



STATE OF MAINE
DEPARTMENT OF
ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

June 20, 2017

Mr. Mark Whitney
Pineland Farms Dairy Company, Inc.
92 Creamery Road
New Gloucester, ME. 04260
e-mail: mwhitney@pinelandfarms.com

RE: Integrated Compliance Information System (ICIS) Permit #MEU508262
Maine Waste Discharge License (WDL) #W008262-5S-B-M
Final License Transfer

Dear Mr. Whitney:

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

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

If you have any questions regarding the matter, please feel free to call me at 287-7693. Your Department compliance inspector copied below is also a resource that can assist you with compliance. Please do not hesitate to contact them with any questions.

Thank you for your efforts to protect and improve the waters of the great state of Maine!

Sincerely,

Gregg Wood
Division of Water Quality Management
Bureau of Water Quality

Enc.

cc: Stuart Rose, DEP/SMRO
Sandy Mojica, USEPA

Lori Mitchell, DEP/CMRO
Olga Vergara, USEPA

Marelyn Vega, USEPA

AUGUSTA
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AUGUSTA, MAINE 04333-0017
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BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

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1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

PINELAND FARMS DAIRY COMPANY, INC.) PROTECTION AND IMPROVEMENT
GRAY, CUMBERLAND COUNTY, MAINE) OF WATERS
SURFACE WASTE WATER DISPOSAL SYSTEM)
MEU508262) WASTE DISCHARGE LICENSE
W008262-5S-B-M APPROVAL) TRANSFER

In compliance with the applicable provisions of *Pollution Control*, 38 M.R.S. §§ 411 – 424-B, *Water Classification Program*, 38 M.R.S. §§ 464 – 470 and applicable rules of the Department of Environmental Protection (Department hereinafter), the Department has considered the application of PINELAND FARMS DAIRY COMPANY, INC. (Pineland Dairy/licensee hereinafter), to transfer combination Integrated Compliance Information System (ICIS) permit #MEU508262/Maine Waste Discharge License (WDL) #W008262-5S-A-N, issued by the Department to Pineland Farms Potato Company, Inc. (Pineland Potato hereinafter) on December 17, 2013, for a five-year term. With its supportive data, agency review comments, and other related materials on file, the Department FINDS THE FOLLOWING FACTS:

TRANSFER SUMMARY

On December 17, 2013, the Department issued ICIS permit/WDL #MEU508262/WDL #W008262-5S-A-N, to Pineland Potato. The license authorized Pineland Potato to dispose of untreated waste water onto a 219-acre parcel of land known as the Gillespie Farms located in Gray, Maine. Waste water is disposed of via a surface waste water disposal system or snowmaking operation.

Pineland Dairy is a duly organized business corporation under the laws of the State of Maine and is currently in good standing according to the Maine Secretary of State. Pineland Dairy has provided the Department with statements in its application materials that indicate it has title, right or interest in the facility, and it has the financial and technical capacity to comply with the terms and conditions of the license issued on December 17, 2013.

CONCLUSIONS

BASED on the findings on page one of this order and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

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

ACTION

THEREFORE, the Department APPROVES the application of PINELAND FARMS DAIRY COMPANY, INC., requesting the Department transfer ICIS permit #MEU508262/WDL #W008262-5S-A-N issued to Pineland Farms Potato Company Inc. on December 17, 2013, SUBJECT TO ALL APPLICABLE STANDARDS AND REGULATIONS AND THE FOLLOWING CONDITIONS:

1. "Standard Conditions of Publicly Owned Treatment Works (POTW) Waste Discharge Licenses," revised July 16, 1996, copy attached to ICIS permit #MEU508262/WDL #W008262-5S-A-N issued on December 17, 2013.
2. The Special Conditions established in ICIS permit #MEU508262/WDL #W008262-5S-A-N issued on December 17, 2013, including effluent limitations and monitoring requirements. Copy attached.
3. All terms and conditions of ICIS permit #MEU508262/WDL #W008262-5S-A-N issued on December 17, 2013, not modified by this transfer remain in effect and enforceable.
4. This transfer becomes effective upon the date of signature below and expires at midnight on December 17, 2018. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of the license, the terms and conditions of this transfer and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. *Maine Administrative Procedure Act*, 5 M.R.S. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (amended October 19, 2015).

