



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF  
ENVIRONMENTAL PROTECTION



PAUL MERCER  
COMMISSIONER

September 20, 2016

Mr. Thomas Milligan Jr. P.E.  
Director of Wastewater / City Engineer  
P.O. Box 586  
Biddeford, Maine 04005  
[tmilligan@Biddefordmaine.org](mailto:tmilligan@Biddefordmaine.org)

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0102741  
Maine Waste Discharge License Application #W007581-6B-F-R  
**Biddeford Pool**  
**Permit**

Dear Mr. Milligan:

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

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

If you have any questions regarding the matter, please feel free to call me at 207-446-1875.

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,

Rodney Robert  
Division of Water Quality Management  
Bureau of Water Quality

Enc.

cc: Stuart Rose, DEP/SMRO      Marelynn Vega, USEPA  
Sandy Mojica, DEP/CMRO      Richard Carvalho, USEPA  
Lori Mitchell, DEP/CMRO  
Olga Vergara, USEPA

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

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

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
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PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143



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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

CITY OF BIDDEFORD	)	MAINE POLLUTANT DISCHARGE
BIDDEFORD, YORK COUNTY, ME.	)	ELIMINATION SYSTEM PERMIT
PUBLICLY OWNED TREATMENT WORKS	)	AND
W007581-6B-F-R	)	WASTE DISCHARGE LICENSE
ME0102741	)	RENEWAL
APPROVAL		

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

**APPLICATION SUMMARY**

On July 8, 2015, the Department accepted as complete for processing, a renewal application for Maine Pollutant Discharge Elimination System (MEPDES) #ME0102741 /Waste Discharge License (WDL) #W007581-6B-D-R, which was issued on July 14, 2010 for a five-year term. The 7/14/10 permit authorized the discharge of up to a monthly average flow of 0.030 million gallons per day (MGD) of secondary treated waste waters from the City's Biddeford Pool facility to Saco Bay, Class SB, in Biddeford, Maine.

**PERMIT SUMMARY**

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

1. Eliminating the waiver for percent removal requirements for BOD5 and TSS when influent strength is less than 200 mg/L.
2. Establishing an assumed influent value of 286 mg/L for percent removal calculations for BOD and TSS.

## CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated September 20, 2016, and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 M.R.S.A. §464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding 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 discharges will be subject to effluent limitations that require application of best practicable treatment as defined in Conditions of licenses, 38 M.R.S.A. § 414-A(1)(D) and 414-A(1-B).

**ACTION**

THEREFORE, the Department APPROVES the application of the CITY OF BIDDEFORD to discharge a monthly average of 30,000 gallons per day (GPD) of secondary treated sanitary wastewater from the City's Biddeford Pool facility to Saco Bay, Class SB, in Biddeford, Maine., SUBJECT TO ALL APPLICABLE STANDARDS AND REGULATIONS AND THE FOLLOWING CONDITIONS:

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 and Services*, 5 M.R.S.A. § 10002 and Rules Concerning the *Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (amended October 19, 2015).

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 22<sup>nd</sup> DAY OF September 2016.

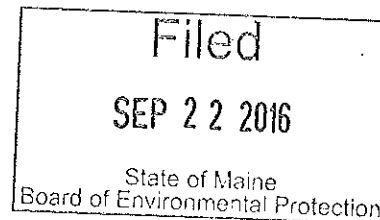
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns  
for PAUL MERCER, Commissioner

Date of initial receipt of application July 7, 2015

Date of application acceptance July 8, 2015

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



**SPECIAL CONDITIONS****A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge secondary treated sanitary waste water from **Outfall #001** to the Atlantic Ocean at Saco Bay, Class SB. Such discharges shall be limited and monitored by the permittee as specified below<sup>(1)</sup>:

<b>Effluent Characteristic</b>	<b>Discharge Limitations</b>						<b>Minimum Monitoring Requirements</b>	
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
<b>Flow</b> [50050]	0.030MGD [03]	---	Report, MGD [03]	---	---	---	Continuous [99/99]	Recorder [RC]
<b>BOD<sub>5</sub></b> <sup>(1)</sup> [00310]	8 lbs/day [26]	11 lbs/day [26]	12 lbs./day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Week [01/07]	24-Hour Composite [24]
<b>BOD<sub>5</sub> Percent Removal</b> <sup>(1)</sup> [81010]	---	---	---	85% [23]	---	---	1/Month [01/30]	Calculate [CA]
<b>TSS</b> [00530]	8 lbs/day [26]	11 lbs/day [26]	12 lbs./day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Week [01/07]	24-Hour Composite [24]
<b>TSS Percent Removal</b> <sup>(1)</sup> [81011]	---	---	---	85% [23]	---	---	1/Month [01/30]	Calculate [CA]
<b>Settleable Solids</b> [00545]	---	---	---	---	---	0.3 ml/L [25]	5/Week [03/07]	Grab [GR]
<b>Fecal coliform bacteria</b> <sup>(2)</sup> (year-round) [31616]	---	---	---	15/100 ml <sup>(3)</sup> [13]	---	50/100 ml [13]	1/Week [02/07]	Grab [GR]
<b>Total Residual Chlorine</b> <sup>(4)</sup> [50060]	---	---	---	---	---	1.0 mg/L [19]	5/Week [05/07]	Grab [GR]
<b>Mercury (Total)</b> <sup>(5)</sup> [71900]	---	---	---	17 ng/L [3M]	---	25.5 ng/L [3M]	1/Year [01/YR]	Grab [GR]
<b>pH</b> [00400]	---	---	---	---	---	6.0 – 9.0 SU [12]	5/Week [05/07]	Grab [GR]

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

## SPECIAL CONDITIONS

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

#### Footnotes:

#### Sampling Locations:

**Effluent sampling-** All effluent monitoring shall be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics.

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

**Sampling** – Sampling and analysis must be conducted in accordance with; a) methods approved in 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Human Services. Samples that are sent to another POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 or laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000).

