STATE OF MAINE

Department of Environmental Protection

Paul R. Lepage
GOVERNOR

Paul Mercer
COMMISSIONER

April 4, 2016

Mr. Ernest Pooler
Town of Bingham
PO Box 652
Bingham, ME 04920

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0100056
Maine Waste Discharge License (WDL) #W001286-6B-G-R
Final Permit

Dear Mr. Pooler:

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

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

If you have any questions regarding the matter, please feel free to call me at 485-2404.

Sincerely,

Irene M Saumur

Irene Saumur
Division of Water Quality Management
Bureau of Water Quality

Enc.

cc: Matt Young, DEP/EMRO
Lori Mitchell, DEP/CMRO
Sandy Mojica, USEPA
Olga Vergara, USEPA
Marelyn Vega, USEPA

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-3901 FAX: (207) 287-3435

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PRESQUE ISLE, MAINE 04769-2094
(207) 764-6477 FAX: (207) 764-1507

web site: www.maine.gov/dep

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

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF BINGHAM	)	MAINE POLLUTANT DISCHARGE
BINGHAM, SOMERSET COUNTY, MAINE	)	ELIMINATION SYSTEM PERMIT
PUBLICLY OWNED TREATMENT WORKS	)	AND
ME0100056	)	WASTE DISCHARGE LICENSE
W001286-6B-G-R **APPROVAL**	)	**RENEWAL**

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

APPLICATION SUMMARY

The permittee has submitted a timely and complete application to the Department for the renewal of Maine Waste Discharge License (WDL) #W001286-6B-E-R / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0100056, which was issued to the permittee on April 21, 2011, for a five-year term. The permit authorized the discharge of up to a monthly average flow of 0.200 MGD of secondary treated sanitary wastewater from a municipal treatment facility to Jackson Brook, Class B, in Bingham, Maine.

PERMT SUMMARY

This permitting action is carrying forward all the terms and conditions of the previous permitting action except;

1. This permitting action is reducing the monitoring frequency for BOD_5 & TSS from once per week (1/Week) to twice per month (2/Mon) based on statistical evaluation of the most current 52 months of data.

2. This permitting action is reducing the monitoring frequency for Settleable Solids from five times per week (5/Week) to three times per week (3/Week) based on statistical evaluation of the most current 52 months of data.

3. This permitting action is eliminating the reporting waiver for BOD5 & TSS percent removal when the monthly average influent concentration is less than 200 mg/L, based on recommendation from EPA.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated March 21, 2016, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

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

2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.

3. The provisions of the State's antidegradation policy, 38 MRSA Section 464(4)(F), will be met, in that:

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

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

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

5. The discharge is necessary and that there are no other practical alternatives available.

ACTION

THEREFORE, the Department APPROVES the above noted application of the TOWN OF BINGHAM to discharge secondary treated waste waters from a publicly owned treatment works to Jackson Brook, Class B, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations including:

1. "*Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits,*" revised July 1, 2002, copy attached.

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

3. This permit becomes effective upon the date of signature below and expires at midnight five (5) years thereafter. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of 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.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (effective April 1, 2003)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 5th DAY OF April, 2016.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
For Paul Mercer, Commissioner

Filed
APR 05 2016
State of Maine
Board of Environmental Protection

Date of initial receipt of application: February 2, 2016

Date of application acceptance: February 2, 2016

Date filed with Board of Environmental Protection: _____

This Order prepared by Irene M Saumur, BUREAU OF WATER QUALITY

ME0100056 2016

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

The permittee is authorized to discharge **secondary treated waste waters** to Jackson Brook. Such treated waste water discharges shall be limited and monitored by the permittee as specified below.

OUTFALL #001

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
	Monthly Average as specified	**Weekly Average** as specified	**Daily Maximum** as specified	**Monthly Average** as specified	**Weekly Average** as specified	**Daily Maximum** as specified	**Measurement Frequency** as specified	**Sample Type** as specified
Flow *[50050]*	0.200 MGD *[03]*	---	Report (MGD) *[03]*	---	---	---	Continuous *[99/99]*	Recorder *[RC]*
Biochemical Oxygen Demand (BOD_5) *[00310]*	50 lbs/Day *[26]*	75 lbs/Day *[26]*	83 lbs/Day *[26]*	30 mg/L *[19]*	45 mg/L *[19]*	50 mg/L *[19]*	2/Month *[02/30]*	Composite *[24]*
BOD_5 % Removal (1) *[81010]*	---	---	---	85% *[23]*	---	---	1/Month *[01/30]*	Calculate *[CA]*
Total Suspended Solids (TSS) *[00530]*	50 lbs/Day *[26]*	75 lbs/Day *[26]*	83 lbs/Day *[26]*	30 mg/L *[19]*	45 mg/L *[19]*	50 mg/L *[19]*	2/Month *[02/30]*	Composite *[24]*
TSS % Removal (1) *[81011]*	---	---	---	85% *[23]*	---	---	1/Month *[01/30]*	Calculate *[CA]*
Settleable Solids *[00545]*	---	---	---	---	---	0.3 ml/L *[25]*	3/Week *[03/07]*	Grab *[GR]*
E. coli Bacteria (2) *(May 15 – September 30)* *[31633]*	---	---	---	64/100 ml (3) *[13]*	---	427/100 ml *[13]*	1/Week *[01/07]*	Grab *[GR]*
Total Residual Chlorine (4) *[50060]*	---	---	---	---	---	1.0 mg/L *[19]*	1/Day *[01/01]*	Grab *[GR]*
Mercury (5) [71900]				17.4 ng/L *[3M]*		26.2 ng/L *[3M]*	1/Year *[01/YR]*	Grab *[GR]*
pH (Std. Units) *[00400]*	---	---	---	---	---	6.0-9.0 *[12]*	1/Week *[01/01]*	Grab *[GR]*

The italicized numeric values bracketed in the table above are code numbers that Department personnel utilized to code the monthly Discharge Monitoring Reports.

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Sampling Locations:

Influent sampling for BOD_5 and TSS shall be sampled after the bar screen.

Effluent sampling shall be sampled for all parameters at the end of the chlorine contact chamber on a year-round basis.

Any change in sampling location(s) must be reviewed and approved by the Department in writing.

Sampling - Sampling and analysis must be conducted in accordance with; a) methods approved in 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services. Samples that are sent to another POTW licensed pursuant to Waste discharge licenses, 38 M.R.S.A. § 413 or laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of Maine Comprehensive and Limited Environmental Laboratory Certification Rules, 10-144 CMR 263 (last amended April 1, 2010). 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, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report.

1. **Percent removal** - The treatment facility shall maintain a minimum of 85 percent removal of both BOD_5 and TSS. The percent removal shall be based on a monthly average calculation using influent and effluent concentrations.

2. **Bacteria Limits** – E. coli bacteria limits and monitoring requirements are seasonal and apply between May 15 – September 30. The Department reserves the right to require year-round disinfection to protect the health, safety and welfare of the public.

3. **Bacteria Reporting** – The monthly average E. coli bacteria limitation is a geometric mean limitation and sample results shall be calculated and reported as such.

4. **Total Residual Chlorine** – Limitations and monitoring requirements are applicable whenever elemental chlorine or chlorine based compounds are being used to disinfect the discharge. The permittee shall utilize approved test methods that are capable of bracketing the limitation. For instances when the chlorine or chlorine-based compounds have not been used for effluent disinfection for an entire reporting period, the permittee shall report "N9"on the monthly electronic Discharge Monitoring Report (eDMR).

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

5. **Mercury** - All mercury sampling (1/Year) required to determine compliance with interim limitations established pursuant to *Interim Effluent Limitations and Controls for the Discharge of Mercury*, 06-096 CMR 519 (last amended October 6, 2001) shall be conducted in accordance with EPA's "clean sampling techniques" found in EPA Method 1669, Sampling Ambient Water For Trace Metals At EPA Water Quality Criteria Levels. All mercury analyses shall be conducted in accordance with EPA Method 1631E, Determination of Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Fluorescence Spectrometry. See **Attachment A,** *Effluent Mercury Test Report*, of this permit for the Department's form for reporting mercury test results.

   Compliance with the monthly average limitation established in Special Condition A of this permit will be based on the cumulative arithmetic mean of all mercury tests results that were conducted utilizing sampling Methods 1669 and analysis Method 1631E on file with the Department for this facility.

B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time which would impair the usages designated for the classification of the receiving waters.

2. The effluent shall not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated for the classification of the receiving waters.

3. The discharge shall not cause visible discoloration or turbidity in the receiving waters, which would impair the usages designated for the classification of the receiving waters.

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

C. TREATMENT PLANT OPERATOR

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

SPECIAL CONDITIONS

D. LIMITATIONS FOR INDUSTRIAL USERS

Pollutants introduced into the waste water collection and treatment system by a non-domestic source (user) shall not pass through or interfere with the operation of the treatment system.