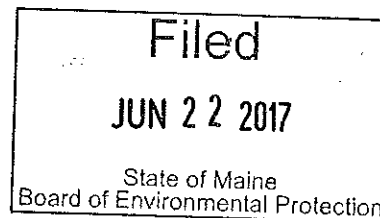
PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 22ND DAY OF June 2017.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
for PAUL MERCER, Commissioner

Date of initial request May 9, 2017
Date of acceptance May 9, 2017



Date filed with Board of Environmental Protection _____

This Order prepared by Gregg Wood, Bureau of Water Quality



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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.



STATE OF MAINE
Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patricia W. Aho
COMMISSIONER

Mr. Greg McCrum
Procurement & Environmental Manager
Pineland Farms Potato Company Inc.
P.O. Box 390
Mars Hill, ME. 04787
e-mail gmccrum@pinelandfarms.com

December 17, 2013

RE: Integrated Compliance Information System (ICIS) #MEU508262
Maine Waste Discharge License (WDL) Application #W008262-5S-A-N
Final License

Dear Mr. McCrum:

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

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

If you have any questions regarding the matter, please feel free to call me at 287-7693.

Sincerely,

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

Enc.

cc: Stuart Rose, DEP/SMRO
Lori Mitchell, DEP/CMRO
Mark Hedrich, DACF
Sandy Mojica, USEPA

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PRESQUE ISLE, MAINE 04769-2094
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

PINELAND FARMS POTATO COMPANY INC.)	PROTECTION AND IMPROVEMENT
GRAY, CUMBERLAND COUNTY, MAINE)	OF WATERS
SURFACE WASTE WATER DISPOSAL SYSTEM)	
MEU508262)	WASTE DISCHARGE LICENSE
W008262-5S-A-N)	NEW
APPROVAL)	

Pursuant to the provisions of *Conditions of licenses*, 38 M.R.S.A. § 414-A, and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of the PINELAND FARMS POTATO COMPANY INC. (Pineland/licensee hereinafter) with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

Pineland has submitted an application to the Department for a new Maine Waste Discharge License (WDL) for the operation of a surface waste water disposal (spray-irrigation/snow-making) system. The system will dispose of untreated process waste waters from a creamery operation onto a 219-acre parcel of land in Gray, Maine. The facility has been assigned number MEU508259 for tracking compliance in the Department's Integrated Compliance Information System (ICIS) as well as a WDL number of #W008262-5S-A-N.

LICENSE SUMMARY

This licensing action;

- 1) Establishes monitoring requirements of the untreated waste water prior to being applied to the surface of the ground via a truck spreading/spray irrigation operation or snowmaking operation.
- 2) Establishes numerous operational constraints to prevent waste water from migrating off the licensee's property and ensure the waste water is receiving best practicable treatment.
- 3) Requires the licensee to maintain records of monitoring results, application rates and the results of periodic site inspections.
- 4) Requires the licensee to maintain a current written Operations and Maintenance (O&M) Plan.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated November 6, 2013, and subject to the conditions listed below, the Department makes the following conclusions:

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

ACTION

THEREFORE, the Department APPROVES the above noted application of PINELAND FARMS POTATO COMPANY INC. to operate a surface wastewater disposal (spray irrigation/snowmaking) system. This WDL authorizes the licensee to utilize the spray irrigation/snow-making system to dispose of untreated process waste water onto a 219-acre parcel of land SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations including:

1. *Standard Conditions of Approval for POTW Waste Discharge Licenses*, revised 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 five (5) years after that date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of the license, the terms and conditions of this license and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [Maine Administrative Procedure Act, 5 M.R.S.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (effective April 1, 2003)].