1. **Percent removal** - The permittee must maintain a minimum of 85 percent removal of both BOD and TSS for all flows receiving secondary treatment. The percent removal must be calculated based on influent and effluent concentration values. In cases where it is unfeasible for the facility to get a true representative influent sample, the Department may assign an assumed influent value. The Biddeford Pool facility falls into the category of those facilities unable to obtain a true representative influent sample. Therefore, the percent removal shall be calculated based on assumed BOD<sub>5</sub> and TSS influent values of 286 mg/L and actual effluent concentration values.
2. **Fecal coliform bacteria** - Limits apply on a year-round basis.
3. **Fecal coliform bacteria** – The monthly average limitation is a geometric mean limitation and values shall be calculated and reported as such.
4. **Total residual chlorine (TRC)** – Limitations and monitoring requirements for TRC are applicable any time elemental chlorine or chlorine based compounds are being utilized to disinfect the discharge(s). The permittee must utilize a USEPA-approved test method capable of bracketing the TRC limitations specified in this permitting action.

## SPECIAL CONDITIONS

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

#### Footnotes:

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

Compliance with the monthly average limitation established in Special Condition A.1 of this permit will be based on the cumulative arithmetic mean of all mercury tests results that were conducted utilizing sampling Methods 1669 and analysis Method 1631E on file with the Department for this facility.

### B. NARRATIVE EFFLUENT LIMITATIONS

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

## **SPECIAL CONDITIONS**

### **C. TREATMENT PLANT OPERATOR**

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

### **D. LIMITATIONS FOR INDUSTRIAL USERS**

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

### **E. AUTHORIZED DISCHARGES**

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on July 8, 2015; 2) the terms and conditions of this permit; and 3) only from Outfall #001. Discharges of waste water from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5)(*Bypass*) of this permit.

### **F. NOTIFICATION REQUIREMENT**

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

1. Any introduction of pollutants into the waste water collection and treatment system from an indirect discharger in a primary industrial category discharging process waste water; and
2. Any substantial change in the volume or character of pollutants being introduced into the waste water collection and treatment system by a source introducing pollutants into the system at the time of permit issuance. For the purposes of this section, notice regarding substantial change shall include information on:
  - (a) the quality and quantity of waste water introduced to the waste water collection and treatment system; and
  - (b) any anticipated impact caused by the change in the quantity or quality of the waste water to be discharged from the treatment system.



## **SPECIAL CONDITIONS**

### **G. WET WEATHER FLOW MANAGEMENT PLAN**

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

The plan shall include operating procedures for a range of intensities, address solids handling procedures (including septic waste and other high strength wastes if applicable) and provide written operating and maintenance procedures during the events.

The permittee shall review their plan annually and record any necessary changes to keep the plan up to date.

### **H. OPERATION & MAINTENANCE (O&M) PLAN**

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

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

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

## **SPECIAL CONDITIONS**

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

**By December 31 of each calendar year**, the permittee must provide the Department with a certification describing any of the following that have occurred since the effective date of this permit *[ICIS Code 96299]*. See **Attachment B** of the permit for an acceptable certification form to satisfy this Special Condition.

- (a) Changes in the number or types of non-domestic wastes contributed directly or indirectly to the wastewater treatment works that may increase the toxicity of the discharge;
- (b) Changes in the operation of the treatment works that may increase the toxicity of the discharge;
- (c) Changes in industrial manufacturing processes contributing wastewater to the treatment works that may increase the toxicity of the discharge;

In addition, in the comments section of the certification form, the permittee must provide the Department with statements describing;

- (d) Changes in stormwater collection or inflow/infiltration affecting the facility that may increase the toxicity of the discharge; and
- (e) Increases in the type or volume of transported (hauled) wastes accepted by the facility.

**The Department may require that annual testing be re-instated if it determines that there have been changes in the character of the discharge or if annual certifications described above are not submitted.**

### **J. MONITORING AND REPORTING**

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

Department of Environmental Protection  
Southern Maine Regional Office  
Bureau of Water Quality  
Division of Water Quality Management  
312 Canco Road  
Portland, Maine 04103

## SPECIAL CONDITIONS

### J. MONITORING AND REPORTING (cont'd)

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

### K. REPORTING DISCHARGES NOT RECEIVING SECONDARY TREATMENT

Pursuant to *Classification of Maine waters*, 38 M.R.S.A. § 464(1)(C) and *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B, which contain standards to achieve Maine's water quality goals for the designated uses of fishing, aquaculture, and propagation and harvesting of shellfish, the permittee must report all occurrences of secondary wastewater treatment system bypasses, upsets, disinfection system malfunctions, combined sewer overflows, and discharges resulting from sanitary sewer overflows, pump stations or broken sewer pipes immediately upon becoming aware of such a condition.

