



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

**DEPARTMENT ORDER  
IN THE MATTER OF**

MAINE WILD BLUEBERRY COMPANY	)	PROTECTION AND IMPROVEMENT
JONESBORO, WASHINGTON CO., MAINE	)	OF WATERS
SURFACE WASTEWATER DISPOSAL SYSTEM	)	
ICIS TRACKING #MEU508236	)	WASTE DISCHARGE LICENSE
WDL #W008236-5P-D-R	)	RENEWAL
<b>APPROVAL</b>	)	

Pursuant to *Conditions of Licenses*, 38 M.R.S. §414 –A, *Water Classification Program*, 38 M.R.S. §464 – 470 and applicable rules of the Department of Environmental Protection (DEPARTMENT), the Department has considered the application of the MAINE WILD BLUEBERRY COMPANY (Licensee), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

On April 5, 2021, the Department accepted as complete for processing an application from Maine Wild Blueberry Company for the renewal of Waste Discharge License (WDL) #W008236-5P-C-R issued by the Department on June 1, 2016, for a five-year term. The 6/1/16 WDL authorized the operation of a surface wastewater (spray irrigation) system to dispose up to a maximum of 1,167,450 gallons per week of blueberry process wastewater and wash-down wastewater. Treatment is achieved by screening, solids separation in settling tanks and storage in one 3-acre, clay-lined lagoon with seasonal disposal via a 21.5-acre spray irrigation site located on land in Jonesboro, Maine. By utilizing the entire 21.5-acre spray irrigation area over the entire 31 week spray irrigation season, the total amount of wastewater that could be applied to the site under ideal conditions is 36,190,950 gallons (1,167,450 gallons per week X 31 weeks). With an annual wastewater generation of 4,652,000 gallons, the spray irrigation system is sufficiently sized and provides ample flexibility to treat and dispose of the amount of wastewater generated. A map of the spray irrigation site is included as Fact Sheet **Attachment A**.

The licensee states that this spray irrigation facility is used only as an emergency back up to other operations. When not in use the lagoon fills with rainwater requiring the licensee to pump out the lagoon, resulting in unnecessary financial costs. The licensee has requested that a drain be installed to keep the lagoon empty of process waters when the facility is not in use.

## **LICENSE SUMMARY**

This licensing action is carrying forward all the terms and conditions of the June 1, 2016, WDL except that this license is;

1. Granting the request to install a drain on the lagoon to keep it empty during periods of non-use
2. Revises Special Condition L Pesticides and requires the permittee to submit a list of pesticides used during the previous season and institute sampling January 1st–May 31st following the use of Propiconazole or Methoxyfenozide during the previous season.

## CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated October 6, 2022, and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 MRS Section 464(4)(F), will be met, in that:
  - (a) Existing water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding natural resource, that water quality will be maintained and protected;
  - (c) Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment as defined in *Conditions of Licenses*, 38 M.R.S. § 414-A(1)(D).

**ACTION**


THEREFORE, the Department APPROVES the above noted application of the MAINE WILD BLUEBERRY COMPANY, to operate a surface wastewater disposal system to discharge 1,167,450 gallons per week of treated wastewater to soil above groundwater, Class GW-A, via a 21.5-acre spray irrigation area, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations including.

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

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES DONE

AND DATED AT AUGUSTA, MAINE, THIS 11 DAY OF October 2022.

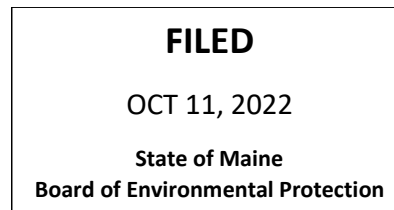
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
for Melanie Loyzim, Commissioner

Date of initial receipt of application: April 5, 2021

Date of application acceptance: April 5, 2021

Date filed with Board of Environmental Protection           



This Order prepared by Rod Robert, BUREAU OF WATER QUALITY

**SPECIAL CONDITIONS**

**A. LIMITATIONS AND MONITORING REQUIREMENTS**

1. The licensee is authorized to operate a surface wastewater treatment and disposal system. The **STORAGE LAGOON EFFLUENT (OUTFALL 001)** <sup>(1)</sup> must be limited and monitored as specified below.

<u>Parameter</u>	Daily <u>Maximum</u> as specified	Measurement <u>Frequency</u> as specified	Sample <u>Type</u> as specified
Biochemical Oxygen Demand <i>[00310]</i>	Report, mg/L <i>[19]</i>	1/Month <sup>(2)</sup> <i>[01/30]</i>	Grab <i>[GR]</i>
Nitrate-Nitrogen <i>[00620]</i>	Report, mg/L <i>[19]</i>	1/Month <sup>(2)</sup> <i>[01/30]</i>	Grab <i>[GR]</i>
PH (Standard Units) <i>[00400]</i>	Report S.U. <i>[12]</i>	1/Month <sup>(2)</sup> <i>[01/30]</i>	Grab <i>[GR]</i>

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 9 – 10 of this license.

**SPECIAL CONDITIONS**

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

2. Application of treated wastewater to the land via a spray irrigation system must be limited to the time period **April 15<sup>th</sup> to November 15<sup>th</sup> of each calendar year**. The **SPRAY-IRRIGATION FIELDS, SF-W** (Spray Field-West contains 13.8 acres), **and SF-E** (Spray Field-East contains 7.7 acres) must be limited and monitored as specified below.

Parameter	Monthly <u>Total</u>	Weekly <u>Maximum</u> <sup>(4)</sup>	Minimum Measurement <u>Frequency</u>	Sample <u>Type</u>
<u>Application Rate (Weekly)</u> <sup>(3)</sup> SF-W SF-E  [51128]	--- ---	749,340 gal/week 418,110 gal/week  [57]	1/Week 1/Week  [01/07]	Calculate Calculate  [CA]
<u>Flow – Total Gallons</u> <sup>(3)</sup> SF-W SF-E  [82220]	Report (Gallons) Report (Gallons)  [8D]	--- ---	1/Month 1/Month  [01/30]	Calculate Calculate  [CA]

**Footnotes:** See pages 9 – 10 of this license.

**SPECIAL CONDITIONS**

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

3. **GROUND WATER MONITORING WELLS MW008A** (the easterly most monitoring well and downgradient of lagoon #2), **MW008C** (located westerly and upgradient of lagoon #1 and considered a lagoon background well), **MW-SFW** (located in the westerly spray irrigation area) and **MW-SFE** (located in the easterly spray irrigation field), must be limited and monitored as specified below.

