



STATE OF MAINE
Department of Environmental Protection

John Elias Baldacci
GOVERNOR

Beth Nagusky
ACTING COMMISSIONER

November 30, 2010

Mr. William Laurita
Atlantic Blanket Company
231 Atlantic Highway
Northport, ME. 04849

RE: Permit Compliance System Tracking Number # MEU508257
Maine Waste Discharge License (WDL) Application # W008257-5S-A-N
Final License

Dear Mr. Laurita:

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

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

If you have any questions regarding the matter, please feel free to call me at 287-7693 or send me an e-mail at gregg.wood@maine.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read "G. Wood", written over a light gray rectangular background.

Gregg Wood
Division of Water Quality Management
Bureau of Land and Water Quality

Enc.

cc: Sterling Pierce, DEP/CMRO
Sandy Mojica, USEPA



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

DEPARTMENT ORDER

IN THE MATTER OF

ATLANTIC BLANKET COMPANY)	PROTECTION AND IMPROVEMENT
d/b/a SWANS ISLAND BLANKETS)	OF WATERS
NORTHPORT, WALDO COUNTY, MAINE		
SUB-SURFACE WASTE WATER)	
DISPOSAL SYSTEM)	
MEU508257)	WASTE DISCHARGE LICENSE
W008257-5S-A-N)	NEW

APPROVAL

Pursuant to the provisions of 38 M.R.S.A., Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of the ATLANTIC BLANKET COMPANY (Atlantic Blanket/licensee hereinafter) with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

Atlantic Blanket has submitted an application to the Department for a new Waste Discharge License (WDL) to dispose of up to a daily maximum of 1,200 gallons per day of process waters associated with dyeing of wool utilized to manufacture blankets into a dedicated sub-surface waste water disposal system. The proposed sub-surface waste water disposal system measures 2,000 square feet and is proposed to be constructed on a 17-acre site owned by Atlantic Blanket Company (d/b/a Swan's Island Blankets) off of U.S. Route #1 in Northport, Maine.

LICENSE SUMMARY

This licensing action establishes, but is not limited to:

- 1) A daily maximum flow limitation of 1,200 gallon per day based on the hydraulic capacity of the sub-surface waste water disposal system.
- 2) A pH range limitation of 6.0 – 9.0 standard units prior to discharge to the sub-surface waste water disposal system.
- 3) A requirement to develop and maintain an up-to-date Operations and Maintenance (O&M) plan for the treatment system, conveyance system and sub-surface waste water disposal system.
- 4) A requirement to install and monitor one (1) ground water monitoring well down gradient of the sub-surface waste water disposal system.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated October 27, 2010, 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 MRSa 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 national resource, that water quality will be maintained and protected;
 - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
 - (e) Where a discharge will result in lowering the existing 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.

ACTION

THEREFORE, the Department APPROVES the above noted application of the ATLANTIC BLANKET COMPANY to treat and dispose of up to 1,200 gpd of process waters associated with dyeing of wool utilized to manufacture blankets into a dedicated sub-surface waste water disposal system, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations including:

1. Standard Conditions of Approval for POTW Waste Discharge Licenses dated July 16, 1996, copy attached.
2. The attached Special Conditions, including effluent limitations and monitoring requirements.
3. This license becomes effective upon signature and expires at midnight five (5) years thereafter.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: October 7, 2010.
Date of application acceptance: October 7, 2010.

This Order prepared by GREGG WOOD, Bureau of Land & Water Quality
MEU508257 2010 11/29/10

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS

- Beginning the effective date of this license, the licensee is authorized to utilize a sub-surface waste water system to dispose of treated wool dyeing waste waters. The waste waters shall be **sampled prior to be disposed in the disposal field** and shall be limited and monitored as specified below. Discharge Monitoring Reports are to be submitted to the Department in the months of March, June, September and December of each year.