Reporting must be provided through the Maine Department of Marine Resources' website at [http://www.maine.gov/dmr/rm/public\\_health/rain/rptevent.htm](http://www.maine.gov/dmr/rm/public_health/rain/rptevent.htm) or by calling the Maine Department of Marine Resources' Pollution Event Reporting Hotline at 207-633-9564.

**On or before, November 1, 2016**, the permittee must have a written approved Emergency Response Plan prepared in conjunction with the Maine Department of Marine Resources, to prevent or minimize conditions that may endanger health or the environment. **On or before November 15, 2016**, the permittee shall submit a copy of the approved Emergency Response Plan to the Department's compliance inspector at the address in Special Condition J, *Monitoring and Reporting*, of this permit. The permittee must report the event in accordance with the Emergency Response Plan between the permittee and the Maine Department of Marine Resources and provide the following information at the time the report is made:

1. Name of facility/individual reporting event;
2. Contact phone number and e-mail address;
3. Location of event (physical address or description);
4. Pollution event type (for example, bypass, CSO, sewer line break);
5. Pollution event quantity (for example approximate number of gallons discharged);
6. Date and time event began;
7. Date and time event ended, or state that the event is on-going;
8. Additional comments;
9. First and last name of person reporting event; and
10. Authorization code.

**K. REPORTING DISCHARGES NOT RECEIVING SECONDARY TREATMENT (cont'd)**

The immediate reporting requirements by this Special Condition are in addition to Standard Condition D(1)(f), *Twenty-four hour reporting*, of this permit, which contains reporting requirements to the Department for conditions that may endanger health or the environment.

**L. REOPENING OF PERMIT FOR MODIFICATIONS**

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

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

# **ATTACHMENT A**

8/18/2015

**MERCURY REPORT - Clean Test Only**

**Data Date Range:** 18/Aug/2010-18/Aug/2015



**Facility:** BIDDEFORD POOL

**Permit Number:** ME0102741

**Max (ug/l):** 0.0034

**Average (ug/l):** 0.0026

Sample Date	Result (ng/l)	Lsthan	Clean.
10/12/2010	2.40	N	T
03/14/2011	3.20	N	T
10/12/2011	3.36	N	T
02/28/2012	2.32	N	T
04/22/2013	2.60	N	T
04/15/2014	2.60	N	T
05/13/2015	2.75	N	T

## **ATTACHMENT B**



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHAPTER 530.2(D)(4) CERTIFICATION

PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
Commissioner

MEPDES# \_\_\_\_\_ Facility Name \_\_\_\_\_

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

COMMENTS:

Name (printed): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

**Scheduled Toxicity Testing for the next calendar year**

Test Conducted	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter
WET Testing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Priority Pollutant Testing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Analytical Chemistry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other toxic parameters <sup>1</sup>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

<sup>1</sup> This only applies to parameters where testing is required at a rate less frequently than quarterly.

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826  
RAY BLDG., HOSPITAL ST.

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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 04769-2094  
(207) 764-0477 FAX: (207) 760-3143



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

Date: September 20, 2016

PERMIT NUMBER: ME0102741  
LICENSE NUMBER: W007581-6B-F-R

NAME AND ADDRESS OF APPLICANT:

**CITY OF BIDDEFORD  
P. O. Box 586  
205 Main Street  
Biddeford, Maine 04005**

COUNTY: York County

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**BIDDEFORD POOL  
12 Stonecliff Road  
Biddeford, Maine 04005**

RECEIVING WATER AND CLASSIFICATION: Saco Bay, Class SB

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: Mr. Thomas Milligan  
Director of Waste Water  
Email: [tmilligan@biddefordmaine.org](mailto:tmilligan@biddefordmaine.org)  
(207) 284-9118

**1. APPLICATION SUMMARY**

- a. Application: On July 8, 2015, the Department accepted as complete for processing, a renewal application for Maine Pollutant Discharge Elimination System (MEPDES) #ME0102741 /Waste Discharge License (WDL) #W007581-6B-D-R, which was issued on July 14, 2010 for a five-year term. . The 7/14/10 permit authorized the discharge of up to a monthly average flow of 0.030 million gallons per day (MGD) of secondary treated waste waters from the City's Biddeford Pool facility to Saco Bay, Class SB, in Biddeford, Maine. See **Attachment A** of this Fact Sheet for a location map.
- b. Source Description: The City's waste water treatment facility receives waste waters generated by approximately 75 residential users in the area of the City referred to as Biddeford Pool. The collection system is approximately one mile in length (2/3rds gravity and 1/3 force main), has two pump stations served by a portable generator and no combined sewer overflow (CSO) points. The facility is not authorized by this permit to receive transported wastes from septage haulers in the area.

