



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

PAUL MERCER  
COMMISSIONER

July 5, 2017

Mr. Christopher R. Shaw  
MSAD 75  
50 Republic Avenue  
Topsham, Maine 04086  
[shawc@link75.org](mailto:shawc@link75.org)

RE: Maine Pollutant Discharge Elimination System (MEPDES) #ME0102776  
Maine Waste Discharge License (WDL) Application # W001003-5D-D-R  
**Final Permit**

Dear Mr. Shaw:

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

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

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

Sincerely,

Irene Saumur  
Division of Water Quality Management  
Bureau of Water Quality

Enc.

cc: Bill Johnson, DEP/CMRO  
Lori Mitchell, DEP/CMRO  
Sandy Mojica, USEPA  
Marelyn Vega, USEPA  
Olga Vergara, USEPA



STATE OF MAINE  
Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

MAINE SCHOOL ADMINISTRATIVE DIST. #75 )	MAINE POLLUTANT DISCHARGE
BOWDOINHAM, SAGadahoc CO., MAINE )	ELIMINATION SYSTEM PERMIT
OVERBOARD DISCHARGE )	AND
#ME0102776 )	WASTE DISCHARGE LICENSE
#W001003-5D-D-R )	RENEWAL
APPROVAL	

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et seq. and Maine Law 38 M.R.S. Section 414-A, et seq., and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of the MAINE SCHOOL ADMINISTRATION DISTRICT #75 (MSAD #75, hereinafter), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

MSAD #75 has applied to the Department for renewal of overboard discharge (OBD) Waste Discharge License (WDL) #W001003-5D-C-R/Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0102776 which was issued by the Department on October 3, 2012, and is scheduled to expire on October 3, 2017. The WDL authorized a year-round monthly average discharge of up to 7,500 gallons per day (gpd) of secondary treated waste waters to the West Branch of the Cathance River, Class B, in Bowdoinham, Maine.

PERMIT SUMMARY

- a. Terms and conditions - This permitting action is carrying forward all conditions of the October 3, 2012 permitting action except:
1. This permitting action is reducing the monitoring frequency for Total Residual Chlorine from 2/wk to 1/wk.
  2. This permitting action establishes a minimum reporting frequency for BOD Percent Removal of 1/Month.
  3. This permitting action establishes a minimum reporting frequency for TSS Percent Removal of 1/Month.
  4. This permitting action establishes a minimum monitoring frequency for pH of 1/Yr.

## CONCLUSIONS

BASED on the findings in the attached **FACT SHEET** dated July 5, 2017, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with State law.
3. The provisions of the State's antidegradation policy, *Classification of Maine waters*, 38 M.R.S. § 464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding natural resource, that water quality will be maintained and protected;
  - (c) Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in *Conditions of licenses*, 38 M.R.S. § 414-A(1)(D) and 414-A(1-B).
5. The overboard discharge system was in continuing existence for the 12 months preceding June 1, 1987.
6. On September 14, 2007, a licensed site evaluator determined subsurface waste water disposal system could be installed (on property not owned or controlled by the school district) in compliance with the Maine Subsurface Waste Water Disposal Rules provided variances afforded by the Rule are granted due to soils limitations. The Department has no authority to require the permittee to obtain a land use easement from the Town to install a subsurface system on property owned by the Town.
7. A publicly owned sewer line is not located on or abutting land owned or controlled by the permittee or is not available for the permittee's use.
8. The discharge is not located within the boundaries of a sanitary district or sewer district.

**ACTION**

THEREFORE, the Department APPROVES the above noted application of the MSAD #75 (BOWDOINHAM COMMUNITY SCHOOL) to discharge a monthly average flow of up to 7,500 GPD of secondary treated waste water to the West Branch of the Cathance River, Class B, in Bowdoinham, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits," revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit becomes effective upon the date of signature below and expires at midnight five (5) years thereafter. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of the this permit, the terms and conditions of the this permit and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [Maine Administrative Procedure Act, 5 M.R.S. § 10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (effective October 19, 2015)].

DONE AND DATED AT AUGUSTA, MAINE, THIS 6<sup>th</sup> DAY OF July, 2017.