OUTFALL #001

EFFLUENT CHARACTERISTIC	DISCHARGE LIMITATIONS		MINIMUM MONITORING REQUIREMENTS	
	Daily <u>Minimum</u> as specified	Daily <u>Maximum</u> as specified	Measurement <u>Frequency</u> as specified	Sample <u>Type</u> ⁽¹⁾ as specified
Flow [50050]	1,200 (gpd) [07]	---	1Week [01/07]	Calculate [CA]
Biochemical Oxygen Demand [00310]	---	Report mg/L [19]	1/Quarter [01/90]	Grab [GR]
Total Suspended Solids [00530]	---	Report mg/L [19]	1/Quarter [01/90]	Grab [GR]
Nitrate-Nitrogen [00620]	---	Report mg/L [19]	1/Quarter [01/90]	Grab [GR]
PH (Standard Units) [00400]	---	6.0 – 9.0 S.U. [12]	1/Month [01/30]	Grab [GR]
<u>Metals (Total)</u> : Arsenic, Cadmium, Chromium, Copper, Lead, Mercury, Nickel and Zinc [01002, 01027, 01034, 01042, 01051, 71900, 01067, 01092]		Report ug/L [28]	1/Year [01/YR]	Grab [GR]

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS

2. Beginning the effective date of this license, the licensee is authorized to operate a sub-surface waste water disposal system. **GROUND WATER MONITORING WELL (MW-1)** shall be limited and monitored as specified below.

MW-1 is located just down gradient from the disposal field and upgradient of a delineated wetland.

EFFLUENT CHARACTERISTIC	DISCHARGE LIMITATIONS	MINIMUM MONITORING REQUIREMENTS	
	Daily <u>Maximum</u> as specified	Measurement <u>Frequency</u> as specified	Sample <u>Type</u> as specified
Depth to Water Level Below Land Surface [72019]	Report (feet) ⁽²⁾ [27]	3/Year ⁽³⁾ [03/YR]	Measure [MS]
Total Suspended Solids [00530]	Report mg/L [19]	3/Year ⁽³⁾ [03/YR]	Grab [GR]
Specific Conductance [00095]	Report (umhos/cm) ⁽⁴⁾ [11]	3/Year ⁽³⁾ [03/YR]	Grab [GR]
pH [00400]	6.0 – 9.0 S.U [19]	3/Year ⁽³⁾ [03/YR]	Grab [GR]
<u>Metals (Total)</u> : Arsenic, Cadmium, Chromium, Copper, Lead, Mercury, Nickel and Zinc [01002, 01027, 01034, 01042, 01051, 71900, 01067, 01092]	Report ug/L [28]	1/Year ⁽⁵⁾ [01/YR]	Grab [GR]

Footnotes: See page 6 of this license.

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

Footnotes – [Special Condition A(1)]

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

1. **Sampling location**– Sampling shall be conducted after the last treatment process such that all samples are representative of the waste water being conveyed to the sub-surface system.
2. **Depth to ground water** - 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.
3. **Sampling frequency** – Sampling is only required in April, July and October of each year.
4. **Specific conductance** (calibrated to 25.0° C) is considered to be a “field” parameter but 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 ground water testing requirements.
5. **Metals** – The licensee shall obtain at least one analysis for the metals listed in Special Condition A(2) of this license prior to utilizing the sub-surface system. These test results will be utilized to establish background concentrations for the metals in the ground water.

SPECIAL CONDITIONS

B. AUTHORIZED DISCHARGES

The licensee is authorized to discharge treated waste waters as identified in the October 7, 2010, Waste Discharge License Application. Disposal of the waste waters shall be limited and monitored in accordance with the terms and conditions of this license and disposed of to a dedicated sub-surface waste water disposal system. Discharge of waste water from any other location or from sources other than those indicated on said application requires formal modification of this license.

C. NOTIFICATION REQUIREMENT

In accordance with Standard Condition #6 of this license, the licensee shall notify the Department of any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system. For the purposes of this section, notice regarding substantial change shall include information on:

- (a) the quality and quantity of waste water introduced to the wastewater collection and treatment system; and
- (b) any anticipated impact caused by the change in the quantity or quality of the wastewater to be discharged from the treatment system.

D. SYSTEM INSPECTIONS

1. The licensee shall conduct at least three inspections of the disposal fields per year.
2. The inspection report or log shall include the date of the inspection, the name of the person performing the inspection, and other relevant system observations.
3. Disposal field inspections shall include: any signs of hydraulic failure; condition of the surface vegetation; level of ponding within the disposal area; physical encroachments into the disposal area; and other sources of hydraulic loading.