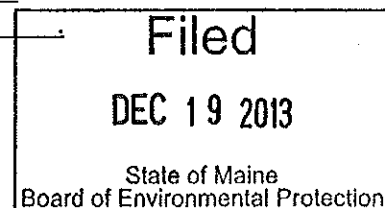
PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 17th DAY OF December 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
for Patricia W. Aho, Commissioner

Date of initial receipt of application September 4, 2013
Date of application acceptance September 4, 2013



Date filed with Board of Environmental Protection _____

This Order prepared by GREGG WOOD, BUREAU OF LAND AND WATER QUALITY

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS

1. The licensee is authorized to operate a surface wastewater treatment and disposal system. The **WASTE WATER (OUTFALL #001)** shall be limited and monitored as specified below⁽¹⁾.

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> as specified	
Biochemical Oxygen Demand [00310]		Report mg/L [19]	2/Year ⁽²⁾ [02/YR]	Grab [GR]	
PH (Standard Units) [00400]		Report S.U. [12]	2/Year ⁽²⁾ [02/YR]	Grab [GR]	

The italicized numeric values bracketed in the table above and on the following pages are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports (DMRs).

Footnotes – See Pages 7 of this WDL

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

2. The application of waste water to the land via a **SPRAYFIELD #1 (SF-1)** shall be limited and monitored as follows:

April 1 to November 30

	Monthly <u>Average</u> as specified	Measurement <u>Frequency</u> as specified	Sample <u>Type</u> as specified
Application Rate [51125]	6,000 gal/acre [8B]	1/Month [01/30]	Calculate [CA]
Flow - Total Gallons [51500]	Report (Gallons) [57]	1/Month [01/30]	Calculate [CA]

Footnotes – See Pages 7 of this WDL.

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

3. The application of waste water to the land via **SNOWMAKING FIELD (SM#1)** shall be limited and monitored as follows:

December 1 – March 31

	Monthly <u>Total</u> as specified	Daily <u>Maximum</u> as specified	Measurement <u>Frequency</u> as specified	Sample <u>Type</u> as specified
Application Rate [51128]	Report (Gallons) [57]	—	1/Month [01/30]	Calculate [CA]

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

Footnotes:

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

All analytical test results shall be reported to the Department including results which are detected below the respective reporting limits (RLs) specified by the Department or as specified by other approved test methods. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the RL achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL or reporting an estimated value ("J" flagged) is not acceptable and will be rejected by the Department. Reporting analytical data and its use in calculations must follow established Department guidelines specified in this permit or in available Department guidance documents.

2. **2/Year sampling events** – One sampling event is required between April 1 – November 30 and one sampling event is required between December 1 – March 30.

B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain materials in concentrations or combinations which would impair the uses designated by the classification of the ground water.
2. The effluent must not lower the quality of any classified body of water (ground water is a classified body of water under Title 38, Section 465-C) below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

SPECIAL CONDITIONS

C. AUTHORIZED DISCHARGES

The licensee is authorized to discharge treated waste water only in accordance with the terms and conditions of this WDL and only to the disposal fields identified in the September 4, 2013. WDL application submitted to the Department. Discharge of waste water to any other location or from sources other than those indicated on said application requires written authorization from the Department.

D. NOTIFICATION REQUIREMENT

In accordance with Standard Condition #6 of this license, the licensee shall notify the Department of the following.

1. Any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system.
2. For the purposes of this section, adequate notice shall include information on:
 - (a) the quality and quantity of wastewater introduced to the wastewater collection and treatment system; and
 - (b) any anticipated impact of the change in the quantity or quality of the wastewater to be discharged from the treatment system.

E. GENERAL OPERATIONAL CONSTRAINTS

1. The surface waste water disposal system shall be effectively maintained and operated at all times so that there is no discharge to surface waters, nor any contamination of ground water which will render it unsatisfactory for usage as a public drinking water supply.
2. The surface waste water disposal system shall 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 Maine law 22 M.R.S.A. § 2611. In the event 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.
3. The Department shall be notified as soon as the licensee becomes aware of any threat to public health, unlicensed discharge of waste water or any malfunction that threatens the proper operation of the system. Notification shall be made in accordance with the attached Standard Condition #4 of this license.

SPECIAL CONDITIONS

E. GENERAL OPERATIONAL CONSTRAINTS (cont'd)

4. The licensee shall maintain a file on the location of all system components and relevant features. Each component shall be mapped and field located sufficiently to allow adequate inspections and monitoring by both the licensee and the Department.