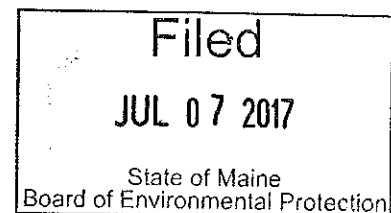
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Melanie B. [Signature]  
for Paul Mercer, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: April 28, 2017.

Date of application acceptance: May 5, 2017.



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

This Order prepared by Irene Saumur, BUREAU OF WATER QUALITY

## SPECIAL CONDITIONS

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- The permittee is authorized to discharge **secondary treated waste water from Outfall #001A** to the West Branch of the Cathance River, Class B. Such discharges shall be limited and monitored by the permittee as specified below<sup>(1)</sup>:

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
	<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>
Flow <i>[50050]</i>	7,500 GPD <i>[07]</i>	---	Report GPD <i>[07]</i>	---	---	---	1/Month <i>[01/30]</i>	Measured <i>[MS]</i>
BOD <sub>5</sub> <i>[00310]</i>	1.9 lbs/day <i>[26]</i>	2.8 lbs/day <i>[26]</i>	3.2 lbs/day <i>[26]</i>	30 mg/L <i>[19]</i>	45 mg/L <i>[19]</i>	50 mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
BOD <sub>5</sub> Percent Removal <sup>(2)</sup> <i>[81010]</i>	---	---	---	85% <i>[23]</i>	---	---	1/Month <i>[1/30]</i>	---
TSS <i>[00530]</i>	1.9 lbs/day <i>[26]</i>	2.8 lbs/day <i>[26]</i>	3.2 lbs/day <i>[26]</i>	30 mg/L <i>[19]</i>	45 mg/L <i>[19]</i>	50 mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
TSS Percent Removal <sup>(2)</sup> <i>[81011]</i>	---	---	---	85% <i>[23]</i>	---	---	1/Month <i>[1/30]</i>	---
Settleable Solids <i>[00545]</i>	---	---	---	---	---	0.3 ml/L <i>[25]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
<i>E. Coli.</i> Bacteria <sup>(3)</sup> <i>[31633]</i>	---	---	---	64/100 ml <i>[13]</i>	---	427/100 ml <i>[13]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
Total Residual Chlorine <sup>(4)</sup> <i>[50060]</i>	---	---	---	---	---	0.3 mg/L <i>[19]</i>	1/Week <i>[01/07]</i>	Grab <i>[GR]</i>
pH <i>[00400]</i>	---	---	---	---	---	6.0 – 9.0 SU <i>[12]</i>	1/Year <i>[01/YR]</i>	Grab <i>[GR]</i>
<i>The italicized numeric values bracketed in the table and in subsequent text are code numbers Department personnel utilize to code the monthly Discharge Monitoring Reports.</i>								

**FOOTNOTES:** See Page 5 of this permit for applicable footnotes.

## **SPECIAL CONDITIONS**

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

#### **Footnotes:**

- 1. Monitoring** – 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. Sampling and analysis must be conducted in accordance with: a) methods approved by 40 Code of Federal Regulations (CFR) Part 136; b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136; or c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services. Samples that are sent to a publicly owned treatment works (POTW) licensed pursuant to *Waste discharge licenses*, 38 M.R.S. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended April 1, 2010). If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the DMR.
- 2. Percent Removal** – The permittee must maintain a minimum of 85 percent removal of both BOD<sub>5</sub> and TSS for all flows receiving secondary treatment. The percent removal must be calculated based on influent and effluent concentration values. The permittee's wastewater treatment system does not contain an influent sampling location that is representative of raw wastewater conditions. Therefore, this permitting action authorizes the permittee to assume an influent BOD<sub>5</sub> and TSS concentration value of 286 mg/L for purposes of calculating the monthly percent removal value.
- 3. *E. coli* bacteria** – *E. coli* bacteria limits and monitoring requirements are seasonal and apply between May 15<sup>th</sup> and September 30<sup>th</sup> of each year. The Department reserves the right to impose bacteria limits on a year-round basis to protect the health, safety, and welfare of the public.
- 4. Total residual chlorine (TRC)** – Limitations and monitoring requirements are applicable whenever elemental chlorine or chlorine based compounds are being used to disinfect the discharge. For instances when a facility has not disinfected with chlorine based compounds for an entire reporting period, the facility shall report "NODI-9" for this parameter on the monthly DMR. The permittee shall utilize approved test methods that are capable of bracketing the limitations in this permit.
- 5. pH** – The pH value of the effluent must not be lower than 6.0 SU nor higher than 9.0 SU at any time unless these limitations are exceeded due to natural causes. The permittee must provide oral notification of any exceedance within 24 hours from the time the permittee becomes aware of the circumstances and shall submit a written explanation of the exceedance within 5 days of the time the permittee becomes aware of the circumstances.