<u>Parameter</u>	<u>Daily Maximum as specified</u>	<u>Measurement Frequency as specified</u>	<u>Sample Type as specified</u>
Nitrate-Nitrogen [00620]	10 mg/L [19]	2/Year <sup>(7)</sup> [02/YR]	Grab [GR]
Depth to Water Level Below Landsurface [72019]	Report (feet) <sup>(5)</sup> [27]	2/Year <sup>(6)</sup> [02/YR]	Measure [MS]
Specific Conductance [00095]	Report (umhos/cm) [11]	2/Year <sup>(7)</sup> [02/YR]	Grab [GR]
Temperature [00011]	Report (Fahrenheit) [15]	2/Year <sup>(7)</sup> [02/YR]	Grab [GR]
PH (Standard Units) [00400]	Report (S.U.) [12]	2/Year <sup>(7)</sup> [02/YR]	Grab [GR]

**Footnotes:** See pages 9 – 10 of this license.

## **SPECIAL CONDITIONS**

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

Footnotes – [Special Conditions A(1), A(2), and A(3)]

#### Sampling

The permittee must conduct sampling and analysis in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services for wastewater. Samples that are sent to a publicly owned treatment works (POTW) pursuant to Waste discharge licenses, 38 M.R.S. § 413 are subject to the provisions and restrictions of Maine Comprehensive and Limited Environmental Laboratory Certification Rules, 10-144 CMR 263 (effective December 19, 2018). Laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of 10 – 144 CMR 263. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the discharge monitoring report (DMR).

#### Storage Lagoon Effluent

- (1) Storage lagoon effluent must be sampled at a point in the lagoon furthest from the truck off-load location or at a sampling port on the discharge pipe leading to the spray irrigation area and must be representative of what is actually sprayed on the fields. Any change in sampling location must be approved by the Department in writing.
- (2) Sampling must 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.

#### Spray-Irrigation Fields

- (3) 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: 54,300 gallons is equivalent to two inches per acre. The licensee must measure the flow of wastewater 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 – [Special Conditions A(1), A(2), and A(3)]

- (4) For Discharge Monitoring Report (DMR) reporting purposes, the licensee must 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.

#### Ground Water Monitoring

- (5) Measured to the nearest one-tenth ( $1/10^{\text{th}}$ ) of a foot as referenced from the surface of the ground at the base of the monitoring well.
- (6) Depth to Water Level Below the Land Surface must be conducted in the months of **May and October** of each calendar year.
- (7) Sampling must be conducted the months of **May and October** of each year. Sampling, handling and preservation must be conducted in accordance with federally approved methods. Temperature and pH are considered to be “field” parameters and are to be measured in the field via instrumentation. Specific conductance (calibrated to 25.0° C) may be measured either in the field or the laboratory pursuant to sampling guidance above. Specific Conductance values indicating a statistically significant trend upwards or sudden spikes from previous levels may necessitate the need for additional groundwater testing requirements to determine causes and effects as related to spray irrigation activities. The licensee is required to test for these parameters whether wastewater was disposed of via the spray-irrigation system or not.

### **B. TREATMENT PLANT OPERATOR**

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

## **SPECIAL CONDITIONS**

### **C. AUTHORIZED DISCHARGES**

The licensee is authorized to discharge treated wastewater only in accordance with: 1) the licensee's General Application for Waste Discharge License, accepted for processing on April 5, 2021, 2) the terms and conditions of this license, 3) and only to the existing spray-irrigation field [Outfall SF-W and SF-E] and, 4) from those sources as indicated in the Waste Discharge License application accepted for processing on April 5, 2021.

Discharges of wastewater from any other point source are not authorized under this license and must be reported in accordance with Standard Condition D(1)(f), *Twenty-four-hour reporting*, of this license.

### **D. NARRATIVE EFFLUENT LIMITATIONS**

1. The licensee must not discharge effluent that contains materials in concentrations or combinations which would impair the uses designated by the classification of the ground water.
2. The licensee must not discharge effluent that contains materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated for the classification of the receiving waters (ground water is a classified body of water under *Standards for Classification of Fresh Surface Waters*, 38 M.R.S 465-C) below such classification, or lowers the existing quality of any body of water if the existing quality is higher than the classification.

### **E. NOTIFICATION REQUIREMENT**

In accordance with Standard Condition D, the licensee must notify the Department of the following:

1. Any substantial change in the volume or character of pollutants being introduced into the treatment system.
2. For the purposes of this section, notice regarding substantial change must include information on:
  - a. the quality and quantity of wastewater introduced to the treatment system; and
  - b. any anticipated impact caused by the change in the quantity or quality of the wastewater to be introduced into the treatment system.

## **SPECIAL CONDITIONS**

### **F. GENERAL OPERATIONAL CONSTRAINTS**

1. All wastewaters must receive treatment through a properly designed, operated and maintained screen, settling tank and lagoon system prior to land irrigation.
2. The spray-irrigation facilities must 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 must not cause the lowering of the quality of the ground water, as measured in the ground water 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 *Drinking Water Regulations* 22 M.R.S. § 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 must be notified as soon as the licensee becomes aware of any threat to public health, unlicensed discharge of wastewater, or any malfunction that threatens the proper operation of the system. Notification must be made in accordance with the attached Standard Condition D of this license.
5. The licensee must 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 must be identified and referenced by a unique identifier (alphabetical, numeric or alpha-numeric) in all logs and reports. Each component must be mapped and field located sufficiently to allow adequate inspections and monitoring by both the licensee and the Department.

## SPECIAL CONDITIONS

### G. 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 must 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 must be present prior to each spray irrigation event.
3. No wastewater must be applied to the site following a rainfall accumulation exceeding 1.0 inches within the previous 24-hour period. **A rain gauge must be located on site to monitor daily precipitation.** The licensee must also manage application rates by taking into consideration the forecast for rain events in the 48-hour period in the future.
4. No wastewater must be applied where there is snow present on the surface of the ground.
5. No wastewater must 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 must 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 must 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 must install and maintain 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.
9. The licensee must 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 must cease irrigation if runoff is observed outside the designated boundaries of the spray field.