E. NOTIFICATION REQUIREMENT

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

1. Any introduction of pollutants into the waste water collection and treatment system from an indirect discharger in a primary industrial category discharging process waste water; and

2. Any substantial change in the volume or character of pollutants being introduced into the waste water collection and treatment system by a source introducing pollutants into the system at the time of permit issuance. For the purposes of this section, notice regarding substantial change must include information on:

   (a) the quality and quantity of waste water introduced to the waste water collection and treatment system; and

   (b) any anticipated impact caused by the change in the quantity or quality of the waste water to be discharged from the treatment system.

F. WET WEATHER FLOW MANAGEMENT PLAN

The permittee must maintain a current written Wet Weather Flow Management Plan to direct the staff on how to operate the facility effectively during periods of high flow. The Department acknowledges that the existing collection system may deliver flows in excess of the monthly average design capacity of the treatment plant during periods of high infiltration and rainfall.

Within 90 days of completion of new and or substantial upgrades of the waste water treatment facility, the permittee must submit to the Department for review and approval, a new or revised Wet Weather Management Plan which conforms to Department guidelines for such plans. The revised plan must include operating procedures for a range of intensities, address solids handling procedures (including septic waste and other high strength wastes if applicable) and provide written operating and maintenance procedures during the events. **The permittee must review their plan annually** and record any necessary changes to keep the plan up to date.

SPECIAL CONDITIONS

G. OPERATION & MAINTENANCE (O&M) PLAN

The permittee must maintain a current written comprehensive Operation & Maintenance (O&M) Plan. The plan must provide a systematic approach by which the permittee shall at all times, properly operate and maintain all facilities and systems of transport, 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 waste water 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 EPA personnel upon request.

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

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

By December 31 of each calendar year, the permittee must provide the Department with a certification describing any of the following that have occurred since the effective date of this permit **[ICIS Code 75305]**: See **Attachment C** of the Fact Sheet of this permit for an acceptable certification form to satisfy this Special Condition.

a. Changes in the number or types of non-domestic wastes contributed directly or indirectly to the wastewater treatment works that may increase the toxicity of the discharge;

b. Changes in the operation of the treatment works that may increase the toxicity of the discharge; and

c. Changes in industrial manufacturing processes contributing wastewater to the treatment works that may increase the toxicity of the discharge.

d Changes in storm water collection or inflow/infiltration affecting the facility that may increase the toxicity of the discharge.

e. Increases in the type or volume of hauled wastes accepted by the facility.

The Department may require that annual surveillance level WET, analytical chemistry or priority pollutant testing be reinstituted if it determines that there have been changes in the character of the discharge or if annual certifications described above are not submitted.

SPECIAL CONDITIONS

I. PRACTICAL ALTERNATIVE DISCHARGE ANALYSIS

On or before December 31, 2016, the permittee shall submit to the Department for review and approval, a practical alternative discharge analysis to mitigate or eliminate the potential toxicity of the discharge of chlorine based compounds due to seasonal disinfection and the potential effects of dissolved oxygen depletion in the receiving water as a result of the use of compounds to dechlorinate the discharge. (See **Attachment D** of the Fact Sheet of this permit for guidance on conducting the practical alternative discharge analysis.)

J. MONITORING AND REPORTING

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

Department of Environmental Protection
Central Maine Regional Office
Bureau of Water Quality
Division of Water Quality Management
17 State House Station
Augusta, Maine 04333-0017

Alternatively, if you are submitting an electronic DMR (eDMR), the completed eDMR must be electronically submitted to the Department by a facility authorized DMR Signatory **not later than close of business on the 15th day of the month** following the completed reporting period. **Hard Copy documentation** submitted in support of the eDMR must be **postmarked on or before the thirteenth (13th)day of the month or hand-delivered to the Department's Regional Office such that it is received by the Department on or before the fifteenth (15th) day of the month** following the completed reporting period. **Electronic documentation** in support of the eDMR must be submitted **not later than close of business on the 15th day of the month** following the completed reporting period.

SPECIAL CONDITIONS

K. REOPENING OF PERMIT FOR MODIFICATIONS

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

L. SEVERABILITY

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

ATTACHMENT A

Maine Department of Environmental Protection
WET and Chemical Specific Data Report Form
This form is for reporting laboratory data and facility information. Official compliance reviews will be done by DEP.

Facility Name _____ MEPDES # _____ Pipe # _____ Facility Representative Signature _____
To the best of my knowledge this information is true, accurate and complete.

Licensed Flow (MGD)		Flow for Day (MGD)[1]		Flow Avg. for Month (MGD)[2]	
Acute dilution factor					
Chronic dilution factor		Date Sample Collected		Date Sample Analyzed	
Human health dilution factor					
Criteria type: M(arine) or F(resh)					

Laboratory _____ Telephone _____
Address _____
Lab Contact _____ Lab ID # _____

ERROR WARNING ! Essential facility information is missing. Please check required entries in bold above.

FRESH WATER VERSION

Please see the footnotes on the last page.

			Effluent Limits, %			Receiving Water or Ambient	Effluent Concentration (ug/L or as noted) WET Result, % Do not enter % sign	Reporting Limit Check	Possible Exceedence [7]		
	WHOLE EFFLUENT TOXICITY		Acute	Chronic					Acute	Chronic	
	Trout - Acute										
	Trout - Chronic										
	Water Flea - Acute										
	Water Flea - Chronic										
	WET CHEMISTRY										
	pH (S.U.) (9)					(8)					
	Total Organic Carbon (mg/L)					(8)					
	Total Solids (mg/L)										
	Total Suspended Solids (mg/L)										
	Alkalinity (mg/L)					(8)					
	Specific Conductance (umhos)										
	Total Hardness (mg/L)					(8)					
	Total Magnesium (mg/L)					(8)					
	Total Calcium (mg/L)					(8)					
	ANALYTICAL CHEMISTRY [3]										
	Also do these tests on the effluent with WET. Testing on the receiving water is optional	Reporting Limit	Effluent Limits, ug/L Acute[6]	Chronic[6]	Health[6]			Reporting Limit Check	Possible Exceedence [7] Acute	Chronic	Health
	TOTAL RESIDUAL CHLORINE (mg/L) (9)	0.05				NA					
	AMMONIA	NA				(8)					
M	ALUMINUM	NA				(8)					
M	ARSENIC	5				(8)					
M	CADMIUM	1				(8)					
M	CHROMIUM	10				(8)					
M	COPPER	3				(8)					
M	CYANIDE	5				(8)					
M	LEAD	3				(8)					
M	NICKEL	5				(8)					
M	SILVER	1				(8)					
M	ZINC	5				(8)					

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	PRIORITY POLLUTANTS [4]	Effluent Limits						Possible Exceedence [7]		
		Reporting Limit	Acute[5]	Chronic[5]	Health[5]		Reporting Limit Check	Acute	Chronic	Health
M	ANTIMONY	5								
M	BERYLLIUM	2								
M	MERCURY (5)	0.2								
M	SELENIUM	5								
M	THALLIUM	4								
A	2,4,6-TRICHLOROPHENOL	3								
A	2,4-DICHLOROPHENOL	5								
A	2,4-DIMETHYLPHENOL	5								
A	2,4-DINITROPHENOL	45								
A	2-CHLOROPHENOL	5								
A	2-NITROPHENOL	5								
A	4,6 DINITRO-O-CRESOL (2-Methyl-4,6-dinitrophenol)	25								
A	4-NITROPHENOL	20								
A	P-CHLORO-M-CRESOL (3-methyl-4-chlorophenol)+B80	5								
A	PENTACHLOROPHENOL	20								
A	PHENOL	5								
BN	1,2,4-TRICHLOROBENZENE	5								
BN	1,2-(O)DICHLOROBENZENE	5								
BN	1,2-DIPHENYLHYDRAZINE	10								
BN	1,3-(M)DICHLOROBENZENE	5								
BN	1,4-(P)DICHLOROBENZENE	5								
BN	2,4-DINITROTOLUENE	6								
BN	2,6-DINITROTOLUENE	5								
BN	2-CHLORONAPHTHALENE	5								
BN	3,3'-DICHLOROBENZIDINE	16.5								
BN	3,4-BENZO(B)FLUORANTHENE	5								
BN	4-BROMOPHENYLPHENYL ETHER	2								
BN	4-CHLOROPHENYL PHENYL ETHER	5								
BN	ACENAPHTHENE	5								
BN	ACENAPHTHYLENE	5								
BN	ANTHRACENE	5								
BN	BENZIDINE	45								
BN	BENZO(A)ANTHRACENE	8								
BN	BENZO(A)PYRENE	3								
BN	BENZO(G,H,I)PERYLENE	5								
BN	BENZO(K)FLUORANTHENE	3								
BN	BIS(2-CHLOROETHOXY)METHANE	5								
BN	BIS(2-CHLOROETHYL)ETHER	6								
BN	BIS(2-CHLOROISOPROPYL)ETHER	6								
BN	BIS(2-ETHYLHEXYL)PHTHALATE	3								
BN	BUTYLBENZYL PHTHALATE	5								
BN	CHRYSENE	3								
BN	DI-N-BUTYL PHTHALATE	5								
BN	DI-N-OCTYL PHTHALATE	5								
BN	DIBENZO(A,H)ANTHRACENE	5								
BN	DIETHYL PHTHALATE	5								
BN	DIMETHYL PHTHALATE	5								