## **SPECIAL CONDITIONS**

### **B. ANNUAL DISCHARGE FEES**

Pursuant to Maine law, 38 M.R.S. §353-B, the permittee is required to pay an applicable annual fee for discharges authorized by this permit. Failure to pay an annual fee within 30 days of the billing date of a license/permit is sufficient grounds for revocation of the permit under Maine law, 38 M.R.S. §341-D, subsection 3 and is subject to penalties for non-payment.

### **C. NARRATIVE EFFLUENT LIMITATIONS**

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

### **D. TREATMENT PLANT OPERATOR**

The treatment facility must be operated by a person holding a minimum of a Maine **Grade I** certificate (or Registered Maine Professional Engineer) pursuant to Title 32 M.R.S. §4171 *et seq.* 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.

### **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 May 5, 2017; 2) the terms and conditions of this permit; and 3) only from Outfall #001A. Discharges of wastewater from any other point source are not authorized under this permit, and must be reported in accordance with Standard Condition D(1)(f), *Twenty-four hour reporting*, of this permit.

## **SPECIAL CONDITIONS**

### **F. NOTIFICATION REQUIREMENT**

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

1. Any substantial change or proposed change in the volume or character of pollutants being introduced into the waste water treatment system. 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 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.

### **G. SITE EVALUATION FOR TRANSFERRED AND RENEWED PERMITS**

**Prior to permit transfer or transfer of the property** occupying the permitted overboard discharge system, a site evaluation must be performed (if not done so within the most recent five-year period) by a licensed site evaluator with experience in designing systems for the replacement of overboard discharge systems.

**Transfers** - The Department may not grant approval for permit transfer if the site evaluation concludes that a non-discharging waste water disposal system designed in compliance with the Maine Subsurface Waste Water Disposal Rules administered by the Maine Department of Health and Human Services, Division of Environmental Health can be installed as an alternative system for the overboard discharge. Pursuant to Maine law 38 M.R.S. §413(3) the alternative system would need to be installed within 90 days of property transfer, except that, if soil conditions are poor due to seasonal weather, the alternative system may be installed as soon as soil conditions permit.

**Renewals** – Pursuant to Maine law 38 M.R.S. §414-A(1-B), if a technologically proven alternative is identified, the alternative must be installed within 180 days of the application's being accepted by the department, subject to availability of funding under section 411-A. If the applicant is not eligible for funding under section 411-A, the alternative system must be installed within 180 days. If the applicant is eligible for funding but no funding is available, the installation of an alternative system may be postponed until funding is available.

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

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



## **SPECIAL CONDITIONS**

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

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

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

### **I. SEPTIC TANK MAINTENANCE**

1. All septic treatment tanks and other holding or treatment tanks must be regularly inspected (at least once every three years) and maintained to ensure that they are providing best practicable treatment.
2. Tank contents should be removed whenever the sludge and scum occupies one-third of the tank's liquid capacity or whenever levels approach maximum design capacity whichever is less. Following pumping, the tanks must be checked for damage at key joints and the inlet and outlet baffles, and repaired promptly if damaged. The permittee must keep a pumping log including the date of pumping, quantity of material removed, name and number of licensed contractor, pumping frequency and other relevant observations. The logs must be kept current and available to the Department for inspection upon request.

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

#### Electronic Reporting

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

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

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

Documentation submitted in support of the electronic DMR may be attached to the electronic DMR. Toxics reporting must be done using the DEP Toxsheet reporting form included as **Attachment C** of this permit. An electronic copy of the Toxsheet reporting document must be submitted to the Department assigned compliance inspector as an attachment to an email. In addition, a hardcopy form of this sheet must be signed and submitted to the Department assigned compliance inspector, or a copy attached to your NetDMR submittal will suffice.

