STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

March 4, 2014

Mr. Bradley Roland, P.E.
City of Portland
Portland Department of Public Services
55 Portland Street
Portland, ME 04101
brad@portlandmaine.gov

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0101435
Maine Waste Discharge License (WDL) Application #W008010-5T-F-R
Final Permit

Dear Mr. Roland:

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

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

If you have any questions regarding the matter, please feel free to call me at 592-7161.

Sincerely,

Cindy L. Dionne
Division of Water Quality Management
Bureau of Land and Water Quality

Enc.
cc: Stuart Rose, DEP/SMRO
Dave Breau, DEP/CMRO
Lori Mitchell, DEP/CMRO
Sandy Mojica, USEPA

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

DEPARTMENT ORDER

IN THE MATTER OF

CITY OF PORTLAND	)	MAINE POLLUTANT DISCHARGE
PORTLAND, CUMBERLAND COUNTY,MAINE	)	ELIMINATION SYSTEM PERMIT
COMBINED SEWER OVERFLOWS	)	AND
#ME0101435	)	WASTE DISCHARGE LICENSE
#W008010-5T-F-R **APPROVAL**	)	**RENEWAL**

In compliance with the *Federal Water Pollution Control Act*, Title 33 USC, §1251, *Conditions of licenses*, 38 M.R.S.A. § 414-A, and applicable regulations, the Department of Environmental Protection (Department) has considered the application of the CITY OF PORTLAND (City), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

On September 20, 2013, the Department accepted as complete for processing, a renewal application from the City for Waste Discharge License (WDL) #W008010-5T-D-R/Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0101435, which was issued on October 24, 2008 for a five year term. The 10/24/08 MEPDES permit authorized the City to discharge an unspecified quantity of untreated sanitary wastewaters from Combined Sewer Overflow (CSO) Outfalls 006, 013, 014, 017, 018 and 019 to Back Cove; from CSO Outfalls 024 and 026 to Portland Harbor; from CSO Outfall 039 to Nasons Brook; and from CSO Outfalls 036, 042 and 043 to Capisic Brook for a total of twelve CSOs. CSO Outfall #036 (Capisic Pond Dam) was permanently closed during the term of the 2008 permit.

The Department issued a minor permit revision on May 5, 2011 to incorporate Special Conditions regarding compliance with the 2010 Clean Water State Revolving Fund (CWSRF) Requirements (Asset Management Principal Forgiveness).

PERMIT SUMMARY

This permitting action carries forward the authorization to discharge untreated sanitary and storm related wastewater during wet weather events from the eleven CSOs. Special Condition A(4) of the permit establishes a schedule the City must adhere to, to mitigate or eliminate discharges from the CSOs during the term of this permit. Special Condition A also requires the City to submit an annual *CSO Activity and Volumes* report, conduct block testing or flow monitoring of all CSOs, submit an annual *CSO Progress Report*, and submit an annual report of work done on the Nine Minimum Controls.

CONCLUSIONS

Based on the findings summarized in the attached Fact Sheet dated March 4, 2014, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

CONCLUSIONS (cont'd)

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 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 discharges will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S.A. § 414-A(1)(D).

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ACTION

Based on the findings and conclusions as stated above, the Department APPROVES the above noted application of the CITY OF PORTLAND to discharge an unspecified quantity of untreated sanitary wastewater and storm water during wet weather events via CSOs 006, 013, 014, 017, 018 and 019 to Back Cove, Class SC; from CSOs 024 and 026 to Portland Harbor, Class SC; from CSO 039 to the Nasons Brook, Class C; and from CSOs 042 and 043 to Capisic Brook, Class C in Portland, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached.

2. The attached Special Conditions, including any effluent limitations and monitoring requirements.

3. This permit and the authorization to discharge become effective upon the date of signature below and expire at midnight five (5) years from the effective date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the authorization to discharge and the terms and conditions of this permit and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (amended August 25, 2013)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 4th DAY OF March 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhn
For PATRICIA W. AHO, Commissioner

Filed
MAR 05 2014
State of Maine
Board of Environmental Protection

Date filed with Board of Environmental Protection _____

Date of initial receipt of application: September 19, 2013
Date of application acceptance: September 20, 2013
This Order prepared by Cindy L. Dionne, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

A. CONDITIONS FOR COMBINED SEWER OVERFLOWS (CSOs)

1. Pursuant to *Combined Sewer Overflow Abatement,* 06-096 Chapter 570 (effective February 5, 2000), the permittee is authorized to discharge from the following CSOs (storm water and sanitary wastewater) subject to the conditions and requirements herein.