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BN	FLUORANTHENE	5									
BN	FLUORENE	5									
BN	HEXACHLOROBENZENE	2									
BN	HEXACHLOROBUTADIENE	1									
BN	HEXACHLOROCYCLOPENTADIENE	10									
BN	HEXACHLOROETHANE	2									
BN	INDENO(1,2,3-CD)PYRENE	5									
BN	ISOPHORONE	5									
BN	N-NITROSODI-N-PROPYLAMINE	10									
BN	N-NITROSODIMETHYLAMINE	1									
BN	N-NITROSODIPHENYLAMINE	5									
BN	NAPHTHALENE	5									
BN	NITROBENZENE	5									
BN	PHENANTHRENE	5									
BN	PYRENE	5									
P	4,4'-DDD	0.05									
P	4,4'-DDE	0.05									
P	4,4'-DDT	0.05									
P	A-BHC	0.2									
P	A-ENDOSULFAN	0.05									
P	ALDRIN	0.15									
P	B-BHC	0.05									
P	B-ENDOSULFAN	0.05									
P	CHLORDANE	0.1									
P	D-BHC	0.05									
P	DIELDRIN	0.05									
P	ENDOSULFAN SULFATE	0.1									
P	ENDRIN	0.05									
P	ENDRIN ALDEHYDE	0.05									
P	G-BHC	0.15									
P	HEPTACHLOR	0.15									
P	HEPTACHLOR EPOXIDE	0.1									
P	PCB-1016	0.3									
P	PCB-1221	0.3									
P	PCB-1232	0.3									
P	PCB-1242	0.3									
P	PCB-1248	0.3									
P	PCB-1254	0.3									
P	PCB-1260	0.2									
P	TOXAPHENE	1									
V	1,1,1-TRICHLOROETHANE	5									
V	1,1,2,2-TETRACHLOROETHANE	7									
V	1,1,2-TRICHLOROETHANE	5									
V	1,1-DICHLOROETHANE	5									
V	1,1-DICHLOROETHYLENE (1,1-dichloroethene)	3									
V	1,2-DICHLOROETHANE	3									
V	1,2-DICHLOROPROPANE	6									
V	1,2-TRANS-DICHLOROETHYLENE (1,2-trans-dichloroethene)	5									
V	1,3-DICHLOROPROPYLENE (1,3-dichloropropene)	5									
V	2-CHLOROETHYLVINYL ETHER	20									

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V	ACROLEIN	NA									
V	ACRYLONITRILE	NA									
V	BENZENE	5									
V	BROMOFORM	5									
V	CARBON TETRACHLORIDE	5									
V	CHLOROBENZENE	6									
V	CHLORODIBROMOMETHANE	3									
V	CHLOROETHANE	5									
V	CHLOROFORM	5									
V	DICHLOROBROMOMETHANE	3									
V	ETHYLBENZENE	10									
V	METHYL BROMIDE (Bromomethane)	5									
V	METHYL CHLORIDE (Chloromethane)	5									
V	METHYLENE CHLORIDE	5									
V	TETRACHLOROETHYLENE (Perchloroethylene or Tetrachloroethene)	5									
V	TOLUENE	5									
V	TRICHLOROETHYLENE (Trichloroethene)	3									
V	VINYL CHLORIDE	5									

Notes:

(1) Flow average for day pertains to WET/PP composite sample day.

(2) Flow average for month is for month in which WET/PP sample was taken.

(3) Analytical chemistry parameters must be done as part of the WET test chemistry.

(4) Priority Pollutants should be reported in micrograms per liter (ug/L).

(5) Mercury is often reported in nanograms per liter (ng/L) by the contract laboratory, so be sure to convert to micrograms per liter on this spreadsheet.

(6) Effluent Limits are calculated based on dilution factor, background allocation (10%) and water quality reserves (15% - to allow for new or changed discharges or non-point sources).

(7) Possible Exceedence determinations are done for a single sample only on a mass basis using the actual pounds discharged. This analysis does not consider watershed wide allocations for fresh water discharges.

(8) These tests are optional for the receiving water. However, where possible samples of the receiving water should be preserved and saved for the duration of the WET test. In the event of questions about the receiving water's possible effect on the WET results, chemistry tests should then be conducted.

(9) pH and Total Residual Chlorine must be conducted at the time of sample collection. Tests for Total Residual Chlorine need be conducted only when an effluent has been chlorinated or residual chlorine is believed to be present for any other reason.

Comments:

ATTACHMENT B

Maine Department of Environmental Protection

Effluent Mercury Test Report

Name of Facility: _____ Federal Permit # ME _____

Pipe # _____

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

SAMPLE COLLECTION INFORMATION

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

Sampling Location:

Weather Conditions: _____

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

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

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

ANALYTICAL RESULT FOR EFFLUENT MERCURY

Name of Laboratory: _____

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

Please Enter Effluent Limits for your facility

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

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

CERTIFICATION

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

By: _____ Date: _____

Title: _____

PLEASE MAIL THIS FORM TO YOUR ASSIGNED INSPECTOR

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND
MAINE WASTE DISCHARGE LICENSE

FACT SHEET

March 21, 2016

PERMIT NUMBER: **ME0100056**
LICENSE NUMBER: **W001286-6B-G-R**

NAME AND MAILING ADDRESS OF APPLICANT:

TOWN OF BINGHAM
P.O. Box 652
Bingham, Maine 04920

COUNTY: **Somerset**

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

Bingham Waste Water Treatment Facility
Route 201
Bingham, Maine

RECEIVING WATER/CLASSIFICATION: **Jackson Brook/Class B**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Ernest Pooler**
(207) 672-4484
e-mail: binghamselectmen@yahoo.com

1. APPLICATION SUMMARY

a. Application: The permittee has submitted a timely and complete application to the Department for the renewal of Maine Waste Discharge License (WDL) #W001286-6B-E-R / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0100056, which was issued to the permittee on April 21, 2011, for a five-year term. The permit authorized the discharge of up to a monthly average flow of 0.200 MGD of secondary treated sanitary wastewater from a municipal treatment facility to Jackson Brook, Class B, in Bingham, Maine. See **Attachment A** of this Fact Sheet for a location map.

1. APPLICATION SUMMARY

b. Source Description: The facility receives commercial and residential sanitary wastewater from customers in the Town of Bingham. There are no significant industrial users within the collection system and there are no combined sewer overflows. The facility is not authorized to treat transported wastes at the waste water treatment facility, but has an approved septage land spreading site, which is regulated by the Department's Bureau of Remediation and Waste Management.

c. Waste Water Treatment: Sanitary wastewater received at the Bingham waste water treatment facility receives a secondary level of treatment via an activated sludge package treatment plant designed to treat a monthly average flow of 200,000 gallons per day (0.200 MGD). See **Attachment B** of this Fact Sheet for a schematic of the facility. In 1998, the plant was upgraded with the addition of a new headworks system with fine screening and grit removal and a second process unit for aeration, sedimentation, and sludge digestion. The upgrade also involved the addition of new aeration blowers, sludge pumps, and an auto dialer alarm system. The design upgrade provided for an increase in effluent flows from 0.146 MGD to the present 0.200 MGD capacity to enable Bingham to provide secondary treatment for a greater volume of its waste water. Prior to the 1998 plant upgrade, the facility only provided primary waste water treatment during some periods of extended high flows.

Waste waters generated in Bingham are conveyed to the treatment facility via a sewer collection system that is a approximately four (4) miles in length with four pump stations. Two of the four pump stations have on-site back-up power and the other two pump stations are served by a pumper truck in the event of a power failure. Waste waters from the collection system are conveyed to the facility headworks building where influent screening is performed either through a mechanical screen or a manual bar rack, followed by grit removal in an aerated grit chamber utilizing diffused air. Waste water then flows to a 68,800-gallon aeration tank. A second 66,800 gallon aeration tank is located adjacent to the first to provide additional treatment capacity during wet weather events. Waste water flow then passes to the 33,800 gallon clarifier for secondary treatment, followed by the chlorine contact tank and then is discharged to Jackson Brook. Between May 15 and September 30 of each year, the effluent is disinfected with sodium hypochlorite. Flow is measured by a continuous recording flow meter.

Sludge is wasted from the clarifier to a 112,200 gallon aerobic digester and can be then pumped to a belt filter press for thickening. Sludge can be stored in either a 20,000-gallon sludge storage tank or the facility's former package process unit. Sludge is disposed of through land spreading at a Department approved site.

The treatment plant is designed to provide for an alternate treatment process in the event that influent flows exceed the capacity of the upgraded treatment system to provide full secondary treatment. In this event, a portion of the flow is diverted to the former process unit for primary treatment following grit removal. The applicant has indicated that since the last permit application was filed upgrades were made to the south end pump station, a dome was installed on the process unit, a new pump station was added as well as a new line to Wing St.