## **SPECIAL CONDITIONS**

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

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

An electronic copy of the secondary treatment bypass reporting document must be submitted to the Department assigned compliance inspector and the CSO Coordinator as an attachment to an email. In addition, a hardcopy form of this sheet must be signed and submitted to the Department assigned compliance inspector, or a copy attached to your NetDMR submittal will suffice. Documentation submitted electronically to the Department in support of the electronic DMR must be submitted no later than midnight on the 15<sup>th</sup> day of the month following the completed reporting period.

#### Non-electronic Reporting

If you have received a waiver from the Department concerning the USEPA electronic reporting rule, or are permitted to submit hardcopy DMR's to the Department, then your monitoring results obtained during the previous month must be summarized for each month and reported on separate Discharge Monitoring Report (DMR) forms provided by the Department and postmarked on or before the thirteenth (13<sup>th</sup>) day of the month or hand-delivered to a Department Regional Office such that the DMR's are received by the Department on or before the fifteenth (15<sup>th</sup>) day of the month following the completed reporting period.

Toxsheet reporting forms must be submitted electronically as an attachment to an email sent to your Department compliance inspector. In addition, a signed hardcopy of your Toxsheet must also be submitted.

A signed copy of the DMR and all other reports required herein must be submitted to the Department assigned compliance inspector (unless otherwise specified) following address:

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

### **K. REOPENING OF PERMIT FOR MODIFICATIONS**

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

**SPECIAL CONDITIONS**

**L. SEVERABILITY**

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

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

**FACT SHEET**

Date: July 5, 2017

MEPDES PERMIT: #ME0102776  
WASTE DISCHARGE LICENSE: #W001003-5D-D-R

NAME AND ADDRESS OF APPLICANT:

**MAINE SCHOOL ADMINISTRATIVE DISTRICT #75  
50 Republic Avenue  
Topsham, Maine 04086**

COUNTY: **Sagadahoc County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**23 Cemetery Road  
Bowdoinham, Maine 04008**

RECEIVING WATER / CLASSIFICATION: **West Branch of the Cathance River/Class B**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Christopher R. Shaw  
Facilities & Projects Director  
(207) 729-1548**

**1. APPLICATION SUMMARY**

- a. Application - Maine School Administrative District #75 (MSAD #75 hereinafter) has applied to the Department for renewal of overboard discharge (OBD) Waste Discharge License (WDL) #W001003-5D-C-R/Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0102776 which was issued by the Department on October 3, 2012, and is scheduled to expire on October 3, 2017. The WDL authorized a year-round monthly average discharge of up to 7,500 gallons per day of secondary treated waste waters to the West Branch of the Cathance River, Class B, in Bowdoinham, Maine.
- b. Source Description: The discharge is from an elementary school complex with approximately 169 students and 38 faculty and staff. See Attachment A of this Fact Sheet for location maps. It is noted the northern half of the layout shows land owned by the Town of Bowdoinham (not MSAD #75) on which the replacement system option discussed in section 1(d) of this Fact Sheet would be located.

## 1. APPLICATION SUMMARY (cont'd)

- c. Wastewater Treatment: Residential like waste water generated at the school receives a secondary level of treatment via a septic tank and a sand filter bed treatment system. The waste water generated by the school is directed to two septic tanks with capacities of 4,000 and 8,000 gallons. After receiving primary treatment in the septic tank, waste water is conveyed to a splitter box that directs one-half of the flow to each of two sand filter beds.

