



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANETT T. MILLS
GOVERNOR

GERALD D. REID
COMMISSIONER

April 11, 2019

Mr. Benjamin Pearson, PE
City of Portland
212 Canco Road, Suite B
Portland, ME. 04103
bnp@portlandmaine.gov

*Sent via electronic mail
Delivery confirmation requested*

**RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0101435
Maine Waste Discharge License (WDL) Application #W008010-5T-G-R
Finalized MEPDES Permit**

Dear Mr. Pearson:

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

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

If you have any questions regarding the matter, please feel free to call me at 287-7823.

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

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

Sincerely,

Cindy L. Dionne
Division of Water Quality Management
Bureau of Water Quality
ph: 207-287-7823

Enclosure

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

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

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

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

City of Portland
April 11, 2019
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cc: Barry Mower, DEP
Pamela Parker, DEP
Stuart Rose, DEP
Michael Riley, DEP
Lori Mitchell, DEP
Ellen Weitzler, USEPA
Alex Rosenberg, USEPA
Sandy Mojica, USEPA
Solanch Pastrana-Del Valle, USEPA
Marelyn Vega, USEPA
Richard Carvalho, USEPA
Shelley Pulco, USEPA
Ivy Frignoca, FOCB



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: November 2018

Contact: (207) 287-2452

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

INFORMATION APPEAL PAPERWORK MUST CONTAIN

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

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

The Board will formally acknowledge receipt of an appeal, and will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see 38 M.R.S. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

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

ADDITIONAL INFORMATION

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

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.



DEPARTMENT ORDER

IN THE MATTER OF

CITY OF PORTLAND)	MAINE POLLUTANT DISCHARGE
PORTLAND, CUMBERLAND COUNTY, MAINE)	ELIMINATION SYSTEM PERMIT
COMBINED SEWER OVERFLOWS)	AND
#ME0101435)	WASTE DISCHARGE LICENSE
#W008010-5T-G-R APPROVAL)	RENEWAL

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

APPLICATION SUMMARY

On December 12, 2018, the Department accepted as complete for processing, a renewal application from the City for Waste Discharge License (WDL) #W008010-5T-F-R/Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0101435, which was issued on March 4, 2014 for a five-year term. The 3/4/14 MEPDES permit authorized the City to discharge an unspecified quantity of untreated sanitary wastewater from Combined Sewer Overflow (CSO) Outfalls 006, 013, 014, 017, 018 and 019 to Back Cove, Class SC; from CSOs 024 and 026 to Portland Harbor, Class SC; from CSO 039 to the Nasons Brook, Class C; and from CSOs 042 and 043 to Capisic Brook, Class C in Portland, Maine. CSO Outfall #043 was permanently closed during the term of the 2014 permit.

PERMIT SUMMARY

This permitting action carries forward the authorization to discharge untreated sanitary and storm related wastewater during wet weather events from the ten CSOs. This permit eliminates Special Conditions B. *Asset Management Program (AMP)* and C. *Repair and Replacement Reserve Account* from the previous permit as the permittee has fulfilled the requirements for those conditions.

Special Condition A(4) of the permit establishes a schedule the City must adhere to, to mitigate or eliminate discharges from the CSOs during the term of this permit. Special Condition A also requires the City to submit an annual *CSO Activity and Volumes* report, conduct block testing or flow monitoring of all CSOs, submit an annual *CSO Progress Report*, and submit an annual report of work done on the Nine Minimum Controls.

CONCLUSIONS

Based on the findings summarized in the attached Fact Sheet dated April 11, 2019, 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, *Classification of Maine waters*, 38 M.R.S. §464(4)(F), will be met, in that:
 - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - (b) Where high quality waters of the State constitute an outstanding 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 water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment as defined in *Conditions of licenses*, 38 M.R.S. § 414-A(1)(D).

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ACTION

THEREFORE, the Department APPROVES the above noted application of the CITY OF PORTLAND to discharge an unspecified quantity of untreated sanitary wastewater and storm water during wet weather events via CSOs 006, 013, 014, 017, 018 and 019 to Back Cove, Class SC; from CSOs 024 and 026 to Portland Harbor, Class SC; from CSO 039 to the Nasons Brook, Class C; and from CSO 042 to Capisic Brook, Class C in Portland, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

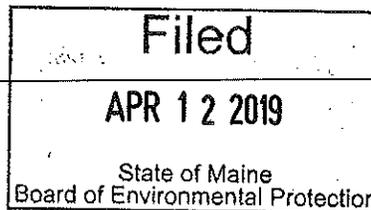
1. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit becomes effective upon the date of signature below and expires at midnight five (5) years after that date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of this permit and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. *Maine Administrative Procedure Act*, 5 M.R.S. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 C.M.R. 2(21)(A) (amended June 9, 2018).

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 11 DAY OF April 2019.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
For GERALD D. REID, Commissioner



Date filed with Board of Environmental Protection _____

Date of initial receipt of application: December 12, 2018

Date of application acceptance: December 12, 2018

This Order prepared by Cindy L. Dionne, BUREAU OF WATER QUALITY

SPECIAL CONDITIONS

A. CONDITIONS FOR COMBINED SEWER OVERFLOWS (CSOs)

1. Pursuant to *Combined Sewer Overflow Abatement*, 06-096 Chapter 570 (effective February 5, 2000), the permittee is authorized to discharge from the following CSOs (storm water and sanitary wastewater) subject to the conditions and requirements herein.

