



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF:

CATALYST PAPER OPERATIONS INC.)	
ACQUISITION OF)	LICENSE
RUMFORD PAPER COMPANY'S)	TRANSFER
MILL IN RUMFORD, MAINE AND LANDFILL)	
IN MEXICO, MAINE)	(Air Emission; Site Location of
A-214-70-M-T)	Development; Solid Waste;
L-004758-26-S-T)	Water Pollution)
S-000686-WR-AB-T)	
S-021787-WX-E-T)	
S-022322-WX-E-T)	
W000955-5N-M-T)	

Pursuant to Maine's *Site Location of Development* laws, 38 M.R.S.A. §§ 481–489; *Protection and Improvement of Air* laws, 38 M.R.S.A. §§ 581–610-D; Maine's *Water Pollution Control* laws, 38 M.R.S.A. §§ 411–424-B; and the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S.A. §§ 1301–1319-Y, rules promulgated pursuant to these laws and the Department's *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (effective August 25, 2013), the Maine DEP has considered the application of Catalyst Paper Operations Inc. with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

A. Application. Catalyst Paper Operations Inc. ("CPOI"), a wholly owned subsidiary of Catalyst Paper Holdings Inc., submitted an application to Maine DEP for the transfer of licenses. The application sought to transfer to CPOI all active Maine DEP *licenses*, as defined in 06-096 CMR 2(1)(L), any modifications, condition compliance orders, all other approvals, and all applications pending held or submitted by Rumford Paper Company ("RPC") relating to RPC's paper mill ("mill") in Rumford, Maine and associated landfill in Mexico, Maine ("landfill"). A schedule of permits and applications that are the subject of that application, and this Department Order, is set forth in Appendix A.¹ Maine DEP accepted CPOI's license transfer application as complete for processing on November 26, 2014.

¹ The intent of this Order is to transfer any and all Maine DEP licenses, permits, certificates, registrations, applications, and decisions concerning the mill and landfill purchased by Catalyst Paper Holdings Inc. and assigned to CPOI. Any license, permit, certificate, registration, application, or decision not specifically listed in this Order is incorporated herein.

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B. History

(1) **The Transaction.** Catalyst Paper Holdings Inc. entered into an Asset Purchase Agreement with NewPage Corporation, NewPage Wisconsin System Inc., and Rumford Paper Company on October 30, 2014 for the purchase of the mill and landfill. Catalyst Paper Holdings Inc. assigned its rights under the Asset Purchase Agreement to CPOI as referenced in Finding of Fact 2B of this Order.

(2) **Operations.** Rumford Paper Company owns and operates a paper mill and associated landfill in Rumford, Maine and Mexico, Maine, respectively.

2. TRANSFER REQUIREMENTS

The following information regarding CPOI was submitted in support of the transfer application:

A. Full Name and Address. The full name and address of the applicant is Catalyst Paper Operations Inc. c/o Brian Baarda, Catalyst Paper Corporation, 3600 Lysander Lane, 2nd floor, Richmond, British Columbia, Canada V7B 1C3.

B. Title, Right, or Interest. On October 30, 2014, an Asset Purchase Agreement was executed by and among NewPage Corporation, NewPage Wisconsin System Inc., Rumford Paper Company (together the "Seller" parties), and Catalyst Paper Holdings Inc. (the "Buyer") for the sale of the mill and landfill to Catalyst Paper Holdings Inc. Catalyst Paper Holdings Inc. executed an assignment to CPOI on November 24, 2014, assigning all rights and obligations to purchase, acquire, and accept from the Seller the purchased assets and liabilities identified in the Asset Purchase Agreement, including inventory, raw materials, work-in-process, finished goods, supplies, spare parts, current assets, any and all prepaid expenses and security deposits, all machinery, equipment and the like, tangible personal property in each case of the business, including the Rumford mill, permits, all intellectual property, agreements, contracts and the like, all warranty and shipping records, customer lists and the like, telephone numbers, claims, actions, defenses, real property, equity interests in GIPOP, tax refunds, the business as a going concern and its goodwill. Based upon the foregoing, CPOI has provided sufficient evidence of title, right, or interest in the mill and landfill to allow the transfer to CPOI the

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licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto, condition compliance orders, and pending applications concerning the mill and landfill, subject to the conditions set forth below.