Waste Water is collected from the sand filters and then conveyed by gravity to a tablet chlorinator for seasonal disinfection, conveyed to a tablet dechlorination chamber and then to the wet well of a pump station. The pump station consists of a wet well with a volume of 2,000 gallons and two pumps. Both pumps are typically set to operate automatically after activated by float switches that are set to initiate one pump when the water level in the wet well rises to a certain height. If waste water is generated at a flow rate exceeding the initial pump capacity and the wet well water level rises to activate the float switch for the second pump, then both pumps will operate to remove waste water from the wet well. When the water level diminishes below the level of the floats due to the pumping cycle, then the pumps will deactivate and no further discharge to the outfall pipe would occur until the next pumping cycle. From the pump station, the waste water is pumped under Ridge Road via a 4-inch diameter force main that leads to an outfall pipe that discharges to the West Branch of the Cathance River. The outfall pipe extends out into the receiving waters approximately 25 feet with approximately five foot of water over the crown of the pipe at low flow conditions. See Attachment B of this Fact Sheet for a layout of the septic tank, sand filters, pump station and outfall pipe discharge area.

- d. Replacement Options: The school has submitted documentation (October 4, 2007) indicating that replacement options are feasible at this location. However, the report notes that the proposed disposal area would require variances afforded by the *Subsurface Waste Water Disposal Rules*, 10-144 CMR, Chapter 241, (Plumbing Code) due to soil limitations consisting of a high perched ground water table and low permeability. The proposed disposal area would be located on land that is owned by the Town of Bowdoinham and not the school district.

The Plumbing Code authorizes a reduction of the leachbed disposal area by using an adjustment factor that is dependent on the quality of the effluent produced via pre-treatment technologies and devices. Sand filters used at the school pre-treat the effluent to a high quality level and would qualify for a reduced leachbed area. Using this adjustment factor, the school would qualify for a 50% reduction of leachbed sizing for subsurface waste water disposal (combined BOD & TSS concentrations less than 30 mg/L). The replacement system(s) would consist of a three sub-surface systems with a total area of 18,750 sq. ft. located just northeast of the existing sandfilter at an estimated cost of \$150,000 - \$175,000 (2007). The sub-surface systems would consist of a total of 375 plastic chambers. One system would be 300 feet long x 45 feet wide and the two other systems would be 200 feet long x 69 feet wide each. The Department has no authority to require the permittee to obtain a land use easement from the Town to install a subsurface system on property owned by the Town.

## 2. PERMIT SUMMARY

- a. Terms and conditions: This permitting action is carrying forward all condition of the October 3, 2012 permitting action except:
1. This permitting action is reducing the monitoring frequency for Total Residual Chlorine from 2/wk to 1/wk.
  2. This permitting action establishes a minimum reporting frequency for BOD Percent Removal of 1/Month.
  3. This permitting action establishes a minimum reporting frequency for TSS Percent Removal of 1/Month.
  4. This permitting action establishes a minimum monitoring frequency for pH of 1/Yr.
- b. Facility History: This section provides a summary of the most significant historical events for the School.

*November 28, 1973* – The Department issued WDL #579 that authorized the discharge of treated sanitary waste water generated by the school with a flow limitation of 7,500 gpd.

*January 11, 1977* – The Department issued WDL #1003 that renewed authorization to discharge up to 7,500 gpd of treated sanitary waste water. WDL #1003 expired on January 11, 1982.

*July 26, 1983* – The Department renewed WDL #1003 for a five year term.

*March 31, 1993* -- The Department issued WDL #W001003-58-A-R that renewed authorization to discharge up to 7,500 gpd generated by the school. The March 31, 1993 WDL was issued for a five-year term and expired on March 31, 1998.

*January 12, 2001* – The Department received authorization from the EPA to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. From that point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) permit program.

*June 12, 2007* – The School submitted a complete application to the Department to renew the WDL for its waste water treatment facility.

*December 21, 2007* – The Department issued WDL #W001003-5D-B-R for a five year term.

*July 16, 2012* – MSAD #75, Bowdoinham Community School, submitted a timely and complete application to the Department for renewal of WDL #W001003-5D-B-R.

*October 3, 2012* - The Department issued combination MEPDES Permit #ME0102776 / WDL #W001003-5D-C-R for a five year term.

*April 28, 2017* - MSAD #75, Bowdoinham Community School, submitted a timely and complete application to the Department for renewal of combination MEPDES Permit #ME0102776 / WDL #W001003-5D-C-R. The application as accepted for processing on May 5, 2017 and assigned application tracking #W001003-5D-D-R.