Regulator Location (RL)	RL #	Owner	Outfall #	Owner	CSO Outfall Location	Receiving Water & Class ()
Front @ Johansen Street	6	City	006	City	Front @ Johansen Street	Back Cove (SC)
Belmont Street	13A	City	013	City	Baxter Blvd. near Belmont St.	Back Cove (SC)
Forest Ave. @ Ashmont St.	13B	City				
Ashmont St. @ Forest Ave.	13C	City				
Forest Ave. @ Coyles Gulley (GLB ¹)	14	City	014	City	Baxter Blvd. near Belmont St.	Back Cove (SC)
Forest Ave. @ Dartmouth St.	15A	City	015	PWD	Baxter Blvd. @ Dartmouth St.	Back Cove (SC)
Dartmouth Ave. @ Baxter Blvd.	15B	PWD				
Forest Ave. @ Bedford St.	16A	City	016	PWD	Baxter Blvd. @ near Preble St.	Back Cove (SC)
Bank St.	16B	PWD				
Preble St. @ Marginal way	17	City	017	City	Preble St.	Back Cove (SC)
Franklin Art. @ Marginal Way	18	City	018	City	I-295 exit near Franklin Arterial	Back Cove (SC)
Diamond @ MW (Fox @ Anderson) ²	19	City	019	City	I-295 exit near Diamond St.	Back Cove (SC)
Franklin Art. @ Fore St.	24A	City	024	City	Commercial St. at Franklin St.	Portland Harbor (SC)
Franklin Art. @ Middle St.	24B	City				
Maple St. @ Commercial St.	26	City	026	City	Commercial St. near Maple St.	Portland Harbor (SC)
Rowe St. (Hillcrest)	39	City	039	City	Rowe St.	Nasons Brook (C)
Warren Avenue 60"	42	City	042	City	Warren Ave. near Newcombe St.	Capisic Brook (C)

¹ Located in front of Great Lost Bear (GLB) restaurant (540 Forest Avenue)

² Diamond @Marginal Way (Fox @ Anderson)

City owned and maintained Regulators #15A and #16A discharge through Outfalls #015 (PWD #019) and #016 (PWD #021) respectively. Outfalls #015 (PWD #019) and #016 (PWD #021) are permitted by the Department to the Portland Water District (PWD). Regulators #15B and #16 B are owned and maintained by the PWD.

SPECIAL CONDITIONS

A. CONDITIONS FOR CSOs (cont'd)

2. Prohibited Discharges

- a) The discharge of dry weather flows is prohibited. All such discharges must be reported to the Department in accordance with Standard Condition D (1) of this permit.
- b) No discharge must occur as a result of mechanical failure, improper design or inadequate operation or maintenance.
- c) No discharges must occur at flow rates below the maximum design capacity of the wastewater treatment facility, pumping stations or sewerage system.

3. Narrative Effluent Limitations

- a. The permittee must not discharge effluent that contains a visible oil sheen, foam or floating solids at any time which would impair the uses designated for the classification of the receiving waters.
- b. The permittee must not discharge effluent that contains materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the uses designated for the classification of the receiving waters.
- c. The permittee must not discharge effluent that causes visible discoloration or turbidity in the receiving waters or otherwise impairs the uses designated for the classification of the receiving waters.
- d. The permittee must not discharge effluent that lowers the quality of any classified body of water below such classification, or lowers the existing quality of any body of water if the existing quality is higher than the classification.

4. CSO Master Plan [see 06-096 CMR 570(2) and (3)]

The permittee must implement CSO control projects in accordance with an approved CSO Master Plan and abatement schedule. The CSO Master Plan entitled Combined Sewer Overflow Abatement Study Master Plan-City of Portland, Maine, dated December 1993 (revised in January 1997) and the abatement project schedule was approved on June 25, 1997. The abatement schedule was modified in the document entitled *City of Portland – Request to Modify the CSO Master Plan Schedule*, dated April 8, 2008 and was approved on April 15, 2008. An update to the Master Plan entitled *Combined Sewer Overflow Long Term Control Plan, Tier III* with abatement schedule was reviewed and subsequently approved on April 19, 2013. The deadline for the next CSO Master Plan Update, originally 12/31/2018, has been revised to coincide with the completion of the City of Portland Integrated Plan, on or before April 30, 2020. The permittee must comply with the following abatement schedule dates:

On or before December 31, 2021, the permittee must complete construction of the Back Cove South Storage Facility. [ICIS code 09199]

SPECIAL CONDITIONS

A. CONDITIONS FOR CSOs (cont'd)

On or before April 30, 2020, the permittee must submit a CSO Master Plan Update evaluating success of abatement projects to date, and the need to proceed with additional CSO Abatement projects. Please note deadline for submission of CSO Master Plan shall match date for completion of City of Portland's Integrated Plan. *[ICIS code CS010]*

On or before December 31, 2020, the permittee must complete construction of the Back Cove West Storage Conduit. *[ICIS code 09199]*

5. Nine Minimum Controls (NMC) [see 06-096 CMR 570(5)]

The permittee must implement and follow the Nine Minimum Control documentation as approved by USEPA on May 29, 1997. Work performed on the Nine Minimum Controls during the year must be included in the annual *CSO Progress Report* (see below).

6. CSO Compliance Monitoring Program [see 06-096 CMR 570(6)]

The permittee must conduct block testing or flow monitoring according to an approved *Compliance Monitoring Program* on all CSO points, as part of the CSO Master Plan. Annual flow volumes for all CSO locations must be determined by actual flow monitoring, or by estimation using a model such as USEPA's Storm Water Management Model (SWMM).

Results must be submitted annually as part of the annual *CSO Progress Report* (see below), and must include annual precipitation, CSO volumes (actual or estimated) and any block test data required. Any abnormalities during CSO monitoring must also be reported. The results must be reported on the Department form "CSO Activity and Volumes" (**Attachment A** of this permit) or similar format and submitted electronically to the Department.

CSO control projects that have been completed must be monitored for volume and frequency of overflow to determine the effectiveness of the project toward CSO abatement. This requirement must not apply to those areas where complete separation has been completed and CSO outfalls have been eliminated.

7. Addition of New Wastewater [see 06-096 CMR 570(8)]

06-096 CMR 570(8) lists requirements relating to any proposed addition of wastewater to the combined sewer system. Documentation of the new wastewater additions to the system and associated mitigating measures must be included in the annual *CSO Progress Report* (see below). Reports must contain the volumes and characteristics of the wastewater added or authorized for addition and descriptions of the sewer system improvements and estimated effectiveness.

