technology currently available (BPT) and best available technology economically achievable (BAT). BPT and BAT for CAFO's is no discharge of process wastewater pollutants to navigable water where process wastewater are defined as any process generated waste and any precipitation (rain or snow) which comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g. milk, eggs).

e. 7 M.R.S. §4204(H)(2) establishes the criteria for who must develop and implement a Nutrient Management Plan. CAFO's meet applicable criteria under this section. *Nutrient Management Rules*, 01-001 C.M.R., 565 §6(1) establishes the standards for Nutrient Management Plans required under 7 M.R.S. §4204. 01-001 C.M.R. 565, §6(2) requires Nutrient Management Plans to be updated at least once each year and must be approved by a certified nutrient management plan specialist at least every five years.

f. 7 M.R.S., §4205(A) requires CAFO's to obtain a Livestock Operating Permit (LOP). 01-001 CMR 565, §8(1)(a) requires the owner or operator of a CAFO to obtain a LOP or provisional LOP from the DACF.

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7. GENERAL FACILITY INSPECTIONS AND MONITORING

The inspections, monitoring and recordkeeping required by this permitting action were developed based on guidance provided by the USEPA to promote consistency with nationwide permitting of CAFOs. In addition, the Department consulted with the Maine DACF to develop inspections, monitoring and recordkeeping that would serve both agencies program requirements.

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 surface water bodies to meet the standards of their assigned classification.

9. PUBLIC COMMENTS

Public notice of this application was made in the Morning Sentinel newspaper on or about April 24, 2019. 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 have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses,* 06-096 C.M.R. 522 (effective January 12, 2001).

10. DEPARTMENT CONTACTS

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

Attn: Nutrient Management Program Manager
Maine Department of Agriculture, Conservation and Forestry
Division of Animal and Plant Health
28 State House Station
Augusta, Maine 04333-0028
Telephone: (207)-287-7608

Attn: MEPDES Permitting Coordinator
Maine Department of Environmental Protection
Bureau of Water Quality
Division of Water Quality Management
17 State House Station
Augusta, Maine 04333-0017 Telephone: (207) 287-7823