1. APPLICATION SUMMARY (cont'd)

The remainder of the flow receives secondary treatment, as described above. The two flows are then blended prior to discharge. As with normal operational conditions, effluent limitations must still be met during these conditions. In addition to the plant upgrade, Bingham undertook removal of some inflow/infiltration (I/I) within the collection system. Additional I/I removal may be necessary in the future to enable the facility to provide secondary treatment to a greater amount of its waste water during high flow periods.

The Bingham waste water treatment facility discharges to an embayment at the confluence of Jackson Brook, a water body with a drainage area of less than ten square miles. Because of the location of the discharge, the zone of initial dilution extends into the Kennebec River. Therefore, receiving water flows and dilution factors were based on those of the Kennebec River.

2. PERMIT SUMMARY

a. Terms and conditions: This permitting action is carrying forward all the terms and conditions of the previous permitting action except;

1. This permitting action is reducing the monitoring frequency for BOD_5 & TSS from once per week (1/Week) to twice per month (2/Mon) based on statistical evaluation of the most current 52 months of data.

2. This permitting action is reducing the monitoring frequency for Settleable Solids from five times per week (5/Week) to three times per week (3/Week) based on statistical evaluation of the most current 52 months of data..

3. This permitting action is eliminating the reporting waiver for BOD5 & TSS percent removal when the monthly average influent concentration is less than 200 mg/L, based on recommendation from EPA.

b. History: The most relevant licensing/permitting actions include the following:

April 24, 1986 - The U.S. Environmental Protection Agency (EPA) issued National Pollutant Discharge Elimination System (NPDES) permit #ME0100056 to the Town of Bingham for a five-year term.

March 23, 1988 - The Department issued WDL #W001286-45-A-R to the Town of Bingham for a five-year term. The WDL approved the discharge of up to 0.146 MGD of secondary treated waste water.

February 15, 1995 – The Department issued a letter to Bingham stating that the Town was exempt from the Department's *Surface Water Toxics Control Program* (Chapter 530.5) adopted on October 12, 1994.

2. PERMIT SUMMARY (cont'd)

June 26, 1996 - The Department issued WDL #W001286-59-B-R to the Town of Bingham for a five-year term. The WDL approved the discharge of 0.146 MGD of secondary treated wastewater as well as approved a discharge increase to 0.200 MGD to follow a proposed facility expansion.

June 27, 2000 – The Department administratively modified the 6/26/96 WDL by establishing interim maximum and average concentration limitations for mercury.

January 12, 2001 - The Department received authorization from EPA to administer the NPDES program in Maine. From that point forward, the program has been referred to as the MEPDES permit program.

April 17, 2001 – The Department issued combination MEPDES permit #ME0100056/WDL #W001286-5L-C-R for a five-year term.

April 20, 2006 – The Department issued combination MEPDES permit #ME0100056/WDL #W001286-5L-D-R for a five-year term.

February 28, 2011 – The Town of Bingham submitted a timely and complete application to the Department to renew MEPDES permit #ME0100056/WDL #W001286 6B-D-R. The application was assigned WDL #W001286-6B-E-R.

April 21, 2011 – The Department issued combination MEPDES permit #ME0100056/WDL #W001286-5L-E-R for a five-year term.

February 6, 2012 – The Department initiated and issued administrative modification WDL#W001286-6B-F-M, reducing the monitoring frequency for mercury to 1/year.

January XX, 2016 – The Town of Bingham submitted a timely and complete application to the Department to renew MEPDES permit #ME0100056/WDL #W001286 6B-E-R. The application was assigned WDL #W001286-6B-G-R.

3. CONDITIONS OF PERMITS

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

4. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A., Section 467(4)(I) indicates that Jackson Brook at the point of discharge is classified as a Class B waterway. In addition, 38 M.R.S.A., Section 465(3), describes the standards for waters classified as Class B waters as follows

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

The dissolved oxygen content of Class B waters may not be less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration may not be less than 9.5 parts per million and the 1-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas. Between May 15th and September 30th, the number of Escherichia coli bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 64 per 100 milliliters or an instantaneous level of 236 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures.

Discharges to Class B waters may not cause adverse impact to aquatic life in that the receiving waters must be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

Maine law (38 M.R.S.A., §464.4(A)(1)) only allows the discharge of pollutants to waters having a drainage area of less than ten square miles, such as Jackson Brook, when they were licensed prior to January 1, 1986, and only until such time that practical alternatives exist. The Department finds that the discharge was licensed prior to January 1, 1986, and that no practical alternatives for the relocation of the outfall exist at this time. However, Special Condition I, *Practical Alternatives Discharge Analysis*, of this permit requires the permittee to conduct a practical alternative discharge analysis to mitigate or eliminate the potential toxicity of the discharge of chlorine based compounds due to seasonal disinfection and the potential effects of dissolved oxygen depletion in the receiving water as a result of the use of compounds to dechlorinate the discharge.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2012 Integrated Water Quality Monitoring and Assessment Report prepared pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, indicates that Jackson Brook is attaining Class B water quality standards in the location of the outfall.

It is noted that all fresh water bodies in Maine carry a fish advisory for mercury due to atmospheric transport and deposition. Maine law 38 M.R.S.A., §420 and Department Rule, Chapter 519, *Interim Effluent Limitations and Controls For the Discharge of Mercury*, establishes controls of mercury to surface waters of the State and United States through interim effluent limitations and implementation of pollution prevention plans. On June 27, 2000, the Department administratively modified the permittee's WDL by establishing an average concentration limit of 17.4 ng/L and a daily maximum concentration limit of 26.2 ng/L with a monitoring frequency of 2/Year based on a past demonstrated performance evaluation of four mercury test results submitted between August of 1998 and September of 1999.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

a. Flow: The monthly average flow limitation of 0.200 MGD in the previous permit is being carried forward in this permitting action and is considered to be representative of the monthly average design flow for the facility.

A review of the monthly Discharge Monitoring Report (DMR) data for the period May 2011 – September 2015 indicates the permittee has reported values as follows:

Flow (DMRs=52)

Value	Limit (MGD)	Range (MGD)	Mean (MGD)
Monthly average	0.200	0.05 – 0.22	0.114
Daily maximum	Report	0.07 – 0.31	0.173

b. Dilution Factors: Dilution factors associated with the discharge from the Bingham waste water treatment facility were derived in accordance with freshwater protocols established in Department Regulation Chapter 530, Surface Water Toxics Control Program, November 2005. With a monthly average treatment plant design flow of 0.200 MGD, dilution calculations are as follows:

Acute: 1Q10 = 508.0 cfs⇒ $\frac{(508.0 \text{ cfs})(0.6464) + 0.200 \text{ MGD}}{0.200 \text{ MGD}} = 1{,}643{:}1$

Chronic: 7Q10 = 1,280.0 cfs ⇒ $\frac{(1{,}280.0 \text{ cfs})(0.6464) + 0.200 \text{ MGD}}{0.200 \text{ MGD}} = 4{,}138{:}1$

Harmonic Mean = 2,777.0 cfs ⇒ $\frac{(2{,}777.0 \text{ cfs})(0.6464) + 0.200 \text{ MGD}}{0.200 \text{ MGD}} = 8{,}976{:}1$

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

c. BOD_5 & TSS - The previous permitting established technology based monthly and weekly average BOD_5 and TSS best practicable treatment (BPT) concentration limits of 30 mg/L and 45 mg/L respectively, that were based on secondary treatment requirements of the Clean Water Act of 1977 §301(b)(1)(B) as defined in 40 CFR 133.102 and Department rule Chapter 525(3)(III). The maximum daily BOD_5 and TSS concentration limits of 50 mg/L were based on a Department best professional judgment of BPT. All three concentration limits are being carried forward in this permitting action.

As for mass limitations, the previous permitting action established technology based monthly average, weekly average and daily maximum limitations based on a monthly average limit of 0.200 MGD that are being carried forward in this permitting action. The limitations were calculated as follows:

Monthly average: (0.200MGD)(8.34)(30 mg/L) = 50 lbs/day
Weekly average: (0.200 MGD)(8.34)(45 mg/L) = 75 lbs/day
Daily maximum: (0.200 MGD)(8.34)(50 mg/L) = 83 lbs/day

A review of the monthly Discharge Monitoring Report (DMR) data for the period May 2011 – September 2015 indicates values have been reported as follows;

BOD_5 Mass (DMRs=52)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	50	3.5 - 32	13.4
Weekly Average	75	4.9 - 54	19.9
Daily Maximum	83	5.2 - 54	20.3

BOD_5 Concentration (DMRs=52)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	7.7 - 26	14.2
Weekly Average	45	9.2 - 27	18.8
Daily Maximum	50	9.2 - 27	18.9

TSS mass (DMRs=52)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	50	1.2 – 10.5	4.5
Weekly Average	75	1.4 – 28.9	7.0
Daily Maximum	83	1.8 – 28.9	7.1

TSS concentration (DMRs=52)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	2 – 11.6	4.9
Weekly Average	45	2.1 - 17	6.7
Daily Maximum	50	2.1 - 17	6.8

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

Minimum monitoring frequency requirements in MEPDES permits are prescribed by 06-096 CMR Chapter 523§5(i). The USEPA has published guidance entitled, *Interim Guidance for Performance Based Reductions of NPDES Permit Monitoring Frequencies* (USEPA Guidance April 1996). In addition, the Department has supplemented the EPA guidance with its own guidance entitled, *Performance Based Reduction of Monitoring Frequencies - Modification of EPA Guidance Released April 1996* (Maine DEP May 22, 2014). Both documents are being utilized to evaluate the compliance history for each parameter regulated by the previous permit to determine if a reduction in the monitoring frequencies is justified.