SPECIAL CONDITIONS

E. MAINTENANCE LOGS

Maintenance logs shall be maintained for each system component including conveyance piping, pumps, distribution boxes and the disposal fields. This shall include for each system: 1) the alphanumeric ID; 2) a summary of the results of all inspections; 3) a summary of all significant maintenance activities and repairs, and other specific action(s) taken to ensure the proper functioning of the systems; 4) a listing of all additions and deletions to the system or individual system components; 5) a summary of pumping activity for all septic tanks and other treatment components; 6) a summary of relevant performance observations; and 7) the volumes of wastewater directed to each disposal field.

F. OPERATIONS AND MAINTENANCE (O & M) PLAN AND SITE PLAN

On or before December 31, 2010, the licensee shall prepare a written comprehensive Operation & Maintenance (O&M) Plan for review by the Department. The plan shall be kept current and provide a systematic approach by which the licensee 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 licensee to achieve compliance with the conditions of this license.

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

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

SPECIAL CONDITIONS

G. MONITORING AND REPORTING

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

Department of Environmental Protection
Central Maine Regional Office
Division of Water Quality Management
17 State House Station
August, Maine 04333

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

H. REOPENING OF LICENSE FOR MODIFICATIONS

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

I. SEVERABILITY

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

MAINE WASTE DISCHARGE LICENSE

FACT SHEET

Date: **October 27, 2010**

PERMIT COMPLIANCE TRACKING SYSTEM NUMBER: **MEU508257**
LICENSE NUMBER: **W008257-5S-A-N**

NAME AND MAILING ADDRESS OF APPLICANT:

**ATLANTIC BLANKET COMPANY
d/b/a Swans Island Blankets
231 Atlantic Highway
Northport, ME. 04849**

COUNTY: **Waldo County**

NAME AND ADDRESS OF FACILITY:

**231 Atlantic Highway
Northport, ME. 04849**

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

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. William Laurita
(207) 338-9691
blankets@prexar.com**

1. APPLICATION SUMMARY

- a. Application : The Atlantic Blanket Company (d/b/a Swan's Island Blankets) has submitted an application to the Department for a new Waste Discharge License (WDL) to dispose of up to a daily maximum of 1,200 gallons per day (GPD) of process waters associated with dyeing of wool utilized to manufacture blankets into a dedicated sub-surface waste water disposal system. The proposed sub-surface waste water disposal system measures 2,000 square feet and is proposed to be constructed on a 17-acre site owned by Atlantic Blanket Company (d/b/a Swans Island Blanket) off of U.S. Route #1 in Northport, Maine. See **Attachment A** of this Fact Sheet for a location map.

1. APPLICATION SUMMARY (cont'd)

- b. Source Description & Waste Water Treatment: Waste water to be disposed of in a dedicated sub-surface waste water disposal system is generated from a dye process for materials used and sold by Swans Island Blankets. The waste water will receive pretreatment via a filter system located in the manufacturing building followed by a series of settling/equalization tanks with a total capacity of 3,000 gallons. The waste water will be conveyed to the disposal field at a rate of approximately 1.5 gallons per minute. The disposal field is designed to accept and treat up to 1,200 gallons per day and has a total area of 2,000 square feet. See **Attachment B** of this Fact Sheet for a layout of the site.

A Class B high intensity soils survey was conducted and found that the soils in the disposal field are comprised of soils classified as Lyman and Tunbridge which are moderately well drained, have a seasonal high water table at or about 14 – 16 inches and 20-40 inches to bedrock.

2. LICENSE SUMMARY

This licensing action establishes, but is not limited to:

- a) A daily maximum flow limitation of 1,200 gallon per day based on the hydraulic capacity of the sub-surface waste water disposal system.
- b) A pH range limitation of 6.0 – 9.0 standard units prior to discharge to the sub-surface waste water disposal system.
- c) A requirement to develop and maintain an up-to-date Operations and Maintenance (O&M) plan for the pH treatment system, conveyance system and sub-surface waste water disposal system.
- d) A requirement to install and monitor one (1) ground water monitoring well down gradient located up-gradient of the sub-surface waste water disposal system.

3. CONDITIONS OF LICENSES

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

4. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A § 470 indicates the groundwater at the point of discharge is classified as Class GW-A receiving waters. Maine law, 38 M.R.S.A., §465-C, describes the standards for Class GW-A waters as the highest classification of groundwater and requires that the ground water shall be of such quality that it can be used for public water supplies. These waters shall be free of radioactive matter or any matter that imparts color, turbidity, taste or odor which would impair the usage of these waters, other than occurring from natural phenomena.

5. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall #001 – Prior to conveyance to the sub-surface disposal field.

- a. Flow – This licensing action establishes a daily maximum flow limitation of 1,200 gpd along with a 1/Week monitoring requirement. The disposal rate of 1,200 gpd is consistent with the hydraulic design capacity of the disposal field.
- b. Biochemical Oxygen Demand & Total Suspended Solids (BOD₅ & TSS) –BOD is the rate at which organisms use the oxygen in waste water while stabilizing decomposable organic matter under aerobic conditions. BOD measurements indicate the organic strength of wastes in water. The Department has established a “Report” requirement at this time for BOD while reserving the possibility to establish a numeric limit in the future based on BPT technology or other relevant factors. TSS consists of both settleable and non-settleable solid materials contained in the waste water. Monitoring for these parameters yields an indication of the effectiveness of the pretreatment system consisting of a filter and a series of settling tanks prior to the waste water being conveyed to the disposal field. TSS in a monitoring well is an indication of a failure in the seal of the well allowing surface water to contaminate the monitoring well.
- c. Nitrate-nitrogen –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 primary drinking water standard.
- d. pH – The pH range limitation of 6.0 – 9.0 standard units is a Department best practicable treatment (BPT) limitation common to all licenses issued by the Department and is based on a National Secondary Drinking Water Standard.
- e. Specific conductance is considered a surveillance level monitoring parameter that is used as an early-warning indicator of potential ground water contamination. By definition the sample shall be temperature calibrated to 25°C. The licensee shall report to the Department statistically significant trends upward or sudden spikes from previous levels that may necessitate the need for additional ground water testing requirements.

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. PUBLIC COMMENTS

Public notice of this application was made in the local newspaper on or about October 7, 2010. 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 proposed draft licenses shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

8. DEPARTMENT CONTACTS

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

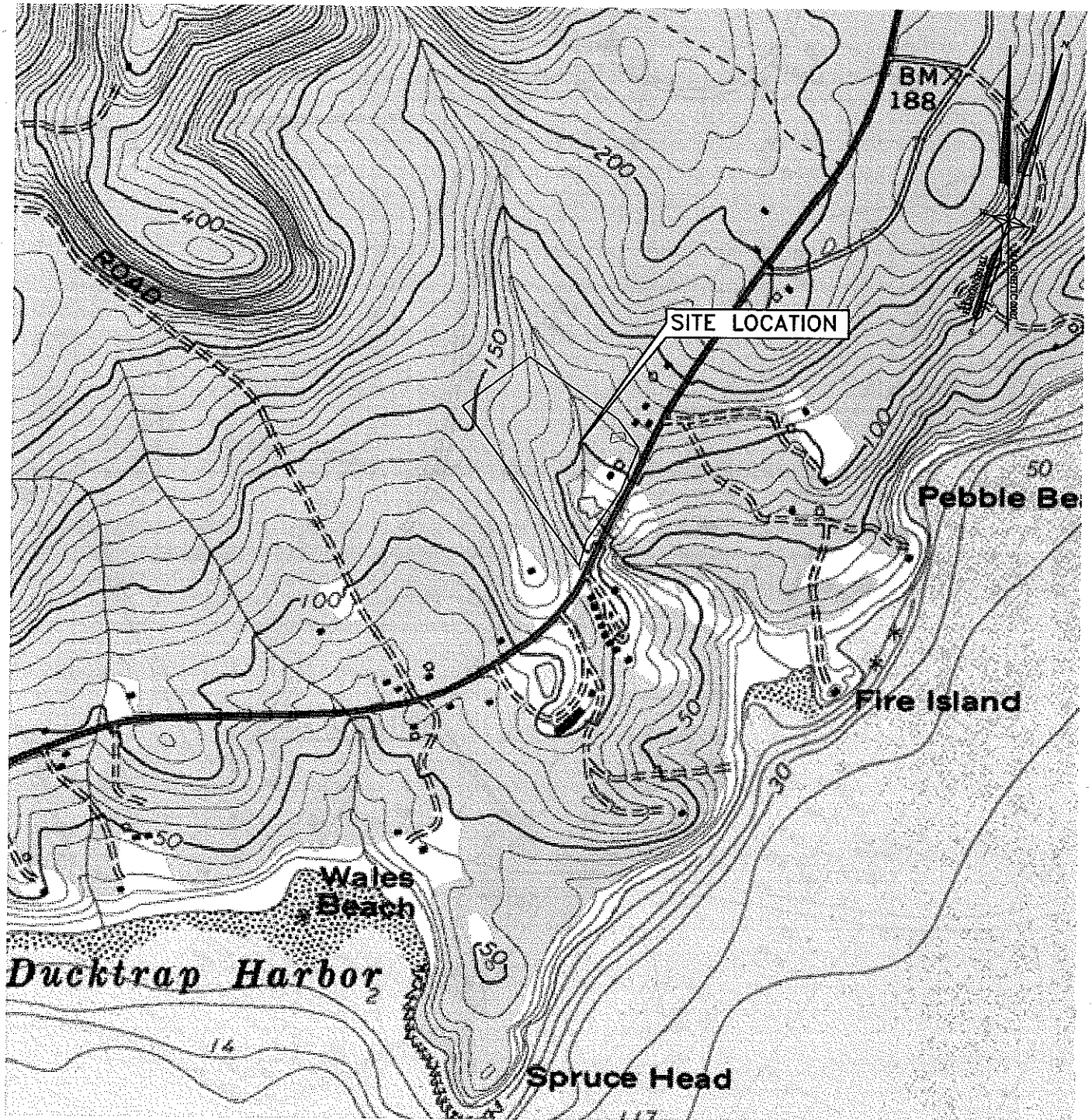
Gregg Wood
Division of Water Quality Management
Bureau of Land and Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
e-mail: gregg.wood@maine.gov