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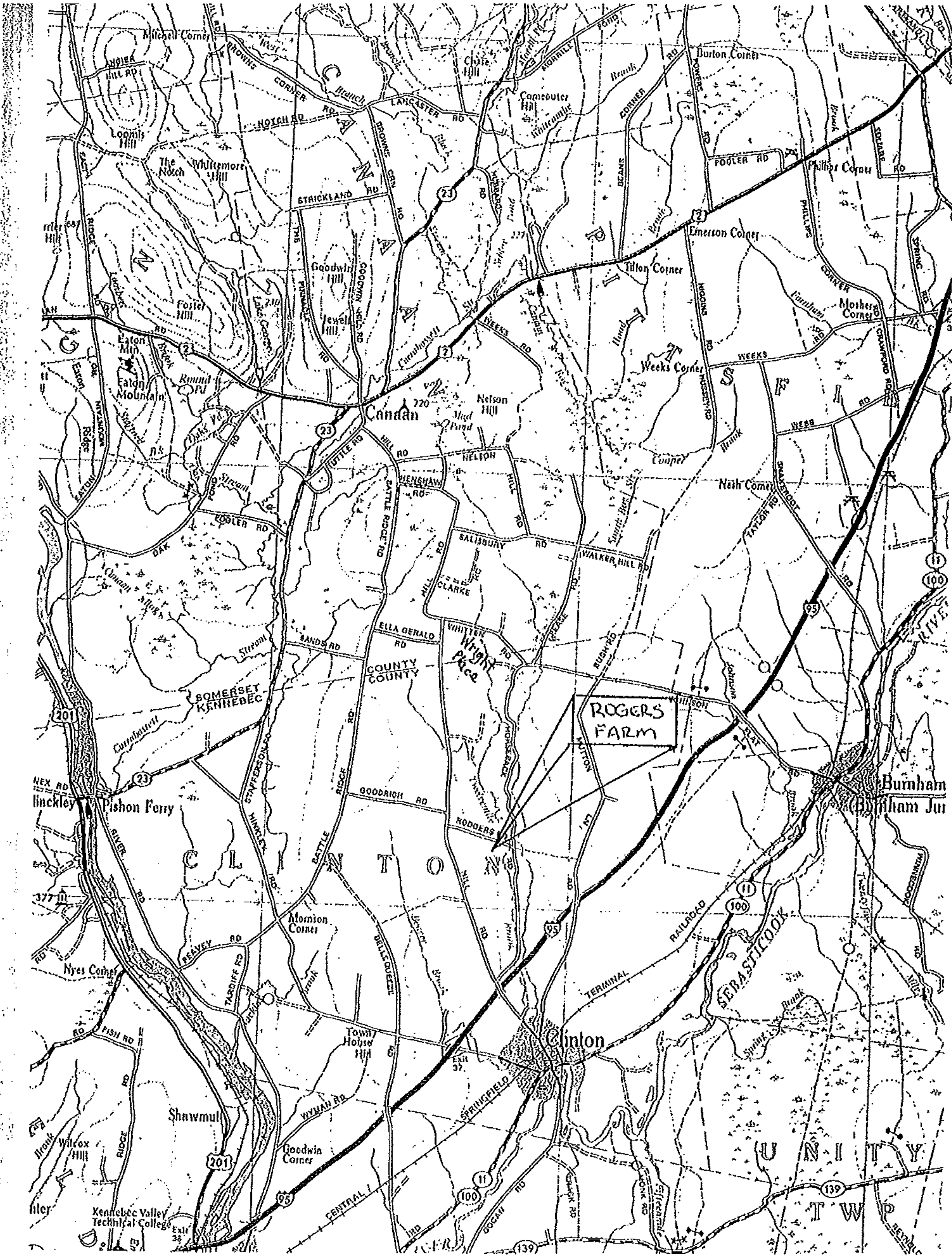
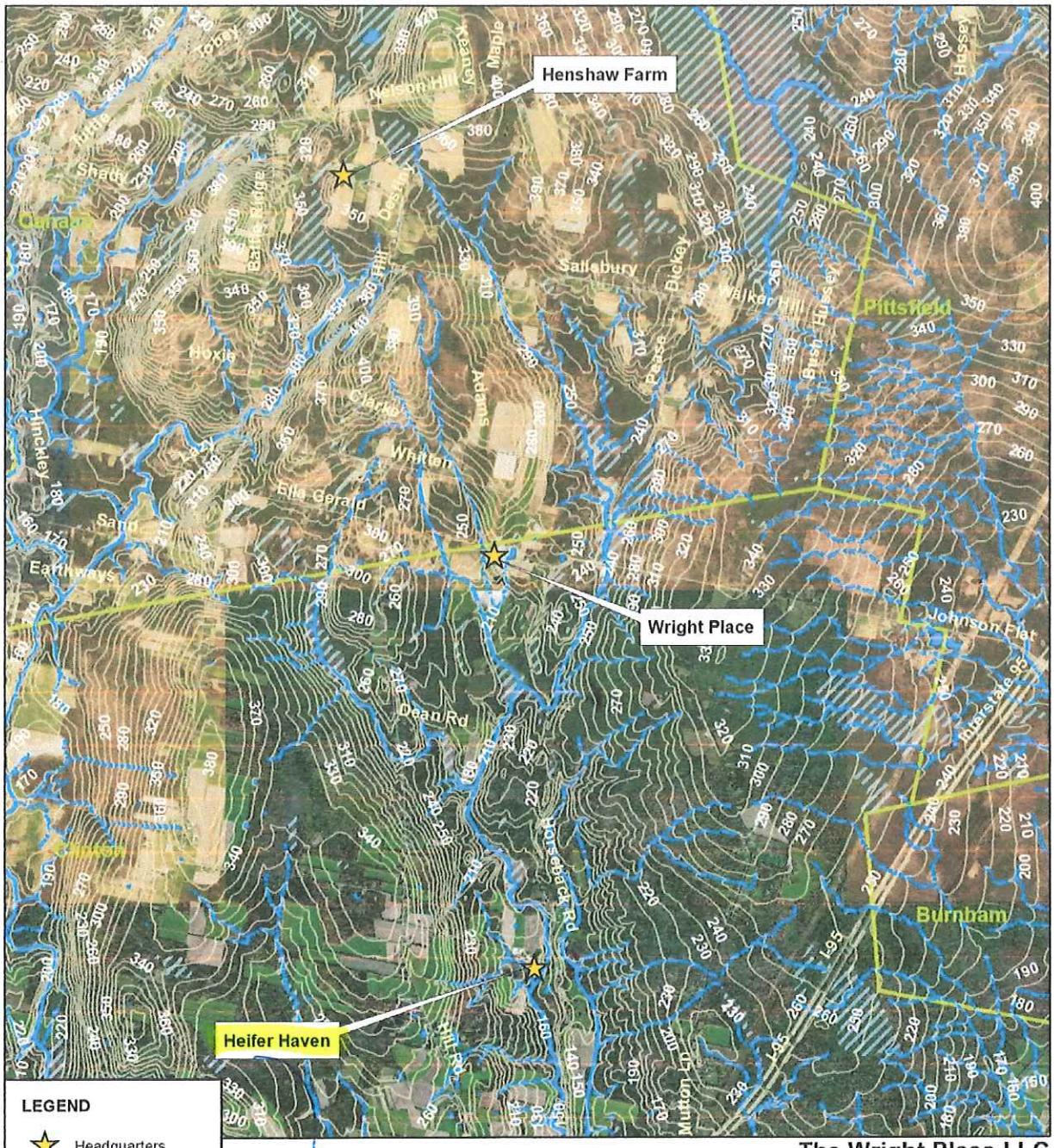
11. RESPONSE TO COMMENTS

