



STATE OF MAINE  
DEPARTMENT OF  
ENVIRONMENTAL PROTECTION



JANET L. MILLS  
GOVERNOR

GERALD D. REID  
COMMISSIONER

Ms. Diane Tilton  
Executive Director  
Downeast Institution for Applied Marine Research and Education  
P.O. Box 83, 39 Wildflower Lane  
Beals, ME. 04611  
e-mail: [dtilton@downeastinstitute.org](mailto:dtilton@downeastinstitute.org)

February 1, 2020

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0037451  
Maine Waste Discharge License (WDL) Application #W009188-5S-B-M  
**Final Minor Revision**

Dear Ms. Tilton:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL **minor revision** which was approved by the Department of Environmental Protection. Please read this minor revision and its attached conditions carefully. Compliance with this permit/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 287-7693. 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,

Gregg Wood  
Division of Water Quality Management  
Bureau of Water Quality

Enc.

cc: Kayleigh Sauda, DEP/EMRO      Lori Mitchell, DEP/CMRO      Irene Saumur, DEP/CMRO  
Sandy Mojica, USEPA              Shelley Puleo, USEPA              Marelyn Vega, USEPA

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

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

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

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: November 2018

Contact: (207) 287-2452

### 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) an administrative process before the Board of Environmental Protection (Board); or (2) 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. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S. § 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. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 C.M.R. ch. 2.

#### **DEADLINE 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 more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

### **INFORMATION APPEAL PAPERWORK MUST CONTAIN**

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

1. *Aggrieved Status.* The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant 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.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing requirements that the appellant believes were not properly considered or fully addressed.
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 matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

### **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, and is made easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an 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 general questions regarding the appeal process.
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. Unless a stay of the decision is requested and granted, 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, and will provide 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, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. 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, the 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. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and 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. 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. § 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.

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**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.**

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

DEPARTMENT ORDER

IN THE MATTER OF

DOWNEAST INSTITUTE FOR APPLIED MARINE)	MAINE POLLUTANT DISCHARGE
RESEARCH AND EDUCATION INC. )	ELIMINATION SYSTEM PERMIT
BEALS, WASHINGTON COUNTY, MAINE )	
NON-PROCESS WASTEWATER )	AND
ME0037460 )	WASTE DISCHARGE LICENSE
W009188-5S-B-M )	MINOR REVISION
APPROVAL )	

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, and applicable rules of the Department of Environmental Protection (Department hereinafter), the Department is initiating a minor revision of combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0037460/Maine Waste Discharge License (WDL) #W009188-5S-A-N (permit hereinafter) issued on September 4, 2018, to the DOWNEAST INSTITUTE FOR APPLIED MARINE RESEARCH AND EDUCATION INC. (Downeast/permittee hereinafter). With its supportive data, agency review comments, and other related materials on file, the Department FINDS THE FOLLOWING FACTS:

**SUMMARY**

The Department is initiating this minor revision to clarify the reporting requirements in the September 4, 2018, permit. This minor revision is;

Outfall #001A & Outfall #002A

1. Removing the daily maximum flow limitation of 64,800 gallons per day (gpd) and replacing it with a report only requirement. The limitation is not representative of the waste stream of concern which is tank cleaning waters.
2. Adding a footnote to the parameter Flow, indicating the only the quantity of tank cleaning waste water is to be reported, not uncontaminated flow-through water.

Outfall #003A

1. Splitting this outfall into two separate waste streams – Outfall #003A (tank cleaning waters) and Outfall #003B (reverse osmosis) and eliminating the parameters of total suspended solids and total residual chlorine for Outfall #003B given the nature of the waste stream.

## CONCLUSIONS

Based on the findings summarized on page 1 of this minor revision and subject to the special and standard conditions that follow, the Department makes the following CONCLUSIONS:

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

**ACTION**

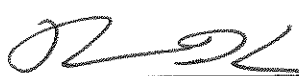
Based on the findings and conclusions as stated above, the Department APPROVES the minor revision of combination MEPDES permit ME0037460/WDL #W009188-5S-A-N issued on September 4, 2018, to the DOWNEAST INSTITUTE FOR APPLIED MARINE RESEARCH AND EDUCATION INC. SUBJECT TO THE ATTACHED CONDITIONS, and all 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 ME0037460/WDL #W009188-5S-A-N, issued on September 4, 2018.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit ME0037460/Maine WDL #W009188-5S-A-N, issued on September 4, 2018, not modified by this minor revision remain in effect and enforceable.
4. This minor revision and the authorization to discharge become effective upon the date of signature below and expire at midnight on September 4, 2023. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the authorization to discharge and the terms and conditions of this permit and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5 M.R.S. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (amended June 9, 2018)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

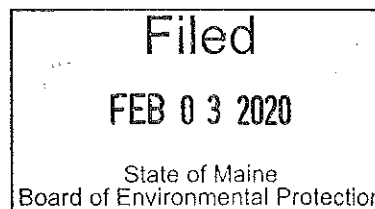
DONE AND DATED AT AUGUSTA, MAINE, THIS 2 DAY OF February 2020.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
For Gerald D. Reid, Commissioner

