STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

December 16, 2009

Via Certified Mail Return Receipt #7006 2150 0000 7488 1582

Mr. Anthony Kelley
Agvest, Incorporated
233 Winter Road
Franklin, ME 04634

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #MEU507755
Maine Waste Discharge License #W007755-5P-C-R
Final Permit/License – Agvest, Incorporated

Dear Mr. Kelley:

Enclosed please find a copy of your **final** Maine MEPDES Permit/WDL which was approved by the Department of Environmental Protection. Please read the license and its attached conditions carefully. You must follow the conditions in the license 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 contact me at (207) 287-7658 or at phyllis.a.rand@maine.gov.

Sincerely,

Phyllis Arnold Rand

Phyllis Arnold Rand
Division of Water Quality Management
Bureau of Land and Water Quality

Enclosure

cc: Clarissa Trasko, DEP/EMRO
Sandy Mojica, USEPA
Doug Koopman, USEPA
Lori Mitchell, DMU

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

DEPARTMENT ORDER

IN THE MATTER OF

AGVEST, INCORPORATED		)	PROTECTION AND IMPROVEMENT
FRANKLIN, HANCOCK COUNTY, MAINE		)	OF WATERS
SURFACE WASTEWATER DISPOSAL SYSTEM		)	
MEU507755		)	WASTE DISCHARGE LICENSE
W007755-5P-C-R	**APPROVAL**	)	**RENEWAL**

Pursuant to *Conditions of licenses*, 38 M.R.S.A. § 414-A, and applicable regulations, the Department of Environmental Protection ("Department") has considered the application of AGVEST, INCORPORATED ("licensee"), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

The licensee has submitted a timely and complete application to the Maine Department of Environmental Protection ("Department") for the renewal of Waste Discharge License (WDL) W007755-5P-B-R, issued by the Department on October 15, 2004, for a five-year term. The 10/15/04 WDL authorized the operation of a surface wastewater (spray irrigation) system for blueberry and cranberry process wastewater. Treatment is achieved by screening, solids separation in holding tanks and seasonal disposal via a 4-acre spray irrigation site located northerly from the processing facility. The 10/15/04 WDL authorized the licensee to apply wastewater to the spray irrigation fields at a rate of no greater than 1.0 inch per week (~27,150 gallons per acre per week) for a total maximum of 108,600 gallons per week over the entire 4-acre spray irrigation area.

LICENSE SUMMARY

The licensee has not requested to modify the terms and conditions established in the 10/15/04 WDL. With the exception of the changes summarized below to make this WDL consistent with other spray irrigation licenses, this licensing action does not include substantive changes to the terms and conditions established in the 10/15/04 WDL.

This licensing action is different from the 10/26/04 licensing action in that it is:

1. Revising the Treatment Plant Operator condition to include SITS-I certification;

2. For groundwater monitoring, revising the depth to water level below land surface monitoring from 1/100th of a foot to 1/10th of a foot;

3. Eliminating the Spray Irrigation Performance Report condition (Special Condition M of the previous WDL);

LICENSE SUMMARY (cont'd)

4. For spray irrigation field, eliminating the monitoring and reporting requirements for chemical oxygen demand and total nitrogen;

5. Establishing notification a requirement for the identification of pesticides used during the previous growing season;

6. Establishing a notification requirement for the identification of pesticides anticipated for use during the upcoming growing season;

7. Revising the monitoring requirements for pesticides.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated December 16, 2009, 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.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) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;

   (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and

   (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.

4. The discharge will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S.A. § 414-A(1)(D).

ACTION

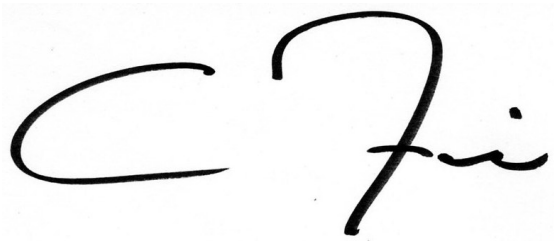
THEREFORE, the Department APPROVES the above noted application of AGVEST, INCORPORATED, to operate a surface wastewater disposal system to treat and dispose of up to 15,514 GALLONS PER DAY of process and wash-down wastewater to ground water, Class GW-A, in Franklin, Maine, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations including:

1. *"Standard Conditions of Industrial Waste Discharge Licenses,"* revised August 14, 1996, copy attached.

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

3. This license expires five (5) years from the date of signature below.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES



This permit has been digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to authority under 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date 2009.12.18 14:03:28 -05'00'

Date of initial receipt of application: August 24, 2009
Date of application acceptance: September 1, 2009

This Order prepared by Phyllis Arnold Rand, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS

1. Beginning the effective date of the license, the licensee is authorized to operate a surface waste water treatment and disposal system. The **STORAGE TANK EFFLUENT (OUTFALL 001A)** **(1)** shall be limited and monitored as specified below.

Parameter	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Total Suspended Solids *[00530]*	Report, mg/L *[19]*	1/Month(2) *[01/30]*	Grab *[GR]*
Nitrate-Nitrogen *[00620]*	Report, mg/L *[19]*	1/Month(2) *[01/30]*	Grab *[GR]*
Total Kjeldahl-Nitrogen *[00625]*	Report, mg/L *[19]*	1/Month(2) *[01/30]*	Grab *[GR]*
Chemical Oxygen Demand *[81017]*	Report, mg/L *[19]*	1/Month(2) *[01/30]*	Grab *[GR]*
Specific Conductance *[00095]*	Report, umhos/cm *[11]*	1/Month(2) *[01/30]*	Grab *[GR]*
pH (Standard Units) *[00400]*	Report S.U. *[12]*	1/Month(2) *[01/30]*	Grab *[GR]*

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

Footnotes: See pages 7–8 of this license.