Regulator Location (RL)	RL #	Owner	Outfall #	Owner	CSO Outfall Location	Receiving Water & Class ( )
Front @ Johansen Street	6	City	006	City	Front @ Johansen Street	Back Cove (SC)
Belmont Street	13A	City	013	City	Baxter Blvd. near Belmont St.	Back Cove (SC)
Forest Ave. @ Ashmont St.	13B	City				
Ashmont St. @ Forest Ave.	13C	City				
Forest Ave. @ Coyles Gulley (GLB[1])	14	City	014	City	Baxter Blvd. near Belmont St.	Back Cove (SC)
Forest Ave. @ Dartmouth St.	15A	City	015	PWD	Baxter Blvd. @ Dartmouth St.	Back Cove (SC)
Dartmouth Ave. @ Baxter Blvd.	15B	PWD				
Forest Ave. @ Bedford St.	16A	City	016	PWD	Baxter Blvd. @ near Preble St.	Back Cove (SC)
Bank St.	16B	PWD				
Preble St. @ Marginal way	17	City	017	City	Preble St.	Back Cove (SC)
Franklin Art. @ Marginal Way	18	City	018	City	I-295 exit near Franklin Arterial	Back Cove (SC)
Diamond @ MW (Fox @ Anderson)[2]	19	City	019	City	I-295 exit near Diamond St.	Back Cove (SC)
Franklin Art. @ Fore St.	24A	City	024	City	Commercial St. at Franklin St.	Portland Harbor (SC)
Franklin Art. @ Middle St.	24B	City				
Maple St. @ Commercial St.	26	City	026	City	Commercial St. near Maple St.	Portland Harbor (SC)
Rowe St. (Hillcrest)	39	City	039	City	Rowe St.	Nasons Brook (C)
Warren Avenue 60"	42	City	042	City	Warren Ave. near Newcombe St.	Capisic Brook (C)
Warren Avenue 24"	43	City	043	City	Warren Ave. near Newcombe St.	Capisic Brook (C)

[1] Located in front of Great Lost Bear (GLB) restaurant (540 Forest Avenue)
[2] Diamond @Marginal Way (Fox @ Anderson)

City owned and maintained Regulators #15A and #16A discharge through Outfalls #015 (PWD #019) and #016 (PWD #021) respectively. Outfalls #015 (PWD #019) and #016 (PWD #021) are permitted by the Department to the Portland Water District (PWD). Regulators #15B and #16 B are owned and maintained by the PWD.

SPECIAL CONDITIONS

A. CONDITIONS FOR CSOs (cont'd)

2. Prohibited Discharges

   a) The discharge of dry weather flows is prohibited. All such discharges must be reported to the Department in accordance with Standard Condition D (1) of this permit.

   b) No discharge must occur as a result of mechanical failure, improper design or inadequate operation or maintenance.

   c) No discharges must occur at flow rates below the maximum design capacity of the wastewater treatment facility, pumping stations or sewerage system.

3. Narrative Effluent Limitations

   a) The permittee must not discharge wastewater that contains a visible oil sheen, settled substances, foam, or floating solids at any time that impair the characteristics and designated uses ascribed to the classification of the receiving waters.

   b) The permittee must not discharge wastewater that contains materials in concentrations or combinations that are hazardous or toxic to aquatic life; or which would impair the usage designated by the classification of the receiving waters.

   c) The permittee must not discharge wastewater that causes visible discoloration or turbidity in the receiving waters that causes whose waters to be unsuitable for the designated uses and characteristics ascribed to their class.

   d) The permittee must not discharge effluent that lowers the quality of any classified body of water below such classification, or lowers the existing quality of any body of water if the existing quality is higher than the classification.

4. CSO Master Plan [see 06-096 CMR 570(2) and (3)]

   The permittee must implement CSO control projects in accordance with an approved CSO Master Plan and abatement schedule. The CSO Master Plan entitled Combined Sewer Overflow Abatement Study Master Plant-City of Portland, Maine, dated December 1993 (revised in January 1997) and the abatement project schedule was approved on June 25, 1997. The abatement schedule was modified in the document entitled *City of Portland – Request to Modify the CSO Master Plan Schedule*, dated April 8, 2008 and was approved on April 15, 2008. An update to the Master Plan entitled *Combined Sewer Overflow Long Term Control Plan, Tier III* with abatement schedule was reviewed and subsequently approved on April 19, 2013. Based on the approved update, the permittee must comply with the following abatement schedule dates:

   On or before April 1, 2014, the permittee shall identify $2.5 million in green or other separation projects which will have construction initiated during 2014 and completed no later than December 31, 2015.

SPECIAL CONDITIONS

A. CONDITIONS FOR CSOs (cont'd)

On or before December 31, 2014, the permittee shall identify $7.5 million in green or other separation projects which will start construction by April 30, 2016 and be completed no later than December 31, 2016.

On or before December 31, 2015, [ICIS Code 73905], the permittee shall complete the design for the 3.5 million gallon storage conduit project identified as Back Cove (South).

On or before June 30, 2016, the permittee shall start construction of the 3.5 million gallon storage conduit project identified as Back Cove (South).

On or before September 30, 2017, [ICIS Code 73905], the permittee shall complete the design for the 3.5 million gallon storage conduit project identified as Back Cove (West).

On or before December 31, 2017, the permittee shall begin construction of the 3.5 million gallon storage conduit project identified as Back Cove (West).

On or before December 31, 2017, the permittee shall identify $7.5 million in green or other separation projects which will start construction in 2019 and be completed no later than September 30, 2020.

On or before June 30, 2018, the permitee shall complete construction of the 3.5 million gallon storage conduit project identified as Back Cove (South).

On or before January 1, 2018, the permittee shall submit a Scope of Work for the Master Plan update due on or before December 31, 2018.

5. Nine Minimum Controls (NMC) [see 06-096 CMR 570(5)]

   The permittee must implement and follow the Nine Minimum Control documentation as approved by USEPA on May 29, 1997. Work performed on the Nine Minimum Controls during the year must be included in the annual *CSO Progress Report* (see below).

6. CSO Compliance Monitoring Program [see 06-096 CMR 570(6)]

   The permittee must conduct block testing or flow monitoring according to an approved *Compliance Monitoring Program* on all CSO points, as part of the CSO Master Plan. Annual flow volumes for all CSO locations must be determined by actual flow monitoring, or by estimation using a model such as USEPA's Storm Water Management Model (SWMM).