## 1. APPLICATION SUMMARY (cont'd)

- c. Waste Water Treatment: The Town's waste water treatment facility provides a secondary level of treatment via two rotating biological contactors (RBCs). Influent waste water is first processed in two anoxic pretreatment tanks prior to flowing to the flow equalization pump station which distributes the waste water to the two RBCs that are operated in a parallel mode of operation. The waste water exits the RBCs and flows to two settling tanks and is then conveyed to chlorine detention tank for disinfection prior to being discharge to the receiving water via a pipe measuring eight inches in diameter. The outfall pipe is submerged 8.5 feet below the mean low water level. The waste water treatment facility is equipped with an emergency stand-by generator with emergency call-in and high alarm systems. See **Attachment B** of this Fact Sheet for a schematic of the waste water treatment facility.

## 2. PERMIT SUMMARY

- a. Terms and Conditions: - This permitting action is carrying forward all the terms and conditions of the previous permitting action except that this permit is;

1. Eliminating the waiver for percent removal requirements for BOD5 and TSS when influent strength is less than 200 mg/L.

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

*November 1989* – The Biddeford Pool waste water treatment facility commenced operations.

*April 13, 1990* – The Department issued Natural Resources Protection Act Coastal Wetland Alteration and Water Quality Certification Order that approved the replacement and extension of the outfall pipe for the Biddeford Pool waste water treatment facility. The outfall pipe replacement/extension was completed in July 1991.

*March 28, 1994* – The Department issued WDL #W007581-45-A-N for a five-year term.

*March 30, 2000* - The Department issued WDL #W007581-5L-B-R for a five-year term.

*July 12, 2000* – The Department administratively modified the 3/30/00 WDL by establishing interim mean and maximum technology based concentration limitations of 17.0 ng/L and 25.5 ng/L, respectively for mercury.

*June 23, 2005* - The Department issued combination MEPDES permit #ME0102741/WDL #W007581-5L-C-R, for a five-year term.

*June 1, 2010* – the City of Biddeford submitted a timely and complete application to the Department to renew the MEPDES permit/WDL for the Biddeford pool facility.

*July 14, 2010* - The Department issued combination MEPDES permit #ME0102741/WDL #W007581-6B-D-R, for a five-year term.

## 2. PERMIT SUMMARY (cont'd)

*July 7, 2015* – the City of Biddeford submitted a timely and complete application to the Department to renew the MEPDES permit/WDL for the Biddeford pool facility.

## 3. CONDITIONS OF PERMITS

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

## 4. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A., Section 469 classifies Saco Bay at the point of discharge as a Class SB waterway. Maine law, 38 M.R.S.A., Section 465-B(2) establishes the classification standards for Class SB waters.

## 5. RECEIVING WATER CONDITIONS

*The 2012 Integrated Water Quality Monitoring and Assessment Report* published by the Department pursuant to Section 305(b) of the Federal Water Pollution Control Act lists Biddeford Pool, Biddeford to Dyer Point, Cape Elizabeth (waterbody ID 821), as “*Category 2: Estuarine and Marine Waters Attaining Some Designated Uses – Insufficient Information for Other Uses.*” The 2012 Report also lists Maine’s marine and estuarine waters as “*Category 5-D: Estuarine and Maine Waters Impaired by Legacy Pollutants.*” Impairment in this context refers to the estuarine and marine waters partially supporting the designated use of fishing and harvesting of shellfish due to elevated levels of PCBs and other persistent bioaccumulating substances in tissues of lobster tomalley. The Department has made the determination that if the Biddeford Pool facility maintains compliance with the fecal coliform bacteria limits established in this permitting action the facility will not cause or contribute to the closure of the shellfish harvesting area.

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Flow - The previously established a monthly average flow limitation of 0.030 MGD is being carried forward in this permitting action. The limit reflects the monthly average design flow capacity of the existing waste water treatment facility. Also, the daily maximum discharge flow reporting requirement is being carried forward in this permitting action to assist the Department in evaluation of effluent data.

A review of the monthly DMR data for the period September 2010 – July 2015 indicates the permittee has been in compliance with said limit 100% of the time as flow values have been reported as follows:

### Flow (DMRs=58)

Value	Limit (MGD)	Range (MGD)	Mean (MGD)
Monthly Average	0.03	0.01 – 0.02	0.012
Daily Maximum	Report	0.004 – 0.08	0.025

- b. Dilution - Department Regulation Chapter 530, *Surface Water Toxics Control Program*, §4(A)(2) states that for discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE or CORMIX. Using plan and profile information provided by the permittee and the PLUMES3 model, the Department has determined the dilution factors for the discharge from the waste water treatment facility are as follows:

Acute = 78:1      Chronic = 540:1      Harmonic Mean: 1,620:1<sup>(1)</sup>

### Footnote:

(1) The harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by three (3). This multiplying factor is based on guidelines for estimation of human health dilution presented in the USEPA publication *Technical Support Document for Water Quality-based Toxics Control* (Office of Water; EPA/505/2-90-001, page 88), and represents an estimation of harmonic mean flow on which human health dilutions are based in a riverine 7Q10 flow situation.

- c. Biochemical Oxygen Demand (BOD5) & Total Suspended Solids (TSS): - The previously established monthly and weekly average BOD5 and TSS concentration limits of 30 mg/L and 45 mg/L, respectively, are considered best practicable treatment (BPT), and are based on secondary treatment requirements of the Clean Water Act of 1977 §301(b)(1)(B) as defined in Department rule 06-096 CMR Chapter 525(3)(III). The maximum daily BOD5 and TSS concentration limits of 50 mg/L were based on a Department best professional judgment of BPT. All three concentration limits are being carried forward in this permitting action.