## **G. SPRAY IRRIGATION OPERATIONAL CONSTRAINTS, LOGS AND REPORTS (cont'd)**

10. **The licensee must maintain a daily log of all spray irrigation operations** which records the date, weather, rainfall, areas irrigated, volume sprayed (gallons), application rates (daily and weekly), and other relevant observations/comments from daily inspections. The log must be in accordance with the general format of the “*Monthly Operations Log*” provided as **Attachment A** of this license, or other similar format approved by the Department. Weekly application rates must be reported in accordance with the general format of the “*Spray Application Report by Week*” provided as **Attachment B** of this license or other format as approved by the Department. The *Monthly Operations Log, and Spray Application Report by Week*, for each month must be submitted to the Department as an attachment to the monthly Discharge Monitoring Reports (DMRs) in a format approved by the Department. Copies must be maintained on site for operation maintenance purposes and made available to Department personnel upon request during normal business hours.

## **H. VEGETATION MANAGEMENT**

1. The licensee must 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 wastewater over the desired application area and to optimize nutrient uptake and removal.
2. The vegetative buffer zones along the perimeter of the site must be maintained to maximize vegetation and forest canopy density in order to minimize off-site drift of spray.

## **I. LAGOON MAINTENANCE**

1. The integrity of the lagoons must be inspected periodically during the operating season and properly maintained at all times. There must be no overflow through or over the lagoon berms. Any signs of leaks or overflow must be repaired or corrected immediately.
2. The licensee must maintain freeboard of the lagoons at design levels or at least one (1) foot, whichever is greater. The lagoons must 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 lagoons must be cleaned of solid materials as necessary to maintain the proper operating depths that will provide best practicable treatment of the wastewater. All material removed from the lagoons must be properly disposed of in accordance with all applicable State and Federal rules and regulations.
4. The licensee will install a valve system on the lagoon drain to prevent accumulation of rainwater during periods of non-use. The licensee will ensure the valve system is in good working order prior to use and the design specifications and procedures for use will be kept in the facility O&M manual.

## **SPECIAL CONDITIONS**

### **J. INSPECTIONS AND MAINTENANCE**

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

### **K. GROUNDWATER MONITORING WELLS**

1. All monitoring wells must be equipped and maintained with a cap and lock to limit access and must be maintained in a secured state at all times.
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.

### **L. PESTICIDES**

By December 31st [ICIS ANNRP] submit a list of pesticides used during the previous season. Between January 1st and May 31st [ICIS code 07099], following the use of Propiconazole or Methoxyfenozide during the previous season, the permittee must sample for these parameters in one groundwater monitoring well that is downgradient of the wastewater storage lagoon(s) at a frequency of once in a 5-year permit cycle. Propiconazole will be sampled and analyzed via USEPA Environmental Chemistry Method (ECM) MRID 48697002 for water samples. Methoxyfenozide will be sampled and analyzed via USEPA ECM MRID 49525703 for water samples. Alternatives to the stated methodology or use of a laboratory that is not certified by the State of Maine's Department of Health and Human Services must be approved by the Department.

The permittee must report sample results to the Department by June 15th, as an attachment to the May Discharge Monitoring Report (DMR). 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 and determine if further testing is necessary.

## **SPECIAL CONDITIONS**

### **M. OPERATIONS AND MAINTENANCE (O & M) PLAN AND SITE PLAN(S)**

This facility must have a current written comprehensive Operation & Maintenance (O & M) Plan. The plan must provide a systematic approach by which the licensee must 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 must evaluate and modify the O& M Plan including site plan(s) and schematic(s) for the wastewater treatment facility to ensure that it is up-to-date. The O& M Plan must be kept on-site at all times and made available to the Department personnel upon request.

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

### **N. PUBLIC ACCESS TO LAND APPLICATION SITES AND SIGNAGE**

Access to the land application sites must be limited during the season of active site use. The licensee must install signs measuring at least 8 ½" x 11", in areas of concern around the perimeter of the lagoon and spray irrigation site that inform the general public that the area is being used to dispose of blueberry processing wastewaters. The signs must be constructed of materials that are weather resistant. The licensee must annually inspect and make any necessary repairs to the signage to comply with this condition.

### **O. MONITORING AND REPORTING**

#### Electronic Reporting

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

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

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

## **SPECIAL CONDITIONS**

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

Documentation submitted in support of the electronic DMR may be attached to the electronic DMR. Toxics reporting must be done using the DEP toxsheet reporting form. An electronic copy of the Toxsheet reporting document must be submitted to your Department compliance inspector as an attachment to an email. In addition, a hardcopy form of this sheet must be signed and submitted to your compliance inspector, or a copy attached to your NetDMR submittal will suffice. Documentation submitted electronically to the Department in support of the electronic DMR must be submitted no later than midnight on the 15th day of the month following the completed reporting period.

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

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

### **P. REOPENING OF LICENSE FOR MODIFICATIONS**

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

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



# Attachment A

## Monthly Operations Log

Maine Wild Blueberry (WDL #W008236)

(Month/Year) \_\_\_\_\_

Spray Field # \_\_\_\_\_

Weekly Application Rate: \_\_\_\_\_ gallons/week

A	B	C	D	E	F	G
Date	Precipitation Previous 24 hours (inches)	Air Temp (°F)	Weather	Wind- Direction Speed (mph)	Depth To GW in Observation well (inches)	Total Gallons Pumped (gallons)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
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22						
23						
24						
25						
26						
27						
28						
29						
30						
31						

Signature of Responsible Official: \_\_\_\_\_ Date \_\_\_\_\_

## Attachment B

### Spray Application Report by Week

Maine Wil Blueberry (WDL #W008236)

(Month/Year) \_\_\_\_\_

Spray Field #	Weekly Limit (Gallons/Week)	Spray Application Rates (Gallons/Week)					Monthly Total
		Week 1	Week 2	Week 3	Week 4	Week 5	

Signature of Responsible Official: \_\_\_\_\_ Date \_\_\_\_\_

**MAINE WASTE DISCHARGE LICENSE**

**FACT SHEET**

**Date: October 6, 2022**

INTEGRATED COMPLIANCE INFORMATION SYSTEM (ICIS) NUMBER: **MEU508236**

LICENSE NUMBER: **#W008236-5P-D-R**

NAME AND MAILING ADDRESS OF APPLICANT:

**MAINE WILD BLUEBERRY COMPANY  
PO Box 128  
Cherryfield, Maine 04622**

COUNTY: **Washington County**

NAME AND ADDRESS OF FACILITY:

**MAINE WILD BLUEBERRY COMPANY  
Jonesboro, Maine 04648**

RECEIVING WATER/CLASSIFICATION: **Groundwater/Class GW-A**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER:

**Daniel Bowker, Environmental Coordinator  
(207) 546-1780  
[dbowker@cherryfieldfoods.com](mailto:dbowker@cherryfieldfoods.com)**

**1. APPLICATION SUMMARY**

- a. Application: On April 5, 2021 the Department of Environmental Protection (Department) accepted as complete for processing an application from Maine Wild Blueberry Company for the renewal of Waste Discharge License (WDL) #W008236-5P-C-R issued by the Department on June 1, 2016, for a five-year term. The 6/1/16 WDL authorized the operation of a surface wastewater (spray irrigation) system to dispose up to a maximum of 1,167,450 gallons per week of blueberry process wastewater and wash-down wastewater. Treatment is achieved by screening, solids separation in settling tanks and storage in one 3-acre, clay-lined lagoon with seasonal disposal via a 21.5-acre spray irrigation site located on land in Jonesboro, Maine. By utilizing the entire 21.5 acre spray irrigation area over the entire 31 week spray irrigation season, the total amount of wastewater that could be applied to the site under ideal conditions is 36,190,950 gallons (1,167,450 gallons per week X 31 weeks). With an annual wastewater generation of 4,652,000 gallons, the spray irrigation system is sufficiently sized and provides ample flexibility to treat and dispose of the amount of wastewater generated. A map of the spray irrigation site is included as Fact Sheet Attachment A.

## 1. APPLICATION SUMMARY (cont'd)

- b. Source Description: The licensee generates blueberry processing wastewater and clean-up water primarily associated with the handling and packaging of cranberries and blueberries. Fresh fruit and frozen berries are processed year-round between early January and late December. The plant has the capacity to process up to 400,000 pounds of Individually Quick-Frozen (IQF) berries per day during the fresh fruit harvest season (July, August, September), with generation of a maximum of 100,000 gallons of wastewater per day. During normal repackaging operations (September – June), a maximum of 45,000 pounds of berries may be processed, with up to 20,000 gallons of wastewater being generated. During the processing of sugar-infused blueberries (September – June), a maximum of 150,000 pounds of berries may be processed, with up to 20,000 gallons of wastewater generated. During the processing of pureed blueberries (June – September), a maximum of 8,500 pounds of berries may be processed, with up to 5,000 gallons of wastewater generated. The wastewater from the processing operations contains dissolved and suspended organic matter and other materials and solids. No pesticides are applied to the berries for 25 days prior to the fresh berry season.

Chemicals used for sanitation and disinfection are Brandguard F-375, sodium hypochlorite and Foam Safe (3% maximum sodium hypochlorite). Chemicals used in processing are potassium sorbate, malic acid and tartaric acid. Noncontact cooling water is discharged to the Machias River under MEPDES Permit #ME0023051.

- c. Wastewater Treatment: All process wastewater is conveyed to a holding tank in the basement of the pretreatment building. All wastewater and debris pumped from the holding tank are filtered through a hydrosieve. Green berries, twigs, leaves and solids measuring greater than 1/16" are hauled away for composting. The filtered wastewater is conveyed to aerated storage basins identified as "Storage Basin No.1 and Storage Basin No. 2" where further clarification occurs. Settled solids from the storage basins are dewatered using a belt filter press and a batch polymer mixing system. The dewatered solids are hauled offsite for agronomic use. The wastewater is pumped from the storage basins to the Stackpole Road spray irrigation/snowmaking site in Machias or to the 3-acre, clay-lined lagoon at the Jonesboro spray irrigation site (Outfall #001). The licensee intends to greatly reduce the amount of wastewater flow that will be sent to the Jonesboro site, given the need for trucking to that location. An aerial photo of the lagoon and layout of the spray irrigation system including the monitoring well locations is included as Fact Sheet **Attachment B** of this Fact Sheet.

The Jonesboro spray irrigation site consists of a 5.5 million gallon, 3-acre lagoon and a 21.5-acre spray field. The licensee is currently using 11.1 acres for spray irrigation. Of the 21.5 acres permitted, there are two outfalls. One outfall is described as Spray Field East (SF-E) which is 7.7 acres and the other is Spray Field West (SF-W) which is 13.8 acres. An 8" main line runs from the pump located at the lagoon to the upper spray field. The 8" line has 6" feeder lines connecting to the 3" lateral sprinklers, each having 5/32" nozzles. All areas used for irrigation are well above the natural water table, in most cases greater than 4' above the natural water table.

## **1. APPLICATION SUMMARY (cont'd)**

It is noted that all wastewater has to be trucked to the lagoon from the processing facility. The truck operator is required to observe the lagoon freeboard levels and is not to off-load the truck tank volume if there is less than two feet of freeboard in the lagoons, thus providing safeguards against the possibility of the lagoon overtopping.

The topography of the site indicates that the lagoons are downgradient from the railbed and also from the spray irrigation area. Therefore, any wastewater that has been discharged to the lagoon cannot flow toward the rail bed thus alleviating the possibility of saturating the rail bed or causing erosion of the rail bed embankments. Therefore, the Department finds that the applicant has made satisfactory provisions to ensure the lagoon waters will not overtop lagoon embankments or cause or contribute to saturated soil conditions.

The spray site is on or near the top of a northwest to southeast oriented glacial moraine ridge with glacial till in the uplands, glaciolacustrine and marine sediments in the lowlands and along the moraine toe slopes. The glacial moraine ridge is dominated by very deep, well drained, loamy over sandy and gravelly deposits. The lower topographic positions on the southeast side slope of the moraine are dominated by very deep, moderately well drained, loamy over sandy and gravelly deposits. The toe slopes and lowlands, southeast of the site are dominated by very deep, somewhat poorly drained and poorly drained silty glaciolacustrine and marine deposits.