   Results must be submitted annually as part of the annual *CSO Progress Report* (see below), and must include annual precipitation, CSO volumes (actual or estimated) and any block test data required. Any abnormalities during CSO monitoring must also be reported. The results must be reported on the Department form "CSO Activity and Volumes" (**Attachment A** of this permit) or similar format and submitted electronically to the Department.

SPECIAL CONDITIONS

A. CONDITIONS FOR CSOs (cont'd)

CSO control projects that have been completed must be monitored for volume and frequency of overflow to determine the effectiveness of the project toward CSO abatement. This requirement must not apply to those areas where complete separation has been completed and CSO outfalls have been eliminated.

7. Addition of New Wastewater [see 06-096 CMR 570(8)]

06-096 CMR 570(8) lists requirements relating to any proposed addition of wastewater to the combined sewer system. Documentation of the new wastewater additions to the system and associated mitigating measures must be included in the annual *CSO Progress Report* (see below). Reports must contain the volumes and characteristics of the wastewater added or authorized for addition and descriptions of the sewer system improvements and estimated effectiveness.

8. Annual CSO Progress Reports [see 06-096 CMR 570(7)]

By March 1 of each year the permittee must submit *CSO Progress Reports* covering the previous calendar year (January 1 to December 31). The CSO Progress Report must include, but is not necessarily limited to, the following topics as further described in 06-096 CMR 570: CSO abatement projects, schedule comparison, progress on inflow sources, costs, flow monitoring results, CSO activity and volumes, nine minimum controls update, sewer extensions, and new commercial or industrial flows.

The CSO Progress Reports must be completed on a standard form entitled "Annual CSO Progress Report", furnished by the Department, and submitted in electronic form, if possible, to the following address:

CSO Coordinator
Department of Environmental Protection
Bureau of Land and Water Quality
Division of Water Quality Management, Compliance and Technical Assistance
17 State House Station
Augusta, Maine 04333
e-mail: CSOCoordinator@maine.gov

9. Signs

If not already installed, the permittee must install and maintain an identification sign at each CSO location as notification to the public that intermittent discharges of untreated sanitary wastewater occur. The sign must be located at or near the outfall and be easily readable by the public. The sign must be a minimum of 12" x 18" in size with white lettering against a green background and

SPECIAL CONDITIONS

A. CONDITIONS FOR CSOs (cont'd)

must contain the following information:

CITY OF PORTLAND
WET WEATHER
SEWAGE DISCHARGE
CSO # AND NAME

10. Definitions

For the purposes of this permitting action, the following terms are defined as follows:

a. Combined Sewer Overflow - a discharge of excess waste water from a municipal or quasi-municipal sewerage system that conveys both sanitary wastes and storm water in a single pipe system and that is in direct response to a storm event or snowmelt.

b. Dry Weather Flows - flow in a sewerage system that occurs as a result of non-storm events or are caused solely by ground water infiltration.

c. Wet Weather Flows - flow in a sewerage system that occurs as a direct result of a storm event, or snowmelt in combination with dry weather flows.

B. ASSET MANAGEMENT PROGRAM (AMP)

The permittee must maintain an AMP in accordance with Department guidance entitled, *Maine Department of Environmental Protection, Clean Water State Revolving Fund (CWSRF) Guidance for Minimum Requirements for an Asset Management Program and Reserve Account In Order to Qualify for CWSRF Principal Forgiveness*, DEPLW1190-2010. The AMP must be reviewed and updated as necessary at least annually. The AMP must be kept on-site at the permittee's office and made available to Department staff for review during normal business hours.

On May 14, 2012, the permittee submitted a complete and timely certification form to the Department for the implementation of a CWSRF AMP in accordance with the Department guidance document DEPLW1190-2010.

C. REPAIR AND REPLACEMENT RESERVE ACCOUNT

Annually, on or before August 1, 2014 and lasting through August 1, 2016, the permittee must fund a Repair and Replacement Reserve Account in accordance with Department guidance DEPLW1190-2010, referenced above, in the amount recommended in the permittee's Asset Management Plan or at a minimum of 2% of the permittee's total yearly wastewater operation and maintenance budget each year.

Annually, on or before August 1, 2014 and lasting through August 1, 2016 ***[ICIS Code 59499]*****,** the permittee must submit a certification to the Department indicating a Repair and Replacement Reserve Account has been fully funded as required above. See **Attachment B** of this permit for a

C. REPAIR AND REPLACEMENT RESERVE ACCOUNT

copy of the certification form. The permittee must attach copies of yearly audit reports to the annual certification forms showing funds in the reserve account for each year for the five years and, if funds were expended, a description of how the funds were used.

D. AUTHORIZED DISCHARGES

The permittee is authorized to discharge untreated sanitary wastewater and storm water during wet weather events only in accordance with the terms and conditions of this permit and only from Outfalls 006, 013, 014, 017, 018, 019, 024, 026, 039, 042, and 043. Discharges of wastewater from any other point source(s) are not authorized under this permit, and must be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

E. REOPENING OF PERMIT FOR MODIFICATION

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

F. SEVERABILITY

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

ATTACHMENT A

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
CSO ACTIVITY AND VOLUMES

MUNICIPALITY OR DISTRICT	MEPDES / NPDES PERMIT NO.
REPORTING YEAR	SIGNED BY:
YEARLY TOTAL PRECIPITATION INCHES	DATE:

CSO EVENT NO.	START DATE OF STORM	PRECIP. DATA		FLOW DATA (GALLONS PER DAY) OR BLOCK ACTIVITY("1")							
		TOTAL INCHES	MAX. HR. INCHES	LOCATION: NUMBER:	LOCATION: NUMBER:	LOCATION: NUMBER:	LOCATION: NUMBER:	LOCATION: NUMBER:	LOCATION: NUMBER:	EVENT OVERFLOW GALLONS	EVENT DURATION HRS
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
12											
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23											
24											
25											
	TOTALS										

Note 1: Flow data should be listed as gallons per day. Storms lasting more than one day should show total flow for each day.