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

As for mass limitations, the previous permitting action established monthly average, weekly average and daily maximum limitations based on a monthly average limit of 0.030 MGD that are being carried forward in this permitting action. The limitations were calculated as follows:

Monthly average:  $(0.030 \text{ MGD})(8.34)(30 \text{ mg/L}) = 7.5 \text{ lbs/day}$

Weekly average:  $(0.030 \text{ MGD})(8.34)(45 \text{ mg/L}) = 11.3 \text{ lbs/day}$

Daily maximum:  $(0.030 \text{ MGD})(8.34)(50 \text{ mg/L}) = 12.5 \text{ lbs/day}$

A review of the monthly Discharge Monitoring Report (DMR) data for the period September 2010 – July 2015 indicates the permittee has been in compliance with said limits 100% of the time as BOD and TSS values have been reported as follows:

### BOD Mass (DMRs=58)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	8	0.1 – 3.2	0.73
Weekly Average	11	0.2 – 8.9	1.23
Daily Maximum	12	0.2 – 8.9	1.28

### BOD Concentration (DMRs=58)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	3.1 – 18	7
Weekly Average	45	2.9 - 23	9.4
Daily Maximum	50	3.8 - 23	9.7

### TSS Mass (DMRs=58)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	8	0.1 – 1.9	0.6
Weekly Average	11	0.2 – 7.5	0.9
Daily Maximum	12	0.1 – 7.5	0.9

### TSS Concentration (DMRs=58)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	1.9– 11	5
Weekly Average	45	2.5 – 17	7.6
Daily Maximum	50	2.5 - 17	7.5

This permitting action carries forward the requirement of 85% removal for BOD and TSS pursuant to Department rule Chapter 525(3)(III)(a&b)(3).

Monitoring frequencies for BOD and TSS of 1/Week are being carried forward from the previous permitting action and are based on Department policy for facilities with a monthly average flow limitation less than 0.1 MGD.

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

- d. Settleable Solids - The previous permit established a daily maximum concentration BPT limit of 0.3 ml/L that is being carried forward in this permitting action. A review of the monthly Discharge Monitoring Report (DMR) data for the period September 2010 – July 2015 indicates the permittee has been in compliance with said limit 100% of the time as settleable solids values have been reported as follows:

### Settleable solids (n=58)

Value	Limit (ml/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	0.3	0.1 – 0.1	0.1

- e. Fecal coliform bacteria - The previous permitting action established monthly average and daily maximum limits of 15 colonies/100 ml and 50 colonies/100 ml and is based on the Maine Water Classification Program criteria for the receiving waters (including standards in the National Shellfish Sanitation Program) and requires application of the BPT technology. At the request of the State of Maine's Department of Marine Resources, the limitations are in effect on a year-round basis to protect open shellfish harvesting areas in the immediate vicinity of the outfall for the waste water treatment facility.

A review of the monthly Discharge Monitoring Report (DMR) data for the period September 2010 – July 2015 indicates the permittee has been in compliance with the monthly average (geometric mean) limit 100% of the time and in compliance with the daily maximum limit 95% of the time as fecal coliform values have been reported as follows:

### Fecal coliform bacteria (n=58)

Value	Limit (col/100 ml)	Range (col/100 ml)	Mean (col/100 ml)
Monthly Average	15	1.0 – 16	1.88
Daily Maximum	50	1.0 - 200	12

- f. Total Residual Chlorine - The previously established daily maximum technology based limit of 1.0 mg/L for the discharge of total residual chlorine (TRC) is specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. The Department imposes the more stringent of the water quality or technology based limits in permitting actions. End-of-pipe water quality based concentration thresholds may be calculated as follows:

Parameter	Acute Criteria	Chronic Criteria	Acute Dilution	Chronic Dilution	Acute Threshold	Chronic Threshold
Chlorine	0.013 mg/L	0.0075 mg/L	78:1	540:1	1.01 mg/L	4.05 mg/L

Example calculation: Acute – 0.013 mg/L (78) = 1.01 mg/L

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

The Department has established a daily maximum BPT limitation of 1.0 mg/L for facilities that disinfect their effluent with elemental chlorine or chlorine based compounds unless the calculated acute water quality based threshold is lower than 1.0 mg/L. In the case of Biddeford Pool, both the acute and chronic water quality based thresholds are greater than 1.0 mg/L, therefore, the daily maximum BPT limit of 1.0 mg/L is being carried forward from the previous permitting action.