- C. Financial Capacity and Intent.** CPOI submitted documentation concerning a credit agreement by and among Catalyst Paper Corporation, Catalyst Paper, Catalyst Paper Holdings Inc., and Catalyst Paper (USA) Inc. as borrowers, and Canadian Imperial Bank of Commerce and Wells Fargo Capital Finance Corporation Canada as lenders, which provides for a \$225,000,000 revolving loan commitment for the acquisition of the Rumford mill as well as another mill located in Biron, Wisconsin. CPOI also submitted a letter confirming that Catalyst Paper Corporation commits to loan the borrowed funds to Catalyst Paper Holdings Inc. which will in turn inject equity into CPOI for the acquisition of the assets under the Asset Purchase Agreement. Furthermore, on closing of the contemplated transaction under the Asset Purchase Agreement, Catalyst Paper Corporation committed to formally adding CPOI to the Credit Agreement. In addition, CPOI submitted an analysis of annual operating costs for the Rumford mill and an analysis of anticipated earnings for CPOI based on historical and projected financial information. The records reflect that anticipated revenue exceeds anticipated operating costs. Based on the foregoing, CPOI has demonstrated sufficient financial capacity and intent to assure compliance with all Maine DEP licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto; condition compliance orders, pending applications, as well as any statutory and regulatory criteria applicable to the mill and landfill, subject to the conditions set forth below.

Catalyst Paper Corporation, on behalf of CPOI, also submitted a closure and post closure cost analysis dated November 7, 2014 from Sevee & Maher Engineers, Inc. for the landfill in Mexico, Maine, pursuant to 06-096 CMR 400(11). The overall cost for the closure increased by \$96,000 from 2013. The revised closure and post-closure costs were estimated at \$8.172 million and \$3.069 million respectively. The submittal indicates that CPOI intends to satisfy the financial assurance requirements of 06-096 CMR 400(11) by the establishment and maintenance of a reserve account and that the reserve account established by Rumford Paper Company, containing approximately \$5,390,000, will be transferred from Rumford Paper Company to CPOI upon closing.

**DEPARTMENT ORDER
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D. Technical Capacity and Intent. CPOI represents that Catalyst Paper Corporation has a long history of operating pulp and paper facilities in both Canada and the United States. CPOI further represents that the technical expertise of Catalyst Paper Corporation will be available to CPOI through its affiliation with Catalyst Paper Corporation. Specifically, CPOI submitted the qualifications of Graham Kissack, Catalyst Paper Corporation's sustainability specialist, who has over 20 years' experience as a pulp and paper mill environmental manager and sustainability expert. Furthermore, CPOI represents that members of the current management team for the Rumford mill will continue to be responsible for the environmental management of the mill. Specifically, CPOI submitted the qualifications of Scott Reed, the existing Environmental Manager of the facility, who will continue to be responsible for the environmental management of the operation of the facilities at the closing of the transaction. Mr. Reed has been directly involved in the Rumford mill since 1992 and has been the environmental manager for the mill since 1999. In addition, CPOI provided the resumes of the mill's engineer and plant supervisors. Rumford Paper Company has a contract with Bancroft Corporation for the day-to-day operation of the landfill. CPOI states the contract with Bancroft Corporation will continue after the transfer of the landfill. Based upon the foregoing, CPOI has provided sufficient evidence that it has the technical capacity and intent to comply with all Maine DEP licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto, condition compliance orders, pending applications, and any statutory and regulatory criteria applicable to the mill and landfill, provided that CPOI receives Department review and approval prior to retaining an entity other than Bancroft Corporation for the day-to-day operation of the landfill.