Note 2: Block activity should be shown as a "1" if the block floated away.

ATTACHMENT B

CLEAN WATER STATE REVOLVING FUND

REPAIR AND REPLACEMENT RESERVE ACCOUNT CERTIFICATION

I _____ representing the _____
(print name of cognizant official) *(print name of permittee)*

hereby certify to the Maine Department of Environmental Protection that as of _____
(date)

a *Clean Water State Revolving Fund (CWSRF) Repair and Replacement Reserve Account* has been established and is fully funded in accordance with Department Guidance entitled, *Maine Department of Environmental Protection, Clean Water State Revolving Fund (CWSRF) Guidance for Minimum Requirements for an Asset Management Program and Reserve Account In Order to Qualify for CWSRF Principal Forgiveness*, DEPLW1190-2010; and

That our total yearly wastewater operation and maintenance budget for the previous year was $_____; and

That the amount recommended in our asset management plan, or as a minimum, 2% of our total yearly wastewater operation and maintenance budget was $_____; and

That $_____ was deposited to the Repair and Replacement Reserve Account last year; and

That $_____ was expended from this account last year in accordance with the Department Guidance; and

That the current balance of the Repair and Replacement Reserve Account is $_____.

Signature _____ Date _____

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
MAINE WASTE DISCHARGE LICENSE

FACT SHEET

DATE: **MARCH 4, 2014**

PERMIT NUMBER: **#ME0101435**

WASTE DISCHARGE LICENSE: **#W008010-5T-F-R**

NAME AND ADDRESS OF APPLICANT:

CITY OF PORTLAND
PORTLAND PUBLIC SERVICES
55 PORTLAND STREET
PORTLAND, MAINE 04101

COUNTY: **CUMBERLAND**

NAME AND ADDRESS WHERE DISCHARGE(S) OCCUR(S):

VARIOUS LOCATIONS LISTED ON PAGE 7
PORTLAND, MAINE 04101

RECEIVING WATER CLASSIFICATION: **BACK COVE/CLASS SC**
PORTLAND HARBOR/CLASS SC
CAPISIC BROOK/CLASS C
NASONS BROOK/CLASS C

COGNIZANT OFFICIAL CONTACT INFORMATION:

MR. BRADLEY A. ROLAND, P.E.
207-874-8846
brad@portlandmaine.gov

1. APPLICATION SUMMARY

a. Application: On September 20, 2013, the Department accepted as complete for processing, a renewal application for Waste Discharge License (WDL) #W008010-5T-D-R/Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0101435, which was issued on October 24, 2008 for a five year term. The 10/24/08 MEPDES permit authorized the City to discharge an unspecified quantity of untreated sanitary wastewaters from Combined Sewer Overflow (CSO) Outfalls 006, 013, 014, 017, 018 and 019 to Back Cove; from CSO Outfalls 024 and 026 to Portland Harbor; from CSO Outfall 039 to Nasons Brook; and from CSO Outfalls 036, 042 and 043 to Capisic Brook for a total of twelve CSOs. Since the 2008 permit, CSO Outfall #036 (Capisic Pond Dam) has been permanently closed.

1. APPLICATION SUMMARY (cont'd)

The Department issued a minor permit revision on May 5, 2011 to incorporate Special Conditions regarding compliance with the 2010 Clean Water State Revolving Fund (CWSRF) Requirements (Asset Management Principal Forgiveness).

2. PERMIT SUMMARY

This permitting action carries forward the authorization to discharge untreated sanitary and storm related wastewater during wet weather events from the eleven CSOs. Special Condition A(4) of the permit establishes a schedule the City must adhere to, to mitigate or eliminate discharges from the CSOs during the term of this permit. Special Condition A also requires the City to submit an annual *CSO Activity and Volumes* report, conduct block testing or flow monitoring of all CSOs, submit an annual *CSO Progress Report*, and submit an annual report of work done on the Nine Minimum Controls.

a. History: The most current relevant regulatory actions include:

January 1991 – The City and the Portland Water District (District) entered into an Administrative Consent Agreement and Enforcement order with the Maine Board of Environmental Protection because of the CSO discharges and the fact that the City did not have a current WDL for its CSOs. The Consent Agreement set forth deadlines for the development and implementation of a long term program for the evaluation and abatement of both the City and District CSO discharges. The City was also required to submit a WDL application to the Department.

February 1991 – The City submitted an application for a WDL for its CSO discharges.

December 1993 – The City and the District submitted a *CSO Abatement Master Plan* prepared by CH2M-Hill. Approval for this plan was withheld pending more detailed project descriptions as well as design and construction schedules for the first two or three years of implementation.

January 1997 – A *Five Year CSO Abatement Plan and Schedule* for the years 1997 through 2001, prepared by Deluca-Hoffman Associates, Inc., was submitted to the Department. This plan, along with the original 1993 CSO Master Plan, was approved by both the U.S. Environmental Protection Agency (USEPA) and the Department on June 25, 1997.

July 3, 1997 – The District, on behalf of the City, submitted the *Portland 1997 CSO Monitoring Plan* which was approved by the Department.