Date of initial receipt of application: July 3, 2019

Date of application acceptance: July 3, 2019



Date filed with Board of Environmental Protection \_\_\_\_\_

This Order prepared by Gregg Wood, BUREAU OF WATER QUALITY

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge **treated tank cleaning waste waters from the hatchery** to the tidewaters of Western Bay via **Outfall #001A and Outfall #002A**. Such discharges are limited and must be monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations		Minimum Monitoring Requirements	
	Daily Maximum	Daily Maximum	Measurement Frequency	Sample Type
<b>Flow<sup>(2)</sup></b> <i>[50050]</i>	Report gpd <i>[07]</i>	---	1/Month <i>[01/30]</i>	Estimate <i>[ES]</i>
<b>Total Suspended Solids</b> <i>[00530]</i>	Report lbs./day <i>[26]</i>	Report mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
<b>pH</b> <i>[00400]</i>	---	6.0 – 9.0 SU <i>[12]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
<b>Total Residual Chlorine<sup>(1)</sup></b> <i>[50060]</i>	---	0.013 mg/L <i>[19]</i>	1/Month <i>[01/30]</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 7 of this permit for applicable footnotes.



**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

2. The permittee is authorized to discharge **treated tank cleaning waste water from the laboratory** to the tidewaters of Western Bay via **Outfall #003A**. Such discharges are limited and must be monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations		Minimum Monitoring Requirements	
	Daily Maximum	Daily Maximum	Measurement Frequency	Sample Type
<b>Flow<sup>(2)</sup></b> <i>[50050]</i>	Report gpd <i>[07]</i>	---	1/Month <i>[01/30]</i>	Estimate <i>[ES]</i>
<b>Total Suspended Solids</b> <i>[00530]</i>	Report lbs./day <i>[26]</i>	Report mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
<b>pH</b> <i>[00400]</i>	---	6.0 – 9.0 SU <i>[12]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
<b>Total Residual Chlorine<sup>(1)</sup></b> <i>[50060]</i>	---	0.013 mg/L <i>[19]</i>	1/Month <i>[01/30]</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 7 of this permit for applicable footnotes.

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

3. The permittee is authorized to discharge **waste water from the reverse osmosis water treatment system** to the tidewaters of Western Bay via **Outfall #003B**. Such discharges are limited and must be monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations		Minimum Monitoring Requirements	
	Daily Maximum	Daily Maximum	Measurement Frequency	Sample Type
<b>Flow<sup>(3)</sup></b> <i>[50050]</i>	Report gpd <i>[07]</i>	---	1/Month <i>[01/30]</i>	Estimate <i>[ES]</i>
<b>pH</b> <i>[00400]</i>	---	6.0 – 9.0 SU <i>[12]</i>	1/Month <i>[01/30]</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 7 of this permit for applicable footnotes.

## SPECIAL CONDITIONS

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

#### Footnotes:

**Sampling** – Sampling and analysis must be conducted in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services for waste water. Samples that are analyzed by laboratories operated by waste discharge facilities licensed pursuant to *Waste discharge licenses*, 38 M.R.S. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended December 19, 2018). If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or as specified in this permit, all results of this monitoring must be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR).

1. **Total residual chlorine** – The permittee must sample the effluent 1/Month during a time when sodium hypochlorite is being discharged as a result of cleaning operations. Compliance will be based on the EPA's minimum level of detection of 0.02 mg/L. Monitoring results that are detected below 0.02 mg/L shall be reported as <0.02 mg/L on the monthly DMR.
2. **Flow** – The permittee shall only report the daily maximum flow of tank cleaning waste waters.
3. **Flow** – The permittee shall only report the daily maximum flow of waste water generated by the reverse osmosis water treatment system.

### B. NARRATIVE EFFLUENT LIMITATIONS

1. The permittee must not discharge effluent that contains a visible oil sheen, foam or floating solids at any time which would impair the uses designated for the classification of the receiving waters.
2. The permittee must not discharge effluent that contains materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the uses designated for the classification of the receiving waters.
3. The discharge must not impart visible discoloration, taste, turbidity, toxicity, radioactivity or other properties in the receiving waters which would impair the usages designated for the classification of the receiving waters.
4. The permittee must not discharge effluent that lowers the quality of any classified body of water below such classification, or lowers the existing quality of any body of water if the existing quality is higher than the classification.

## SPECIAL CONDITIONS

### C. AUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on April 23, 2018; 2) the terms and conditions of this permit; and 3) only from Outfalls #001A, #002A, #003A and #003B. Discharges of wastewater from any other point source(s) are not authorized under this permit, and must be reported in accordance with Standard Condition D(1)(f), *Twenty-four hour reporting*, of this permit.

### D. NOTIFICATION REQUIREMENT

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

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

### E. OPERATIONS AND MAINTENANCE (O&M) PLAN

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

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

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

## **SPECIAL CONDITIONS**

### **F. MONITORING AND REPORTING**

#### Electronic Reporting

*NPDES Electronic Reporting*, 40 C.F.R. 127, requires MEPDES permit holders to submit monitoring results obtained during the previous month on an electronic discharge monitoring report to the regulatory agency utilizing the USEPA electronic system.

Electronic Discharge Monitoring Reports (DMRs) submitted using the USEPA NetDMR system, must be:

1. Submitted by a facility authorized signatory; and
2. Submitted no later than **midnight on the 15<sup>th</sup> day of the month** following the completed reporting period.

Documentation submitted in support of the electronic DMR may be attached to the electronic DMR. Documentation submitted electronically to the Department in support of the electronic DMR must be submitted no later than midnight on the 15<sup>th</sup> day of the month following the completed reporting period.

### **G. REOPENING OF PERMIT FOR MODIFICATION**

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

### **H. SEVERABILITY**

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