Although EPA's 1996 Guidance recommends evaluation of the most current two years of effluent data for a parameter, the Department is considering 53 months of data (May 2011 – September 2015). A review of the mass monitoring data for BOD & TSS indicates the ratios (expressed in percent) of the long term effluent average to the monthly average limits can be calculated as 26.8% for both BOD and 9% for TSS. According to Table I of the EPA Guidance and Department Guidance, a 1/Week monitoring requirement can be reduced to 2/Month. Therefore, this permitting action is reducing the monitoring frequencies for BOD and TSS from 1/Week to 2/Month.

Should the facility experience operational problems resulting in significant non-compliance, or subsequent enforcement, then the Department reserves the right to reopen the permit and revoke the testing reductions that have been granted.

This permitting action is carrying forward a requirement of 85% removal for BOD and TSS pursuant to Department rule Chapter 525(3)(III)(a&b)(3) and eliminating the reporting waiver for BOD5 & TSS percent removal when the monthly average influent concentration is less than 200 mg/L, based on recommendation from EPA.

A review of the monthly Discharge Monitoring Report (DMR) data for the period May 2011 – September 2015 indicates no values were reported for BOD_5 & TSS percent removal.

BOD % Removal (DMRs=52)

Value	Limit (%)	Range (%)	Average (%)
Monthly Average	85	n/a(1)	n/a(1)

TSS % Removal (DMRs=52)

Value	Limit (%)	Range (%)	Average (%)
Monthly Average	85	n/a(1)	n/a(1)

(1) monthly average influent concentrations were below 200 mg/L for the entire reporting period.

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

d. Settleable Solids - The previous permitting action established a technology based daily maximum limit of 0.3 ml/L and a monitoring frequency of 5/Week. Both are being carried forward in this permitting action. The limit was based on a Department best professional judgment of BPT and the monitoring frequency is based on Department policy for facilities with a monthly average flow limitation greater than 0.1 MGD but less than 0.5 MGD.

A review of the monthly Discharge Monitoring Report (DMR) data for the period May 2011 – September 2015 indicates values have been reported as follows;

Settleable solids (DMRs=52)

Value	Limit (ml/L)	Range (ml/L)	Average (ml/L)
Daily Maximum	0.3	0.01 – 0.20	0.08

e. *E. coli* bacteria: Maine's Water Classification Program found at 38 M.R.S.A. Article 4-A states that Escherichia coli bacteria (*E. Coli*) standards apply to freshwaters. Based on Maine law, 38 M.R.S.A., §465(3)(B) which relates to Class B waterways, the previous permitting action established a seasonal water quality based monthly average *E. coli* bacteria limits of 64 colonies per 100 milliliters (ml)(geometric mean) and a daily maximum (instantaneous) level of 427 colonies per 100 ml from May 15 – September 30. These limits and the monitoring frequency of once per week are being carried forward from the previous permitting action.

During calendar year 2005, Maine's Legislature approved a new daily maximum water quality standard of 236 colonies/100 ml for water bodies designated as Class B and Class C. The Department has determined that end-of-pipe limitations for the instantaneous concentration standard of 427 colonies/100 mL will be achieved through available dilution of the effluent with the receiving waters and need not be revised in MEPDES permits for facilities with adequate dilution such as is the case with the permittee's facility. The bacteria limits established in this permitting action are seasonal and apply between May 15 and September 30 of each year. The Department reserves the right to impose year-round bacteria limits, if necessary, to protect the health, safety and welfare of the public.

A review of the monthly Discharge Monitoring Report (DMR) data for the period May 2011 – September 2015 indicates values have been reported as follows;

***E. coli* bacteria (DMRs=22)**

Value	Limit (col/100 ml)	Range (col/100 ml)	Mean (col/100 ml)
Monthly Average	64	2 - 150	36
Daily Maximum	427	2 - 197	63

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

f. Total Residual Chlorine: Limits on total residual chlorine (TRC) are specified to ensure attainment of the in-stream water quality criteria for levels of chlorine and that BPT technology is utilized to abate the discharge of chlorine. Permits issued by this Department impose the more stringent of the calculated water quality based or BPT based limits. The previous permitting action established a daily maximum limit of 1.0 mg/L. With dilution factors as determined above, water quality based thresholds for TRC may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A & C Dilution Factors	Calculated Acute Limit	Calculated Chronic Limit
0.019 mg/L	0.011 mg/L	1,643:1 (A) 4,138:1 (C)	31.2 mg/L	45.5 mg/L

The Department's BPT limitation of 1.0 mg/l is more stringent than the calculated water quality based limit. Therefore, the BPT limitation of 1.0 mg/l is being imposed from May 15 – September 30 to correspond with seasonal disinfection requirements. This permitting action carries forward the TRC monitoring frequency of once per day.

A review of the monthly Discharge Monitoring Report (DMR) data for the period May 2011 – September 2015 indicates values have been reported as follows;

Total residual chlorine (DMRs=24)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Daily Maximum	1.0	0.83 – 0.97	0.91

g. pH – The previous permitting action established a technology based pH range limitation of 6.0 – 9.0 standard units based on Department rule Chapter 525(3)(III)(c).The limit range is considered BPT. The monitoring frequency requirement of 1/Week is being carried forward from the previous permitting action. A review of the DMR data for the period May 2011 – September 2015- indicates the pH range limitation has never been exceeded.

h. Mercury: Pursuant to *Certain deposits and discharges prohibited*, Maine law, 38 M.R.S.A. § 420 and *Waste discharge licenses*, 38 M.R.S.A. § 413 and *Interim Effluent Limitations and Controls for the Discharge of Mercury*, 06-096 CMR 519 (last amended October 6, 2001), the Department issued a *Notice of Interim Limits for the Discharge of Mercury* to the permittee thereby administratively modifying W002726-58-B-R by establishing interim monthly average and daily maximum effluent concentration limits of 17.4 parts per trillion (ppt) and 26.2 ppt, respectively, and a minimum monitoring frequency requirement of 2 tests per year for mercury. The interim mercury limits were scheduled to expire on October 1, 2001. However, effective June 15, 2001, the Maine Legislature enacted Maine law, 38 M.R.S.A. §413, sub-§11 specifying that interim mercury limits and monitoring requirements remain in effect.

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

On February 6, 2012, the Department issued a minor revision of the permit by reducing the monitoring frequency to 1/Year. The mercury effluent limitations and monitoring requirement of 1/Year are being incorporated into Special Condition A, *Effluent Limitations And Monitoring Requirements*, of this permit.

Maine law 38 M.R.S.A., §420 1-B,(B)(1) states that a facility is not in violation of the AWQC for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to section 413, subsection 11. A review of the Department's database for the period May 2011 – September 2015 (Fact Sheet **Attachment E**) indicates mercury test results reported have ranged from 1.0 ppt to 1.60 ppt with an arithmetic mean (number of DMRs = 5) of 1.18 ppt.

i. Total Phosphorus: Waste Discharge License Conditions, 06-096 CMR 523 specifies that water quality based limits are necessary when it has been determined that a discharge has a reasonable potential to cause or contribute to an excursion above any State water quality standard including State narrative criteria.[1] In addition, 06-096 CMR 523 specifies that water quality based limits may be based upon criterion derived from a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents.[2]

USEPA's Quality Criteria for Water 1986 (Gold Book) puts forth an in-stream phosphorus concentration goal of less than 0.100 mg/L in streams or other flowing waters not discharging directly to lakes or impoundments, to prevent nuisance algal growth. The use of the 0.100 mg/L Gold Book goal is consistent with the requirements of 06-096 CMR 523 noted above for use in a reasonable potential (RP) calculation.

Based on the above rationale, the Department has chosen to utilize the Gold Book goal of 0.100 mg/L. It is the Department's intent to continue to make determinations of actual attainment or impairment based upon environmental response indicators from specific water bodies. The use of the Gold Book goal of 0.100 mg/L for use in the RP calculation will enable the Department to establish water quality based limits in a manner that is reasonable and that appropriately establishes the potential for impairment, while providing an opportunity to acquire environmental response indicator data, numeric nutrient indicator data, and facility data as needed to refine the establishment of site-specific water quality-based limits for phosphorus. Therefore, this permit may be reopened during the term of the permit to modify any reasonable potential calculation, phosphorus limits, or monitoring requirements based on site-specific data.

