

Chapter 521 Rule Amendment Pertaining to Post-Construction Storm Water Discharges in Urban Impaired Stream Watersheds

This rulemaking would amend Applications for Waste Discharge Licenses, 06-096 CMR 521, by adding Section 9-A. Text in italics is not part of the rule.

Section 9-A. Post Construction Storm water discharges in urban impaired stream watersheds. An owner or operator of property in an urban impaired stream watershed that has been designated by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, 33 U.S.C. §§1251 et seq., and 40 C.F.R. §122.26 (a)(9)(i)(D), or the Department pursuant to Chapter 521(9)(a)(1)(v) as requiring a storm water discharge permit due to post-construction storm water flow from impervious area, shall either provide a notice of intent to comply with a general permit adopted pursuant to Chapter 529, if available, or shall apply for an individual permit.

- (a) Individual permit requirements. To qualify for an individual permit, the following requirements must be met in addition to otherwise applicable requirements.
- (1) The basic standards described in the Department’s Stormwater Management Rules, Chapter 500, Section 4(A), addressing erosion and sedimentation control, inspection and maintenance, and housekeeping must be met.
 - (2) Provisions for treatment of stormwater from the developed area of the property must be provided that comply with the general standards described in the Department’s Stormwater Management Rules, Chapter 500, Section 4(B), with no exception for a linear portion of a project. If provisions for treatment of storm water meeting these standards are not in place at the time of application, then the application must include plans for storm water treatment measures that will be put in place within two years of permit issuance. The Department may extend the two-year period up to five years if the parcel includes five acres or more of impervious area and interim milestones are approved.
 - (3) Inspections of installed best management practices must occur at least annually by a qualified person to determine if they are in place and functioning as intended, and if not, corrective action must be taken within 30 days. Maintenance plans for the property must include provisions for sweeping paved areas at least once per year after snowmelt.
 - (4) An on-going monitoring program must be established, either by measuring the water quality of storm water discharge from the project site for parameters and at a frequency approved by the Department, or by contributing to a Department-approved monitoring program, at a rate consistent with assessments to other plan participants for monitoring work.
- (b) Stream restoration. When the stream channel or riparian area has been impacted due to storm water flow from impervious area, the Department may require that:

- (1) Measures be taken to mitigate the effects of the past storm water discharges on the urban impaired stream, such as restoration of floodplain area, establishment of vegetated riparian buffers, and stabilization of the stream channel; or
- (2) Where a Department-approved watershed management plan exists and is being implemented, the Department may require that a financial contribution, or a combination of a financial contribution and mitigation, be made toward restoration of floodplain area, establishment of vegetated riparian buffers, and stabilization of the stream channel, consistent with the approved watershed management plan. The financial contribution is based on the percentage of impervious area in the watershed that is located on the applicant’s property, multiplied by the estimated total cost for stream channel restoration. Payments may be spread over multiple years in accordance with a schedule approved by the Department.
- (c) Credit for watershed plan contributions. The Department may allow an applicant to reduce the amount of treatment for developed area required in this section by giving credit for prior contributions toward implementation of a Department-approved watershed management plan. The amount of credit given is determined by the department on a case-by-case basis. The amount of credit may not exceed on a percentage basis, the amount contributed by the applicant for construction of storm water treatment measures to the estimated total cost of all required stormwater treatment construction work for the applicant’s parcel, in order to meet the requirements of section 9-A(a)(i) and (ii) above.
- (d) Additional requirements. The Department may establish additional on-site mitigation and stream restoration requirements, if necessary, to ensure progress in restoring water quality in the impaired stream.

The following language appears after Section 10:

AUTHORITY: 38 MRS.A §§ 341-D and 413

APA EFFECTIVE DATE: April 5, 1999

EFFECTIVE DATE: This rule became effective upon the approval of the U.S. Environmental Protection Agency of related parts of the State’s application to administer the National Pollutant Discharge Elimination System program of the Federal Clean Water Act, pursuant to 40 CFR part 123. This approval was granted through a January 12, 2001 (the presumed effective date) letter from Mindy S. Lubber of the United States Environmental Protection Agency to Governor Angus S. King, Jr. The APA Office was notified of this action through a memo, which included a copy of the Lubber letter, from Dennis Merrill of the Department of Environmental Protection dated January 23, 2001.