F. SPRAY IRRIGATION OPERATIONAL CONSTRAINTS

1. No waste water shall be applied to the disposal areas where there is more than 0.5 inches of snow present on the surface of the ground.
2. No waste water shall be applied to the disposal areas when there is any evidence of frost or frozen ground within the upper 10 inches of the soil profile.

G. SPRAY IRRIGATION OPERATIONAL PROCEDURES, LOGS AND REPORTS

1. **The licensee shall maintain a weekly log** of all disposal activities in accordance with the log format similar to the "*Monthly Operations Log*" provided as **Attachment A** to this license. The *Monthly Operations Log* for each month shall be submitted to the Department as an attachment to the monthly Discharge Monitoring Reports (DMR's). Copies will also be maintained on site for Department review and for license operation maintenance purposes.

H. INSPECTIONS AND MAINTENANCE

The licensee shall periodically inspect all system components to ensure the facility is being operated and maintained in accordance with the design of the system. Maintenance logs shall be maintained. At a minimum, the logs shall include the date of maintenance, type of maintenance performed, names or person performing the maintenance, and other relevant system observations.

I. MONITORING AND REPORTING

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

Department of Environmental Protection
Bureau of Land and Water Quality
Division of Water Quality Management
312 Canco Road
Portland, ME. 04103

SPECIAL CONDITIONS

I. MONITORING AND REPORTING (cont'd)

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

J. REOPENING OF LICENSE 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.

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

Attachment A

Monthly Operations Log

Pineland Farms Potato Company Inc. (WDL #W008262) (Month/Year) _____

Spray Application Rates (6,000 Gallons/Acre/Month)					Monthly Total (Gal/acre)
Week 1 (Gal/acre)	Week 2 (Gal/acre)	Week 3 (Gal/acre)	Week 4 (Gal/acre)	Week 5 (Gal/acre)	

Signature of Responsible Official: _____ Date _____

MAINE WASTE DISCHARGE LICENSE

FACT SHEET

DATE: November 6, 2013

INTERGRATED COMPLIANCE INFORMATION SYSTEM: MEU508262
WASTE DISCHARGE LICENSE NUMBER: W008262-5S-A-N

NAME AND MAILING ADDRESS OF APPLICANT:

PINELAND FARMS POTATO COMPANY INC.
Attn: Greg McCrum
P.O. 390
Mars Hill, ME. 04787

COUNTY: Cumberland County

NAME AND ADDRESS OF DISPOSAL FACILITY:

91 Weymouth Road
Gray, Maine

RECEIVING WATER/ CLASSIFICATION: Groundwater /Class GW-A

COGNIZANT OFFICIAL AND TELEPHONE NUMBER:

Mr. Greg McCrum
Procurement & Environmental Mgr.
(207) 227-2434
gmcCrum@pinelandfarms.com

1. APPLICATION SUMMARY

- a. Application: Pineland Farms Potato Company Inc. (Pineland/licensee hereinafter) has submitted an application to the Department for a new Maine Waste Discharge License (WDL) for the operation of a surface waste water disposal (spray-irrigation/snowmaking) system. The system will dispose of treated process waste waters generated by the Pineland Farms Creamery operation onto a 219-acre parcel of land in Gray, Maine. The facility has been assigned number MEU508263 for tracking compliance in the Department's Integrated Compliance Information System (ICIS) as well as a WDL #W008263-5S-A-N. See **Attachment A** of this Fact Sheet for a location map. It is noted that up until this permitting action, the disposal activity has been implemented in accordance with a Nutrient Management Plan (NMP) prepared by a certified NMP specialist and approved by the Maine Department of Agriculture, Conservation and Forestry.

1. APPLICATION SUMMARY (cont'd)

- b. Source Description and Waste Water Treatment: The waste water generated by the Pineland Creamery is whey which is the liquid remaining after milk has been curdled and strained. It is a by-product of the manufacture of cheese at the creamery. The cheese making operation is a year-round operation that generates up to 36,000 gallons/week of waste water. The waste water is pumped into a tanker truck and trucked to a 219-acre disposal site approximately ten miles from creamery. The disposal site has a concrete tank that has a holding capacity of up to 750,000 gallons to store waste water when climatic conditions are not conducive to spray irrigation or snowmaking. See **Attachment B** of the Fact Sheet for a more detailed description of the waste water disposal process and site characteristics.