### 3. CONDITIONS OF PERMIT

*Conditions of licenses*, 38 M.R.S. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require the application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, *Certain deposits and discharges prohibited*, 38 M.R.S. § 420 and Department rule *Surface Water Toxics Control Program*, 06-096 CMR 530 (effective March 21, 2012), require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective July 29, 2012), 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. §468(6) states that the West Branch, a tributary of the Cathance River, or those waters draining directly or indirectly into tidal waters of Sagadahoc County above the Chops, with the exception of tributaries of the Androscoggin River Estuary, the Kennebec River Estuary and Merrymeeting Bay is a Class B water body. Maine law 38 M.R.S. §465(3) contains the classification standards for Class B waterbodies.

### 5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2014 Integrated Water Quality Monitoring and Assessment Report. The 305b Report lists all of Maine's fresh waters as, "*Category 5C: Waters Impaired by Atmospheric Deposition of Mercury. Regional or National TMDL may be required.*" Impairment in this context refers to a statewide fish consumption advisory due to elevated levels of mercury in some fish tissues.

All freshwaters are listed in Category 5C (TMDL Completed) due to US EPA approval of Regional Mercury TMDL. Maine has a fish consumption advisory for fish taken from all freshwaters due to mercury. Many waters, and many fish from any given water, do not exceed the action level for mercury. However, because it is impossible for someone consuming a fish to know whether the mercury level exceeds the action level, the Maine Department of Human Services decided to establish a statewide advisory for all freshwater fish that recommends limits on consumption. Maine has already instituted statewide programs for removal and reduction of mercury sources.

Department rule Chapter 519, *Interim Effluent Limitations and Controls for the Discharge of Mercury*, establishes controls on the discharge of mercury to the surface waters of the State through interim effluent limits and implementation of pollution prevention plans. However, Section 1(A)(1) of the Chapter 519 rule states in part:

"This rule applies to all persons licensed or permitted pursuant to 38 M.R.S. §413 to discharge pollutants to the surface waters of the State except as described below. For the purposes of this rule, the term licensee also means permittee.

## 5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

- (1) Categorical exclusions. This rule does not apply to the following categories of licensees: combined sewer overflows, snow dumps, pesticide applications, and over board discharges licensed pursuant to 38 M.R.S. §413.[emphasis added] Except, however, specific members of these categories may be required by the department to comply with this rule on a case by case basis...”

The Department has no information at this time that the discharge from the school causes or contributes to the impairment status of the receiving waterbody.

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Best Practicable Treatment (BPT) - The Department will find that the discharge meets the requirements of best practicable treatment pursuant to 38 M.R.S. § 414-A(1-B) for purposes of licensing when it finds that there are no technologically proven alternative methods of wastewater disposal consistent with the plumbing code adopted by the Department of Health and Human Services pursuant to Title 22, section 42 that will not result in an overboard discharge. Pursuant to *Overboard Discharges: Licensing and Abandonment*, 06-096 CMR 596(9), *Criteria and Standards for Waste Discharge Licenses* 06-096 CMR 524(2) (effective January 12, 2001) and 06-096 CMR 525(3)(III), BPT for overboard discharges is secondary treatment.
- b. Flow: The previous established monthly average discharge flow limitation of 7,500 gallons per day (gpd), which is based on the design flow for the treatment system, is being carried forward in this permitting action.

The Department reviewed the discharge monitoring reports (DMR) that were submitted for the period of January 1, 2014 through January 1, 2017. A review of data indicates the following:

### Flow (n = 35)

Value	Limit (GPD)	Range (GPD)	Mean (GPD)
Monthly Average	7,500	0 - 576	384
Daily Maximum	Report	0 - 576	386

- c. Biochemical Oxygen Demand (BOD<sub>5</sub>) and Total Suspended Solids (TSS): This permitting action is carrying forward a technology-based monthly average and daily maximum BOD<sub>5</sub> and TSS concentration limits of 30 mg/L and 50 mg/L, respectively. The monthly average concentration limit is 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 daily maximum BOD<sub>5</sub> and TSS concentration limits of 50 mg/L were based on a Department best professional judgment (BPJ) of best practicable treatment (BPT). In addition, this permitting action is carrying forward the weekly average BPT concentration limit of 45 mg/L pursuant to Department rule, 06-096 CMR Chapter 525(3)(III).