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS

2. Beginning the effective date of the license, application of wastewater to the land via a spray irrigation system shall be limited to the time period **April 15th to November 15th of each calendar year**. The **SPRAY-IRRIGATION FIELD, SF-1**, shall be limited and monitored as specified below:

Parameter	**Monthly Total** as specified	**Weekly Average** as specified	**Measurement Frequency** as specified	**Sample Type** as specified
Application Rate (Weekly) (3) *[51125]*	---	27,150 gal/acre/week(4) (1.0 in/acre/week) [8B]	1/Week *[01/07]*	Calculate *[CA]*
Flow – Total Gallons(3) *[82220]*	Report (Gallons) *[80]*	---	1/Month *[01/30]*	Calculate *[CA]*

Note: Site #6 of SF-1 is not active at this time.

Footnotes: See pages 7–8 of this license.

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS

3. Beginning the effective date of the license, **GROUND WATER MONITORING WELLS MW3** (new) (the southerly most monitoring well and designated as Outfall 001G), **MW4** (located southeasterly of the spray site and designated as Outfall 001H), **MW5** (located easterly of the spray site and designated as Outfall 001I), **MW6** (the most northerly well and designated as Outfall 001J) shall be limited and monitored as specified below. Groundwater monitoring wells MW1, MW2, MW3(old) corresponding to Outfalls 001D, 001E and 001F, respectively, have been abandoned and are no longer being used.

Monitoring Parameters	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Nitrate-Nitrogen *[00620]*	10 mg/L *[19]*	2/Year(6) *[02/YR]*	Grab *[GR]*
Total Kjeldahl Nitrogen *[00625]*	Report, mg/L *[19]*	2/Year(6) [02/YR]	Grab *[GR]*
Depth to Water Level Below Land surface *[72019]*	Report (feet)(5) *[27]*	3/Year(5) *[03/YR]*	Measure *[MS]*
Specific Conductance *[00095}*	Report (umhos/cm) *[11]*	2/Year(6) *[02/YR]*	Grab *[GR]*
Temperature *[00011]*	Report (Fahrenheit) *[15]*	2/Year(6) *[02/YR]*	Grab *[GR]*
pH (Standard Units) *[00400}*	Report (S.U.) *[12]*	2/Year(6) *[02/YR]*	Grab *[GR]*
Total Suspended Solids *[00530}*	Report (mg/L) *[19]*	2/Year(6) *[02/YR]*	Grab *[GR]*
Chemical Oxygen Demand *[81017}*	Report (mg/L) *[19]*	2/Year(6) *[02/YR]*	Grab *[GR]*

Footnotes: See pages 7–8 of this license.

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

FOOTNOTES:

1. **Sampling –** Sampling and analysis must be conducted in accordance with; a) methods approved in Title 40 *Code of Federal Regulations* (40 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 are subject to the provisions and restrictions of the *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000). Laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of 10-144 CMR 263.

   All analytical test results shall be reported to the Department including results which are Detected below the respective reporting limits (RL's) specified by the Department or as specified by other approved test methods. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the detection limit achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL is not acceptable and will be rejected by the Department. For mass, if the analytical result is reported as <Y or if a detectable result is less than a RL, report a <X lbs/day, where X is the parameter specific limitation established in the permit. See **Attachment A** of this permit for a list of the Department's RL's.

   Storage tank effluent shall be sampled at a point in the discharge pipe leading to the spray irrigation area, and shall be representative of what is actually sprayed on the fields. Any change in sampling location must be approved by the Department in writing.

2. **Storage Tank Effluent Sampling Period –** Storage tank effluent sampling shall be conducted in the months of **April, May, August, and October** of each calendar year in accordance with approved methods for sampling, handling and preservation. The licensee is not required to test for these parameters during a month where no wastewater was disposed of via the spray irrigation system.

3. **Spray Application Rate Calculation** – A field's weekly application rate is the total gallons sprayed over the applicable period of time divided by the size of the wetted area of the spray-irrigation field or the area in acres of that portion of the field utilized. Note: 27,150 gallons is equivalent to one acre-inch. The licensee shall measure the flow of waste water to the irrigation area by the use of a flow measuring device that is checked for calibration at least once per calendar year. Weekly is defined as Sunday through Saturday.

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

FOOTNOTES:

4. **DMR Reporting** – For Discharge Monitoring Report (DMR) reporting purposes, the licensee shall report the highest weekly application rate for the month in the applicable box on the form. Compliance with weekly reporting requirements must be reported for the month in which the calendar week ends.

5. **Depth to Water Level Below Land Surface Monitoring** – Measured to the nearest one-tenth ($1/10^{th}$) of a foot as referenced from the surface of the ground at the base of the monitoring well and shall be conducted in the months **of May, August and October** of each calendar year.

6. **Groundwater Monitoring** – Groundwater sampling shall be conducted the months of **May and October** of each year. Sampling, handling and preservation shall be conducted in accordance with federally approved methods. Specific conductance (calibrated to 25.0° C), temperature, and pH are considered to be "field" parameters, and are to be measured in the field via instrumentation. The licensee is required to test for these parameters whether wastewater was disposed of via the spray-irrigation system or not. Specific Conductance values greater than 275 umhos/cm, consistent trends approaching 275 umhos/cm or sudden spikes from previous levels shall be reported immediately to the Department, and may necessitate the need for additional groundwater testing requirements.

B. TREATMENT PLANT OPERATOR

The person who has the management responsibility over the treatment facility must hold a **Grade SITS-I or Grade I** certificate (or Registered Maine Professional Engineer) pursuant to Title 32 M.R.S.A. § 4171 *et seq*. 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 licensee may engage the services of the contract operator.

C. AUTHORIZED DISCHARGES

The licensee is authorized to discharge to discharge only: 1) in accordance with the licensee's General Application for Waste Discharge License, accepted for processing on September 1, 2009; 2) in accordance with the terms and conditions of this license; and 3) to the existing spray-irrigation field SF-1. Discharge of wastewater from any other location or from sources other than those indicated on said application requires formal modification of this license.