A review of the monthly Discharge Monitoring Report (DMR) data for the period September 2010 – July 2015 indicates the permittee has been in compliance with said limit 100% of the time as total residual chlorine values have been reported as follows:

### Total residual chlorine (DMRs=58)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Daily Maximum	1.0	0.7 – 1.0	0.9

- g. pH - A previous permitting action established a pH range limit of 6.0 – 9.0 standard units pursuant to a new Department rule found at Chapter 525(3)(III)(c). The limits are considered BPT and are being carried forward in this permitting action.
- h. Mercury - Pursuant to *Certain deposits and discharges prohibited*, Maine law, 38 M.R.S.A. § 420 and *Waste discharge licenses*, 38 M.R.S.A. § 413 and *Interim Effluent Limitations and Controls for the Discharge of Mercury*, 06-096 CMR 519 (last amended October 6, 2001), the Department issued a *Notice of Interim Limits for the Discharge of Mercury* on July 12, 2000 to the permittee thereby administratively modifying the WDL by establishing interim monthly average and daily maximum effluent concentration limits of 17.0 parts per trillion (ppt) and 25.5 ppt, respectively, along with a minimum monitoring frequency requirement of two (2) tests per year for mercury.

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

Maine law 38 M.R.S.A., §420 1-B,(B)(1) states that a facility is not in violation of the AWQC for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to section 413, subsection 11. A review of the Department's data base for the period August 2010 through August 2015 indicates mercury test results reported have ranged from 2.3 ppt to 3.4 ppt with an arithmetic mean (n=7) of 2.8 ppt.

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

- i. Nitrogen – The permittee has not been conducting total nitrogen testing on its discharge to date. However, the USEPA requested the Department evaluate the reasonable potential for the discharge of total nitrogen to cause or contribute to non-attainment of applicable water quality standards in marine waters, namely dissolved oxygen (DO) and marine life support. The Department has 50 total nitrogen effluent values with an arithmetic mean of 14.3 mg/L collected from various municipally-owned treatment works that discharge to marine waters of the State. None of the facilities whose effluent data were used are specifically designed to remove total nitrogen. For the MEPDES permitting program, the Department considers 14.3 mg/L to be representative of total nitrogen discharge levels for all facilities providing secondary treatment that discharge to marine waters in the absence of facility specific data.

As of the date of this permitting action, the State of Maine has not promulgated numeric ambient water quality criteria for total nitrogen. According to several studies in EPA's Region I, numeric total nitrogen criteria have been established for relatively few estuaries but the criteria that have been set typically fall between 0.35 mg/L and 0.50 mg/L to protect marine life using dissolved oxygen as the indicator. While the thresholds are site-specific, nitrogen thresholds set for the protection of eelgrass habitat range from 0.30 mg/L to 0.39 mg/L.

Extrapolating estuarine criteria to an exposed coastal marine environment may result in thresholds that are not appropriate given the lower ambient nutrient concentrations expected in the open ocean. Based on studies in EPA Region I and the Department's best professional judgment of thresholds that are protective of Maine water quality standards, the Department is utilizing a threshold of 0.45 mg/L for the protection of aquatic life in marine waters using dissolved oxygen as the indicator, and 0.32 mg/L for the protection of eelgrass in the vicinity of discharge outfalls. There are eelgrass beds in the immediate vicinity of the outfall.

With the exception of ammonia, nitrogen is not acutely toxic, the Department is considering a far-field dilution to be more appropriate when evaluating impacts of total nitrogen to the marine environment. The permittee's facility has a chronic near field dilution of 540:1. Far field dilutions are significantly higher than the near-field dilution, ranging from 100 – 10,000 times higher depending on the location of the outfall pipe. With outfalls located in protected coves or small embayments without significant flushing, far field dilution factors would tend to be on the order of 100 times the near field dilution. With open ocean discharges, far field dilutions would tend to be 1,000 – 10,000 times the near field dilution. The permittee's facility discharges to a small embayment, thus the far field dilution would likely be 100 times the near field dilution. Using the most protective far field dilution multiplier of 100 times higher than the near field dilution factor becomes 54,000:1 in the far field.



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

Total nitrogen concentrations in effluent = 14.3 mg/L

Far Field dilution factor = 54,000:1

In-stream concentration after dilution:  $\frac{14.3 \text{ mg/L}}{54,000} = 0.00026 \text{ mg/L}$

The Department has been collecting ambient total nitrogen data in Maine's marine waters to support development of statewide nutrient criteria for marine waters. For the permittee's facility, the Department calculated a mean background concentration of 0.22 mg/L based on ambient data collected in small, shallow embayments directly exposed to the Gulf of Maine (n=10). As a result, after reasonable opportunity for far field mixing, the increase in the concentration of total nitrogen in the receiving water due to the discharge from the permittee's facility will not be measureable based on typical laboratory detection limits; thus, the instream concentration of total nitrogen will remain 0.22 mg/L. This concentration is lower than the Department's and EPA's best professional judgment of a critical threshold of 0.32 mg/L to protect eelgrass in the vicinity of the permittee's outfall pipe. Therefore, the Department is making a best professional judgment determination that the discharge of total nitrogen from the permittee's facility does not exhibit a reasonable potential to exceed applicable water quality standards for Class SB waters.

- j. Whole Effluent Toxicity (WET) and Chemical Specific Testing – WET monitoring is conducted of effluent to assess and protect against impacts upon water quality and designated uses caused by the aggregate effect of the discharge on specific aquatic organisms. Acute and chronic WET tests are performed on invertebrate and vertebrate species. Priority pollutant and analytical chemistry testing is required to assess the levels of individual toxic pollutants in the discharge, comparing each pollutant to acute, chronic, and human health AWQC as established in Department rule Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*.