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

This permitting action carries forward the monthly average, weekly average and daily maximum BOD<sub>5</sub> and TSS mass limitations based on calculations using the design flow for the facility of 7,500 gpd (0.0075 MGD) and the applicable concentration limits as follows:

Monthly Average Mass Limit: (0.0075 MGD)(8.34 lbs./gallon)(30 mg/L) = 1.9 lbs/day  
Weekly Average Mass Limit: (0.0075 MGD)(8.34 lbs./day) (45 mg/L) = 2.8 lbs/day  
Daily Maximum Mass Limit: (0.0075MGD) (8.34 lbs./day)(50 mg/L) = 3.2 lbs/day

All mass limits are being carried forward in this permitting action. The Department reviewed DMRs that were submitted for the period of January 1, 2014 through January 1, 2017. A review of data indicates the following:

### BOD<sub>5</sub> Mass (n=35)

Value	Limit (lbs./day)	Range (lbs./day)	Average (lbs./day)
Monthly Average	1.9	0 – 0.03	0.002
Weekly Average	2.8	0 – 0.03	0
Daily Maximum	3.2	1 - 1	0.859

### BOD<sub>5</sub> Concentration (n=35)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	1 - 11	3.38
Weekly Average	45	1 - 11	3.38
Daily Maximum	50	1 - 11	3.38

### TSS mass (n=35)

Value	Limit (lbs./day)	Range (lbs./day)	Average (lbs./day)
Monthly Average	1.9	0 – 0.05	0.004
Weekly Average	2.8	0 – 0.05	0
Daily Maximum	3.2	0.01 – 1	0.861

### TSS concentration (n=35)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	2.50 - 19	9.73
Weekly Average	45	2.50 - 19	9.73
Daily Maximum	50	2.50 - 19	9.73

This permitting action is carrying forward a 1/Month minimum monitoring frequency requirement for BOD<sub>5</sub> and TSS.

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

This permitting action is also carrying forward the requirement for a minimum of 85% removal of BOD5 and TSS pursuant to Chapter 525(3)(III)(a)(3) and (b)(3) of the Department's rules. The school's waste water treatment system does not have an influent sampling port location that is representative of raw waste water conditions. According to the USEPA's Onsite Wastewater Treatment Systems Manual, dated February 2002, table 3-7 entitled "*Constituent Mass Loadings and Concentrations in Typical Residential Wastewater*" a reasonable influent value for BOD5 and TSS may be assumed to be 286 mg/L. This permitting action is carrying forward the authorization for the permittee to assume an influent BOD5 and TSS concentration value of 286 mg/L for purposes of calculating the monthly percent removal value until such time that the infrastructure is modified or replaced such that collection of a representative raw influent sample is practical.

- d. Settleable Solids: This permitting action is carrying forward the technology based daily maximum concentration limit for settleable solids of 0.3 ml/L with a 1/Month monitoring frequency. The limit is a Department BPT limit and is consistent with all other MEPDES permits issued by the Department for like discharges. During the period between January 1, 2014 through January 1, 2017, the permittee has reported settleable solid concentrations at 0.0 ml/L.
- e. Escherichia coli Bacteria: This permitting action is carrying forward the seasonal monthly average and daily maximum concentration limits for *E. coli* bacteria of 64 colonies/100 ml (geometric mean) and 427 colonies/100 ml (instantaneous level), respectively, which were based on the State of Maine Water Classification Program criteria for Class B waters found at 38 M.R.S. §465(3)(B), and a minimum monitoring frequency requirement of once every month between May 15 and September 30 of each year to be consistent with the time frame established in Maine law, 38 M.R.S. §465(C). Subsequent to issuance of the previous permit, the State Legislature adopted more stringent AWQC for *E. coli* bacteria. The newer criteria for Class B waste are 64 colonies/100 ml as a monthly average and 236 colonies/100 ml as a daily maximum. The Department has made the determination that after taking into consideration the dilution associated with the discharge, the daily maximum BPT limit established in the previous permitting action is protective of the newer AWQC for bacteria.

Although *E. coli* bacteria limits are seasonal, the Department reserves the right to impose year-round bacteria limits if deemed necessary to protect the health, safety and welfare of the public.