SPECIAL CONDITIONS

D. NOTIFICATION REQUIREMENT

In accordance with Standard Condition #6, the licensee shall notify the Department of the following:

1. Any substantial change in the volume or character of pollutants being introduced into the 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 treatment system; and

   b. any anticipated impact caused by the change in the quantity or quality of the waste water to be introduced into the treatment system.

E. GENERAL OPERATIONAL CONSTRAINTS

1. All wastewater shall receive treatment through a properly designed, operated and maintained screen and settling tank system prior to land irrigation.

2. The spray irrigation facilities shall be effectively maintained and operated at all times so that there is no discharge to surface waters, nor any contamination of ground water which will render it unsatisfactory for usage as a public drinking water supply.

3. The surface wastewater disposal system shall not cause the lowering of the quality of the groundwater, as measured in the groundwater monitoring wells specified by this license, below the State Primary and Secondary Drinking Water Standards specified in the Maine State Drinking Water Regulations pursuant to Maine law 22 M.R.S.A. § 2611. In the event that ground water monitoring results indicate lowering of the existing groundwater quality, the licensee may be required to take immediate remedial action(s), which may include but not limited to, adjustment of the irrigation schedule or application rates, a reduction of the pollutant loading, ground water remediation, or ceasing operation of the system until the groundwater attains applicable standards.

4. The Department shall be notified as soon as the licensee becomes aware of any threat to public health, unlicensed discharge of waste water, or any malfunction that threatens the proper operation of the system. Notification shall be made in accordance with the attached Standard Condition #4 of this license.

5. The licensee shall maintain a file on the location of all system components and relevant features. System components including collection pipes, tanks, manholes, pumps, pumping stations, spray disposal fields, and monitoring wells shall be identified and referenced by a unique identifier (alphabetical, numeric or alpha-numeric) in all logs and reports. Each component shall be mapped and field located sufficiently to allow adequate inspections and monitoring by both the licensee and the Department.

SPECIAL CONDITIONS

F. SPRAY IRRIGATION OPERATIONAL CONSTRAINTS, LOGS AND REPORTS

1. Wastewater may not be applied to areas without sufficient vegetation or ground cover as to prevent erosion or surface water runoff within or outside the designated boundaries of the spray fields. There shall be no significant runoff within or out of the spray irrigation area due to the spray irrigation events.

2. At least 10 inches of separation from the ground surface to the groundwater table shall be present prior to each spray irrigation event.

3. No wastewater shall be applied to the site following a rainfall accumulation exceeding 1.0 inches within the previous 24-hour period. **A rain gauge shall be located on site to monitor daily precipitation.** The licensee shall also manage application rates by taking into consideration the forecast for rain events in the 48-hour period in the future**.**

4. No wastewater shall be applied where there is snow present on the surface of the ground.

5. No wastewater shall be applied when there is any evidence of frost or frozen ground within the upper 10 inches of the soil profile.

6. No traffic or equipment shall be allowed in the spray-irrigation field except where installation occurs or where normal operations and maintenance are performed.

7. **Prior to the commencement of spray irrigation for the season**, the licensee shall notify the Department's compliance inspector that they have verified that site conditions are appropriate (frozen ground, soil moisture etc) for spray irrigation.

8. The licensee shall install the equivalent of one groundwater level inspection well per spray field to verify that 10 inches of separation from the ground surface to the observed groundwater level is present each day prior to spraying. Depths to ground water shall be recorded in accordance with the format of *"Depth to Groundwater"* provided as **Attachment A** of this license.

9. The licensee shall at all times maintain in good working order and operate at maximum efficiency all wastewater collection, treatment and/or control facilities. Should significant malfunctions or leaks be detected, the licensee must shut down the malfunctioning portion of the spray system and make necessary repairs before resuming operation. The licensee shall cease irrigation if runoff is observed outside the designated boundaries of the spray field.

10. **The licensee shall maintain a daily log** of all spray irrigation operations which records, the date, weather and soil conditions, rainfall, areas irrigated, volume sprayed (gallons), application rates (daily and weekly), and other relevant observations/comments from daily inspections. The log shall be in accordance with the format of the *"Monthly Operations Log"* provided as **Attachment B** of this license.

SPECIAL CONDITIONS

F. SPRAY IRRIGATION OPERATIONAL CONSTRAINTS, LOGS AND REPORTS (cont'd)

Weekly spray application rates shall be reported in accordance with the format of the *"Spray Application Report by Week"* provided as **Attachment C** of this license. The *Monthly Operations Log, Spray Application Report by Week, and Depth to Groundwater* for each month shall be submitted to the Department as an attachment to the monthly Discharge Monitoring Reports (DMR's). Copies will also be maintained on site for Department review upon request.

G. VEGETATION MANAGEMENT

1. The licensee shall remove grasses and other vegetation such as shrubs and trees if necessary so as not to impair the operation of the spray irrigation system, ensure uniform distribution of waste water over the desired application area and to optimize nutrient uptake and removal.

2. The vegetative buffer zones along the perimeter of the site shall be maintained to maximize vegetation and forest canopy density in order to minimize off-site drift of spray.

H. TANK MAINTENANCE

1. The integrity of the settling or storage tanks shall be inspected periodically during the operating season and properly maintained at all times. There shall be no overflow through or over the tanks. Any signs of leaks or overflow shall be repaired or corrected immediately upon discovery.

2. The licensee shall maintain storage tank freeboard at design levels or at least two (2) feet whichever is greater**.** The storage tank shall be operated in such a way as to balance the disposal of wastewater via spray irrigation and to ensure that design freeboard levels are maintained.

3. The storage tanks shall be cleaned of solid materials as necessary to maintain the proper operating depths in both types of tanks that will provide best practicable treatment of the wastewater. All material removed from the tanks shall be properly disposed of in accordance with all applicable State and Federal rules and regulations.