This permitting action does not contain any WET or chemical specific testing requirements as the Biddeford Pool facility is exempt from said testing pursuant to Department rule Chapter 530, *Surface Water Toxics Control Program*, adopted on October 12, 2005, §2(1) exempting the Biddeford Pool facility from WET and chemical specific testing as it states;

*The following dischargers are exempt from testing requirements of this rule unless the Department determines that there is a need for testing based on the nature, location or circumstances of an individual discharge.*

- (1) *Discharges from individual discharge points licensed to discharge less than 50,000 gallons per day of solely domestic wastewater and with a chronic dilution factor of at least 50 to 1, provided no holding tank wastes containing chemicals are accepted by the facility;*

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

The Biddeford Pool facility meets the exemption criteria at it is permitted to discharge 30,000 gpd and has a chronic dilution factor of 540:1. Pursuant to Chapter 530(2)(D)(4), Special Condition I of this permit requires the permittee to file an annual certification with the Department to maintain the exemption from the testing requirements.

## **7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY**

As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the waterbody to meet standards for Class SB classification.

## **8. PUBLIC COMMENTS**

Public notice of this application was made in the Journal Tribune newspaper on or about July 10, 2015. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

## **9. DEPARTMENT CONTACTS**

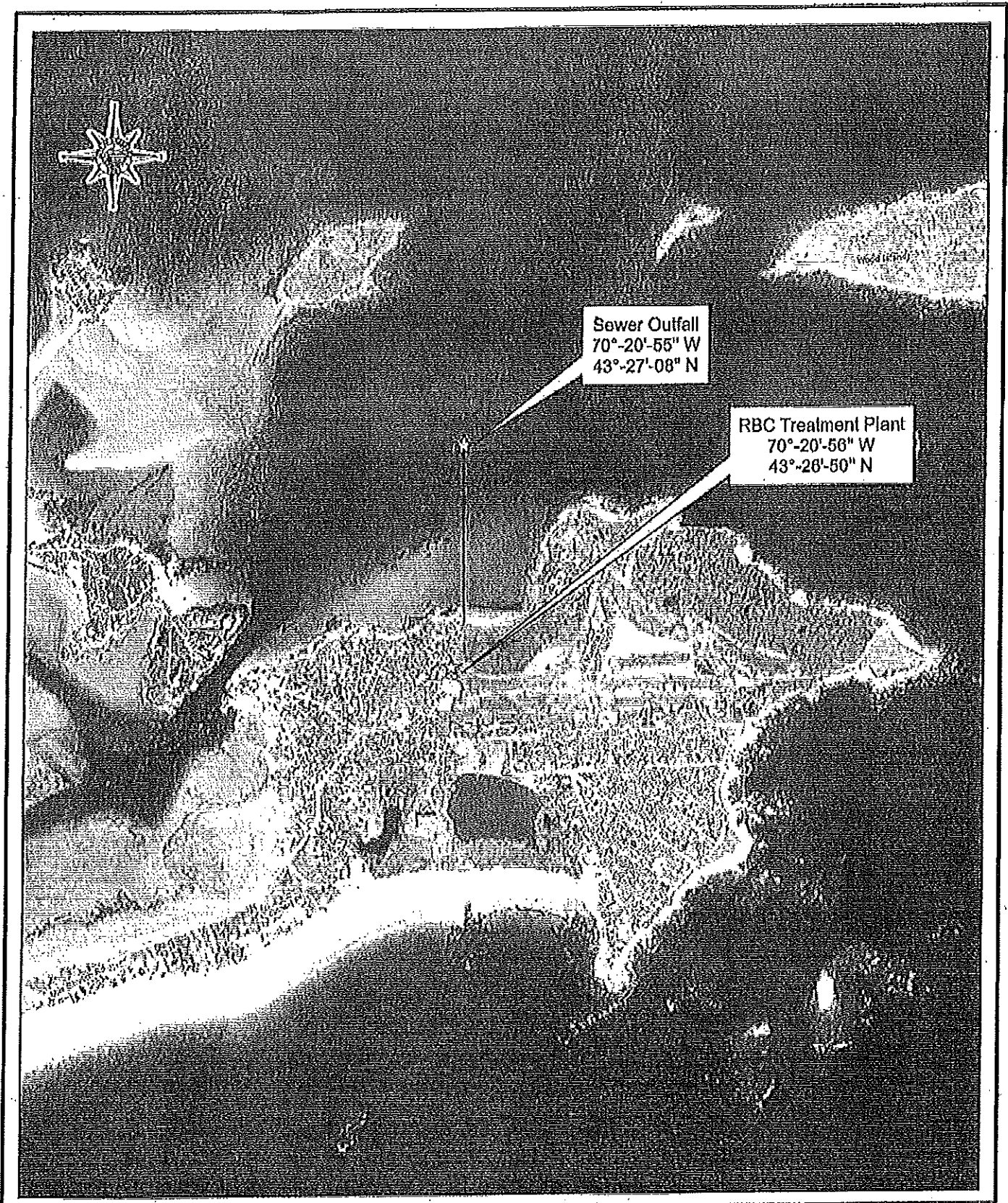
Additional information concerning this permitting action may be obtained from and written comments should be sent to:

Rod Robert  
Division of Water Quality Management  
Bureau of Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 446-1875  
e-mail: [rodney.robert@maine.gov](mailto:rodney.robert@maine.gov)

## **10. RESPONSE TO COMMENTS**

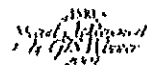
During the period January 6, 2016, through the issuance of this permit, the Department solicited comments from state and federal agencies as well as parties that expressed interest in the proposed draft permit for the permittee's facility. The Department did not receive any comments from the public. Therefore, the Department has not prepared a formal Response to Comments.