2. CONDITIONS OF LICENSE

Maine law, 38 M.R.S.A. Section 414-A, requires that the effluent limitations prescribed for discharges require application of best practicable treatment and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System.

3. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A § 470 indicates the ground water 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 ground water and 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

- a. Monitoring Parameters – Effluent monitoring (prior to disposal) established in this licensing action is limited to biochemical oxygen demand (BOD₅) and pH. Monitoring for these parameters yields an indication of the strength being applied. Effluent monitoring shall be conducted 2/Year, once during the spray irrigation season (April 1 – November 30) and once during the snowmaking season.
- b. Spray Irrigation Application Rates – This licensing action is establishing an application rate of 6,000 gallons/acre/month based on information provided by the licensee. This is equivalent to 0.22 inches/month.
- c. Snowmaking Application rates – This licensing action does not establish a numeric limit on the application rate for snowmaking given the nature of the disposal associated with the seasonal melting of the snow.

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

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. For these reasons, the licensee should field calibrate their equipment on a regular basis to ensure proper application and uniformity, and when operating conditions are changed from the assumed design.

- d. Ground Water Monitoring – This licensing action is not establishing ground water monitoring given the conclusion by the State Soil Scientist in his August 13, 2013, memo in which he states “I believe the threat to ground water is negligible as the fields are being used now and see no reason to require groundwater monitoring.”

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 Portland Press Herald newspaper on or about August 29, 2013. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

8. DEPARTMENT CONTACTS

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

Gregg Wood
Division of Water Quality Management
Bureau of Land & Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone: (207) 287-7693 Fax: (207) 287-3435
e-mail: gregg.wood@maine.gov

9. RESPONSE TO COMMENTS

During the period of November 6, 2013, through the issuance date of the license, the Department solicited comments on the proposed draft license to be issued for the discharge(s) from the Pineland Farms 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



0 1 MI
0 5000 Ft

Map provided by MyTopo.com

ATTACHMENT B

MAINE DEPARTMENT OF AGRICULTURE,
CONSERVATION AND FORESTRY
OFFICE OF THE STATE SOIL SCIENTIST
STATE HOUSE STATION # 28
AUGUSTA, MAINE 04333
PHONE: (207) 287-2666
E-MAIL: DAVID.ROCOUE@MAINE.GOV

MEMO

To: Greg Wood, Senior Environmental Engineer, MDEP
From: David P. Rocque, State Soil Scientist, MDOA,C&F
Re: Pineland Farms Cheese Process Waste Water Spray Irrigation site
Date: August 13, 2013

This is in regard to our site visit on August 12, 2013 at the subject property. The purpose of the site visit was to evaluate soil conditions in the fields where effluent from Pineland Farms cheese processing facility have been sprayed in the past and where the farm would like to continue spraying in the future.

Background:

According to farm representatives present during the site visit, the fields being irrigated with the cheese process waste water are approximately 219 acres in size which allows for a low spraying rate. They indicated that they only spray about 6,000 gallons per acre, twice a year; once in the spring before planting a crop and after harvest of the first crop (a second crop is usually planted such as winter rye). This amounts to about 1/4" of water at each spraying. The current spray program is being done as part of a nutrient management plan under the direction of a certified nutrient management planner.

The BOD of the waste water is quite high, in the vicinity of 25,000 milligrams per liter.

During the winter and other times when the fields cannot be used for spray irrigation of the waste water, it is stored in a 600,000 gallon lagoon previously used to hold irrigation water. The water in this lagoon is made into snowfluent in the winter which is collected in several piles. The piles are rotated to different locations each year to prevent overload of nutrients at any one location.

Soils in the fields are deep, well drained sand and gravel deposits which have rapid permeability in the C horizon but have lower permeability in the upper soil horizons. The landform is nearly level. The farm uses Best management Practices to improve and maintain soil health and productivity. They regularly incorporate organic matter from their crops into the soil.