I. INSPECTIONS AND MAINTENANCE

The licensee shall periodically inspect all system components to ensure the facility is being operated and maintained in accordance with the design of the system. Maintenance logs shall be maintained for each major system component including pumps, pump stations, storage tanks, spray apparatus, and pipes. At a minimum, the logs shall include the unique identifier [alphabetic, numeric or alpha-numeric -see Special Condition E(5)], the date of maintenance,

SPECIAL CONDITIONS

I. INSPECTIONS AND MAINTENANCE (cont'd)

type of maintenance performed, names or person performing the maintenance, and other relevant system observations.

J. GROUND WATER MONITORING WELLS

1. All monitoring wells shall be equipped and maintained with a cap and lock to limit access and shall be maintained in a secured state at all times. The integrity of the monitoring wells shall also be verified annually.

2. The Department reserves the right to require increasing the depth and or relocating any of the groundwater monitoring wells if the well is perennially dry or is determined not to be representative of groundwater conditions.

K. OPERATIONS AND MAINTENANCE (O & M) PLAN

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

By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades, the licensee shall 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 shall be kept on-site at all times and made available to the Department personnel upon request.

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

L. PESTICIDES

On or before December 1st of each year, ***[PCS code 95999]*** the licensee shall report to the Department any insecticides, fungicides, and herbicides (collectively referred to as pesticides) that have been used during the previous growing season and **on or before March 1st** ***[PCS code 95999]*** report pesticides that may be used in the next growing season on blueberries processed through the facility. Such notification shall include analytical test methods and minimum levels of detection available for each pesticide. The Department, in conjunction with the Maine Department of Agriculture's Board of Pesticide Control, or other State and or federal agency/organization with expertise in pesticides will evaluate the information submitted. If a pesticide(s) of concern is identified, the Department may administratively modify this license pursuant to Special Condition N, *Reopening of License for Modifications*,

SPECIAL CONDITIONS

L. PESTICIDES (cont'd)

to establish appropriate limitations and or monitoring requirements based on the new information.

If deemed appropriate, sampling for pesticides in the storage tank/lagoon effluent and ground water shall continue for as long as the parameter is detected at or above a State or federal: (1) Maximum Exposure Guideline (MEG), (2) Action Level (AL), (3) Maximum Contamination Level (MCL) or (4) other scientifically-defensible critical thresholds established in literature. If a parameter is not detected in the storage tank effluent, it does not need to be sampled for in the ground water monitoring locations provided the ground water is satisfying all the critical thresholds listed above.

M. MONITORING AND REPORTING

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

Department of Environmental Protection
Eastern Maine Regional Office
Bureau of Land and Water Quality
106 Hogan Road
Bangor, Maine 04401

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

SPECIAL CONDITIONS

N. REOPENING OF LICENSE FOR MODIFICATIONS

Upon evaluation of any required test results, results of inspections and/or reporting required by the Special Conditions of this licensing action, additional site specific or any other pertinent information or test results obtained during the term of this license, the Department may, at anytime and with notice to the licensee, modify this license to require additional monitoring, inspections and/or reporting based on the new information.

O. SEVERABILITY

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

Monthly Operations Log **Attachment A** **(Month/Year) _____)**

WDL #W007755-5P-B-R; Field(s) #__**SF-1**_____Weekly Application Rate: 27,150 gallons/acre (1.0 inch)

	A	B	C	D	E	F	G	H	I	J	K
Day	DATE	PRECIP Inches	TEMP	WEATHER	WIND-Direction Speed	Soil Moisture	Quantity-Total Gallons Pumped	Name of Field(s) Used	Acres Sprayed (Sum of Col H x Area of Each Field)	Gallons/Acre (inches) (Col G divided by I)	Total Inches
	1										
	2										
	3										
	4										
	5										
	6										
	7										
	8										
	9										
	10										
	11										
	12										
	13										
	14										
	15										
	16										
	17										
	18										
	19										
	20										
	21										
	22										
	23										
	24										
	25										
	26										
	27										
	28										
	29										
	30										
	31										
Monthly Total =											

Spray Application Report by Week **Attachment B** **Facility Name: AGVEST, Inc.**

WDL # W007755-5P-B-R (Month _____, Year _____) Weekly Application Rate _____ gallons/acre (____ inches)

Field Name/#	Effective Spray Area (Acres)	Weekly Limit (Gallons/Acre)	Actual Spray Application Rates (Gallons per Acre)					Number of Exceptions to Weekly Limit	Monthly Average
			Week 1	Week 2	Week 3	Week 4	Week 5		

Note: 1 acre-inch is equivalent to 27,150 gallons of liquid 27,150 gallons per acre is equivalent to 1.0 inch		Total Number of Exceptions	

A spray-field's weekly application rate if the total gallons sprayed (Sunday through Saturday) divided by the size of the spray-field in acres or the size in acres of that portion of the spray field utilized.

Signature of Responsible Official: _____, Date _____

Depth to Groundwater (Tenths of Feet) **Attachment C** (Month _____, Year _____)

Facility Name: AGVEST, INC. WDL # W007755-5P-B-R

Field Name/#	Monitoring Location	1. Depth to Groundwater (Measured From Ground Surface in Tenths of Feet)					Number of Exceptions	Monthly Average Depth
		Week 1	Week 2	Week 3	Week 4	Week 5		
					Total Number of Exceptions			

Note: Special Condition F(2) of this license requires that a depth of 10 inches from the ground surface to the groundwater table must be present prior to spraying. The licensee shall report the minimum depth to groundwater in the table above.