During the period of December 5, 2019 through the effective date of this final agency action, the Department solicited comments on the draft MEPDES permit. The Department did not receive any comments that resulted in substantive changes to the draft permit. It is noted that typographical and grammatical errors identified in comments were not summarized in this section, but were corrected, where necessary, in the final permit.

ATTACHMENT A


ROGERS
FARM
Wright
Place
Canaan
Clinton
Burnham
Burnham Jn
Pishon Ferry
Shawmut
Nyes Corner
Morrison Corner
Goodwin Corner
Town House Hill
Kennebec Valley Technical College
Mitchell Corner
Loomis Hill
The Notch
Whittemore Hill
Goodwin Hill
Jewell Hill
Foster Hill
Eaton Mtn
Eaton Mountain
Round Pd
Oaks Pd
Nelson Hill
Mud Pond
Chase Hill
Burton Corner
Phillips Corner
Emerson Corner
Tilton Corner
Weeks Corner
Mosher Corner
Nash Corner
SOMERSET
KENNEBEC
COUNTY
COUNTY
STRICKLAND RD
LANCASTER RD
NOTCH RD
POOLER RD
NELSON RD
HENSHAW RD
SALISBURY RD
WALKER HILL RD
ELLA GERALD RD
WHITTEN RD
SANDS RD
GOODRICH RD
RODGERS
HORSEBACK
HUTTON
RUSH RD
PEAVEY RD
TARDIFF RD
FISH RD
WYMAN RD
SPRINGFIELD
TERMINAL
RAILROAD
WILSON
FLAT
WEEKS
WEBB
SEBASTICOOK
C L I N T O N
U N I T Y
T W P
Exit 37
Exit 36

Wright Place LLC MEPDES Application —Question 11 Topographic maps (1 mile radius)



The Wright Place LLC

Whole Farm Contour Map

Latitude: 44.7129, Longitude: -69.5187
Coordinate System: NAD 1983 UTM Zone 19N
Projection: Transverse Mercator
Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