A review of the monthly average and daily maximum data as reported on the DMRs submitted to the Department for the period January 1, 2014 through January 1, 2017 indicates the monthly (geometric mean) and daily maximum *E. coli* bacteria discharged has ranged from <1 colonies/100 ml to 48 colonies per 100 ml. The DMR indicates the facility has been in compliance with the limitation 100% of the time.

### ***E. coli* Bacteria (n=14)**

Value	Limit (col/100 ml)	Range (col/100 ml)	Mean (col/100 ml)
Monthly Average	64	1 – 48	9.29
Daily Maximum	427	1 – 48	9.28

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

- f. Total Residual Chlorine (TRC): This permitting action is carrying forward the daily maximum technology based concentration limit of 0.3 mg/L for TRC. Limitations on TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either a water quality-based or BPT-based limit. 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 or a daily maximum technology based limit of 0.3 mg/L if the permittee dechlorinates the discharge. This school dechlorinates the effluent prior to discharge. Therefore, this permitting action is carrying forward the daily maximum limitation of 0.3 mg/L.

During the period of January 1, 2014 through January 1, 2017 the DMRs indicate the TRC discharged was 0.0 ml/L throughout the entire period. Therefore, this permitting action is reducing the monitoring requirements for TRC to 1/week.

- g. pH: This permitting action is carrying forward the pH range limit of 6.0 – 9.0 standard units (SU), considered by the Department at the time, as BPT for secondary treated waste water, but did not establish any monitoring frequency requirements. This permitting action establishes a monitoring frequency of 1/Year.

## 7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has determined the existing water uses will be maintained and protected, and that the discharge as permitted will not cause or contribute to the failure of the water body to meet standards for Class B waters.

## 8. PUBLIC COMMENTS

Public notice of this application was made in the Brunswick Times Record newspaper on or about April 30, 2017. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits 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 sent to:

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

## **10. RESPONSE TO COMMENTS**

During the period of May 15, 2017 through issuance of the permit, the Department solicited comments from the permittee, state and federal agencies and interested parties on the proposed draft MEPDES permit and Maine WDL to be issued for the proposed discharge from MSAD #75. The Department did not receive any substantial comments from any party. Therefore, no Response to Comments has been prepared.

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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).

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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

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

- (b) The permittee shall at all times maintain in good working order and operate at maximum efficiency all waste water collection, treatment and/or control facilities.
- (c) All necessary waste treatment facilities will be installed and operational prior to the discharge of any wastewaters.
- (d) Final plans and specifications must be submitted to the Department for review prior to the construction or modification of any treatment facilities.
- (e) The permittee shall install flow measuring facilities of a design approved by the Department.
- (f) The permittee must provide an outfall of a design approved by the Department which is placed in the receiving waters in such a manner that the maximum mixing and dispersion of the wastewaters will be achieved as rapidly as possible.

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

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

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

#### **5. Bypasses.**

(a) Definitions.

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

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

(c) Notice.

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



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- (ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D(1)(f), below. (24-hour notice).
- (d) Prohibition of bypass.
  - (i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:
    - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
    - (C) The permittee submitted notices as required under paragraph (c) of this section.
  - (ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (d)(i) of this section.

**6. Upsets.**

- (a) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- (c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
  - (ii) The permitted facility was at the time being properly operated; and
  - (iii) The permittee submitted notice of the upset as required in paragraph D(1)(f), below. (24 hour notice).
  - (iv) The permittee complied with any remedial measures required under paragraph B(4).
- (d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

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**C. MONITORING AND RECORDS**

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

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

**3. Monitoring and records.**

- (a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (b) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.
- (c) Records of monitoring information shall include:
  - (i) The date, exact place, and time of sampling or measurements;
  - (ii) The individual(s) who performed the sampling or measurements;
  - (iii) The date(s) analyses were performed;
  - (iv) The individual(s) who performed the analyses;
  - (v) The analytical techniques or methods used; and
  - (vi) The results of such analyses.
- (d) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in the permit.
- (e) State law provides that any person who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule license, permit approval or decision is subject to the penalties set forth in 38 MRSA, §349.

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**D. REPORTING REQUIREMENTS**

**1. Reporting requirements.**

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

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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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