Signature of Responsible Official: _____, Date _____

MAINE WASTE DISCHARGE LICENSE

FACT SHEET

December 16, 2009

COMPLIANCE TRACKING NUMBER: **MEU507755**

LICENSE NUMBER: **W007755-5P-C-R**

NAME AND MAILING ADDRESS OF APPLICANT:

AGVEST, INCORPORATED
233 Winter Road
Franklin, Maine 04634

COUNTY: **HANCOCK COUNTY**

NAME AND ADDRESS OF FACILITY:

AGVEST, INCORPORATED
233 Winter Road
Franklin, Maine 04634

RECEIVING WATER/ CLASSIFICATION: **GROUND WATER/CLASS GW-A**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Anthony Kelley**
(207) 565-2300
Tony@agvest.com

1. APPLICATION SUMMARY

a. Application: Agvest, Incorporated ("licensee") has submitted a timely and complete application to the Maine Department of Environmental Protection ("Department") for the renewal of Waste Discharge License (WDL) W007755-5P-B-R, issued by the Department on October 15, 2004, for a five-year term. The 10/15/04 WDL authorized the operation of a surface waste water (spray irrigation) system for blueberry and cranberry process wastewater. Treatment is achieved by screening, solids separation in holding tanks and seasonal disposal via a 4-acre spray irrigation site located northerly from the processing facility. The 10/15/04 WDL authorized the licensee to apply wastewater to the spray irrigation fields at a rate of no greater than 1.0 inch per week (~27,150 gallons per acre per week) for a total maximum of 108,600 gallons per week over the entire 4-acre spray irrigation area.

2. LICENSE SUMMARY

a. Terms and Conditions: The licensee has not requested to modify the terms and conditions established in the 10/15/04 WDL. With the exception of the changes summarized below to make this WDL consistent with other spray irrigation licenses, this licensing action does not include substantive changes to the terms and conditions established in the 10/15/04 WDL.

This licensing action is different from the 10/26/04 licensing action in that it is:

1. Revising the Treatment Plant Operator condition to include SITS-I certification;

2. For ground water monitoring, revising the depth to water level below land surface monitoring from 1/100th of a foot to 1/10th of a foot;

3. Eliminating the Spray Irrigation Performance Report condition (Special Condition M of the previous WDL);

4. For spray irrigation field, eliminating the monitoring and reporting requirements for chemical oxygen demand and total nitrogen;

5. Establishing notification a requirement for the identification of pesticides used during the previous growing season;

6. Establishing a notification requirement for the identification of pesticides anticipated for use during the upcoming growing season;

7. Revising the monitoring requirements for pesticides.

b. History: This section provides a summary of significant licensing/permitting actions and milestones that have been completed for the licensee.

August 23, 1991– The Department issued WDL #W007755-WA-A-N for a five-year term. The WEL authorized the surface application of wastewater generated from the process and cleanup water from the blueberry processing facility in Franklin, Maine.

May 14, 1996 – Agvest submitted an application for renewal of the WDL.

August 24, 1998 – Agvest submitted a Water Storage and Spray irrigation Management Plan showing the revised spray irrigation area (4.0 acres) and new spray head pattern.

September 23, 1998 – The Department issued and Administrative Consent Agreement to address noncompliance the Agvest facility.

September 1, 2009 – The Department accepted a complete and timely application for license renewal from Agvest, Incorporated.

2. LICENSE SUMMARY (cont'd)

c. Source Description: Agvest, Incorporated, is a blueberry and cranberry processing facility located in the Town of Franklin, Maine. The Agvest facility generates blueberry and cranberry processing wastewater and cleanup water associated with the handling, freezing and storage of fresh blueberries and cranberries. The facility cleans and freezes up to 3.0 million pounds of fresh blueberries annually between late July and early September, and up to 3.0 million pounds of cranberries annually during October and November. The processing plant has a capacity to freeze up to 40 tons of fresh berries per day. Agvest generates a maximum of approximately 15,000 gallons of wastewater per day. The wastewater from the processing operations contains natural dissolved and suspended organic matter. Berry floatwater contains high concentrations of sugar. Washwater used for equipment disinfection contains 1-2 parts per million of chlorine. The processing and cleanup wastewater is conveyed to an onsite storage tank prior to pumping to the spray irrigation field. Sanitary wastes are disposed offsite.

d. Wastewater Treatment: Waste water at Agvest is managed by screening and then pumping to a forest soil spray irrigation site for treatment and disposal located northerly from the processing plant. Berry processing wash water is initially screened inside the plant with a Sweco vibratory screen measuring 24 inches in diameter with a mesh size of 0.10 inch. Screened waste water is discharged to a 2,000-gallon settling tank outside the processing plant. The overflow from the settling tank drains to an adjacent pump station wet well. The pump station wet well is a reinforced concrete structure measuring 8 feet in diameter and 10 feet deep with a working capacity of 3,400 gallons. Solids separated by the Sweco screen and the settling tank are collected and disposed of by composting at an off-site facility.

Small amounts of waste water are generated from the defrost of the freezer tunnel and from floor wash down, both of which are discharged to the 2,000-gallon settling tank without screening. The combined waste water is pumped by a 2 HP submersible pump at a rate of 100 to 150 gpm to a stationary screen located at the rear of the processing plant. This screen is a Sweco SV6S cycloid curved stationary 0.060 inch slotted wedgewire screen with an area of 39 square feet.

The stationary screen is mounted over a steel 4,050-gallon receiving tank. Screened waste water drops through the screen to the tank and solids are discharged to a conveyor belt to a dumpster for off-site composting and disposal. The screened wastewater is then pumped by a dual alternating 15 HP pumps to a 4.0 acre spray irrigation treatment and disposal site. A single pump discharges at a rate of 160 gpm at a total dynamic head of 160 feet. There are eleven spray heads shown on a plan entitled "Agvest, Inc, Wastewater Spray Irrigation System, Franklin, Maine, Site Plan," prepared by CES, dated July 10, 1997.

The spray heads are Nelson F80A series impact sprinklers with an 18 degree trajectory and a 15/32 inch nozzle size. They are each specified to deliver 40 gpm with a 68 foot radius at a pressure of 40 psi. An individual shut off gate valve for each spray head is

2. LICENSE SUMMARY (cont'd)

provided. The system is designed to be operated with two or three spray heads running simultaneously.