Observations:

In order to determine soil characteristics of the fields currently being used to irrigate the waste water, I did a couple of soil auger borings. The soil profiles I observed had a 10" sandy loam Ap horizon that was underlain by 8" of loamy sand B horizon. At a depth of about 18" I encountered the C horizon which was a gravelly sand. The Ap horizon was quite dark in color indicating it had a significant amount of organic matter in it.

I also did a soil auger boring at the site where the last snowfluent pile was stored and observed a similar profile to that I observed in the fields (topsoil layer was a little thinner as was to be expected since the area was not being actively managed to grow a crop). There was a good stand of grass type vegetation growing in the area. I did not see any impact from the organic solids dropping out from the snowfluent.

Conclusions:

It is my professional opinion that the soils and site used for the spraying of cheese processing plant effluent are suitable as they are being used now for the following reasons:

1. The irrigation rate is very low and is only done twice a year at any one location.
2. The Ap horizon is a sandy loam texture (has a lot of fines in it) and has a significant amount of organic matter in it. The fines and organic matter should provide for a relatively high Cation Exchange Capacity.
3. The Bs horizon is a loamy sand with enough fines in it to provide treatment of the effluent that makes it through the Ap horizon.
4. Effluent is sprayed on the land only during the growing season when plant growth and microbial activity is at their highest.
5. The relatively fine textured topsoil layers are underlain by relatively coarse textured subsoil horizons. This creates a lithologic discontinuity where the fine textured soils have capillary pores but the sand only has gravity pores. This textural difference acts like a barrier to water movement into the sand layer. Water will only move into the sand layer when sufficient head is present to force it drip from above. Spraying a small amount of effluent at one time will not provide sufficient head to force it into the sand layers and allows for a long contact time in the biologically active topsoil layer.

The high BOD would be a problem if waste water were to be spread frequently and at a high application rate but as it is being done now and as it is proposed to be in the future, it is actually beneficial.

I also do not see any problems with the farms present snowfluent program. The piles are rotated each year so no site is used for two consecutive years. Organic matter from the snowfluent is being incorporated into the topsoil layer, improving its ability to support plant growth that take up nutrients and stabilizes the soil.

I believe the threat to the groundwater table is negligible as the fields are being used now and see no reason to require groundwater monitoring.

Feel free to contact me if you have any questions.

STANDARD CONDITIONS OF PUBLICLY OWNED TREATMENT WORKS (POTW) WASTE
DISCHARGE LICENSES

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STANDARD CONDITIONS OF PUBLICLY OWNED TREATMENT WORKS (POTW) WASTE
DISCHARGE LICENSES

1. GENERAL CONDITIONS

- A. All discharges shall be consistent with the terms and conditions of this license; 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 license; it shall be a violation of the terms and conditions of this license 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 license.
- B. the licensee shall permit the Department of Environmental Protection Staff upon the presentation of proper credentials:
 - (1) To enter upon licensee's premises where an effluent source is located or in which any records are required to be kept under the terms and conditions of this license;
 - (2) To have access to and copy any records required to be kept under the terms and conditions of this license;
 - (3) To inspect any monitoring equipment or monitoring method required in this license; or,
 - (4) To measure and/or sample at any intake, process or cooling effluent stream, waste water treatment facility and/or outfall.
- C. This license shall be subject to such monitoring requirements as may be reasonably required by the Department of Environmental Protection including the installation, use and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). The licensee shall provide the Department of Environmental Protection with periodic reports on the proper Department of Environmental Protection reporting form of monitoring results obtained pursuant to the monitoring requirements contained herein.
- D. This license does not preclude obtaining other required Federal, State, or Municipal permits and does not authorize or approve the construction of any on-shore physical structures or facilities or the undertaking of any work in any navigable waters.
- E. The issuance of this license does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to public or private property or any invasion of personal rights nor any infringement of Federal, State or local laws or regulations.
- F. Nothing in this license shall be construed to relieve the licensee from civil or criminal penalties for non-compliance, whether or not such non-compliance is due to factors beyond the licensee's control, such as an accident, equipment breakdown, labor disputes or natural disaster.