Soils in the spray irrigation area are characterized as Monadnock to Waumbek glacial till. Monadnock and Waumbek have a well-drained to moderately well-drained soil drainage class. Slopes are gently sloping to moderately steep on the ridge and gently sloping along the toe slopes and in the lowlands. The site is currently forested with a mixed growth of spruce, fir, ash and maple trees and is undeveloped, except for a railroad bed that runs between the lagoon area to the southeast and the spray irrigation area to the northwest.

The licensee states that this spray irrigation facility is used only as an emergency back up to other operations. When not in use the lagoon fills with rainwater requiring the licensee to pump out the lagoon, resulting in unnecessary financial costs. The licensee has requested that a drain be installed to keep the lagoon empty of rainwater when the facility is not in use.

## 2. LICENSE SUMMARY

- a. Terms and Conditions - This licensing action is carrying forward all the terms and conditions of the June 1, 2016 WDL except that this license is;

1. Granting the request to install a drain on the lagoon to keep it empty during periods of non-use
2. Revises Special Condition L Pesticides and requires the permittee to submit a list of pesticides used during the previous season and institute sampling January 1st–May 31st following the use of Propiconazole or Methoxyfenozide during the previous season.

- b. History: Recent Department licensing actions include the following:

*April 14, 2006* – The licensee’s application for a new spray irrigation Waste Discharge License (WDL) was accepted for processing by the Maine Department of Environmental Protection. The application was assigned WDL #W008236-5P-A-N.

*July 26, 2006* – The Department issued WDL #W008236-5P-A-N for a five-year term.

*September 15, 2011* – The Department issued WDL #W008236-5P-B-R for a five-year term.

*February 4, 2016* - The licensee submitted a timely and complete application to the Department to renew WDL#W008236-5P-B-R.

*June 1, 2016* – The Department issued WDL #W008236-5P-C-R for a five-year term.

*April 5, 2021* - The licensee submitted a timely and complete application to the Department to renew WDL#W008236-5P-C-R.

## 3. CONDITIONS OF LICENSE

*Conditions of licenses*, 38 M.R.S. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, *Certain deposits and discharges prohibited*, 38 M.R.S. § 420 and *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 February 16, 2020), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters and ground waters are maintained and protected.

#### 4 RECEIVING WATER QUALITY STANDARDS

*Classification of Groundwater*, 38 M.R.S. § 470, indicates the groundwater at the point of discharge is classified as Class GW-A receiving waters. *Standards of Classification of Groundwater*, 38 M.R.S. §465-C, describes the standards for Class GW-A waters.

#### 5. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

##### Effluent and Groundwater Monitoring

Slow rate land irrigation treatment is an environmentally sound and appropriate technology for best practicable treatment and disposal of wastewater. The theory behind surface wastewater 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 wastewaters. 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.

The Department has established lagoon effluent, spray irrigation and groundwater monitoring parameters to provide consistency across similar facilities now licensed by the Department. The licensee must periodically monitor the lagoon effluent, spray irrigation fields and ground water monitoring locations on site at the specified frequencies and locations as called for in Special Condition A of this license.

- a. *Biochemical Oxygen Demand (BOD5)* –BOD5 is the rate at which organisms use the oxygen in wastewater while stabilizing decomposable organic matter under aerobic conditions. BOD5 measurements indicate the organic strength of wastes in water. Monitoring for BOD5 yields an indication of the effectiveness of the lagoon treatment process and the condition of the wastewater being applied.
- b. *Total Suspended Solids (TSS)* – TSS monitoring consists of both settleable and non-settleable solid materials contained in the groundwater. Monitoring for TSS is used in groundwater monitoring to verify the integrity of the monitoring wells.
- c. *pH* – The daily maximum pH limit of 6.0 – 8.5 standard units is a best practicable treatment standard incorporated into similar waste discharge licenses issued by the Department. 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.

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

- d. *Specific Conductance* – 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. *Depth to Water Level Below Land Surface* – Measuring the distance from the ground level to the ground water surface in monitoring wells will be used to monitor representative groundwater conditions.
- f. *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 utilized to calibrate specific conductance values.
- g. *Application Rates (Weekly)* – The weekly maximum rate of 54,300 gallons per acre (2.0 inches per week) is being carried forward from the previous licensing action. The weekly limit is based on the characteristics of in-situ soils and provides protection against hydraulically overloading and preventing runoff from the spray irrigation area.
- h. *Nitrate-nitrogen* – Nitrogen assumes different forms depending upon the oxidation-reduction conditions in the soil and ground water. The presence of a particular form of nitrogen indicates the nutrient attenuation capacity of the spray site. 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.
- i. *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 and soil, the Maine Board of Pesticide Control has recommended that it may be necessary to monitor pesticides in storage tank/lagoon effluent, groundwater monitoring locations, and spray irrigation site soils.



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

Because farmers are regularly changing pesticides, this permit is requiring the permittee to report to the December 31st a list of pesticides used during the previous season. Between January 1st and May 31st, following the use of Propiconazole or Methoxyfenozide during the previous season, the permittee must sample for these parameters in one groundwater monitoring well that is downgradient of the wastewater storage lagoon(s) at a frequency of once in a 5-year permit cycle. Propiconazole will be sampled and analyzed via USEPA Environmental Chemistry Method (ECM) MRID 48697002 for water samples. Methoxyfenozide will be sampled and analyzed via USEPA ECM MRID 49525703 for water samples. Alternatives to the stated methodology or use of a laboratory that is not certified by the State of Maine's Department of Health and Human Services must be approved by the Department. The permittee must report sample results to the Department by June 15th, as an attachment to the May Discharge Monitoring Report (DMR). 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 and determine if further testing is necessary.

### j. Groundwater Monitoring Wells

The four monitoring wells being carried forward in this licensing action are:

Monitoring Wells	PCS Code	Location
MW-008A	008A	Located at the southeast down gradient of both lagoons
MW-008C	008C	Located westerly of Lagoon No. 1 and up gradient of both Lagoons.
MW-SFE (Outfall #MWEA)	MWSFE	Located in the East Spray Irrigation Field.
MW-SFW (Outfall #MWWA)	MWSFW	Located in the West Spray Irrigation Field.