SPECIAL CONDITIONS

A. CONDITIONS FOR CSOs (cont'd)

8. Annual CSO Progress Reports [see 06-096 CMR 570(7)]

By March 1 of each year the permittee must submit *CSO Progress Reports* covering the previous calendar year (January 1 to December 31). The CSO Progress Report must include, but is not necessarily limited to, the following topics as further described in 06-096 CMR 570: CSO abatement projects, schedule comparison, progress on inflow sources, costs, flow monitoring results, CSO activity and volumes, nine minimum controls update, sewer extensions, and new commercial or industrial flows.

The CSO Progress Reports must be completed on a standard form entitled "Annual CSO Progress Report", furnished by the Department, and submitted in electronic form, if possible, to the following address:

CSO Coordinator
Department of Environmental Protection
Bureau of Water Quality
Division of Water Quality Management, Compliance and Technical Assistance
17 State House Station
Augusta, Maine 04333
e-mail: CSOCoordinator@maine.gov

9. Signs

If not already installed, the permittee must install and maintain an identification sign at each CSO location as notification to the public that intermittent discharges of untreated sanitary wastewater occur. The sign must be located at or near the outfall and be easily readable by the public. The sign must be a minimum of 12" x 18" in size with white lettering against a green background and must contain the following information:

**CITY OF PORTLAND
WET WEATHER
SEWAGE DISCHARGE
CSO # AND NAME**

SPECIAL CONDITIONS

A. CONDITIONS FOR CSOs (cont'd)

10. Definitions

For the purposes of this permitting action, the following terms are defined as follows:

- a. Combined Sewer Overflow - a discharge of excess waste water from a municipal or quasi-municipal sewerage system that conveys both sanitary wastes and storm water in a single pipe system and that is in direct response to a storm event or snowmelt.
- b. Dry Weather Flows - flow in a sewerage system that occurs as a result of non-storm events or are caused solely by ground water infiltration.
- c. Wet Weather Flows - flow in a sewerage system that occurs as a direct result of a storm event, or snowmelt in combination with dry weather flows.

B. AUTHORIZED DISCHARGES

The permittee is authorized to discharge untreated sanitary wastewater and storm water during wet weather events only in accordance with the terms and conditions of this permit and only from Outfalls 006, 013, 014, 017, 018, 019, 024, 026, 039, and 042. Discharges of wastewater from any other point source(s) are not authorized under this permit, and must be reported in accordance with Standard Condition D(1)(f), *Twenty-four hour reporting* of this permit.

C. REOPENING OF PERMIT FOR MODIFICATION

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

D. SEVERABILITY

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

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

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MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

A. GENERAL PROVISIONS

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

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

(a) They are not

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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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.

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- (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.

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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.

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D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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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).

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- (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.

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

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

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

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

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

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

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

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

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

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

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

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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.

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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.

ATTACHMENT A

**MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
CSO ACTIVITY AND VOLUMES**

MUNICIPALITY OR DISTRICT				MEPDES / NPDES PERMIT NO.							
REPORTING YEAR				SIGNED BY:							
YEARLY TOTAL PRECIPITATION				INCHES				DATE:			
CSO EVENT NO.	START DATE OF STORM	PRECIP. DATA		FLOW DATA (GALLONS PER DAY) OR BLOCK ACTIVITY("1")							
		TOTAL INCHES	MAX. HR. INCHES	LOCATION:	LOCATION:	LOCATION:	LOCATION:	LOCATION:	LOCATION:	EVENT OVERFLOW	EVENT DURATION
				NUMBER:	NUMBER:	NUMBER:	NUMBER:	NUMBER:	NUMBER:	GALLONS	HRS
1											
2											
3											
4											
5											
6											
7											
8											
9											
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20											
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23											
24											
25											
TOTALS											

Note 1: Flow data should be listed as gallons per day. Storms lasting more than one day should show total flow for each day.

Note 2: Block activity should be shown as a "1" if the block floated away.

**MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
MAINE WASTE DISCHARGE LICENSE**

Final FACT SHEET

DATE: **April 11, 2019**

PERMIT NUMBER: **#ME0101435**

WASTE DISCHARGE LICENSE: **#W008010-5T-G-R**

NAME AND ADDRESS OF APPLICANT:
**CITY OF PORTLAND
DEPARTMENT OF PUBLIC WORKS
212 CANCO ROAD, SUITE B
PORTLAND, MAINE 04103**

COUNTY: **CUMBERLAND**

NAME AND ADDRESS WHERE DISCHARGE(S) OCCUR(S):
**VARIOUS LOCATIONS LISTED ON PAGE 7
PORTLAND, MAINE 04101**

RECEIVING WATER CLASSIFICATION: **BACK COVE/CLASS SC
PORTLAND HARBOR/CLASS SC
CAPISIC BROOK/CLASS C
NASONS BROOK/CLASS C**

COGNIZANT OFFICIAL CONTACT INFORMATION:
**MR. BENJAMIN PEARSON, P.E.
207-874-8843
BNP@portlandmaine.gov**

1. APPLICATION SUMMARY

- a. Application: On December 12, 2018, the Department of Environmental Protection (Department) accepted as complete for processing, a renewal application from the City of Portland (City/permittee) for Waste Discharge License (WDL) #W008010-5T-F-R/Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0101435, which was issued on March 4, 2014 for a five-year term. The 3/4/14 MEPDES permit authorized the City to discharge an unspecified quantity of untreated sanitary wastewater from Combined Sewer Overflow (CSO) Outfalls 006, 013, 014, 017, 018 and 019 to Back Cove, Class SC; from CSOs 024 and 026 to Portland Harbor, Class SC; from CSO 039 to the Nasons Brook, Class C; and from CSOs 042 and 043 to Capisic Brook, Class C in Portland, Maine. CSO Outfall #043 was permanently closed during the term of the 2014 permit.