On days with precipitation or other adverse operating conditions, the screened wastewater is diverted to three above ground steel storage tanks. These tanks are piped and valved so that they can be operated independently or in combination. There are two 10,000 gallon tanks and one 15,000-gallon tank for a total of 35,000 gallons (approximately two days flow at the maximum wastewater generation rates). The stationary screen, receiving tank, dual pumps and storage tanks are all located within a secondary containment basin with a capacity of 6,500 cubic feet or 49,000 gallons. The basin is lined with an impermeable membrane constructed of 40 mil thick linear low density polyethylene. The membrane is covered with a 12 inch thick layer of 0.5 to 2.0 inch rounded screened stone for physical protection.

Precipitation and any spills within the basin are recycled to the storage tanks by a 0.5 HP submersible pump in a sump at the low end of the basin. Precipitation which accumulates in the secondary containment basin is assumed to be contaminated and is recycled to the storage tanks unless the water is tested and found to contain no contamination.

Design of an on-site spray irrigation system was developed to handle the application of annual wastewater generated by the blueberry processing. This design was developed with regard to several controlling factors such as anticipated wastewater volume, COD and nitrogen loadings on the proposed spray irrigation site, the permeability of the native soils, and the expected rates of evapotranspiration from the site.

The maximum volume handled by the system was based on records from the previous year of operation, which was 15,000 gpd with an average of 10,000 to 12,000 gpd during the typical August 1st to September 10th fresh berry processing season. This timeframe is typically followed by a seven week season of reduced flows averaging 4,000 gpd during the repackaging of previously frozen berries. In 1997, the fresh berry processing season was actually extended until November 8th for processing of cranberries.

The spray irrigation area is characterized by Dixfield sandy loam soils with a 3–8% slope with some minor areas of Brayton-Colonel complex with a 0-8% slope and some Scantic-Lamoine complex with a 0-3% slope. Dixfield soils are generally moderately well drained and were formed in glacial till with a friable surface layer. The site is located along a slope with a southerly aspect ranging from 85 to 115 feet above mean sea level containing a well distributed stand of mixed forest hardwood and softwood trees. A site location map is included as **Attachment A** of this fact sheet.

3. CONDITIONS OF LICENSE

Conditions of licenses, 38 M.R.S.A. § 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, *Certain deposits and discharges prohibited*, 38 M.R.S.A. § 420 and *Surface Water Toxics Control Program*, 06-096 CMR 530 (effective October 9, 2005) 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 October 9, 2005), 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

Classification of ground water, 38 M.R.S.A. § 470 states *"All ground water shall be classified as not less than Class GW-A, except as otherwise provided in this section."* *Standards of classification of ground water*, 38 M.R.S.A. § 465-C(1) contains the standards for the classification of ground water. *"Class GW-A shall be the highest classification and shall be of such quality that it can be used for public drinking water supplies. These waters shall be free of radioactive matter or any matter that imparts color, turbidity, taste or odor which would impair usages of these waters, other than that occurring from natural phenomena."*

5. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Groundwater Monitoring

During the previous licensing period, all groundwater monitoring wells were monitored. The monitoring wells are:

Monitoring Wells	Location
001G/MW3	Most southerly of the spray area, downgradient of spray area
001H/MW4	Southeasterly of the spray area, downgradient
001I/MW5	Easterly of the spray area, downgradient
001J/MW6	Most northerly well, upgradient of spray field

Groundwater monitoring parameters in the previous licensing action are being carried forward in this licensing action.

Monitoring Parameters

Slow rate land irrigation treatment is an environmentally sound and appropriate technology for best practicable treatment and disposal of waste water. The theory behind surface waste water disposal systems is to utilize the top 10-12 inches of organic matter and in-situ soils to attenuate the pollutant loadings in the applied waste waters. The soils and vegetation within the spray field area will provide adequate filtration and absorption to preserve the integrity of the soil, and both surface and ground water quality in the area.

5. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

The applicant shall periodically monitor the spray irrigation field and the groundwater monitoring locations at the specified frequencies and locations as called for in Special Condition A of this license.

a. *Biochemical Oxygen Demand & Total Suspended Solids (BOD_5 & TSS)* –BOD is the rate at which organisms use the oxygen in wastewater while stabilizing decomposable organic matter under aerobic conditions. BOD measurements indicate the organic strength of wastes in water. The Department established a "Report" requirement for BOD for calendar year 2005 only. TSS consists of both settleable and non-settleable solid materials contained in the wastewater. Monitoring for these parameters yields an indication of the condition of the wastewater being land applied.

b. *pH* - pH is considered a "field" parameter meaning that it is measured directly in the field via instrumentation and does not require laboratory analysis. It is considered a surveillance level monitoring parameter that is used as an early-warning indicator of potential ground water contamination and is carried forward from the previous licensing action.

c. *Chemical Oxygen Demand* – Chemical oxygen demand (COD) is a measure of the oxygen consuming capacity of organic matter present in waste water. This analysis is not necessarily related to BOD as chemical oxidants may react with substances that bacteria do not stabilize. COD is another indicator of the strength of the waste water being applied to the spray irrigation fields and is being carried forward from the previous licensing action.

d. *Specific Conductance* – Like pH, specific conductance is considered a "field" parameter, meaning that it is measured directly in the field via instrumentation and does not require laboratory analysis. It is considered a surveillance level monitoring parameter that is used as an early-warning indicator of potential ground water or surface water contamination and is being carried forward from the previous licensing action.

e. *Insecticides, Fungicides, Herbicides (collectively referred to as "pesticides")* – Farmers may utilize insecticides such as (phosmet), fungicides (chlorothalonil, propiconazole), and other pesticides on the crop at various times during berry producing years. Based on the varying persistence of these and other pesticides in water, the Maine Board of Pesticide Control has recommended that it may be necessary to monitor pesticides in storage tank effluent and groundwater monitoring locations and spray irrigation site soils.