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

For the background concentration in the Kennebec River just upstream of the permittee's discharge, the permittee collected one test result during summer of 2014 and the result was 0.004 mg/L which is being utilized in reasonable potential calculations in this Fact Sheet. To get more current values of the total phosphorus being discharged from the permittee's facility, the Department requested the permittee and other major dischargers on the Kennebec River conduct effluent testing during the summer of 2014. The permittee did not submit any test result, therefore the Department is a utilizing a default concentration of 2.2 mg/L which is being utilized in reasonable potential calculations in this Fact Sheet.

Using the following calculation and criteria, the discharge from the permittee's facility does not exhibit a reasonable potential to exceed the EPA's Gold Book ambient water quality goal of 0.100 mg/L for phosphorus or the Department's 06-096 CMR 583 draft criteria of 0.030 mg/L.

$$Cr = \frac{QeCe + QsCs}{Qr}$$

Qe = effluent flow i.e. facility design flow	=	0.2 MGD
Ce = effluent pollutant concentration	=	2.2 mg/L
Qs = 7Q10 flow of receiving water	=	827 MGD
Cs = upstream concentration	=	0.004 mg/L
Qr = receiving water flow	=	827.2 MGD
Cr = receiving water concentration		

$$\underline{Cr = (0.2 \text{ MGD} \times 2.2 \text{ mg/L}) + (827 \text{ MGD} \times 0.004 \text{ mg/L}) = 0.004 \text{ mg/L}}$$
$$827.2 \text{ MGD}$$

Cr = 0.004 mg/L < 0.100 mg/L	☐	No Reasonable Potential
Cr = 0.004 mg/L < 0.030 mg/L	☐	No Reasonable Potential

Therefore, no end-of-pipe limitations or monitoring requirements for total phosphorus are being established in this permit.

j. Whole Effluent Toxicity (WET) and priority pollutant testing - Maine law, 38 M.R.S.A., Sections 414-A and 420, prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. Department Rules, 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, and Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants* set forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

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

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

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

Level I – chronic dilution factor of <20:1.
Level II – chronic dilution factor of ≥20:1 but <100:1.
Level III – chronic dilution factor ≥100:1 but <500:1 or >500:1 and Q ≥1.0 MGD
Level IV – chronic dilution >500:1 and Q ≤1.0 MGD
Department rule Chapter 530 (2)(D) specifies the criteria to be used in determining the minimum monitoring frequency requirements for WET, priority pollutant and analytical chemistry testing. Based on the Chapter 530 criteria, the permittee's facility falls into the Level IV frequency category as the facility has a chronic dilution factor ≥500:1 and discharges ≤1.0 MGD. Chapter 530(2)(D)(1) specifies that routine surveillance and screening level testing requirements are as follows:

Screening level testing

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

Surveillance level testing

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

Chapter 530(2)(D)(1) states:

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

(a) The discharger's permit application or information available to the Department indicate that toxic compounds may be present in toxic amounts; or

(b) Previous testing conducted by the discharger or similar dischargers indicates that toxic compounds may be present in toxic amounts.

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

Based on the information available to date, the Department has made a best professional judgment determination to waive surveillance and screening level testing for the Town of Bingham. Special Condition H, *06-096 CMR 530(D)(2)(4) Statement For Reduced/Waived Toxics Testing*, of this permit requires the permittee to submit an annual certification indicating the discharge from the facility has not change changed substantially since the previous permitting action. However, should there be a substantial change in the characteristics of the discharge in the future, the Department may reopen this permit pursuant to Special Condition K, *Reopening Of Permit For Modifications*, to incorporate the applicable WET, priority pollutant and or analytical testing requirements cited above.

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the waterbody to meet standards for Class B classification. Special Condition I, *Practical Alternatives Discharge Analysis*, of this permit requires the permittee to conduct a practical alternative discharge analysis to mitigate or eliminate the potential toxicity of the discharge of chlorine based compounds due to seasonal disinfection and the potential effects of dissolved oxygen depletion in the receiving water as a result of the use of compounds to dechlorinate the discharge.

8. PUBLIC COMMENTS

Public notice of this application was made in the Morning Sentinel newspaper on or about January 26, 2016. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

9. DEPARTMENT CONTACTS

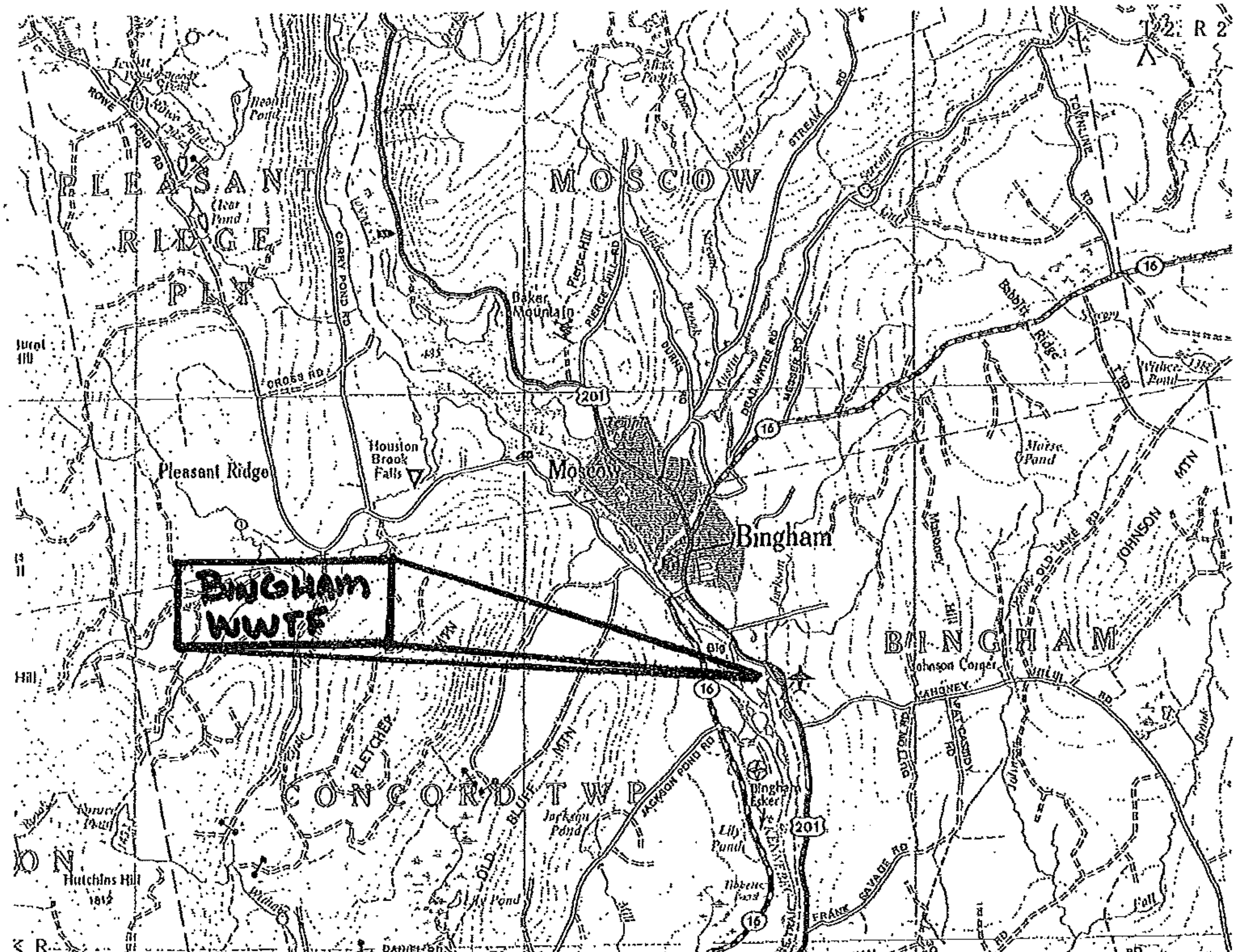
Additional information concerning this permitting action may be obtained from and written comments should be sent to:

Irene Saumur
Division of Water Quality Management
Bureau of Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone (207) 485-2404
E-mail: irene.saumur@maine.gov

10. RESPONSE TO COMMENTS

During the period of February 19, 2016 through March 21, 2016, the Department solicited comments on the proposed draft Maine Pollutant Discharge Elimination System/Waste Discharge License to be issued to the Town of Bingham, Maine. The Department did not receive substantive comments during the public comment period. Therefore, a Response to Comments section was not prepared.