2. PERMIT SUMMARY

This permitting action carries forward the authorization to discharge untreated sanitary and storm related wastewater during wet weather events from the ten CSOs. Special Condition A(4) of the permit establishes a schedule the City must adhere to, to mitigate or eliminate discharges from the CSOs during the term of this permit. Special Condition A also requires the City to submit an annual *CSO Activity and Volumes* report, conduct block testing or flow monitoring of all CSOs, submit an annual *CSO Progress Report*, and submit an annual report of work done on the Nine Minimum Controls.

a. History: The most current relevant regulatory actions include:

January 1991 – The City and the Portland Water District (District) entered into an Administrative Consent Agreement and Enforcement order with the Maine Board of Environmental Protection because of the CSO discharges and the fact that the City did not have a current WDL for its CSOs. The Consent Agreement set forth deadlines for the development and implementation of a long term program for the evaluation and abatement of both the City and District CSO discharges. The City was also required to submit a WDL application to the Department.

February 1991 – The City submitted an application for a WDL for its CSO discharges.

December 1993 – The City and the District submitted a *CSO Abatement Master Plan* prepared by CH2M-Hill. Approval for this plan was withheld pending more detailed project descriptions as well as design and construction schedules for the first two or three years of implementation.

January 1997 – A *Five Year CSO Abatement Plan and Schedule* for the years 1997 through 2001, prepared by Deluca-Hoffman Associates, Inc., was submitted to the Department. This plan, along with the original 1993 CSO Master Plan, was approved by both the U.S. Environmental Protection Agency (USEPA) and the Department on June 25, 1997.

July 3, 1997 – The District, on behalf of the City, submitted the *Portland 1997 CSO Monitoring Plan* which was approved by the Department.

September 29, 1997 – The Department issued Order #W008010-68-B-N/#ME0101435 certifying that the discharge proposed in a pending National Pollutant Discharge Elimination System (NPDES) permit was in compliance with applicable sections of the Federal Water Pollution Control Act.

September 30, 1997 – The USEPA issued the NPDES permit #ME0101435 which expired on March 31, 2002.

October 7, 1997 – The Department issued Waste Discharge License #W008010-58-A-R authorizing the discharge of combined storm water and untreated sanitary wastewater from 13 CSOs.

January 12, 2001 – The Department received authorization from the USEPA to administer the NPDES permitting program in Maine, excluding areas of special interest to Maine Indian Tribes. From this point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) program, and MEPDES permit #ME0101435 has been utilized for this facility. On March 26, 2011, the USEPA authorized the Department to administer the MEPDES program in Indian territories of the Penobscot Nation and Passamaquoddy Tribe.

2. PERMIT SUMMARY (cont'd)

February 10, 2003 – The Department approved the *City of Portland Tier II Combined Sewer Overflow Abatement 8-Year Implementation Plan*, dated February 5, 2003.

July 7, 2003 – The Department issued combination MEPDES permit #ME0101435/WDL #W008010-5T-C-R for a five-year term.

July 3, 2008 – The City submitted a complete application to the Department to renew the MEPDES permit/WDL for the discharge from 12 CSOs.

October 24, 2008 – The Department issued combination MEPDES permit #ME0101435/WDL #W008010-5T-D-R for a five year term.

May 4, 2011 – The City submitted an application to modify the 10/24/08 permit to incorporate Special Conditions regarding compliance with the 2010 Clean Water State Revolving Fund (CWSRF) Requirements (Asset Management Principal Forgiveness).

May 5, 2011 – The Department issued a minor revision to the 10/24/08 permit to include conditions regarding the CWSRF requirements.

June 20, 2011 – The City submitted a timely and complete Wastewater Facility Energy Audit as required in Special Condition G of the May 5, 2001 permit.

July 2011 – The City and Portland Water District submitted a final draft CSO Long Term Control Plan update with abatement schedule prepared by CDM Smith and covering a fifteen year period with an estimated cost of \$170 million dollars. The plan was reviewed; comments made and final plan resubmitted January 25, 2013. Approval was granted by the Department on April 19, 2013.

March 4, 2014 – The Department issued combination MEPDES permit #ME0101435/WDL #W008010-5T-F-R for a five-year term.

December 12, 2018 – The City submitted a timely and complete General Application to the Department for renewal of the March 4, 2014 MEPDES permit. The application was accepted for processing on the same day, and was assigned WDL #W008010-5T-G-R / MEPDES #ME0101435.

- b. Source Description: During wet weather events caused by precipitation, snow melt, inflow and infiltration (I & I) into the collection system from roof drains, cellar drains, combined storm sewers, and/or leaking collection systems, the flow in the sewer system may be greater than what the treatment plant can handle and therefore water may back up in the sewer lines causing the activation of CSOs. Also the wet weather flows may exceed the capacity of certain sewer lines and therefore cause CSO activation. The City has a total of 30 CSOs, 20 of which are owned and maintained by the Portland Water District (District). CSOs not covered in this permitting action are addressed in other Department permitting actions.

2. PERMIT SUMMARY (cont'd)

In December 1993, CH2M-Hill of Boston, Massachusetts, submitted a *Combined Sewer Overflow Abatement Study Master Plan (CSO Master Plan)* to the Department on behalf of the City. The CSO Master Plan contained a 15-year implementation schedule for the abatement of CSO activity associated with 39 CSOs discharging to 6 receiving waters. The *CSO Master Plan* sought to eliminate 33 out of 39 CSOs, reduce the annual CSO volume from 720 million gallons (MG) to 87 MG based on the 1966 precipitation record and eliminate the discharge of CSOs to sensitive receiving waters which include Capisic Brook, the Presumpscot River Estuary and the Fore River. In January 1997, DeLuca-Hoffman Associates, Inc. of South Portland, Maine submitted a *Five Year CSO Abatement Plan and Schedule* to the Department on behalf of the City. The *Five Year CSO Abatement Plan and Schedule* identified 43 projects (12 flood control projects and 31 CSO abatement projects) and provided a detailed plan of project scheduling and cost budgeting for the 5-year period of 1997-2001. The flood control projects are classified as prerequisite work to CSO abatement projects and typically take the form of culvert enlargements, channel improvements and storm water management facilities. These flood control projects do not generally reduce CSO activity; however the CSO abatement projects cannot be performed until the flood control projects are implemented.