STANDARD CONDITIONS OF PUBLICLY OWNED TREATMENT WORKS (POTW) WASTE
DISCHARGE LICENSES

2. PRETREATMENT REQUIREMENTS

- A. The licensee shall comply with all Federal Statutes, regulations, and conditions of permits applicable to its discharge of waste waters, including, but not limited to, those requiring the installation of pretreatment facilities or establishment of pretreatment programs.
- B. Municipal or quasi-municipal licenses shall maintain user contracts, permits or ordinances to regulate industrial entities which discharge process waste water to the licensee's treatment facilities in quantities greater than 10% of the facility's design capacity. Such contracts, permits or ordinances shall be submitted to the Department for approval within three months of the effective date of this license or prior to acceptance of new or increased volumes of industrial waste water. All such contracts, permits or ordinances shall be an enforceable part of this license whether or not approved by the Department.

3. WASTE WATER TREATMENT AND SAMPLING FACILITIES

- A. The licensee shall collect all waste flows designated by the Department of Environmental Protection as requiring treatment and discharge them into an approved waste treatment facility in such a manner as to maximize removal of pollutants unless authorization to the contrary is obtained from the Department.
- B. The licensee 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 waste waters.
- D. Final plans and specifications must be submitted to the Department of Environmental Protection and approved prior to the construction or modification of any treatment facilities.
- E. The licensee shall install flow measuring facilities of a design approved by the Department of Environmental Protection.
- F. The licensee must provide an outfall of a design approved by the Department of Environmental Protection which is placed in the receiving waters in such a manner that maximize mixing and dispersion of the waste waters will be achieved as rapidly as possible.

4. NON-COMPLIANCE NOTIFICATION

- A. In the event the licensee bypasses collection or treatment facilities or is unable to comply with any of the conditions of this license due, among other reasons, to:
 - (1) breakdown of waste treatment equipment;
 - (2) accidents caused by error or negligence;
 - (3) high strength, high volume or incompatible wastes; or
 - (4) other causes such as acts of nature,

STANDARD CONDITIONS OF PUBLICLY OWNED TREATMENT WORKS (POTW) WASTE
DISCHARGE LICENSES

the licensee shall notify the Department of Environmental Protection verbally as soon as its agents have knowledge of the incident.

- B. Within five (5) days of becoming aware of such condition the licensee shall provide the Department of Environmental Protection in writing, the following information:

- (1) A description of the discharge and cause of non-compliance; and
- (2) The period of non-compliance, including exact dates and times; or, if not corrected, the anticipated time the non-compliance is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the non-complying discharge.

- C. If the licensee knows in advance of changes in licensed facilities or activities which may result in non-compliance or of the need to bypass, it shall submit prior notice at least ten days in advance of such occurrence.

- D. In the event of a bypass is due to inflow or infiltration of uncontaminated water into a sewer system, reporting requirements may be adjusted by the Department to a monthly basis.

5. MONITORING AND REPORTING

- A. 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 licensee 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.

- B. Test Methods

The sampling, preservation, handling, and analytical methods used must conform with Standard Methods for the Examination of Water and Waste Waters, American Public Health Association, 1015 18th Street, N.W., Washington, D.C. 20036, latest approved edition, or methods referenced in 40 CFR Part 136, Guidelines Establishing Test Procedures for Analysis of Pollutants. However, different but equivalent methods are allowable if they receive the prior written approval from the Department of Environmental Protection.

- (1) All reports shall be submitted to the Department not later than the fifteenth of the month following the end of the monitoring period.
- (2) Any reports or records of monitoring activities and results shall include for all samples: (a) the date, exact place, and time of sampling; (b) the dates and times of analyses; (c) the analytical techniques/methods used, including sampling, handling, and preservation techniques; and (d) the results of all required analyses.

STANDARD CONDITIONS OF PUBLICLY OWNED TREATMENT WORKS (POTW) WASTE
DISCHARGE LICENSES

C. All reports shall be signed by:

- (1) In the case of corporations, a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the reporting form originates.
- (2) In the case of a partnership, a general partner or duly authorized representative.
- (3) In the case of a sole proprietorship, the proprietor or duly authorized representative.
- (4) In the case of a municipal, State, or other public facility, either a principal executive officer, ranking elected official, or duly authorized employee.

