



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR

MELANIE LOYZIM
COMMISSIONER

March 16, 2022

Mr. Matthew E. Sturgis
Town Manager
30 Ocean House Road
Cape Elizabeth, Maine 04107
e-mail: matthew.sturgis@capeelizabeth.com

**RE: Municipal Separate Storm Sewer System (MS4) General Permit #MER041000
Proposed Draft - MER041005**

Dear Mr. Sturgis:

Enclosed is a **proposed draft** Department Order granting coverage for the Town of Cape Elizabeth under the Municipal Separate Storm Sewer System (MS4) General Permit, #MER041000, issued by the Department on October 15, 2020 and revised on November 23, 2021. The Department proposes to issue this Department Order as a final document after opportunity for your review and comment. By transmittal of this letter, you are provided with an opportunity to comment on the proposed draft document. If it contains errors or does not accurately reflect present or proposed conditions, please respond to this Department so that changes can be considered.

Beginning today, Wednesday, March 16, 2022, the Department is making the draft Department Order available for a 30-day public comment period. All comments on the proposed draft Department Order must be received in the Department of Environmental Protection office on or before the close of business on **Monday, April 18, 2022**. Failure to submit comments in a timely fashion will result in the final permit document being issued as drafted.

Comments in writing should be submitted to my attention at the following address:

Maine Department of Environmental Protection
Bureau of Water Quality
Division of Water Quality Management
17 State House Station
Augusta, ME 04333-0017
gregg.wood@maine.gov

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

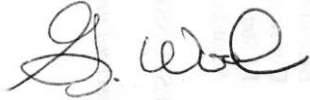
BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

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

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

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

Sincerely,

A handwritten signature in black ink, appearing to read "G. Wood". The signature is fluid and cursive, with the first name "G." and the last name "Wood" clearly distinguishable.

Gregg Wood
Division of Water Quality Management
Bureau of Water Quality

Enc.

cc: Alison Moody, DEP/SMRO
Damien Houlihan, USEPA
Newton Tedder, USEPA

Lori Mitchell, DEP/CMRO
Nathan Chien, USEPA

Holliday Keen, DEP/CMRO
Richard Carvalho, USEPA



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

**DEPARTMENT ORDER
IN THE MATTER OF**

TOWN OF CAPE ELIZABETH)	MUNICIPAL SEPARATE STORM
CAPE ELIZABETH, CUMBERLAND COUNTY, MAINE))	SEWER SYSTEM
MER041005)	MER041000
)	GENERAL PERMIT COVERAGE
March 16, 2022 Proposed Draft	APPROVAL)	RENEWAL

The Department of Environmental Protection (Department/DEP) has considered the Notice of Intent submitted by the TOWN OF CAPE ELIZABETH (Town/permittee), with supportive data, agency review comments and other related materials on file for coverage under the Municipal Separate Storm Sewer System (MS4) General Permit, #MER041000, issued by the Department on October 15, 2020 and revised on November 23, 2021, and FINDS THE FOLLOWING FACTS.

The permittee submitted a Notice of Intent (NOI) with an initial Stormwater Management Plan (SWMP) to the Department on March 30, 2021 that were made available for a 30-day public comment period on the Department's website at <https://www.maine.gov/dep/comment/comment.html?id=4463193>. No public comments were received on the NOI or the initial SWMP. The Department has reviewed the initial SWMP document and made the determination that the document is consistent with and fully articulates what is required to meet the MS4 GP standard. Pursuant to Part IV(B) of MS4 GP issued by the Department on October 15, 2020 and revised on November 23, 2021, the permittee must update the initial SWMP within 60 days of the effective date of this DEP permittee specific order or within 60 days of the final resolution to an appeal of this DEP permittee specific order. The final plan must be submitted to the Department and will be posted on the Department's website.

The permittee must fully implement all actions, schedules and milestones established in the March 30, 2021 initial SWMP and any revisions to the initial SWMP reflected in the final plan.

The permittee has agreed to comply with all terms and conditions of the MS4 General Permit, #MER041000, dated October 15, 2020 and revised on November 23, 2021. Operated in accordance with the Municipal Separate Storm Sewer System (MS4) General Permit, #MER041000, the discharges identified by the permittee will not have a significant adverse effect on water quality or cause or contribute to the violation of the water quality standards of the receiving water.

Impaired Waters

To meet the standards of the MS4 GP for impaired waters, the permittee must implement the following terms and conditions:

The permittee's MS4 includes point source discharges to Trout Brook which is classified as an Urban Impaired Stream (UIS) in Maine DEP Rule Chapter 502 and has its own TMDL dated October 2007. A Watershed Management Plan was completed for Trout Brook in 2012, and three phases of restoration projects have been completed in the watershed. To meet the UIS requirement of the 2022 MS4 General Permit, the Town must implement the following Best Management Practices (BMPs).