September 29, 1997 – The Department issued Order #W008010-68-B-N/#ME0101435 certifying that the discharge proposed in a pending National Pollutant Discharge Elimination System (NPDES) permit was in compliance with applicable sections of the Federal Water Pollution Control Act.

September 30, 1997 – The USEPA issued the NPDES permit #ME0101435 which expired on March 31, 2002.

October 7, 1997 – The Department issued Waste Discharge License #W008010-58-A-R authorizing the discharge of combined storm water and untreated sanitary waste water from 13 CSOs.

2. PERMIT SUMMARY (cont'd)

January 12, 2001 – The Department received authorization from the USEPA to administer the NPDES permitting program in Maine, excluding areas of special interest to Maine Indian Tribes. From this point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) program, and MEPDES permit #ME0101435 has been utilized for this facility. On March 26, 2011, the USEPA authorized the Department to administer the MEPDES program in Indian territories of the Penobscot Nation and Passamaquoddy Tribe.

February 10, 2003 – The Department approved the *City of Portland Tier II Combined Sewer Overflow Abatement 8-Year Implementation Plan*, dated February 5, 2003.

July 7, 2003 – The Department issued combination MEPDES permit #ME0101435/WDL #W008010-5T-C-R for a five-year term.

July 3, 2008 – The City submitted a complete application to the Department to renew the MEPDES permit/WDL for the discharge from 12 CSOs.

October 24, 2008 – The Department issued combination MEPDES permit #ME0101435/WDL #W008010-5T-D-R for a five year term.

May 4, 2011 – The City submitted an application to modify the 10/24/08 permit to incorporate Special Conditions regarding compliance with the 2010 Clean Water State Revolving Fund (CWSRF) Requirements (Asset Management Principal Forgiveness).

May 5, 2011 – The Department issued a minor revision to the 10/24/08 permit to include conditions regarding the CWSRF requirements.

June 20, 2011 – The City submitted a timely and complete Wastewater Facility Energy Audit as required in Special Condition G of the May 5, 2001 permit.

July 2011 – The City and Portland Water District submitted a final draft CSO Long Term Control Plan update with abatement schedule prepared by CDM Smith and covering a fifteen year period with an estimated cost of $170 million dollars. The plan was reviewed; comments made and final plan resubmitted January 25, 2013. Approval was granted by the Department on April 19, 2013.

September 19, 2013 – The City submitted a timely and complete General Application to the Department for renewal of the October 24, 2008 MEPDES permit. The application was accepted for processing on September 20, 2013, and was assigned WDL #W008010-5T-F-R / MEPDES #ME0101435.

b. Source Description: During wet weather events caused by precipitation, snow melt, inflow and infiltration (I & I) into the collection system from roof drains, cellar drains, combined storm sewers, and/or leaking collection systems, the flow in the sewer system may be greater than what the treatment plant can handle and therefore water may back up in the sewer lines causing the activation of CSOs. Also the wet weather flows may exceed the capacity of certain sewer lines and therefore cause CSO activation. The City has a total of 31 CSOs, 20 of which are owned and maintained by the Portland Water District (District). CSOs not covered in this permitting action are addressed in other Department permitting actions.

2. PERMIT SUMMARY (cont'd)

In December 1993, CH2M-Hill of Boston, Massachusetts, submitted a *Combined Sewer Overflow Abatement Study Master Plan* (*CSO Master Plan*) to the Department on behalf of the City. The CSO Master Plan contained a 15-year implementation schedule for the abatement of CSO activity associated with 39 CSOs discharging to 6 receiving waters. The *CSO Master Plan* sought to eliminate 33 out of 39 CSOs, reduce the annual CSO volume from 720 million gallons (MG) to 87 MG based on the 1966 precipitation record and eliminate the discharge of CSOs to sensitive receiving waters which include Capisic Brook, the Presumpscot River Estuary and the Fore River. In January 1997, DeLuca-Hoffman Associates, Inc. of South Portland, Maine submitted a *Five Year CSO Abatement Plan and Schedule* to the Department on behalf of the City. The *Five Year CSO Abatement Plan and Schedule* identified 43 projects (12 flood control projects and 31 CSO abatement projects) and provided a detailed plan of project scheduling and cost budgeting for the 5-year period of 1997-2001. The flood control projects are classified as prerequisite work to CSO abatement projects and typically take the form of culvert enlargements, channel improvements and storm water management facilities. These flood control projects do not generally reduce CSO activity; however the CSO abatement projects cannot be performed until the flood control projects are implemented.

At the adoption of the *CSO Master Plan* in 1993, the City had 42 CSO outfalls of which 39 were classified as active. The City now has 31 CSO's, 20 of which are owned and maintained by the Portland Water District and the other 11 are owned and maintained by the City of Portland.

The applicant's renewal application states "In the past 5 years the City of Portland has been completing the CSO projects as proposed in its Tier II CSO Master Plan. As of 9/18/13 all but one project remains to be completed. The Baxter Boulevard North Storage Conduit will be complete by December 31, 2013. All other projects have been completed. As a result from the Tier II projects CSO #36 (Capisic Pond Dam) has been permanently closed."

Tables A1 and A2 on pages 5 and 6, respectively, list all the CSO regulator locations and CSO locations in Portland, Maine. Table B on page 7 lists the CSO regulator locations and CSOs owned and maintained by the City of Portland.

Attachment A of this Fact Sheet is a map prepared by the City showing the locations of the CSOs.