At the adoption of the *CSO Master Plan* in 1993, the City had 42 CSO outfalls of which 39 were classified as active. The City now has 30 CSO's, 20 of which are owned and maintained by the Portland Water District and the other 10 are owned and maintained by the City of Portland.

The applicant's renewal application states "In the past 5 years the City of Portland has completed several separation projects including the State Street Sewer Separation project, Woodford Street and Corner Separation project, Anderson Street Sewer Separation Project, Deering Street Sewer Separation Project, Morse Street Sewer Separation Project, and Moody-Wilson Street Sewer Separation Project. An additional project's (Madison-Walnut-Washington) sewer separation portion will be complete by years' end. CSO 43 was closed after observation of hydraulic capacity."

Tables A1 and A2 on pages 5 and 6, respectively, list all the CSO regulator locations and CSO locations in Portland, Maine. Table B on page 7 lists the CSO regulator locations and CSOs owned and maintained by the City of Portland.

Attachment A of this Fact Sheet is a map prepared by the City showing the locations of the CSOs.

2. PERMIT SUMMARY (cont'd)

Table A1 City of Portland and Portland Water District CSOs

Regulator location (RL)	RL #	Owner	Outfall #	PWD Outfall # ()	Owner	Receiving Water	Year Closed
Maranda St.	1A	PWD	001	(027)	PWD	Casco Bay	2001
Olympia St.	1B	PWD	001	(028)	PWD	Casco bay	2001
Arcadia St.	2	PWD	002	(022)	PWD	Presumpscot Est.	
Berwick St.	3	PWD	003	(023)	PWD	Casco bay	2001
Tukey's Bridge Syphon	4	PWD	004	(026)	PWD	Casco bay	
Randal St.	5	PWD	005	(010)	PWD	Back cove	
Front @ Johansen St.	6	City	006	---	City	Back Cove	
Ocean Ave.	7	PWD	007	(011)	PWD	Back Cove	
Clifton St.	8	PWD	008	(020)	PWD	Back Cove	
George St.	9	PWD	009	(012)	PWD	Back Cove	
Austin St.	10A	PWD	010	(014)	PWD	Back Cove	
Mackworth St.	10B	PWD	010	(014)	PWD	Back Cove	
Parson's St.	10C	PWD	010	(014)	PWD	Back Cove	2019
Chenery St.	11A	PWD	011	(017)	PWD	Back Cove	
Codman St.	11B	PWD	011	(017)	PWD	Back Cove	
Vannah Ave.	12	PWD	012	(018)	PWD	Back Cove	
Belmont St.	13A	City	013	---	City	Back Cove	
Forest Ave. @ Ashmont St.	13B	City	013	---	City	Back Cove	
Ashmont St. @ Forest Ave.	13C	City	013	---	City	Back Cove	
Forest Ave. @ Coyles Gully	14	City	014	---	City	Back Cove	
Forest Ave. @ Dartmouth St.	15A	City	015	(019)	PWD	Back Cove	
Dartmouth Ave. @ Baxter Blvd.	15B	PWD	015	(019)	PWD	Back Cove	
Forest Ave. @ Bedford St.	16A	City	016	(021)	PWD	Back Cove	
Bank St.	16B	PWD	016	(021)	PWD	Back Cove	
Preble St. @ Marginal Way (M W)	17	City	017	---	City	Back Cove	
Franklin Arterial @ M W	18	City	018	---	City	Back Cove	
Diamond @ M W (Fox @ Anderson)	19	City	019	---	City	Back Cove	
Northeast P.S.	20	PWD	020	(024)	PWD	Casco bay	

*The estimated annual flow based on the storm water management model (SWMM)

~~PWD~~ – Portland Water District – All shaded areas are facilities owned and maintained by the Portland Water district.

~~Closed CSOs~~ – All facility descriptions with lines drawn through them are closed CSOs

2. PERMIT SUMMARY (cont'd)

Table A2 City of Portland and Portland Water District CSOs (cont'd)

Regulator Location (RL)	RL #.	Owner	Outfall #	PWD Outfall # ()	Owner	Receiving Water	Year Closed
Quebec St.	21	PWD	021	(002)	PWD		1995
Sewage treatment plant	22		022	---			NA
India St.	23	PWD	023	(003)	PWD	Portland Harbor	
Franklin Arterial @ Fore St.	24A	City	024	---	City	Portland Harbor	
Franklin Arterial @ Middle St.	24B	City		---			
Long wharf	25	PWD	025	(004)	PWD	Portland Harbor	
Maple St. @ Commercial St.	26	City	026	---	City	Portland Harbor	
Clark St.	27	PWD	027	(005)	PWD	Portland Harbor	
Emery St.	28	PWD	028	(006)	PWD	Portland Harbor	
West Commercial St.	29	PWD	029	(007)	PWD	Fore River	
St. John St.	30	PWD	030	(008)	PWD	Fore River	
Congress St. @ Sewall St.	31	PWD	031	---	PWD	Fore River	1993
Thompson Pt. P.S.	32	PWD	032	(028)	PWD	Fore River	
Fore River P.S.	33	PWD	033	(009)	PWD	Fore River	
Brewer St.	34	PWD	034	(025)	PWD	Fore River	2012
Stroudwater Road	35A	PWD	035	(029)	PWD	Fore River	2017
Capisc Pond Dam Overflow	36	City	036	---	City	Capisc Brook	12/21/10
Mayer road	37	City	037	---	City	Capisc Brook	1993
Brighton Ave @ Capisc St.	38	City	038	---	City	Capisc Brook	1998
Rowe St. (Hillcrest)	39	City	039	---	City	Nasons Brook	
Sagamore Village Overflow	40	City	040	---	City	Capisc Brook	1993
Helm Ave.	41	City	041	---	City	Capisc Brook	1996
Warren Ave. 60"	42	City	042	---	City	Capisc Brook	
Warren Ave. 24"	43	City	043	---	City	Capisc Brook	2016

*The estimated annual flow based on the storm water management model (SWMM)

PWD – Portland Water District – All shaded areas are facilities owned and maintained by the Portland Water district.