E. Solid Waste Facility Disclosure. The disclosure statement provided by CPOI in accordance with the Department's Solid Waste Management Rules, *General Provisions*, 06-096 CMR 400(12) reveals that the corporation, the parent and the directors and operator, have no record of any criminal, civil violations or consent decrees in the last five years.

BASED ON THE ABOVE FINDINGS OF FACT, the Maine DEP CONCLUDES that CPOI has demonstrated title, right, or interest to the mill and the landfill as well as the technical and financial capacity and intent to comply with the conditions of all Maine DEP licenses, permits,

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approvals, permits-by-rule, registrations, variances, certifications and amendments thereto, condition compliance orders and pending applications associated with the mill and landfill described in this Order's findings, including specifically those licenses and applications listed in Appendix A, and to satisfy all applicable statutory and regulatory criteria.

THEREFORE the Maine DEP APPROVES the application of CPOI SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards:

1. **POINT OF EFFECTIVE TRANSFER.** This transfer will become effective upon the closing of the transaction described in Finding of Fact 1(B)(1) of this Order provided that a final financial package on terms at least equal to that stated in the commitment letter dated October 29, 2014 referenced in Finding of Fact 2(C) of this Order has been implemented as of the date of the closing.
2. **DOCUMENTATION.** Within 10 days following the closing, CPOI shall provide to the Department: (1) documentation demonstrating closing of the transaction described in Finding of Fact 1(B)(1) of this Order; (2) documentation that a final financial package on terms at least equal to that stated in the commitment letter dated October 29, 2014 referenced in Finding of Fact 2(C) of this Order has been implemented; and (3) documentation that Catalyst Paper Corporation formally added CPOI to the Credit Agreement as provided for in Finding of Fact 2(C) of this Order.
3. **LANDFILL CONTRACTOR.** If CPOI intends to replace Bancroft Corporation as the contractor for day-to-day landfill operations, or if CPOI intends to operate the landfill without a contractor, CPOI shall submit to the Department for its review and approval the information required under the Department's Solid Waste Management Rules, *General Provisions*, 06-096 CMR 400(4)(C).
4. **STANDARD CONDITIONS.** Standard Conditions of Approval included in Maine *Protection and Improvement of Air* law permits; and Standard Conditions of Approval for *Site Location of Development* law permits; *Maine Hazardous Waste, Septage and Solid Waste Management Act* permits; and *Maine Pollution Discharge Elimination Permits*, copies attached.

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S-022322-WX-E-T)	
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5. **EFFECT ON EXISTING ORDERS.** All other Findings of Fact, Conclusions, and Conditions associated with all approvals that are the subject of this Order remain as approved and are incorporated herein.

6. **SEVERABILITY.** The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

DONE AND DATED AT AUGUSTA, MAINE THIS 23rd DAY OF DECEMBER, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

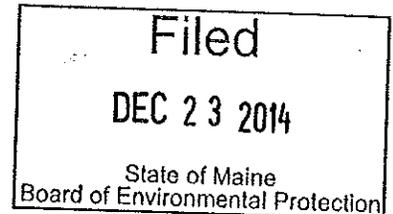
By: Heathm Parent For
Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: November 26, 2014