Beginning calendar year 2022, the permittee must implement the following chloride reduction practices for the Trout Brook watershed.

- a. At least one representative from the Town must attend an annual regional training or roundtable to learn about new chloride reduction techniques coordinated by the ISWG or another organization.
- b. The permittee, solely or in combination with others, must
 - **Beginning July 1, 2022 and alternating years thereafter until it passes**, provide educational outreach to legislators regarding limited liability legislation and at least two other organizations representing firms that conduct application of chloride on private property;
 - In years when limited liability legislation has not passed and is not active for procedural reasons, the Town must provide winter maintenance education and outreach to the public using two tools from Appendix D Table 5 of the Town's Stormwater Management Plan.
 - The first year after legislation passes, the Town must provide awareness of its passage in the form of a presentation to the Council.
 - Beginning the second and subsequent years after passage, the City will educate property managers, private contractors, and/or the public on winter maintenance practices to maintain public safety and protect the environment using two tools from Appendix D Table 5 of the Town's Stormwater Management Plan.

Beginning July 1, 2022, the permittee, solely or in combination with others, must:

- a. Provide one digital and one print targeted education outreach each year to the residents living adjacent to Trout Brook in the following areas at a minimum: the section that is a border between South Portland and Cape Elizabeth (Waterhouse Road and Bradford Road), the State Street area that was retrofitted with buffers by the Youth Conservation Corps in 2016, and the Valley Road/Spurwink road area that abuts the headwaters. The goal of the enhanced public education is to improve their riparian zone by creating or improving and maintaining the riparian buffer with native species to minimize erosion and follow proper yard waste practices.
- b. Offer four regional workshops on Yardscaping and buffer BMPs. At least one workshop during the permit term will target the residents living adjacent to Trout Brook identified in paragraph a above.

Beginning July 1, 2022 and lasting through June 30, 2023, the permittee must conduct site visits to several catchment, erosion, and inadequate buffer sites and evaluate them for current condition and potential for retrofits, repair and/or impervious cover disconnection. At a minimum the following sites must be visited: Catchment Z2 Pleasant Ave, Catchment G Spurwink and Route 77, Catchment E State Street and Route 77, Catchment K Waterhouse Road, Catchment Q Wilton Lane, and stream corridor erosion sites 26 and 27. The Town will write a memo summarizing the results of the evaluation and will select a site(s) for design. The permittee must report on the recommended project in their Annual Compliance Report required by Special Condition G, *Annual Compliance Report*, of MS4 GP #MER041000 referenced above.

- a. **Beginning July 1, 2023 and lasting through June 30, 2024**, should the budget be approved, the permittee must prepare the design for the recommended project(s).
- b. **Beginning July 1, 2024 and lasting through June 30, 2025**, should the budget be approved, the permittee must make application to obtain the necessary permits and easements to construct the recommended project(s).
- c. **Beginning July 1, 2025 and lasting through June 30, 2026**, should the budget be approved and the permits and easements are obtained, the permittee must construct three (3) retrofits, repairs and/or impervious cover disconnections in the Trout Brook watershed.
- d. **Beginning July 1, 2026**, the permittee must begin inspection and maintenance on the completed project(s).

Should the budget for the requirements in paragraphs (a-d) above not be approved, the permittee must notify the Department as soon as it is aware of the lack of funding and implement the following:

- a. Annually, the permittee must conduct a minimum of two rounds of street sweeping in the Trout Brook Watershed between the months of May and October each year.

The Department reserves the right to reopen this Order to reestablish a scope of work and schedule for implementation of alternate BMPs.

Results of implementation of the BMPs established in this Order must be documented in the permittee's Annual Report required by Special Condition G, *Annual Compliance Report*, of MS4 GP #MER041000 referenced above.

THEREFORE, the Department GRANTS the TOWN OF CAPE ELIZABETH, coverage under the Municipal Separate Storm Sewer System (MS4) General Permit, #MER041000, issued by the Department on October 15, 2020 and revised on November 23, 2021, subject to the terms and conditions therein.

DONE AND DATED AT AUGUSTA, MAINE, THIS _____ DAY OF _____, 2022.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: _____
Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

The Notice of Intent was received by the Department on _____ March 30, 2021 _____.

The Notice of Intent was accepted by the Department on _____ April 5, 2021 _____.

Date filed with Board of Environmental Protection: _____

This Order prepared by GREGG WOOD, BUREAU OF WATER QUALITY