Because farmers are regularly changing pesticides, this license is requiring the licensee to report to the Department any insecticides, fungicides, and herbicides that have been or may be used during the calendar year on blueberries processed through the facility. Such notification shall include analytical test methods and minimum levels of detection available for each pesticide. The Department, in conjunction with the Maine Department of

5. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

Agriculture's Board of Pesticide Control or other State and or federal agency/organization with expertise in pesticides, will evaluate the information submitted and determine which (if any) pesticide(s) the licensee shall sample for and at what frequency of sampling is appropriate.

If deemed appropriate, sampling for pesticides in storage tank effluent and monitoring wells shall be conducted according to the frequency and methods determined by the Department. If analysis indicates the presence of pesticides in the storage tank effluent at or above (1) Maximum Exposure Guidelines (MEGs), (2) Action Levels (ALs), (3) Maximum Contamination Levels (MCLs) or (4) other scientifically-defensible critical thresholds established in literature, the licensee shall conduct sampling for the parameter in the groundwater monitoring locations during the next scheduled sampling event.

f. *Application Rates (Weekly)* – The weekly maximum rate of 27,152 gallons per acre (1.0 inches per week) is being carried forward from the previous licensing action. The weekly limit is based on the characteristics of in-situ soils.

g. *Nitrate-nitrogen, total Kjeldahl nitrogen, total nitrogen (as N), organic nitrogen* – Nitrogen assumes different forms depending upon the oxidation-reduction conditions in the groundwater. The presence of a particular form of nitrogen indicates the nutrient attenuation capacity of the spray site. The Department considers the required monitoring for various forms of nitrogen in groundwater to provide accurate and sufficient analysis of site conditions and effects from the treatment process. The monitoring well sampling can also help identify overloading of the spray sites. Nitrogen compounds can indicate human health concerns if elevated in a drinking water supply. The 10 mg/L limit for nitrate nitrogen in monitoring wells is based on state and federal drinking water standards and is being carried forward from the previous licensing action.

h. *Depth to Water Level Below Land Surface* – Measuring the distance from the ground level to the groundwater surface in monitoring wells will be used to monitor representative groundwater conditions and is being carried forward from the previous licensing action.

i. *Temperature* – Temperature is considered a "field" parameter, meaning that it is measured directly in the field via instrumentation and does not require laboratory analysis. It is considered a surveillance level monitoring parameter that is used as an early-warning indicator of potential ground water contamination and is being carried forward from the previous licensing action.

6. HISTORICAL MONITORING RESULTS

Below is a summary of the storage tank effluent and groundwater monitoring test results and spray application rates for the period October 2005 – October 2009.

a. Storage Tank Effluent

BOD5 (mg/L) (# DMR's = 1)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	Report	2500	2500

TSS (mg/L) (# DMR's = 10)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	Report	19 – 300	88

pH (standard units) (#DMR's = 10)

Value	Limit (s.u)	Range (s.u)
Daily Maximum	Report	4.7 – 6.8

Specific Conductance (umhos/cm) (#DMR's = 10)

Value	Limit (umhos/cm)	Range (umhos/cm)	Avg. (umhos/cm)
Daily Maximum	Report	177 – 1260	678

Nitrate-Nitrogen (mg/L) (#DMR's = 10)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	Report	<0.05 – 0.17	0.2

Total Kjeldahl-Nitrogen (mg/L) (#DMR's = 9)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	Report	<0.25 – 13	6

Chemical Oxygen Demand (mg/L) (#DMR's = 10)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	Report	180 – 12,000	4,259

Pesticides (ug/L) (#DMR's = 2)

Value	Limit (mg/L)	Range (ug/L)	Average (ug/L)
Daily Maximum	Report	1 – 1	1

b. Spray application rates

Weekly Average Rate (gal/acre) (#DMR's = 19)

Value	Limit (gal/acre)	Range (gal/acre)	Average (gal/acre)
Weekly average	27,150	4,005 – 21,452	11,831

6. HISTORICAL MONITORING RESULTS (cont'd)

Flow-Total Gallons Applied (#DMR's = 19)

Value	Limit (gal)	Range (gal)	Average (gal)
Monthly total	Report	8,410 – 139,760	48,920

Chemical Oxygen Demand (mg/L) (#DMR's = 0)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	Report	Not reported	Not reported

Total Nitrogen (mg/L) (#DMR's = 0)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	Report	Not reported	Not reported

c. Groundwater

Values summarized below are mean values for results reported from October 2005 through October 2009. For results reported as "less than" (<), the detection limits were used for calculation purposes.

Well #	Temperature (Deg F)	Conductance (umhos/cm)	pH Range (SU)	TSS (mg/L)	Nitrate-Nitrogen (mg/L)
MW3	51	24	4.6 – 5.6	12	<0.05
MW4	50	119	5.7 – 6.9	9	<0.05
MW5	42	131	5.5 – 6.4	360	0.06
MW6	48	52	5.2 – 6.3	10	0.05

Well #	Total Kjeldahl Nitrogen (mg/L)	Depth-to-Water Level (feet)	COD (mg/L)	Pesticides
MW3	<0.25	6	<15	No Data
MW4	<0.25	4	<15	No Data
MW5	0.66	5	27	No Data
MW6	<0.25	6	15	No Data

7. SYSTEM CALIBRATION

Discharge rates, application rates and uniformity of application change over time as equipment gets older and components wear, or if the system is operated differently from the assumed design. Operating below design pressure greatly reduces the coverage diameter and application uniformity (resulting in increased ponding). For these reasons, the licensee should field calibrate their equipment on a regular basis to ensure proper application and uniformity, and when operating conditions are changed from the assumed design.

8. IMPACT ON RECEIVING WATER QUALITY

As licensed, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the water body to meet standards for Class GW-A classification.