Date application accepted for processing: November 26, 2014

Date filed with the Board of Environmental Protection: _____



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APPENDIX A: CURRENT LICENSES AND APPLICATIONS

AIR EMISSION ORDERS

NUMBER	DESCRIPTION	EFFECTIVE
A-214-70-G-R/A	Part 70 Air Emission License	2/13/14
A-214-75-D-N	Sales & Use, Property Tax Certification	7/9/86
A-214-75-F-N	Sales & Use, Property Tax Certification	7/9/86
A-214-75-G-N	Sales & Use, Property Tax Certification	7/9/86
A-214-75-K-N	Sales & Use, Property Tax Certification	7/18/89
A-214-75-L-N	Sales & Use, Property Tax Certification	7/18/89
A-214-75-M-N	Sales & Use, Property Tax Certification	7/18/89
A-214-75-P-N	Sales & Use, Property Tax Certification	7/18/89
A-214-75-AE-X	Sales & Use, Property Tax Certification	9/3/96
A-214-75-AF-X	Sales & Use, Property Tax Certification	9/3/96
A-214-75-AK-X	Sales & Use, Property Tax Certification	9/3/96
A-214-75-C-X	Sales & Use, Property Tax Certification	7/30/03
A-214-75-E-X	Sales & Use, Property Tax Certification	7/30/03
A-214-77-1-A	NSR: Title V license	7/30/03
A-214-77-2-A	NSR: BART determination	7/30/03
A-214-77-3-A	NSR: Add natural gas fired air heater	7/30/03
A-214-77-4-A	NSR: stack testing schedule	7/30/03
A-214-77-5-A	NSR: add lift pump	7/30/03
A-214-77-6-A	NSR: upgrade pulp dryer	7/30/03
A-214-77-7-A	NSR: major mod: add natural gas to lime kiln	9/2/08
A-214-77-12-A	NSR Amendment	10/8/13
A-214-77-8-M	NSR: MR to stack testing	8/24/09
A-214-77-9-M	MR Chapter 115	1/8/10
A-214-77-11-O	Offset Credits	2/27/13

**DEPARTMENT ORDER
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LAND DEVELOPMENT ORDERS

NUMBER	DESCRIPTION	EFFECTIVE
L-4758-20-A-A	Cogeneration Project	5/14/86
L-4758-20-B-M	Coal Handling facility	10/19/87
L-4758-20-C-A	Mill modernization	3/16/89
L-4758-20-E-M	Fill	5/26/89
L-4758-20-G-A	Paper Machine & Woodroom/Woodyard	1/17/91
L-4758-20-H-M	Paper Mill modification	4/26/90
L-4758-20-I-M	Modification	11/8/89
L-4758-20-J-M	Modification	9/29/89
L-4758-20-K-A	Amendment substation expansion	7/3/90
L-4758-20-L-M	Modification	3/29/90
L-4758-20-M-M	Modification	6/13/90
L-4758-20-N-M	Underground acid tank removal and reinstallation	10/9/91
L-4758-20-O-M	New cooling tower	12/10/91
L-4758-20-P-B	Electrical interconnect project	10/27/10

WASTEWATER DISCHARGE DECISIONS

NUMBER	DESCRIPTION	EFFECTIVE
W-7583-63-A-N	Sales, Use and Property Tax certification	12/17/87
W-7584-63-A-N	Sales, Use and Property Tax certification	12/17/87
W-7585-63-A-N	Sales, Use and Property Tax certification	12/17/87
W-7586-63-A-N	Sales, Use and Property Tax certification	12/17/87
W-7599-63-A-N	Sales, Use and Property Tax certification	3/29/88
W-7716-63-A-N	Sales, Use and Property Tax certification – leachate collection leaders	3/22/91
W-7717-63-A-N	Sales, Use and Property Tax certification – sewer system improvements	3/22/91
W-7723-64-A-N	Sales, Use and Property Tax certification – secondary containment for fuel tanks	3/22/91

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NUMBER	DESCRIPTION	EFFECTIVE
W-7794-64-A-N	Sales, Use and Property Tax certification	3/31/93
W-7798-64-A-N	Sales, Use and Property Tax certification	3/31/93
W-8097-63-A-N	Sales, Use and Property Tax certification	3/31/00
W-8107-63-A-N	Sales, Use and Property Tax certification	3/31/00
W-8108-63-A-N	Sales, Use and Property Tax certification	3/31/00
W-8123-6T-A-N	Sales, Use and Property Tax certification	3/25/02
W-8138-6T-A-N	Sales, Use and Property Tax certification	3/25/02
W-8200-6T-A-N	Sales, Use and Property Tax certification	3/26/04
W-8217-6T-A-N	Sales, Use and Property Tax certification	3/30/05
W-000955-5N-K-R ME0002054	MEPDES and Waste Discharge	12/20/12