Telephone (207) 287-7693

9. RESPONSE TO COMMENTS

During the period of October 27, 2010, through the date of issuance of this license, the Department solicited comments on the proposed draft WDL for the discharge from the licensee's facility. The Department did not receive comments from the licensee, state or federal agencies, or interested parties that resulted in any substantive change(s) in the terms and conditions of the license. Therefore, the Department has not prepared a Response to Comments.

ATTACHMENT A



LOCATION MAP

SCALE: 1" = ±1000'

Gartley & Dorsky
ENGINEERING SURVEYING

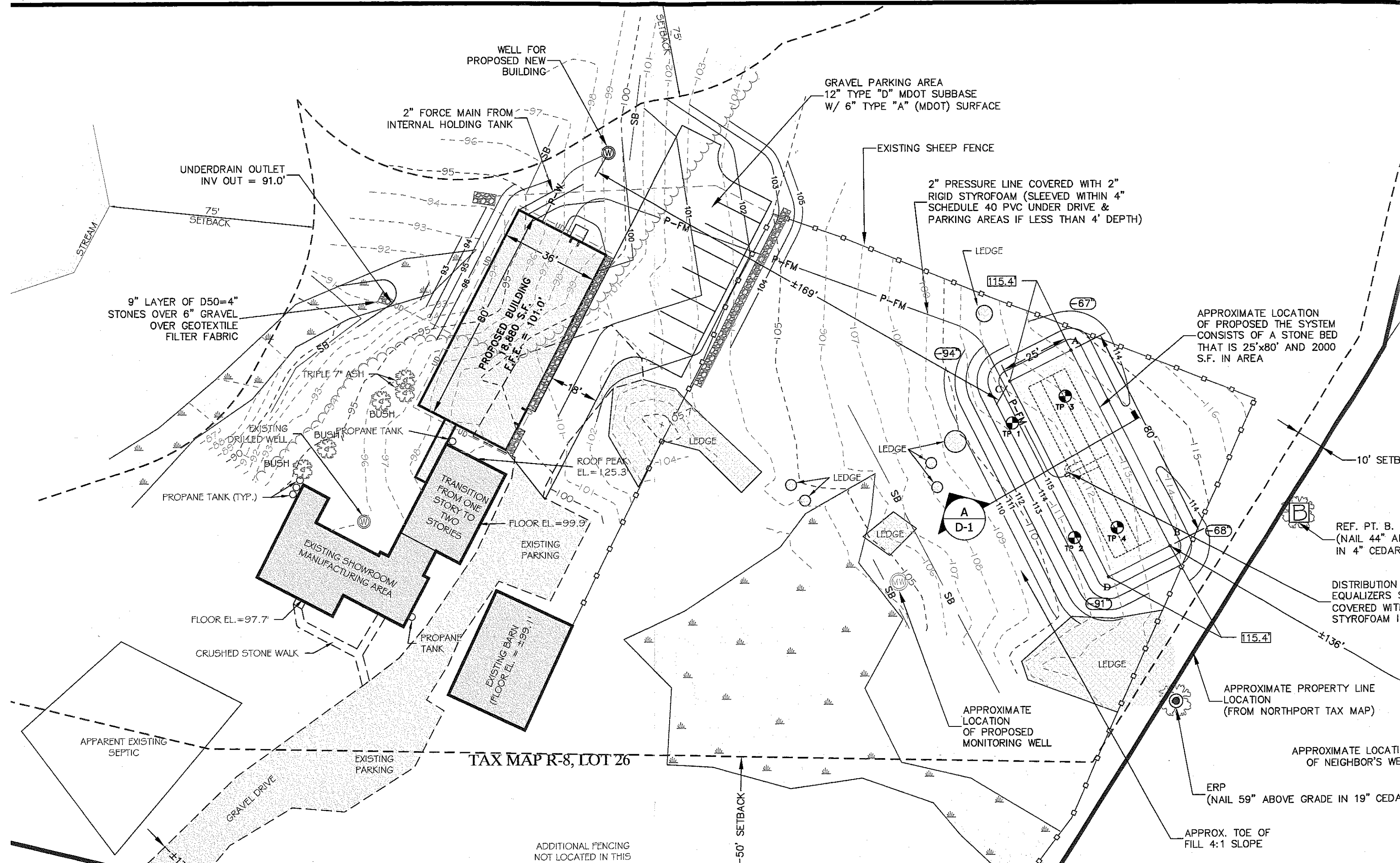
SWAN'S ISLAND BLANKET
NORTHPORT

59B Union Street P.O. Box 1031 Camden, ME 04843-1031
Ph (207) 236-4365 Fax (207) 236-3055 Toll Free 1-888-282-4365

SEPTEMBER 28, 2010

PROJ. NO. 2010-063

ATTACHMENT B



TAX MAP R-8, LOT 26

ADDITIONAL FENCING
NOT LOCATED IN THIS

50' SETBACK

GRAVEL PARKING AREA
12" TYPE "D" MDOT SUBBASE
W/ 6" TYPE "A" (MDOT) SURFACE

EXISTING SHEEP FENCE

2" PRESSURE LINE COVERED WITH 2"
RIGID STYROFOAM (SLEEVED WITHIN 4"
SCHEDULE 40 PVC UNDER DRIVE &
PARKING AREAS IF LESS THAN 4' DEPTH)

APPROXIMATE LOCATION
OF PROPOSED THE SYSTEM
CONSISTS OF A STONE BED
THAT IS 25'x80' AND 2000
S.F. IN AREA

REF. PT. B.
(NAIL 44" ABOVE GRADE IN 4" CEDAR)

DISTRIBUTION
EQUALIZERS
COVERED WITH
STYROFOAM

APPROXIMATE PROPERTY LINE
LOCATION
(FROM NORTHPORT TAX MAP)

APPROXIMATE LOCATION
OF NEIGHBOR'S WELL

ERP
(NAIL 59" ABOVE GRADE IN 19" CEDAR)

APPROX. TOE OF
FILL 4:1 SLOPE

APPROXIMATE
LOCATION
OF PROPOSED
MONITORING WELL

TRANSITION
FROM ONE
STORY TO
TWO STORIES

EXISTING BARN
(FLOOR EL. = 99.1')

EXISTING SHOWROOM/
MANUFACTURING AREA

UNDERDRAIN OUTLET
INV OUT = 91.0'

9" LAYER OF D50=4"
STONES OVER 6" GRAVEL
OVER GEOTEXTILE
FILTER FABRIC

TRIPLE 7" ASH

BUSH

PROPANE TANK (TYP.)

PROPANE TANK

ROOF PEAK
EL. = 125.3

FLOOR EL. = 99.9'

EXISTING PARKING

FLOOR EL. = 97.7'

CRUSHED STONE WALK

APPARENT EXISTING
SEPTIC

GRAVEL DRIVE

EXISTING PARKING

PROPANE TANK

LEDGE

LEDGE

LEDGE

LEDGE

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MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

A. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

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

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

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

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

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

5. Bypasses.

(a) Definitions.

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

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

(c) Notice.

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

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

6. Upsets.

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

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C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

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

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D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

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

ADDITIONAL INFORMATION

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

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