9. PUBLIC COMMENTS

Public notice of this application was made in the *Bangor Daily News* newspaper on or about August 4, 2009. 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 licenses shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses,* 06-096 CMR 522 (effective January 12, 2001).

10. DEPARTMENT CONTACTS

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

Phyllis A. Rand
Division of Water Quality Management
Bureau of Land & Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone: (207) 287-7658 Fax: (207) 287-3435
phyllis.a.rand@maine.gov

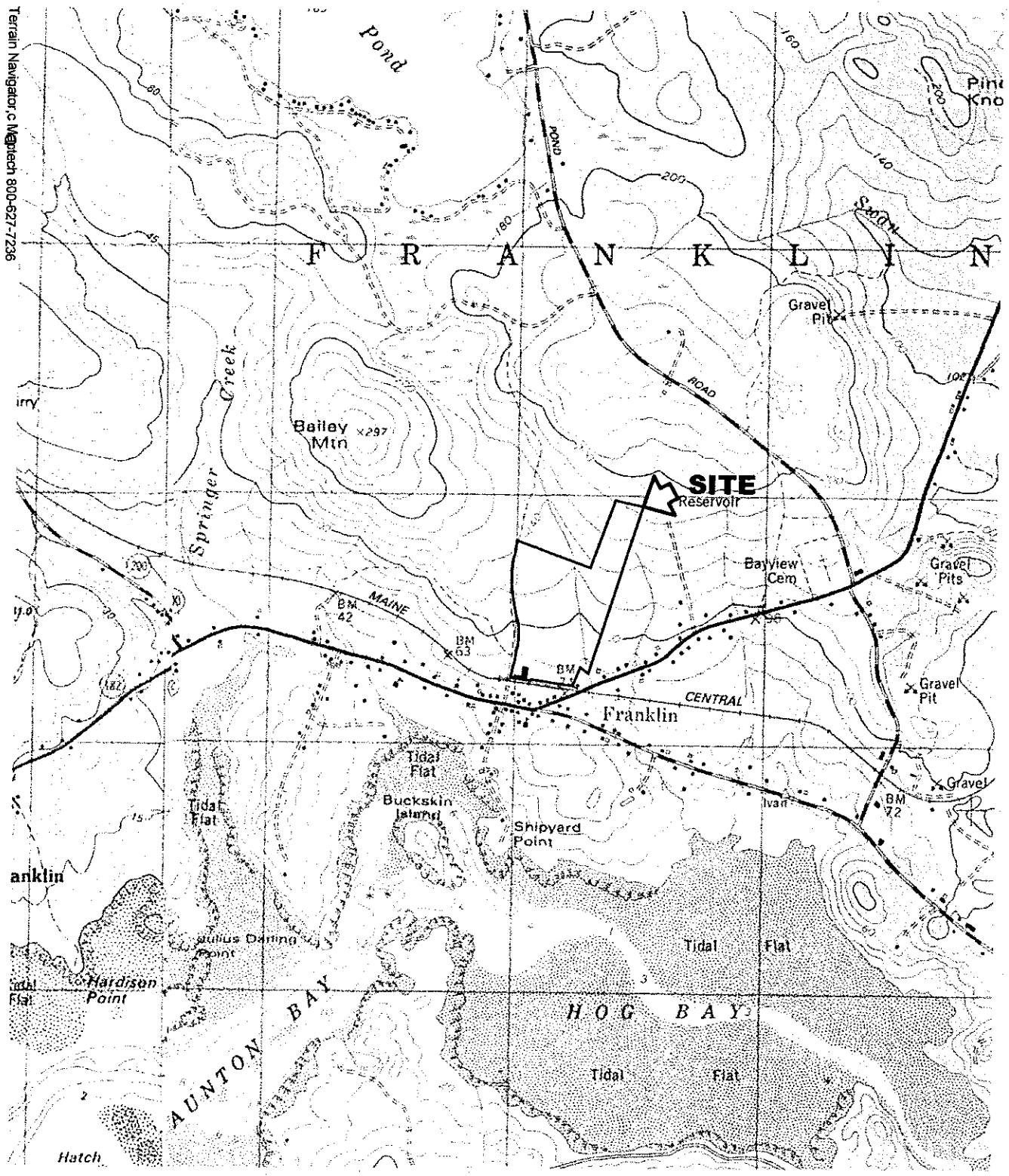
11. RESPONSE TO COMMENTS

During the period of November 9, 2009, through the issuance date of the permit/license, the Department solicited comments on the proposed draft permit/license to be issued for the discharge(s) from Agvest, Incorporated. The Department received one substantive internal comment regarding the limitations and monitoring requirements for pesticides. The comment and response are as follow:

***Comment*:** The permittee should only have to monitor for those pesticides expected to be present.

Response: The Department agrees and has modified the monitoring and reporting requirements for pesticides in *Special Condition L* of this permit.

ATTACHMENT A



SOURCE:
U.S.G.S. TOPOGRAPHIC QUADRANGLE
SULLIVAN, MAINE
@ 1:24,000

CES INC

AGVEST BLUEBERRY
FRANKLIN, MAINE
LOCATION MAP

8/5/09
2342

CONTENTS

A. GENERAL PROVISIONS

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

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

(a) They are not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. OPERATION AND MAINTENACE OF FACILITIES

1. General facility requirements.

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

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

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

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

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

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

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

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

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

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

5. Bypasses.

(a) Definitions.

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

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

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

(c) Notice.

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

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

(d) Prohibition of bypass.

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

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

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

6. Upsets.

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

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

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

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

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

C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

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

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

(c) Records of monitoring information shall include:

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

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

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

D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

(f) Twenty-four hour reporting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Publicly owned treatment works.

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

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

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

E. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004 **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. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days 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 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 and the applicant a copy of the documents. All 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

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status*. Standing to maintain an appeal requires the appellant to show they are particularly injured by 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 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 as part of an appeal only when 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 show 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, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information 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.* An applicant proceeding with a project pending the outcome of an appeal 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 initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final 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. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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.