SOLID WASTE MANAGEMENT ORDERS

NUMBER	DESCRIPTION	EFFECTIVE
26-0686-17270	Construct waste treat facility	2/9/1973
26-0686-17270	Construct waste treat facility and construct disposal area	8/8/1973
26-0686-17190	Stream alteration	11/1/77
26-0686-17190	Site location, solid waste and 300 foot	7/12/1978
26-0686-17190	Condition removal	10/26/1978
26-0686-17190b	Interim solid waste disposal	11/15/1978
S-000686-WD-ZZ-N	Sludge disposal site	1/30/1980
26-0686-17270	Sludge disposal – 2 nd amendment	1/30/1980
26-0686-17190	300 foot order	1/28/1981
26-0686-17190	Sludge disposal site, site location and 300 foot	8/11/1982
26-0686-17190	300 foot variance request renewal	1/26/1983
S-000686-WD-A-M	Phase II development	7/30/1984
S-000686-WD-B-R	300 foot variance	11/30/84- returned
S-000686-WD-C-A	Asbestos disposal	4/14/1986

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NUMBER	DESCRIPTION	EFFECTIVE
S-000686-WD-D-A	Asbestos disposal	11/12/1987
S-000686-WD-E-A	Asbestos disposal	5/2/1988
S-000686-WY-F-R	Variance renewal	9/30/1988
S-000686-WD-H-M	Soil and concrete disposal – fee refund	1/31/1989
S-000686-WU-G-N	Asbestos Disposal	11/8/1989
S-000686-WD-I-A	Boiler ash disposal	6/12/1990
S-000686-WK-O-P	PBR landclearing debris	6/5/1990
S-000686-WD-L-N	Mercury contamination soil	7/26/1990
S-000686-WT-K-N	Contaminated soil disposal	8/8/1990
S-000686-WT-M-N	Sodium ferrocyanide	8/8/1990
S-000686-WD-P-M	Daily cover modification	1/28/1991
S-000686-WY-J-R	300 foot variance	8/23/1991
S-000686-WD-N-R	Solid waste license renewal	8/23/1991
S-000686-WR-S-T	Transfer from Boise Cascades	11/18/1996
S-000686-WD-T-M	MH 16 pump station	4/10/1997
S-000686-WD-V-M	Asbestos disposal	4/20/1998
S-000686-WD-Q-R	License renewal and vertical expansion	4/15/1999
S-000686-WD-W-A	Perimeter drain changes	9/20/2000
S-000686-WD-R-M	Revision to EMP	10/10/2002
S-000686-WD-W-M	East Side drainage system	1/31/2009
S-000686-WD-X-M	Leachate pond liner replacement	5/29/2009
S-000686-WD-W-M	Corrected copy	9/10/2010
S-000686-WD-Y-M	Leachate collection system modification	3/28/2012
S-000686-WD-AA-M	Manhole 1 improvements	10/20/14 – accepted for processing
S-021354-88-A-N	Woodyard Ash Pad	5/17/1995
S-021354-WX-B-T	Transfer from Boise Cascades	11/18/1996
S-021787-WK-A-N	Processing facility CoGen	9/9/97
S-021787-WK-B-M	Minor revision to CoGen processing facility	12/11/97

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NUMBER	DESCRIPTION	EFFECTIVE
S-021787-WK-C-C	Condition Compliance 2A/B	8/27/03
S-021787-WK-D-M	Condition 5 revision	7/8/11
S-022322-WV-A-N	Beneficial use - tires	4/15/11
S-022322-WV-C-A	Beneficial use of CTW	10/17/12
S-022322-WV-D-M	Beneficial use of CDDW	11/5/13

SITE LOCATION OF DEVELOPMENT (SITE)
STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL.