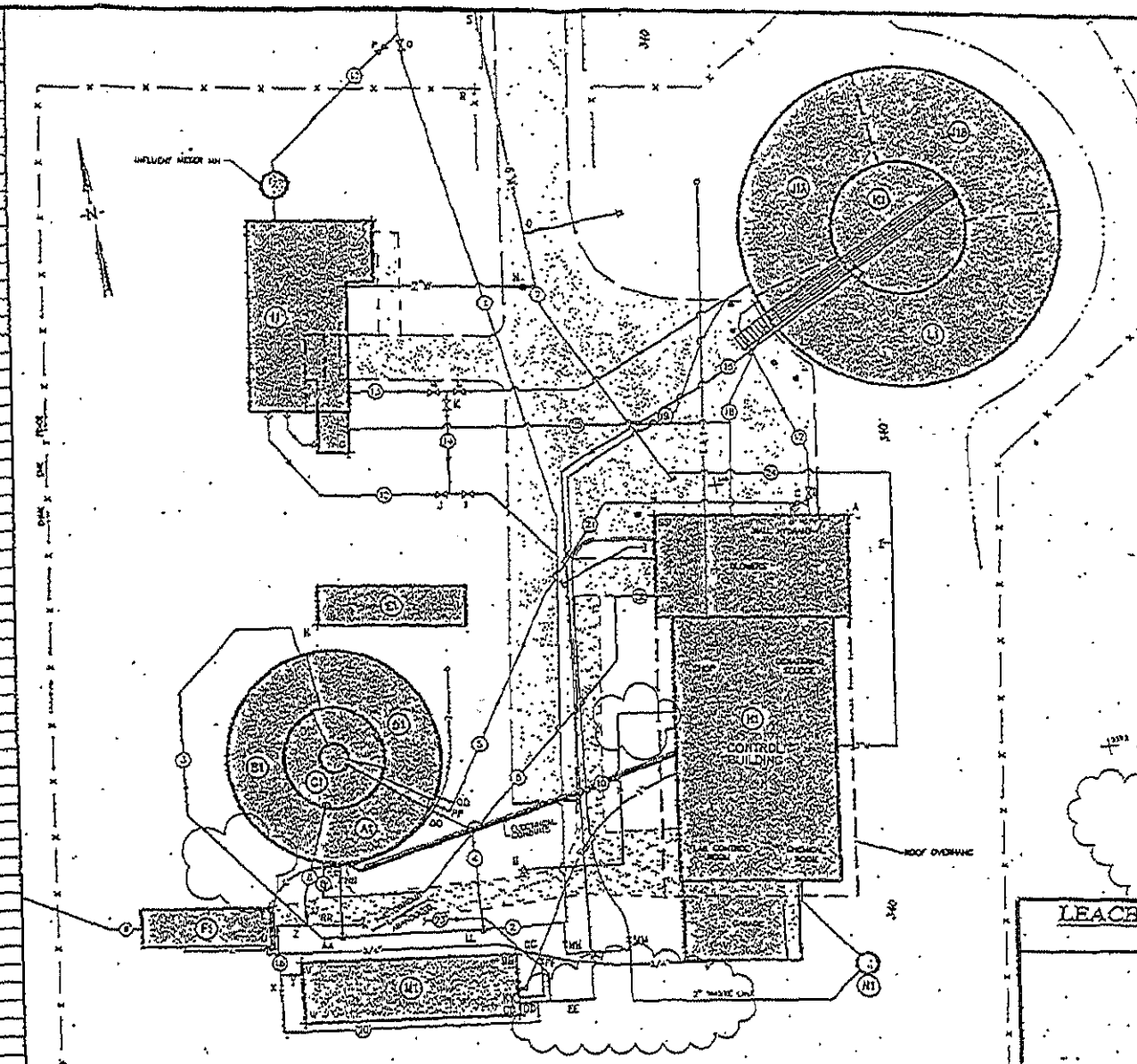
ATTACHMENT A



BINGHAM WWTF
PLEASANT RIDGE PLT
MOSCOW
BINGHAM
CONCORD TWP
EMBDEN
SOLON
Pleasant Ridge
Houston Brook Falls
Moscow
Bingham
Baker Mountain
Johnson Corner
Bingham Esker
Jackson Pond
Lily Pond
Savage Hill
Hutchins Hill
Hackett Hill
Whipple Hill
French Hill
Arnolds Landing
Solon
Parkman Hill
Dunbar Hill
Black Hill
Fletcher Hill
North New Portland
Embden
SKOWHEGAN
Hancock Pond
Baker Pond
Morse Pond
Wilbur Pond
Clear Pond
JOHNSON MTN
Babbitt Ridge
OLD BLUFF MTN
FLETCHER MTN
KENNEBEC VALLEY MULTIUSE TRAIL
CARRY POND RD
CROSS RD
JACKSON POND RD
DANIEL RD
SAVAGE HILL RD
CONCORD RD
MOLTON RD
BERRY RD
SHORE RD
DUNBAR HILL RD
EMBDEN POND RD
ACROSS TOWN RD
LAKE RD
FRENCH HILL RD
GRANT RD
HOLE IN THE WALL RD
BRIGHTON RD
DRURY RD
FRANK SAVAGE RD
MAHONEY HILL RD
OLD LAKE RD
TOWNLINE RD
ROWE POND RD
McCARTY RD
PARKMAN HILL RD
201
201A
16
8
T2 R2
© DeLorme
70°00'00"
70.0000°
Continue on Map 20
1 ½ 0 1 2 3 4 5 Miles

ATTACHMENT B

LOCATION	VALVE I.D. & LOCATION	DIMENSION BETWEEN LOCATIONS
A	C	2'-1"
B	C	1'-1"
A	D	3'-3"
B	D	3'-11"
E	O	23'-7"
G	G	54'-6"
E	N	35'-4"
G	N	45'-8"
G	M	19'-8"
F	M	19'-1"
F	L	22'-2"
G	L	23'-10"
G	K	20'-7"
F	K	22'-7"
C	J	18'-11"
H	J	34'-4"
G	I	23'-3"
H	I	37'-10"
R	P	15'-10"
S	P	19'-11"
R	O	16'-0"
S	O	16'-3"
T	MM	12'-2"
V	MM	5'-3"
T	Z	6'-1"
U	Z	6'-3"
T	JJ	7'-0"
U	JJ	5'-6"
V	Y	2'-11"
W	Y	3'-5"
V	X	6'-2"
W	X	5'-8"
BB	GG	2'-4"
BB	FF	4'-11"
CC	FF	10'-11"
KK	GG	1'-7"
CC	KK	2'-1"
CC	EE	10'-1"
BB	EE	13'-6"
BB	HH	9'-4"
B	HH	16'-2"
II	LL	14'-5"
BB	LL	9'-4"
BB	MM	21'-6"
II	MM	23'-8"
T	NN	14'-3"
V	NN	17'-6"
II	OO	18'-3"
BB	OO	22'-10"
II	PP	18'-0"
BB	PP	30'-2"
II	QQ	18'-10"
BB	QQ	31'-8"
T	RR	11'-0"
V	RR	8'-6"
Y	II	46'-1"
BB	II	16'-3"
A	B	9'-2"
SS	B	28'-1"



PIPING LEGEND

1. 8" INFLUENT FORCE MAIN
2. 6" GRAVITY TO PROCESS UNIT #1—NODE A
3. 6" GRAVITY TO PROCESS UNIT #1—NODE B
4. 6" GRAVITY TO PROCESS UNIT #1—NODE C
5. 6" SLUDGE RECIRCULATION
6. 4" PROCESS UNIT #1 EFFLUENT
7. 2" POTABLE WATER SUPPLY
8. 4" AIR LINE TO PROCESS UNIT #1
9. 8" PLANT EFFLUENT
10. ELECTRICAL TO PROCESS UNIT
11. 8" FORCE MAIN
12. 8" EXCESS FLOW
13. 6" INFLUENT TO PROCESS UNIT #2
14. 6" PROCESS UNIT #2 RETURN
15. 8" CLARIFIER EFFLUENT
16. 10" CHLORINE CONTACT TANK #2 EFFLUENT
17. 6" SLUDGE WITHDRAWAL LINE
18. 4" AIR LINE TO PROCESS UNIT #2
19. 3" WASTE LINE TO PROCESS UNIT #2
20. 10" CHLORINE CONTACT TANK #2 RETURN
21. 6" SLUDGE RECIRCULATION LINE
22. 2" AIR LINE TO PROCESS UNIT #1
23. 6" PD #1 TO DCT #2
24. 2" POTABLE WATER
25. 3" AIR LINE TO GRIT CHAMBER

PROCESS LEGEND

A1. PROCESS UNIT #1—ANOXIC ZONE
B1. PROCESS UNIT #1—AERATION
C1. PROCESS UNIT #1—CLARIFIER
D1. PROCESS UNIT #1—AEROBIC DIGESTER
E1. SLUDGE STORAGE TANK (COMMON FOR BOTH UNITS)
F1. CHLORINE CONTACT TANK #1
H1. CONTROL BUILDING
J1. HEADWORKS BUILDING
A2. PROCESS UNIT #2—AERATION ZONE
B2. PROCESS UNIT #2—CLARIFIER
C2. PROCESS UNIT #2—AEROBIC DIGESTER
D2. CHLORINE CONTACT TANK #2
K1. PUMP STATION