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

A summary of groundwater monitoring well results for the period June 2016 – March 2022 is as follows:

**Nitrate-Nitrogen**

Monitoring Well	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Number of DMRs	Compliance Status
MW-008A	10 mg/L	<0.05 – <1.3	0.59	10	100%
MW-008C	10 mg/L	<0.05 – <1.0	0.17	10	100%
MW-SFE	10 mg/L	0.1 – 0.28	0.13	9	100%
MW-SFW	10 mg/L	<1	<1	1	100%

This licensing action is carrying forward the monitoring requirements for Nitrate nitrogen from the previous licensing action.

**j. Groundwater Monitoring Wells****Depth to Water Level Below Landsurface**

Monitoring Well	Limit (Feet)	Range (Feet)	Average (Feet)	Number of DMRs	Compliance Status
MW-008A	Report	4.9 – 14.5	9.6	10	N/A
MW-008C	Report	10.3 – 14.3	12.8	10	N/A
MW-SFE	Report	2.9 - 15	8.8	10	N/A
MW-SFW	Report	4.1 – 11.7	8.9	10	N/A

This licensing action is carrying forward the monitoring requirements for depth to water level below landsurface from the previous licensing action.

**Specific Conductance**

Monitoring Well	Limit (umhos/cm)	Range (umhos/cm)	Average (umhos/cm)	Number of DMRs	Compliance Status
MW-008A	Report	37 - 115	70.8	10	N/A
MW-008C	Report	209 - 518	365	9	N/A
MW-SFE	Report	30 - 50	41.8	9	N/A
MW-SFW	Report	48	48	1	N/A

This licensing action is carrying forward the monitoring requirements for specific conductance from the previous licensing action.

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

### Temperature

Monitoring Well	Limit (Deg F)	Range (Deg F)	Average (Deg F)	Number of DMRs	Compliance Status
MW-008A	Report	44 - 51	47	8	N/A
MW-008C	Report	45 - 52	48	8	N/A
MW-SFE	Report	44 - 53	48	8	N/A
MW-SFW	Report	55	55	1	N/A

This licensing action is carrying forward the monitoring requirements for temperature from the previous licensing action.

### j. Groundwater Monitoring Wells

#### pH

Monitoring Well	Limit (S.U.)	Range (S.U.)	Average (S.U.)	Number of DMRs	Compliance Status
MW-008A	Report	5.2 – 6.6	6.2	10	N/A
MW-008C	Report	5.5 – 6.8	6.2	9	N/A
MW-SFE	Report	4.7 – 6.1	5.3	9	N/A
MW-SFW	Report	6.1	6.1	1	N/A

This licensing action is carrying forward the monitoring requirements for pH from the previous licensing action.

### k. Storage Lagoon Effluent

A summary of the storage lagoon effluent results for the period June 2012 – Oct 2015 is as follows:

#### BOD5

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)	Number of DMRs	Compliance
Daily Maximum	Report	8.6 – 1,200	607.2	4	N/A

This licensing action is carrying forward the BOD monitoring requirements from the previous licensing action.

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

### k. Storage Lagoon Effluent

#### Nitrate-Nitrogen

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)	Number of DMRs	Compliance
Daily Maximum	Report	0.05 – 0.25	0.19	4	N/A

This licensing action is carrying forward the Nitrate nitrogen monitoring requirements from the previous licensing action.

#### pH

Value	Limit (S.U.)	Range (S.U.)	Mean (S.U.)	Number of DMRs	Compliance
Daily Maximum	Report	4.1 – 6.7	5.2	4	N/A

This licensing action is carrying forward the pH monitoring requirements from the previous licensing action.

## 6. DISCHARGE 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.

## **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 Department recommends field calibration of equipment on a regular basis to ensure proper application and uniformity and when operating conditions are changed from the assumed design.

Calibration involves collecting and measuring flow at several locations in the application area (typically a grid pattern of containers with uniform diameters). Rain gauges work best because they already have a graduated scale from which to read the application amount without having to perform additional calculations. It is recommended that a calibration report be submitted to the Department Compliance Inspector shortly after relicensing and annually thereafter, or whenever operating conditions are changed from assumed design parameters.

## **8. PUBLIC COMMENTS**

Public notice of this application was made in the *Machias Valley News Observer* on or about March 31, 2021. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits must have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2011).

## **9. DEPARTMENT CONTACTS**

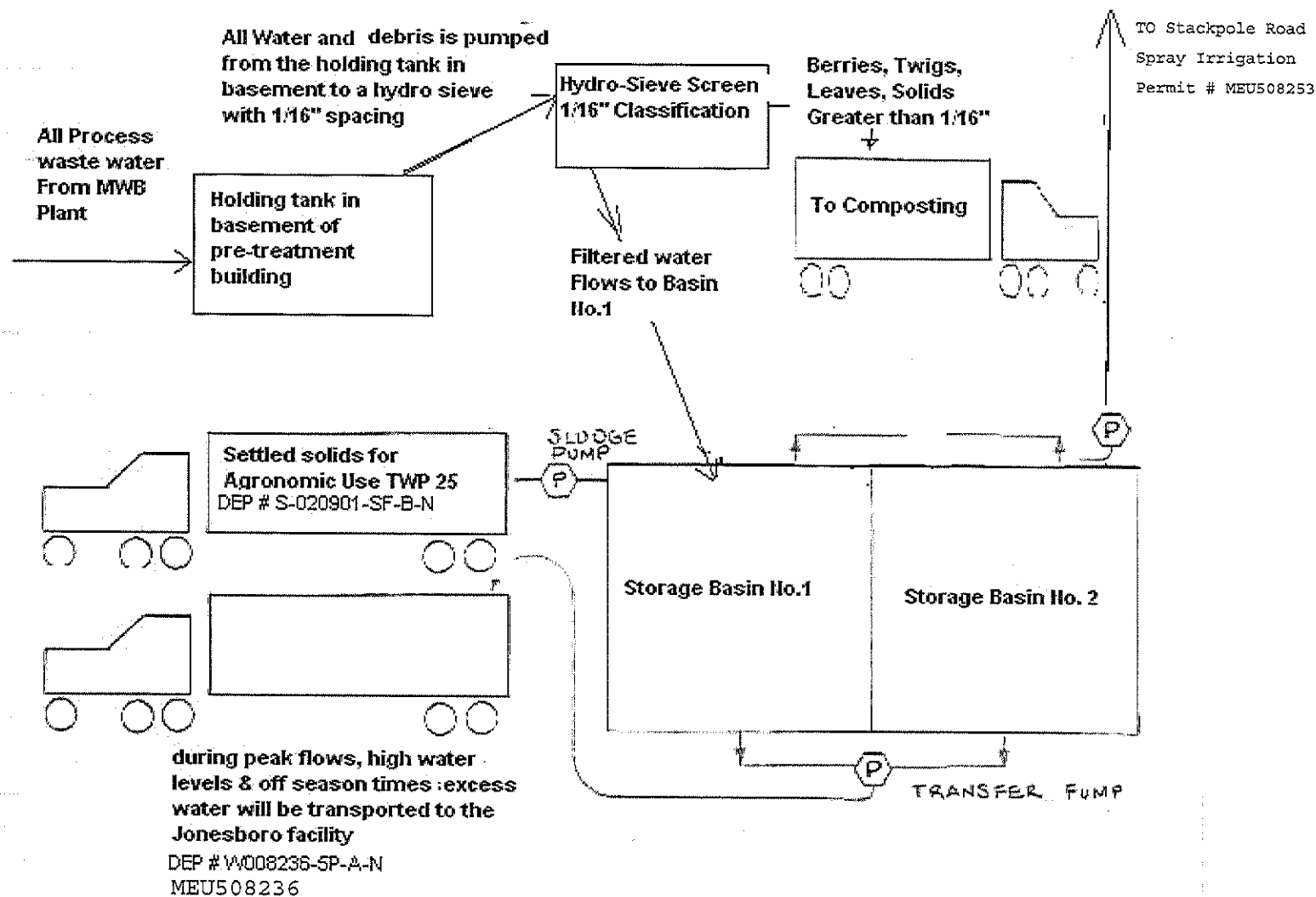
Additional information concerning this licensing action may be obtained from and written comments should be sent to:

Rod Robert  
Division of Water Quality Management  
Bureau of Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017      Tel: (207) 680-0576      Fax: (207) 287-3435  
e-mail: [rodney.robert@maine.gov](mailto:rodney.robert@maine.gov)

## **10. RESPONSE TO COMMENTS**

During the period September 1, 2022, through the issuance of this license the Department solicited comments from the public and other interested parties. The Department did not receive comments therefore, a Response to Comments has not been included in the final license.

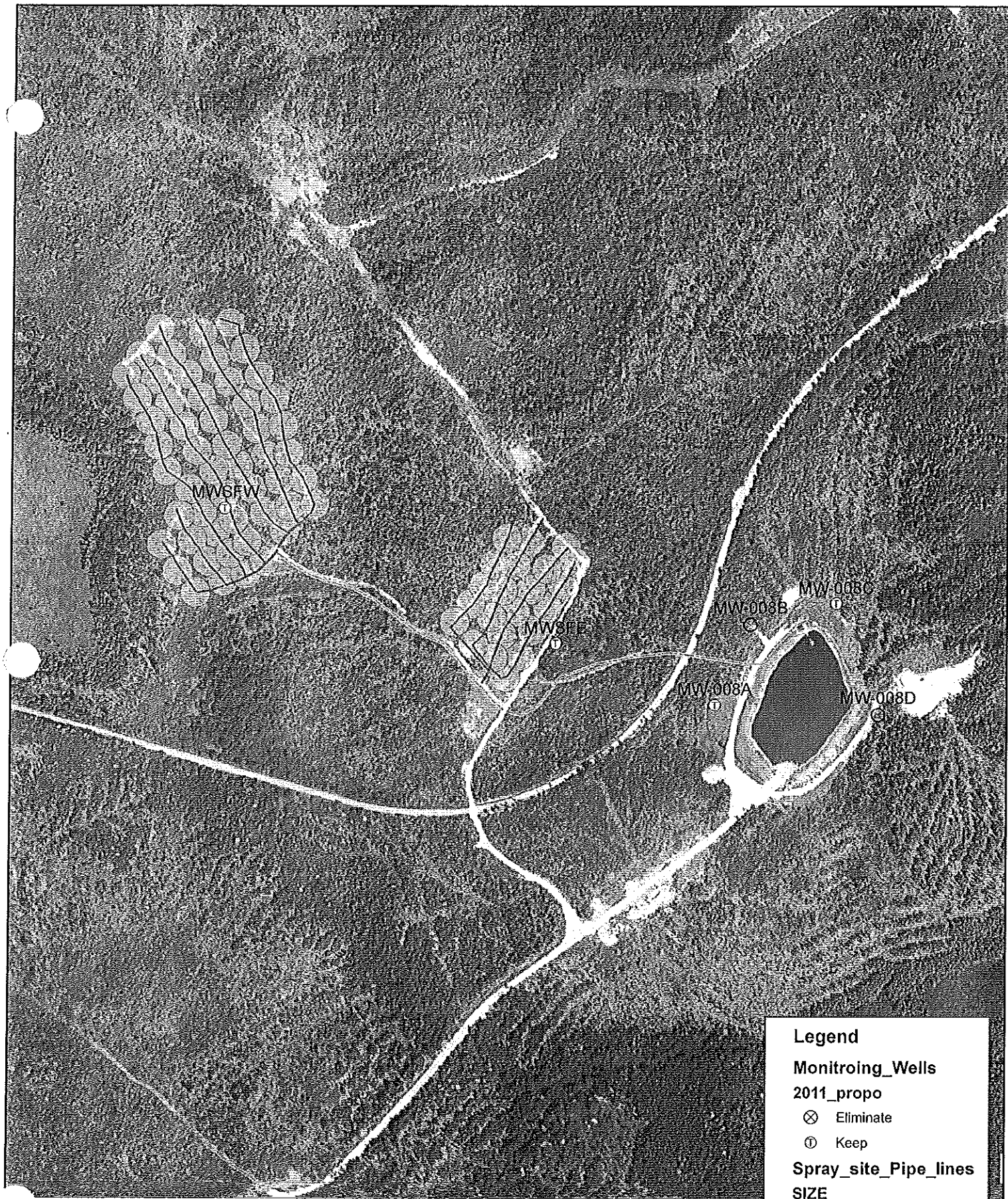
# **ATTACHMENT A**



MAINE WILD BLUEBERRY PRODUCTION  
FACILITY PRETREATMENT SCHEMATIC

## **ATTACHMENT B**





0 235 470 940 Feet

# MWB Wastewater Site Jonesboro

## Legend

### Monitoring\_Wells

#### 2011\_propo

- ⊗ Eliminate
- ① Keep

### Spray\_site\_Pipe\_lines

#### SIZE

- 3
- 6
- 8

 Sprinklers

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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CONTENTS