1. This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents is subject to the review and approval of the Board prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited, without prior approval by the Board of Environmental Protection, and the applicant shall include deed restrictions to this effect.
2. The applicant shall secure and comply with all applicable Federal, State and local licenses, permits, authorizations, conditions, agreements, and orders, prior to or during construction and operation as appropriate.
3. The applicant shall submit all reports and information requested by the Board or Department demonstrating that the applicant has complied or will comply with all conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
4. Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted **WITH CONDITIONS**, and indicates where copies of those conditions may be obtained.
5. Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
6. If the construction or operation of the activity is not begun within two years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. Reapplications for approval shall state the reasons why the development was not begun within two years from the granting of the initial approval and the reasons why the applicant will be able to begin the activity within two years from the granting of a new approval, if granted. Reapplications for approval may include information submitted in the initial application by reference.
7. If the approved development is not completed within five years from the date of the granting of approval, the Board may reexamine its approval and impose additional terms or conditions or prescribe other necessary corrective action to respond to significant changes in circumstances which may have occurred during the five-year period.
8. A copy of this approval must be included in or attached to all contract bid specifications for the development.
9. Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.

(2/81)/Revised November 1, 1979

DEPLW 0429

Appendix A

STANDARD CONDITIONS TO ALL SOLID WASTE FACILITY LICENSES

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL. VIOLATIONS OF THE CONDITIONS UNDER WHICH A LICENSE IS ISSUED SHALL CONSTITUTE A VIOLATION OF THAT LICENSE AGAINST WHICH ENFORCEMENT ACTION MAY BE TAKEN, INCLUDING REVOCATION.

1. **Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed by the licensee. Any consequential variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
2. **Compliance with All Applicable Laws.** The licensee shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
3. **Compliance with All Terms and Conditions of Approval.** The licensee shall submit all reports and information requested by the Department demonstrating that the licensee has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
4. **Transfer of License.** The licensee may not transfer the solid waste facility license or any portion thereof without approval of the Department.
5. **Initiation of Construction or Development Within Two Years.** If the construction or operation of the solid waste facility is not begun within two years of issuance or within 2 years after any administrative and judicial appeals have been resolved, the license lapses and the licensee must reapply to the Department for a new license unless otherwise approved by the Department.
6. **Approval Included in Contract Bids.** A copy of the approval must be included in or attached to all contract bid specifications for the solid waste facility.
7. **Approval Shown to Contractors.** Contractors must be shown the license by the licensee before commencing work on the solid waste facility.
8. **Background of key individuals.** A licensee may not knowingly hire as an officer, director or key solid waste facility employee, or knowingly acquire an equity interest or debt interest in, any person convicted of a felony or found to have violated a State or federal environmental law or rule without first obtaining the approval of the Department.
9. **Fees.** The licensee must comply with annual license and annual reporting fee requirements of the Department's rules.
10. **Recycling and Source Reduction Determination for Solid Waste Disposal Facilities.** This condition does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

The solid waste disposal facility shall only accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by 38 MRSA Chapter 13.

11. **Deed Requirements for Solid Waste Disposal Facilities.** Whenever any lot of land on which an active, inactive, or closed solid waste disposal facility is located is being transferred by deed, the following must be expressly stated in the deed:
 - A. The type of facility located on the lot and the dates of its establishment and closure.
 - B. A description of the location and the composition, extent, and depth of the waste deposited.
 - C. The disposal location coordinates of asbestos wastes must be identified.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

CONTENTS

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

5. Bypasses.

(a) Definitions.

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

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

(c) Notice.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

(d) Prohibition of bypass.

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

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (c) of this section.

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

6. Upsets.

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

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

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

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph D(1)(f), below. (24 hour notice).

(iv) The permittee complied with any remedial measures required under paragraph B(4).

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

- (g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this section.
- (h) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

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

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

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

- (a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (i) One hundred micrograms per liter (100 ug/l);
 - (ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
 - (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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.