LEACH ENGINEERING CONSULTANTS, P.A.
LYNDONVILLE, VERMONT

YARD PIPING
PLAN & SCHEDULE

WASTEWATER TREATMENT
FACILITY

BINGHAM, MAINE

DRAWN: COM	CHK'D BY: T.L.T.	APP'D BY: G.A.L.
SCALE: 1" = 20'	DATE: 9-10-99	SHEET:

ATTACHMENT C

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHAPTER 530.2(D)(4) CERTIFICATION

MEPDES#_____Facility Name_____

Since the effective date of your permit, have there been;		NO	YES Describe in comments section
1	Increases in the number, types, and flows of industrial, commercial, or domestic discharges to the facility that in the judgment of the Department may cause the receiving water to become toxic?	☐	☐
2	Changes in the condition or operations of the facility that may increase the toxicity of the discharge?	☐	☐
3	Changes in storm water collection or inflow/infiltration affecting the facility that may increase the toxicity of the discharge?	☐	☐
4	Increases in the type or volume of hauled wastes accepted by the facility?	☐	☐

COMMENTS:

Name (printed): _____

Signature:_____Date: _____

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

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

Scheduled Toxicity Testing for the next calendar year

Test Conducted	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
WET Testing	☐	☐	☐	☐
Priority Pollutant Testing	☐	☐	☐	☐
Analytical Chemistry	☐	☐	☐	☐
Other toxic parameters [1]	☐	☐	☐	☐

Please place an "X" in each of the boxes that apply to when you will be conducting any one of the three test types during the next calendar year.

[1] This only applies to parameters where testing is required at a rate less frequently than quarterly.

ATTACHMENT D

DEPLW0451

Practical Alternative Discharge Analysis

Record of Decision

Facility: **Date:**
Permit #:
Project Mngr.:
Staff involved in decision:

REASON ALTERNATIVE IS NEEDED:

DESCRIPTION OF ALTERNATIVE PROPOSED:

FINAL DECISION:

Alternative Proposed is Practical: _____ **Alternative Proposed is Not Practical:** _____

CRITERIA FOR DECISION: (record a decision of yes or no for each criterion and a summary of the reason for the decision. Refer to the Practical Alternative Discharge Decision Guidance for information on each criterion)

Environmentally Feasible:

Technically Feasible:

Legal:

Within Power of Permittee to Accomplish:

Economically Feasible:

Other Issues:

Practical Alternative Discharge Analysis

Decision Guidance

CITATIONS:
The following citations apply:

38 MRSA, Sect. 464.4(A)(1) Waters having a drainage area of less than 10 square miles
38 MRSA, Sect. 465.2(C) Class A waters.
38 MRSA, Sect. 465-A.1(C) Class GPA waters

These 3 sections state that discharges into these waters licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist. Because of the concise nature of this statement, the intent of the practical alternative discharge study requirement appears to be:

Investigate the complete elimination of the discharge regardless of its impact or nonimpact on the receiving water. If a practical alternative exists, the discharge must be eliminated even if BPT and receiving water quality standards are met. Alternatives can include closed loop systems with no discharges, land application, changing outfalls to larger nearby receiving waters, POTWs, etc.

If there is no practical alternative, the discharger still must meet the relicensing requirement of having to meet BPT, and if necessary to protect water quality, water quality limits.

DEFINITION:
It should be noted there is little if any legal guidance on how to determine if a proposed alternative is "practical". There is no definition of "practical" in Black's Law Dictionary, and the AG's office found no useful guidance. In order to determine if an alternative is "practical" the following definition of "practical" from Webster's Dictionary can be referenced:

Practical: 4. Capable of being used or put into effect: USEFUL; 5. Designed to serve a useful purpose; 7. Having or displaying good judgement: SENSIBLE.
Practical refers to something that is sensible and worthwhile.

CRITERIA FOR DECISION:
The following criteria should be considered when determining if an alternative is practical:

Environmentally Feasible: Will the alternative produce an environmental impact that will be, or may be, worse than the impact of the current discharge?

Technically Feasible: Is the technology to implement the alternative available to the applicant? Does the technology have a high likelyhood of successs?

Legal: Is the alternative proposed allowable under state and federal law?

Within Power of Permittee to Accomplish: Is the alternative within the power of the applicant to accomplish? I.e., is land required that the applicant does not own? Are local approvals required that can not be obtained?

Economically Feasible: Is the cost reasonable given the applicant's resources? A given cost may be reasonable for a large corporation, state, or federal facility but not reasonable for a small privately held facility. In determining if a cost is reasonable, formulas used by the Department's enforcement section may be useful.

Other Issues: Are there other site specific issues that may make the alternative impractical such as impacts on water levels, water rights issues, etc?

ATTACHMENT E

MERCURY REPORT - Clean Test Only

Data Date Range: 19/Nov/2010-19/Nov/2015

Facility: BINGHAM **Permit Number:** ME0100056

Max (ug/l): 0.0027 **Average (ug/l):** 0.0015

Sample Date	Result (ng/l)	Lsthan	Clean
06/23/2011	1.00	Y	T
10/27/2011	1.60	N	T
08/20/2012	1.30	N	T
06/17/2013	1.00	Y	T
10/27/2014	1.02	N	T

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

CONTENTS

A. GENERAL PROVISIONS

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

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

(a) They are not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. OPERATION AND MAINTENACE OF FACILITIES

1. General facility requirements.

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

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

(b) The permittee shall at all times maintain in good working order and operate at maximum efficiency all waste water collection, treatment and/or control facilities.

(c) All necessary waste treatment facilities will be installed and operational prior to the discharge of any wastewaters.

(d) Final plans and specifications must be submitted to the Department for review prior to the construction or modification of any treatment facilities.

(e) The permittee shall install flow measuring facilities of a design approved by the Department.

(f) The permittee must provide an outfall of a design approved by the Department which is placed in the receiving waters in such a manner that the maximum mixing and dispersion of the wastewaters will be achieved as rapidly as possible.

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

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

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

5. Bypasses.

(a) Definitions.

(i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

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

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

(c) Notice.

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

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

(d) Prohibition of bypass.

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

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
(C) The permittee submitted notices as required under paragraph (c) of this section.

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

6. Upsets.

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

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

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

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;
(ii) The permitted facility was at the time being properly operated; and
(iii) The permittee submitted notice of the upset as required in paragraph D(1)(f) , below. (24 hour notice).
(iv) The permittee complied with any remedial measures required under paragraph B(4).

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

C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.

(c) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;
(ii) The individual(s) who performed the sampling or measurements;
(iii) The date(s) analyses were performed;
(iv) The individual(s) who performed the analyses;
(v) The analytical techniques or methods used; and
(vi) The results of such analyses.

(d) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in the permit.

(e) State law provides that any person who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule license, permit approval or decision is subject to the penalties set forth in 38 MRSA, §349.

D. REPORTING REQUIREMENTS

1. Reporting requirements.

(a) Planned changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

(ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D(4).

(iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

(b) Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. This permit is not transferable to any person except upon application to and approval of the Department pursuant to 38 MRSA, § 344 and Chapters 2 and 522.

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices.

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.

(iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.

(e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(f) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance

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

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

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit.
(B) Any upset which exceeds any effluent limitation in the permit.
(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

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

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

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

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

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

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

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

(i) One hundred micrograms per liter (100 ug/l);
(ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
(iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

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

(i) Five hundred micrograms per liter (500 ug/l);
(ii) One milligram per liter (1 mg/l) for antimony;
(iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
(iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

5. Publicly owned treatment works.

(a) All POTWs must provide adequate notice to the Department of the following:

(i) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA or Chapter 528 if it were directly discharging those pollutants.
(ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
(iii) For purposes of this paragraph, adequate notice shall include information on (A) the quality and quantity of effluent introduced into the POTW, and (B) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(b) When the effluent discharged by a POTW for a period of three consecutive months exceeds 80 percent of the permitted flow, the permittee shall submit to the Department a projection of loadings up to the time when the design capacity of the treatment facility will be reached, and a program for maintaining satisfactory treatment levels consistent with approved water quality management plans.

E. OTHER REQUIREMENTS

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

(a) For municipal sources. During power failure, all wastewaters which are normally treated shall receive a minimum of primary treatment and disinfection. Unless otherwise approved, alternate power supplies shall be provided for pumping stations and treatment facilities. Alternate power supplies shall be on-site generating units or an outside power source which is separate and independent from sources used for normal operation of the wastewater facilities.

(b) For industrial and commercial sources. The permittee shall either maintain an alternative power source sufficient to operate the wastewater pumping and treatment facilities or halt, reduce or otherwise control production and or all discharges upon reduction or loss of power to the wastewater pumping or treatment facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012 **Contact: (207) 287-2811**

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

Other Considerations in Appealing a Decision to the Board

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

What to Expect Once You File a Timely Appeal with the Board

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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