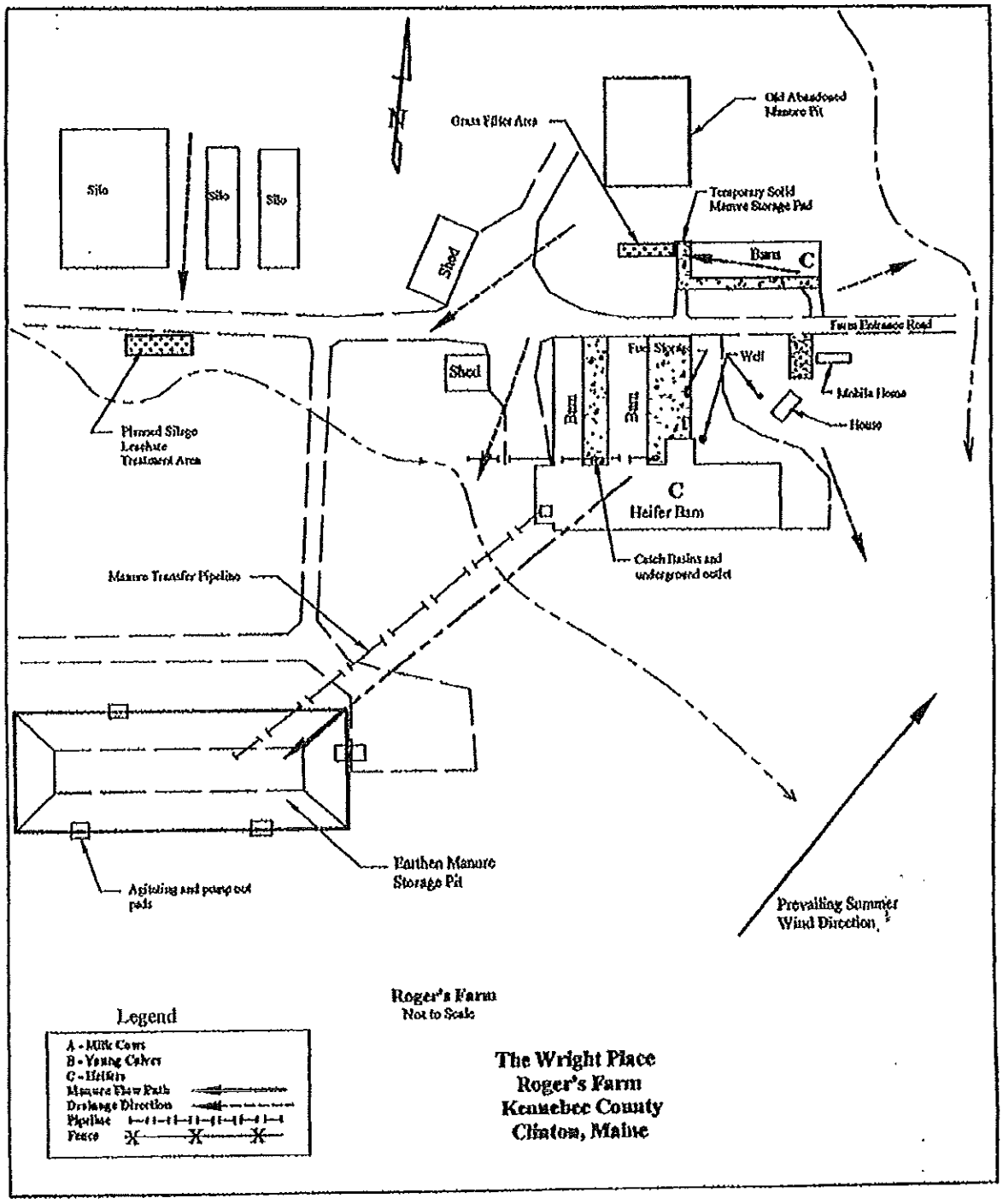
Date: 2/14/2019

Northern Tilth

ATTACHMENT B

Verification 13 a

The Rogers Farm



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.