Closed CSOs – All facility descriptions with lines drawn through them are closed CSOs

2. PERMIT SUMMARY (cont'd)

Table B City of Portland CSOs

Regulator Location (RL)	RL #	Owner	Outfall #	Owner	Outfall Location	Outfall Pipe dia. unless specified	Flap Gate	Receiving Water & Class ()
Front @ Johansen	6	City	006	City	Front @ Johansen Street	48"	No	Back Cove (SC)
Belmont Street	13A	City	013	City	Baxter Blvd. near Belmont St.	36"	No	Back Cove (SC)
Forest Ave. @ Ashmont St.	13B	City						
Ashmont St. @ Forest Ave.	13C	City						
Forest Ave. @ Coyles Gulley (GLB)	14	City	014	City	Baxter Blvd. near Belmont St.	30"	No	Back Cove (SC)
Preble St. @ Marginal Way (M W)	17	City	017	City	Preble St.	2 – 60"	Yes	Back Cove (SC)
Franklin Art. @ M W	18	City	018	City	I-295 exit near Franklin Arterial	72"	Yes	Back Cove (SC)
Diamond @ M W (Fox @ Anderson)	19	City	019	City	I-295 exit near Diamond St.	66"	Yes	Back Cove (SC)
Franklin Art. @ Fore St.	24A	City	024	City	Commercial St. at Franklin St.	54"	No	Portland Harbor (SC)
Franklin Art. @ Middle St.	24B	City						
Maple St. @ Commercial St.	26	City	026	City	Commercial St. near Maple St.	24"	No	Portland Harbor (SC)
Rowe St. (Hillcrest)	39	City	039	City	Rowe St.	30"	No	Nasons Brook (C)
Warren Avenue 60"	42	City	042	City	Warren Ave. near Newcombe St.	60"	No	Capisic Brook (C)

3. CONDITIONS OF PERMIT

Conditions of licenses, 38 M.R.S. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require the application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, *Certain deposits and discharges prohibited*, 38 M.R.S. § 420 and Department rule *Surface Water Toxics Control Program*, 06-096 C.M.R. 530 (effective March 21, 2012), require the regulation of toxic substances so as not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 C.M.R. 584 (effective July 29, 2012), and ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

4. RECEIVING WATER QUALITY STANDARDS

Classifications of minor drainages, 38 M.R.S., § 468(1)(B)(1) classifies Capisic Brook and Nasons Brook at the point of discharge as Class C water ways. *Standards for classification of fresh surface waters*, 38 M.R.S. § 465(4) describes the standards for Class C.

Classifications of estuarine and marine waters, 38 M.R.S. § 469(1)(E)(2), classifies Back Cove and Portland Harbor as SC waters. *Standards for classification of estuarine and marine waters*, 38 M.R.S. § 465-B(3) describes the standards for Class SC waters.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2016 Integrated Water Quality Monitoring and Assessment Report (Report), prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists both Nasons Brook and Capisic Brook as tributaries to the Fore River and listed under Category 4-A: "Rivers and Streams with Impaired Use Other than Mercury, TMDL Completed" for Benthic-Macroinvertebrate Bioassessments (Streams) and Periphyton (Aufwuchs). Nasons Brook (ME0106000105_607R11_01) is also listed under Category 4-A for Dissolved Oxygen. Capisic Brook (ME0106000105_610R01) is also listed under Category 4-A for Habitat Assessment (Streams). The comment under Nasons Brook states "1/3/2017: AKA 'Nason's Brook. 9/27/2012: Aquatic life use impairments now Category 4-A due to approval of Statewide % Impervious Cove TMDL. 2/6/2012: New 5-A listing for aquatic life use due to dissolved oxygen impairment (based on 2008 TMDL-DO study data) and for algae (periphyton; non-attainment of biocriteria in 2003 and 2004 at biomonitoring station S-638). AU name changed from 'Nasons Brook (Portland) south of Rt. 25, trib to Fore River' to 'Nasons Brook (Portland), trib to Fore River'. This unit was split into two due to differences in statutory class; the Portland segment is Class C, the new upstream Westbrook segment (AU ME0106000105_607R11_02) is Class B." The comment for the Capisic Brook segment states: "9/22/2014: Capisic Brook Watershed Restoration Project underway (May 2014-2016). Sampling for macroinvertebrates and algae planned for 2015. 9/27/2012: Aquatic life use impairments now Category 4-A due to approval of Statewide % Impervious Cover TMDL. 3/20/2012: New 5-A listing in 2012 cycle for Aquatic Life Use due to algae (periphyton) non-attainment results (2003 and 2004, biomonitoring station 257). Mapping corrected, resulting in increase in segment size (from 3.02 to 4.1 miles). City of Portland's Draft Capisic Brook Watershed Management Plan was approved by DEP in October 2011."

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

Capisic Brook Wetland Complex (ME0106000105_610R01_W023) and Nasons Brook Wetland Complex (ME0106000105_607R11_01_W127) are both also listed under Category 4-A: "Wetland Habitat with Impaired Use, TMDL Completed" for Benthic-Macroinvertebrate Bioassessments (Wetlands). The comment field states that they are listed as "9/27/2012: Aquatic life use impairments now Category 4-A due to approval of Statewide % Impervious Cover TMDL."