2. PERMIT SUMMARY (cont'd)

Table A1 City of Portland and Portland Water District CSOs

Regulator location (RL)	RL #	Owner	Outfall #	PWD Outfall # ( )	Owner	Receiving Water	Year Closed
Veranda St.	1A	PWD	001	(027)	PWD	Casco Bay	2001
Olympia St.	1B	PWD					
Arcadia St.	2	PWD	002	(022)	PWD	Presumpscot Est.	
Berwick St.	3	PWD	003	(023)	PWD	Casco bay	2001
Tukey's Bridge Syphon	4	PWD	004	(026)	PWD	Casco bay	
Randal St.	5	PWD	005	(010)	PWD	Back cove	
Front @ Johansen St.	6	City	006	---	City	Back Cove	
Ocean Ave.	7	PWD	007	(011)	PWD	Back Cove	
Clifton St.	8	PWD	008	(020)	PWD	Back Cove	
George St.	9	PWD	009	(012)	PWD	Back Cove	
Austin St.	10A	PWD	010	(014)	PWD	Back Cove	
Mackworth St.	10B	PWD					
Parsons St.	10C	PWD					
Chenery St.	11A	PWD	011	(017)	PWD	Back Cove	
Codman St.	11B	PWD					
Vannah Ave.	12	PWD	012	(018)	PWD	Back Cove	
Belmont St.	13A	City	013	---	City	Back Cove	
Forest Ave. @ Ashmont St.	13B	City					
Ashmont St. @ Forest Ave.	13C	City					
Forest Ave. @ Coyles Gully	14	City	014	---	City	Back Cove	
Forest Ave. @ Dartmouth St.	15A	City	015	(019)	PWD	Back Cove	
Dartmouth Ave. @ Baxter Blvd.	15B	PWD					
Forest Ave. @ Bedford St.	16A	City	016	(021)	PWD	Back Cove	
Bank St.	16B	PWD					
Preble St. @ Marginal Way (M W)	17	City	017	---	City	Back Cove	
Franklin Arterial @ M W	18	City	018	---	City	Back Cove	
Diamond @ M W (Fox @ Anderson)	19	City	019	---	City	Back Cove	
Northeast P.S.	20	PWD	020	(024)	PWD	Casco bay	

*The estimated annual flow based on the storm water management model (SWMM)
PWD – Portland Water District – All shaded areas are facilities owned and maintained by the Portland Water district.
Closed CSOs – All facility descriptions with lines drawn through them are closed CSOs

2. PERMIT SUMMARY (cont'd)

Table A2 City of Portland and Portland Water District CSOs (cont'd)

Regulator Location (RL)	RL #.	Owner	Outfall #	PWD Outfall # ( )	Owner	Receiving Water	Year Closed
Quebec St.	21	PWD	021	(002)	PWD		1995
Sewage treatment plant	22		022	---			NA
India St.	23	PWD	023	(003)	PWD	Portland Harbor	
Franklin Arterial @ Fore St.	24A	City	024	---	City	Portland Harbor	
Franklin Arterial @ Middlee St.	24B	City		---			
Long wharf	25	PWD	025	(004)	PWD	Portland Harbor	
Maple St. @ Commercial St.	26	City	026	---	City	Portland Harbor	
Clark St.	27	PWD	027	(005)	PWD	Portland Harbor	
Emery st.	28	PWD	028	(006)	PWD	Portland Harbor	
West Commercial St.	29	PWD	029	(007)	PWD	Fore River	
St. John St.	30	PWD	030	(008)	PWD	Fore River	
Congres St. @ Sewall St.	31	PWD	031	-----	PWD	Fore River	1993
Thompson Pt. P.S.	32	PWD	032	(028)	PWD	Fore River	
Fore River P.S.	33	PWD	033	(009)	PWD	Fore River	
Brewer St.	34	PWD	034	(025)	PWD	Fore River	
Stroudwater Road	35A	PWD	035	(029)	PWD	Fore River	
Capisic Pond Dam Overflow	36	City	036	---	City	Capisic Brook	12/21/10
Mayer road	37	City	037	---	City	Capisic Brook	1993
Brighton Ave. @ Capisic St.	38	City	038	---	City	Capisic Brook	1998
Rowe St. (Hillcrest)	39	City	039	---	City	Nasons Brook	
Sagamore Village Overflow	40	City	040	---	City	Capisic Brook	1993
Holm Ave.	41	City	041	---	City	Capisic Brook	1996
Warren Ave. 60"	42	City	042	---	City	Capisic Brook	
Warren Ave. 24"	43	City	043	---	City	Capisic Brook	

*The estimated annual flow based on the storm water management model (SWMM)
PWD – Portland Water District – All shaded areas are facilities owned and maintained by the Portland Water district.
Closed CSOs – All facility descriptions with lines drawn through them are closed CSOs