SECTION	TOPIC	PAGE
A	GENERAL PROVISIONS	
1	General compliance	2
2	Other materials	2
3	Duty to Comply	2
4	Duty to provide information	2
5	Permit actions	2
6	Reopener clause	2
7	Oil and hazardous substances	2
8	Property rights	3
9	Confidentiality	3
10	Duty to reapply	3
11	Other laws	3
12	Inspection and entry	3
B	OPERATION AND MAINTENANCE OF FACILITIES	
1	General facility requirements	3
2	Proper operation and maintenance	4
3	Need to halt reduce not a defense	4
4	Duty to mitigate	4
5	Bypasses	4
6	Upsets	5
C	MONITORING AND RECORDS	
1	General requirements	6
2	Representative sampling	6
3	Monitoring and records	6
D	REPORTING REQUIREMENTS	
1	Reporting requirements	7
2	Signatory requirement	8
3	Availability of reports	8
4	Existing manufacturing, commercial, mining, and silvicultural dischargers	8
5	Publicly owned treatment works	9
E	OTHER PROVISIONS	
1	Emergency action - power failure	9
2	Spill prevention	10
3	Removed substances	10
4	Connection to municipal sewer	10
F	DEFINTIONS	10

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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### A. GENERAL PROVISIONS

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

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

- (a) They are not
  - (i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
  - (ii) Known to be hazardous or toxic by the licensee.
- (b) The discharge of such materials will not violate applicable water quality standards.

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

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

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

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

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

## **B. OPERATION AND MAINTENANCE OF FACILITIES**

### **1. General facility requirements.**

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

### **5. Bypasses.**

(a) Definitions.

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

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

(c) Notice.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

**6. Upsets.**

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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### C. MONITORING AND RECORDS

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

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

### **3. Monitoring and records.**

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**D. REPORTING REQUIREMENTS**

**1. Reporting requirements.**

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



# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

- (A) Any unanticipated bypass which exceeds any effluent limitation in the permit.

- (B) Any upset which exceeds any effluent limitation in the permit.

- (C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

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

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

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

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

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

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

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

- (i) One hundred micrograms per liter (100 ug/l);

- (ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

- (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or

- (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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- (b) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - (i) Five hundred micrograms per liter (500 ug/l);
  - (ii) One milligram per liter (1 mg/l) for antimony;
  - (iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
  - (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

#### **5. Publicly owned treatment works.**

- (a) All POTWs must provide adequate notice to the Department of the following:
  - (i) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA or Chapter 528 if it were directly discharging those pollutants.
  - (ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
  - (iii) For purposes of this paragraph, adequate notice shall include information on (A) the quality and quantity of effluent introduced into the POTW, and (B) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
- (b) When the effluent discharged by a POTW for a period of three consecutive months exceeds 80 percent of the permitted flow, the permittee shall submit to the Department a projection of loadings up to the time when the design capacity of the treatment facility will be reached, and a program for maintaining satisfactory treatment levels consistent with approved water quality management plans.

#### **E. OTHER REQUIREMENTS**

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

- (a) For municipal sources. During power failure, all wastewaters which are normally treated shall receive a minimum of primary treatment and disinfection. Unless otherwise approved, alternate power supplies shall be provided for pumping stations and treatment facilities. Alternate power supplies shall be on-site generating units or an outside power source which is separate and independent from sources used for normal operation of the wastewater facilities.
- (b) For industrial and commercial sources. The permittee shall either maintain an alternative power source sufficient to operate the wastewater pumping and treatment facilities or halt, reduce or otherwise control production and or all discharges upon reduction or loss of power to the wastewater pumping or treatment facilities.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

**Maximum daily discharge limitation** means the highest allowable daily discharge.

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

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

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

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

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: August 2021**

**Contact: (207) 314-1458**

### **SUMMARY**

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner.

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

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

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

A person filing an appeal with the Board should review Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); the Maine Administrative Procedure Act, 5 M.R.S. § [11001](#); and the DEP's [Rule Concerning the Processing of Applications and Other Administrative Matters \(Chapter 2\)](#), 06-096 C.M.R. ch. 2.

#### **DEADLINE TO SUBMIT AN APPEAL TO THE BOARD**

Not more than 30 days following the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The filing of an appeal with the Board, in care of the Board Clerk, is complete when the Board receives the submission by the close of business on the due date (5:00 p.m. on the 30<sup>th</sup> calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30<sup>th</sup> calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

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

An appeal to the Board may be submitted via postal mail or electronic mail and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection  
c/o Board Clerk  
17 State House Station  
Augusta, ME 04333-0017  
[ruth.a.burke@maine.gov](mailto:ruth.a.burke@maine.gov)

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee; and if a hearing was held on the application, (3) any intervenors in that hearing proceeding. **Please contact the DEP at 207-287-7688 with questions or for contact information regarding a specific licensing decision.**

#### **REQUIRED APPEAL CONTENTS**

A complete appeal must contain the following information at the time the appeal is submitted.

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

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

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made accessible by the DEP. Upon request, the DEP will make application materials available to review and photocopy during normal working hours. There may be 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 the appeal.* DEP staff will provide this information upon request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a licensee may proceed with a project pending the outcome of an appeal, but the licensee 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 acknowledge receipt of an appeal, and it will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials admitted by the Board as supplementary evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the application, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant, the licensee, and parties of record are notified in advance of the date set for the Board's consideration of an appeal or request for a hearing. The appellant and the licensee will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding the merits of the appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the licensee, and parties of record of its decision on appeal.

## **II. JUDICIAL APPEALS**

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

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

### **ADDITIONAL INFORMATION**

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov), or for judicial appeals contact the court clerk's office in which the appeal will be filed.

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**Note: This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. The DEP provides this information sheet for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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