The Report lists all of Maine's fresh waters as, "Category 4-A: Waters Impaired by Atmospheric Deposition of Mercury." Impairment in this context refers to a statewide fish consumption advisory due to elevated levels of mercury in some fish tissues. The Report states, "All freshwaters are listed in Category 4A (TMDL Completed) due to USEPA approval of a Regional Mercury TMDL." Maine has a fish consumption advisory for fish taken from all freshwaters due to mercury. Many fish from any given waters do not exceed the action level for mercury. However, because it is impossible for someone consuming a fish to know whether the mercury level exceeds the action level, the Maine Department of Health and Human Services decided to establish a statewide advisory for all freshwater fish that recommends limits on consumption.

The City of Portland (City of Portland and Portland Water District facilities) is listed under Category 4-A(b): "Estuarine and Marine Waters with Impaired Use – TMDL Completed (Bacteria from Combined Sewer Overflows)."

Marine waters adjacent to the City of Portland are also listed under Category 5-B-1(a): "Estuarine and Marine Waters Impaired for Bacteria Only – TMDL Required" for elevated fecal indicators.

The Fore River Estuary is listed under Category 5-A: "Estuarine and Marine Waters Impaired by Pollutants Other Than Those Listed in 5-B Through 5-D – TMDL Required" for marine life and toxics. The comment field states: "Also listed in Category 4-A9b) and 5-B-1(a) for elevated fecals. Further data collection required. Sources: municipal discharges, CSOs, stormwater, hazardous waste sites, nonpoint sources."

The estuarine and marine waters of Portland's Back Cove and Portland Harbor are listed as, "Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants" for legacy pollutants in lobster tomalley. The Report states that bacteria may impair either recreational uses (swimming) or shellfish consumption uses, or both. Shellfish consumption impairments only apply to waters naturally capable of supporting the shellfish-harvesting use (*i.e.*, waters of high enough salinity for propagation of shellfish.) On September 28, 2009, the USEPA approved the Department's Maine Statewide Bacteria TMDL (Total Maximum Daily Loads), dated August 2009, for fresh, marine and estuarine waters impaired by bacteria.

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

No effluent limitations have been established in this permitting action for the CSO discharges. Best practicable treatment (BPT) of CSO discharges includes control through best management practices and abatement of the discharge as specified in Chapter 570 of Department Rules (Combined Sewer Overflow). The permittee is required to measure and report annually CSO flow volumes and CSO discharge events.

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

The CSO discharge of untreated sewage has a negative impact on the water quality of the receiving waters, however the CSO Master Plan includes projects and management strategies to eliminate CSO discharges. (See Special Condition A(4) of this permit.)

The Department acknowledges that total elimination of the CSOs is a costly long term project. With continued implementation of the Nine Minimum Control measures and the continued implementation of the CSO Master Plan and associated best management practices, the Department anticipates a reduction in CSO events and an improvement in water quality. Therefore, 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 water body to meet standards for Class C and Class SC classifications.

8. PUBLIC COMMENTS

Public notice of this application was made in the *Portland Press Herald* newspaper on or about December 9, 2018. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits must have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 C.M.R. 522 (effective January 12, 2001).

9. RESPONSE TO COMMENTS

During the period of February 28, 2019, through the issuance date of the permit/license, the Department solicited comments on the proposed draft permit/license to be issued for the discharge(s) from the City of Portland CSOs. The Department received written comments from the Friends of Casco Bay (FOCB) that did not result in substantive changes(s) in the terms and conditions of the permit. However, the Department has included the comments and our response, herein, as a courtesy.

Comments received by Friends of Casco Bay received on March 25, 2019 are as follows:

The proposed draft includes the following provisions:

On or before December 31, 2021, the permittee must complete construction of the Back Cove South Storage Facility.

On or before April 30, 2020, the permittee must submit a CSO Master Plan contemporaneously with the City's Integrated Plan.

On or before December 31, 2020, the permittee must complete construction of the Back Cove West Storage Conduit.

The City's Tier III CSO Implementation Plan has the project design to completion of construction phase of Back Cove South extending from 2014-2017 and Back Cove West from 2015 to early 2019. See Tier III plan, Figure 11-1.²

9. RESPONSE TO COMMENTS (cont'd)

In 2016, we met with City Manager Jon Jennings, who expressed his frustration at the costs of the storage projects. The City then delayed construction to redesign and conduct a triple bottom line economic analysis of Back Cove South. We supported this effort and believe the design reviewed under the triple bottom line analysis, as presented to us at a stakeholder meeting about two years ago, will foster better improvements of water quality.

Why must construction be delayed further? It is our understanding that the new design and economic analysis has long been complete. The permit and fact sheet contain no justification for the delay.

Furthermore there is no justification for extending completion of construction for Back Cove South from early 2019 to December 2020.

We recognize it is impossible to meet the deadlines set in the Tier III implementation plan, as they have all passed. While some delay is inevitable, it is not ideal. We respectfully request that construction of the storage facilities commence and proceed on the fastest possible schedule, and that no further delays in construction be considered or permitted. We also request that the fact sheet articulate why the Department has authorized any delay and reference the IP process.

Department Response - Portland's Tier III CSO Abatement Plan, adopted in 2013, transitioned the City from the "separation only" CSO abatement strategy pursued under Tier I and part of Tier II, to one which considered storage as a primary element of the plan. The central tenets of the new strategy were to capture the first 1" of any storm using storage, treating the captured flow to secondary level by bleeding the stored flow back into the system as conveyance capacity and treatment capacity became available, and finally to adopt an Integrated Planning approach to wastewater and stormwater infrastructure needs. The revised abatement strategy was projected to reduce overall costs of the program significantly.

Tier III was divided into three five-year phases. Phase A (2014-2019), which focused on improving water quality in the Back Cove, consisted of constructing the Back Cove South and Back Cove West storage facilities.

Phase B (2020-2024) focuses on providing storage near the Fore Street Pump Station, while Phase C (2025-2029) will involve wet weather upgrades to the East End Wastewater Treatment Facility and the Northeast Pump Station. In total, Tier 3 recommended \$169M be spent over a 15-year period to abate CSO discharges city wide.