2. PERMIT SUMMARY (cont'd)

Table B City of Portland CSOs

Regulator Location (RL)	RL #	Owner	Outfall #	Owner	Outfall Location	Outfall Pipe dia. unless specified	Flap Gate	Receiving Water & Class ( )
Front @ Johansen	6	City	006	City	Front @ Johansen Street	48"	No	Back Cove (SC)
Belmont Street	13A	City	013	City	Baxter Blvd. near Belmont St.	36"	No	Back Cove (SC)
Forest Ave. @ Ashmont St.	13B	City						
Ashmont St. @ Forest Ave.	13C	City						
Forest Ave. @ Coyles Gulley (GLB)	14	City	014	City	Baxter Blvd. near Belmont St.	30"	No	Back Cove (SC)
Preble St. @ Marginal Way (M W)	17	City	017	City	Preble St.	2 – 60"	Yes	Back Cove (SC)
Franklin Art. @ M W	18	City	018	City	I-295 exit near Franklin Arterial	72"	Yes	Back Cove (SC)
Diamond @ M W (Fox @ Anderson)	19	City	019	City	I-295 exit near Diamond St.	66"	Yes	Back Cove (SC)
Franklin Art. @ Fore St.	24A	City	024	City	Commercial St. at Franklin St.	54"	No	Portland Harbor (SC)
Franklin Art. @ Middle St.	24B	City						
Maple St. @ Commercial St.	26	City	026	City	Commercial St. near Maple St.	24"	No	Portland Harbor (SC)
Rowe St. (Hillcrest)	39	City	039	City	Rowe St.	30"	No	Nasons Brook (C)
Warren Avenue 60"	42	City	042	City	Warren Ave. near Newcombe St.	60"	No	Capisic Brook (C)
Warren Avenue 24"	43	City	043	City	Warren Ave. near Newcombe St.	24"	No	Capisic Brook (C)

3. CONDITIONS OF PERMIT

Conditions of licenses, 38 M.R.S.A. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S.A. § 420 and 06-096 CMR 530 require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (last amended July 29, 2012), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

4. RECEIVING WATER QUALITY STANDARDS

Classifications of minor drainages, 38 M.R.S.A., § 468(1)(B)(1) classifies Capisic Brook and Nasons Brook at the point of discharge as Class C water ways. *Standards for classification of fresh surface waters*, 38 M.R.S.A. § 465 (4) describes the standards for Class C.

Classifications of estuarine and marine waters, 38 M.R.S.A. § 469(1)(E)(2), classifies Back Cove and Portland Harbor as SC waters. *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B(3) describes the standards for Class SC waters.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2010 Integrated Water Quality Monitoring and Assessment Report (Report), prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists the following:

Both Nasons Brook and Capisic Brook are listed under Category 5-A: Rivers and Streams Impaired by Pollutants Other Than Those Listed in 5-B Through 5-D (TMDL Required) for Benthic-Macroinvertebrate Bioassessments. Capisic Brook was also listed in the same Category for Habitat Assessment. Capisic Brook was also listed under Category 5-A for Wetland Habitat Impairment.

Both Capisic and Nasons Brook are tributaries to Fore River. The Fore River Estuary is listed under Category 4-A: Estuarine and Marine Waters with Impaired Used, TMDL Completed for elevated fecals. The Fore River Estuary is also listed under Category 5-A: Estuarine and Marine Waters Impaired by Pollutants Other Than Those Listed in 5-B Through 5-D (TMDL Required) caused by municipal point source, CSOs, storm water, hazardous waste sites, and nonpoint sources (spills of all sizes).

The estuarine and marine waters of Portland's Back Cove and Portland Harbor are listed as, "Category 5-D: Legacy Pollutants" for legacy pollutants in lobster tomalley and "Category 4-A: Estuarine and Marine Waters with Impaired Use, TMDL Completed." The Report states that bacteria may impair either recreational uses (swimming) or shellfish consumption uses, or both. Shellfish consumption impairments only apply to waters naturally capable of supporting the shellfish-harvesting use (*i.e.*, waters of high enough salinity for propagation of shellfish.) On September 28, 2009, the USEPA approved the Department's Maine Statewide Bacteria TMDL (Total Maximum Daily Loads), dated August 2009, for fresh, marine and estuarine waters impaired by bacteria.

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

The Report lists all of Maine's fresh waters as, "Category 4-A: Waters Impaired by Atmospheric Deposition of Mercury." Impairment in this context refers to a statewide fish consumption advisory due to elevated levels of mercury in some fish tissues. The Report states, "All freshwaters are listed in Category 4A (TMDL Completed) due to USEPA approval of a Regional Mercury TMDL. Maine has a fish consumption advisory for fish taken from all freshwaters due to mercury. Many waters, and many fish from any given water, do not exceed the action level for mercury. However, because it is impossible for someone consuming a fish to know whether the mercury level exceeds the action level, the Maine Department of Health and Human Services decided to establish a statewide advisory for all freshwater fish that recommends limits on consumption. Maine has already instituted statewide programs for removal and reduction of mercury sources."

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

No effluent limitations have been established in this permitting action for the CSO discharges. Best practicable treatment (BPT) of CSO discharges includes control through best management practices and abatement of the discharge as specified in Chapter 570 of Department Rules (Combined Sewer Overflow). The permittee is required to measure and report annually CSO flow volumes and CSO discharge events.

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

The CSO discharge of untreated sewage has a negative impact on the water quality of the receiving waters, however the CSO Master Plan includes projects and management strategies to eliminate CSO discharges. (See Special Condition A(4) of this permit.)

The Department acknowledges that total elimination of the CSOs is a costly long term project. With continued implementation of the Nine Minimum Control measures and the continued implementation of the CSO Master Plan and associated best management practices, the Department anticipates a reduction in CSO events and an improvement in water quality. Therefore, as permitted, 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 C and Class SC classifications.

8. PUBLIC COMMENTS

Public notice of this application was made in the *Portland Press Herald* newspaper on or about September 22, 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 must have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses,* 06-096 CMR 522 (effective January 12, 2001).