# **ATTACHMENT A**

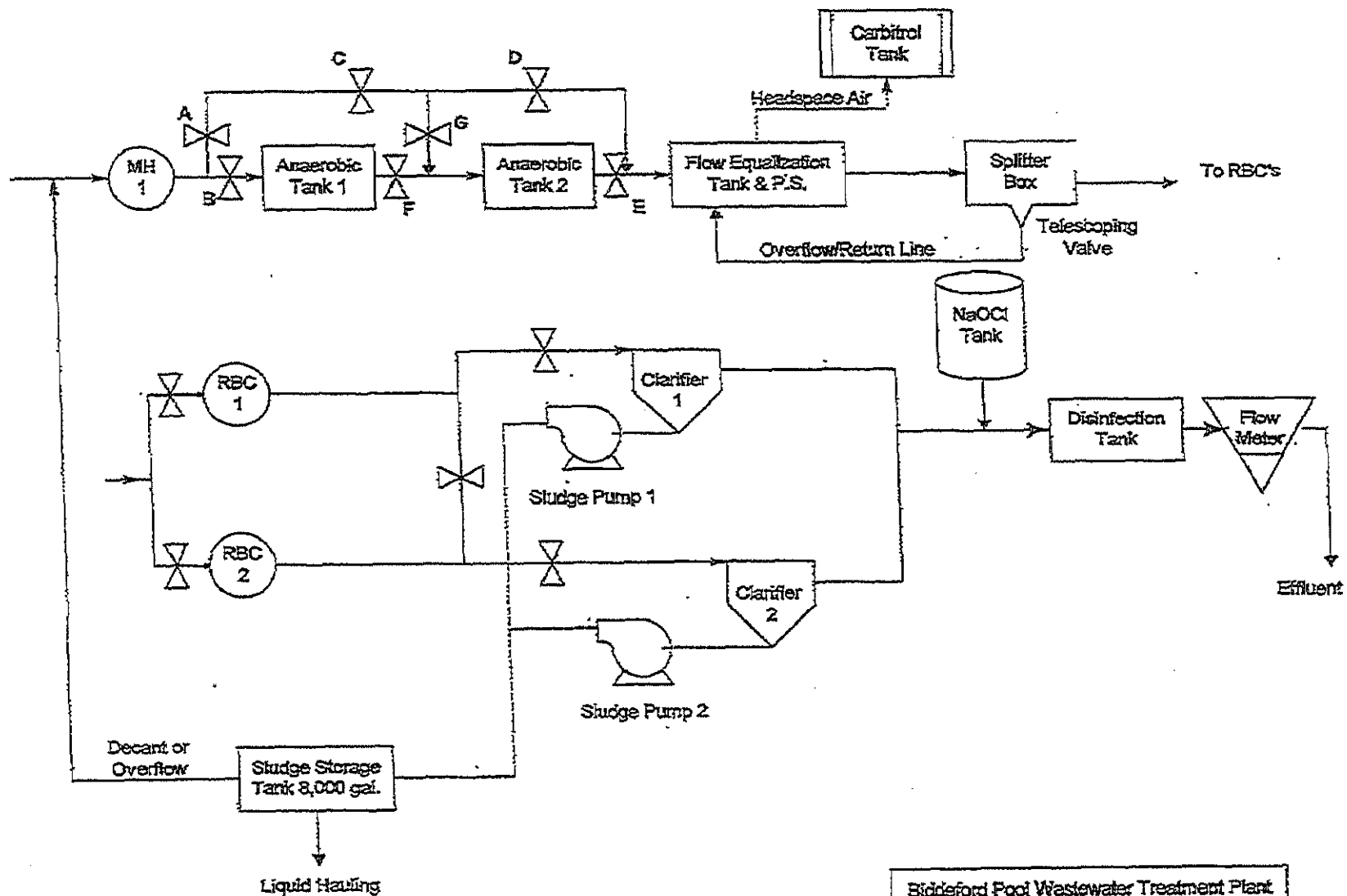


*The City of Biddeford, Maine*  
Engineering Department - GIS Mapping  
205 Main Street • P.O. Box 386 • Biddeford, Maine 04005-0386  
Tel. 207 284-9118 • Fax 207 286-9388

## Biddeford Pool RBC Location



## ATTACHMENT B



Biddeford Pool Wastewater Treatment Plant  
Flow Schematic - August 2000

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

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### 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

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

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

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

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

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

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

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

### B. OPERATION AND MAINTENANCE OF FACILITIES

#### 1. General facility requirements.

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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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STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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

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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.



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

### SUMMARY

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

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

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

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### LEGAL REFERENCES

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

#### HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

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

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

#### WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

#### OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

## **II. JUDICIAL APPEALS**

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

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

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

### **ADDITIONAL INFORMATION**

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

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

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