9. RESPONSE TO COMMENTS (cont'd)

Phase A - Back Cove South Drainage Area - As shown in the Tier III CSO Master Plan on Figure 9-2, the Back Cove South drainage area covers a large portion of the downtown peninsula and generates between 40% and 45% of the annual citywide CSO discharge. In particular, CSO's 017 and 018, which discharge to the Back Cove, are two of the highest volume discharge points in the City. In 2018, these two CSO's discharged approximately 138 million gallons, or 48.7% of Portland's overall discharge. The original plan also included eliminating discharges at CSO 020 -Northeast Pump Station, which totaled 14.5 million gallons in 2018. Overall, the Back Cove South storage was predicted to reduce annual CSO discharge to the Back Cove from 150 MG to 18 MG. As such, the BCSST project is the single most impactful CSO abatement project in the State, when measured by CSO volume reduction.

Back Cove South Storage - To determine the best configuration for the Back Cove South Storage Facility, the Tier III CSO Master Plan included an alternatives analysis which identified a 5,300 foot, 3.2 million-gallon storage conduit connecting CSO 017 and CSO 020, as the top alternative. Despite concerns over cost, difficulty of construction, and the impact on businesses along Marginal Way, the City decided to proceed with design of the Marginal Way conduit to meet the original deadlines for completion of the design (December 31, 2015), and completion of construction (June 30, 2018). The Marginal Way conduit was selected over other options largely because it allowed a key advantage over other alternatives; the ability to eliminate the Franklin Street Pump Station which had reached the end of its service life.

As the design proceeded, the estimated cost of the conduit escalated due to micro-tunneling which would be needed to extend the conduit under I-295, as well as other construction challenges. When the final cost estimate was completed, it became apparent that the project as designed was cost prohibitive and created too great an economic hardship on businesses along Marginal Way. The City decided to table the Marginal Way concept and look for other more cost-effective approaches to control CSO's 017 and 018.

To achieve this goal the City undertook a second alternatives analysis, titled the *Business Case Evaluation (BCE) – Back Cove South CSO Storage Conduit and Tank Alternatives*, which was completed on January 9, 2018. The BCE went beyond the typical alternatives analysis to include a triple bottom line, which assessed the economic, social, and environmental impacts of the project. Five alternatives were evaluated in the BCE, with alternative #3, a 3.5 million-gallon storage tank in Back Cove Park, selected as the preferred option. In addition, it was decided that it would be less expensive to control CSO 016 using the BCSST, as opposed to the BCWSC. This decision allowed the length of the BCWSC to be shortened significantly, since it no longer had to come far enough south to pick up CSO 016.

9. RESPONSE TO COMMENTS (cont'd)

The City lost approximately 18 months deciding to shelve the Marginal Way design and conduct a second alternatives analysis. Although the delay was regrettable, the DEP feels that the Back Cove Park design is an improvement over the Marginal Way conduit in a number of regards, including ease of installation, impact on businesses, the degree of traffic disruption, and cost effectiveness. As such, we have been supportive of the City's desire to move in this direction, despite the schedule delay and the need for permit milestone extensions.

On January 13, 2018 the DEP agreed to move the deadline for completion of Back Cove South Storage Tank (BCSST) from June 30, 2018 to December 31, 2019 to account for the delay. The deadline for completion of the Back Cove West Storage Facility (BCWSF), December 31, 2019, did not change.

Design Build Approach - In an effort to try to regain some of the time lost, DEP suggested that the City look at a Design/Build approach for project delivery on the BCSST. The City adopted this approach and issued Request for Proposals for Owner's Advisor (September 2018) and Design Build Entities (December 2018). Proposals from the Design Build teams were scheduled to be opened in February of 2019. In retrospect, the Design Build approach did not condense the project schedule, but rather lengthened it. At this point, the City projected a completion date of summer 2020 for the BCSST.

Bidding Climate in Portland Area - Within the last couple of years, the bidding environment in Portland has become more challenging. There is a shortage of contractors for the amount of work taking place in the Portland area, and thus it's been difficult for the City to generate interest on a technically demanding project like the BCSST. Only two design build entities have shown interest in the project which makes bidding even more challenging.

On February 13th, 2019, the City of Portland's engineering staff informed the DEP that one of the two design build entities was going to withdraw from the process due to an insufficient amount of time to develop a proposal, and insufficient time to complete the project by the middle of 2020. That would have left the City in a very difficult position of having only one bidder on a major infrastructure project. The City staff requested that DEP allow an extension to the construction schedule to keep the second design build team from withdrawing from the process, and to keep bid prices as low as possible.

The DEP agreed that an extension would be in the best interests of all parties because it would give the City the best chance of maintaining a competitive proposal process, the best chance of keeping bid prices reasonable, and the best chance of actually building the BCSST in the short term. After internal deliberations, the DEP decided to extend the deadline for completion of the BCSST to December 31, 2021. We also informed the City that the DEP would not consider any further extensions on the project.

9. RESPONSE TO COMMENTS (cont'd)

Integrated Planning (IP) - In September of 2018 the City of Portland embarked on a 2-1/2 year planning effort to reprioritize investments in stormwater, wastewater, and combined sewer overflow (CSO) abatement. Goals of the IP effort include:

1. Measurable improvement of water quality
2. Streamlined regulatory compliance process
3. Focus on economic health, social welfare, recreational opportunities and other sustainable environmental benefits
4. A more systemic approach to water resources management

The City is conducting six (6) IP stakeholder workshops to help inform the final IP report. To ensure that the Integrated Planning process and the CSO Master Plan are developed in conjunction with each other we've adjusted the deadline for the next CSO Master Plan to match the deadline for issuance of the IP report of March 30, 2020.

10. DEPARTMENT CONTACTS

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

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Division of Water Quality Management
Bureau of Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
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ATTACHMENT A