6. CHANGE OF DISCHARGE

The licensee shall notify the Department in writing as soon as it has knowledge of any significant changes or proposed changes in its discharge, including but not limited to:

- A. the temporary or permanent termination of the discharge;
- B. changes in the waste collection, treatment or disposal facilities;
- C. changes in the volume or character of waste water flows;
- D. permanent changes in industrial production rates;
- E. the proposed addition, directly or indirectly, of toxic pollutants not authorized by the license or reflected in the application filed with the Department;
- F. the addition to a municipal or quasi-municipal treatment system of industrial wastes which are categorically regulated by the U.S. EPA pursuant to the agency's pretreatment program.

7. TRANSFER OF OWNERSHIP

In the event that any person possessing a license issued by the Department shall transfer the ownership of the property, facility or structure which is the source of a licensed discharge, without transfer of the license being approved by the Department, the license granted by the Department shall continue to authorize a discharge within the limits and subject to the terms and conditions stated in the license, provided that the parties to the transfer shall be jointly and severally liable for any violation thereof until such times as the Department approves transfer or issuance of a waste discharge license to the new owner. The Department may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

8. RECORDS RETENTION

All records and information resulting from the monitoring activities required by this license including all records of analyses performed and calibrations and maintenance of instrumentation shall be retained for a minimum of three (3) years.

STANDARD CONDITIONS OF PUBLICLY OWNED TREATMENT WORKS (POTW) WASTE
DISCHARGE LICENSES

9. 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

- (1) 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
- (2) known to be hazardous or toxic by the licensee.

B. The discharge of such materials will not violate applicable water quality standards.

10. 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 of Environmental Protection.

11. BYPASS OF WASTE TREATMENT FACILITIES

The diversion or bypass of any discharge from facilities utilized by the licensee to maintain compliance with the terms and conditions of this license is prohibited, except (1) where unavoidable to prevent loss of life or severe property damage, or (2) where excessive storm drainage or runoff would damage any facilities necessary for compliance with the terms and conditions of this license. The licensee shall notify the Department of Environmental Protection of each such diversion or bypass in accordance with the procedure specified in paragraph 6 above for reporting non-compliance. It is the duty of the licensee to take all feasible steps to prevent, minimize and mitigate bypasses. If infiltration or inflow of stormwater or ground water contribute to bypasses, the licensee shall submit to the Department for approval, a wet weather flow management plan. The plan shall describe measures implemented to maximize the volume of flow through the treatment facilities and the efficiency of the treatment process. Submission of this plan shall not remove any responsibilities of the licensee pursuant to paragraph 6.

12. EMERGENCY ACTION-ELECTRIC POWER FAILURE

Within thirty days after the effective date of this license, the licensee shall notify the Department of Environmental Protection of facilities and plans to be used in the event the primary source of power to its waste water pumping and treatment facilities fails. During power failure, all waste waters 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 waste water facilities.

STANDARD CONDITIONS OF PUBLICLY OWNED TREATMENT WORKS (POTW) WASTE
DISCHARGE LICENSES

DEFINITIONS

FOR THE PURPOSE OF THIS LICENSE THE FOLLOWING SHALL APPLY

- A. Grab Sample: An individual sample collected in a period of less than 15 minutes.
- B. Composite Sample: A sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (or a lesser period if specified in the section on Monitoring and Sampling) and combined proportional to flow or a sample continuously collected proportionally to flow over the same time period.
- C. Daily Maximum For Concentration: The maximum value not to be exceeded at any time.
- D. Daily Maximum For Quantity: The maximum value not to be exceeded during any day.
- E. Weekly or Monthly Average: The sum of all daily samples measurement or test results made during a week or month divided by the number of tests or measurement made during the respective time period. Exception: bacteriological tests shall be calculated as a geometric mean.
- F. Bypass: The diversion of waste water, either by act or by design, from any portion of a treatment facility or conveyance system.



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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.