9. RESPONSE TO COMMENTS

During the period of January 27, 2014 through the effective date of this final agency action, the Department solicited comments on the proposed draft Maine Pollutant Discharge Elimination System Permit to be issued to the City of Portland for the proposed discharge. The Department received comments from the City of Portland. They included minor corrections as well as the following comment:

9. RESPONSE TO COMMENTS (cont'd)

a. "On or before December 31, 2014
   i. The design consultant for the Back Cove South Storage Conduit, Wright-Pierce, is evaluating green infrastructure/ separation alternatives associated with the storage conduit.
   ii. At this time, we believe we will be able to meet the timeline for the identification of these projects.
   iii. However, typical city design and stakeholder coordination takes approximately 12–18 months preventing us from meeting the 2015 start construction deadline for all projects identified by Wright-Pierce.
   iv. The city is also mindful that the list will likely identify a number of projects in a concentrated area and will want to stagger construction accordingly to provide proper traffic flow and business success considerations.
   v. We would ask that the start construction date be moved to 2016 and remain flexible through the end of 2017 for implementation due to coordination of stakeholder/ city needs."

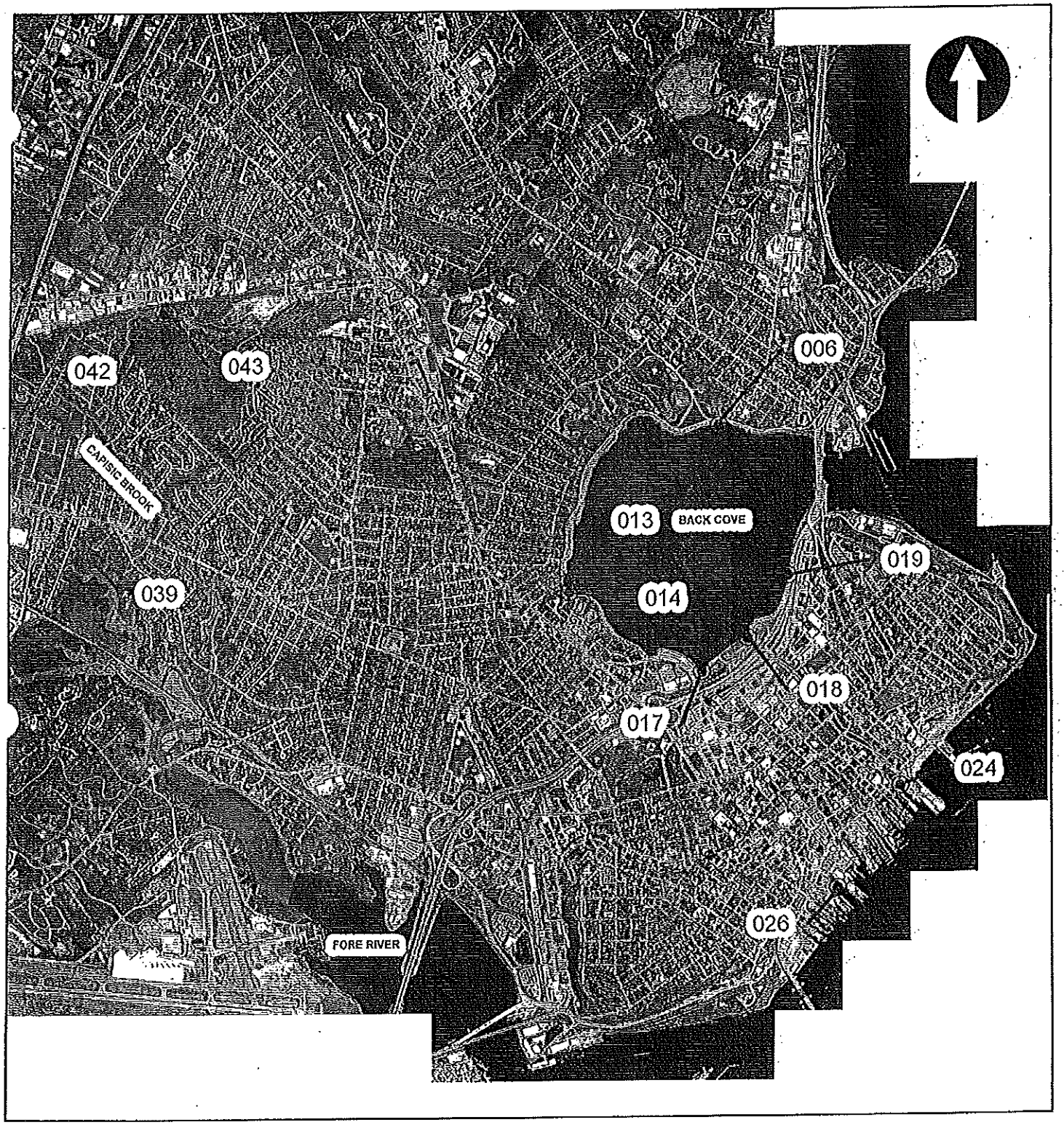
In response to this comment, the Department has amended the dates in the final permit to allow an additional 6 month extension to the deadline dates that were previously proposed.

10. DEPARTMENT CONTACTS

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

Cindy L. Dionne
Division of Water Quality Management
Bureau of Land & Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
Telephone: (207) 592-7161
e-mail: cindy.l.dionne@maine.gov

ATTACHMENT A



CITY OF PORTLAND CSO LOCATIONS
PORTLAND, MAINE

0 1,050 2,100 4,200 6,300 8,400 Feet

Map prepared by the City of Portland's Department of Public Services September 18, 2013

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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A. GENERAL PROVISIONS

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

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

(a) They are not

(i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
(ii) Known to be hazardous or toxic by the licensee.

(b) The discharge of such materials will not violate applicable water quality standards.

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

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

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

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

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

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 if 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 MAINTENACE 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

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.

(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.

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.

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

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).

(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.

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 contaminates 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.

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.

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.