AMENDMENT ADDING SECTION 9-A EFFECTIVE DATE:



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

DEPARTMENT ORDER

IN THE MATTER OF

LONG CREEK POST-CONSTRUCTION)	MAINE POLLUTANT DISCHARGE
STORMWATER DISCHARGE)	ELIMINATION SYSTEM PERMIT
GENERAL PERMIT)	AND
STATE OF MAINE)	WASTE DISCHARGE LICENSE
#MEG190000)	
#W-9052-5Y-A-N)	CORRECTED
APPROVAL)	

Pursuant to the provisions of the *Federal Water Pollution Control Act*, Title 33 USC, § 1251, et seq. and Conditions of Licenses, 38 M.R.S.A. Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department) is hereby issuing a new combination Maine Pollutant Discharge Elimination System (MEPDES) Permit #MEG190000/ Waste Discharge License (WDL) #W-9052-5Y-A-N, *Long Creek Post-Construction Stormwater Discharge* (General Permit), with its supportive data, agency review comments, and other related materials on file, the Department FINDS THE FOLLOWING FACTS:

REGULATORY SUMMARY

On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. From that point forward, the program has been referenced as the MEPDES permit program.

On December 3, 2008, USEPA, in consultation with the State of Maine, made a preliminary determination that a designation of certain stormwater discharges in the Long Creek watershed is appropriate because the discharges are contributing to applicable water quality violations. This designation became final on October 28, 2009.

PERMIT SUMMARY

WDL # W-9052-5Y-A-N authorizes the discharge of post-construction stormwater from one or more acres of impervious area on property in the watershed of Long Creek, located in the municipalities of South Portland, Portland, Westbrook and Scarborough, Maine. The discharge of post-construction stormwater has not been licensed or permitted prior to this general permit.

To be covered under this general permit, an operator of a property with a designated stormwater discharge must submit to the Department a Notice of Intent form and associated materials in accordance with the requirements of the permit. In so doing, the permittee agrees to support implementation of the Long Creek Watershed Management Plan by making appropriate payments through an agreement with the Long Creek Watershed Management District (District), by supplying the necessary easements, and cooperating with the District on Plan implementation in accordance with the schedule approved by the Department.

CONCLUSIONS

Based on the findings in the attached Fact Sheet, dated October 29, 2009, and subject to the conditions listed in this general permit, the Department makes the following conclusions:

Long Creek Post-Construction Stormwater Discharge General Permit Department Order
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1. 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 the discharge will not cause or contribute to the failure of Long Creek to meet the standards of its classification.
2. The cumulative effect of the designated dischargers' compliance with this general permit, or equally stringent individual permits or alternative general permits, will result in compliance with the water quality standards applicable to the Long Creek and its tributaries by December 31, 2020.

ACTION

Based on the findings and conclusions as stated above, the Department is hereby issuing MEPDES Permit # MEG190000/WDL #W-9052-5Y-A-N, for the discharge of post-construction stormwater to Long Creek in the municipalities of South Portland, Portland, Westbrook and Scarborough, Maine, SUBJECT TO THE ATTACHED CONDITIONS, including:

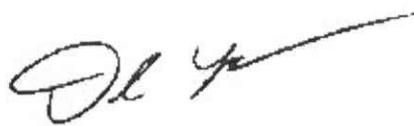
1. Authorization to discharge under this general permit is conditioned upon Long Creek Watershed Management District's satisfactory implementation of the Long Creek Watershed Management Plan, as approved by the Department.
2. Inspection and maintenance details of the Long Creek Watershed Management Plan must be submitted to, and approved by, the Department, before any permittee may obtain coverage under this permit.
3. Monitoring and assessment details of the Long Creek Watershed Management Plan must be submitted to, and approved by, the Department, before any permittee may obtain coverage under this permit.
4. The attached Standard Conditions included as Part VI of this general permit.
5. The expiration date of this permit is five (5) years from the date of signature below.

This Order supercedes the Department Order issued on October 29, 2009 and corrects an error in the general permit definition of the Long Creek watershed by removing the inclusion of Clark's Pond.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE THIS 6TH DAY OF NOVEMBER, 2009
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:


David P. Littell, Commissioner

Date of Public Notice: July 1, 2009

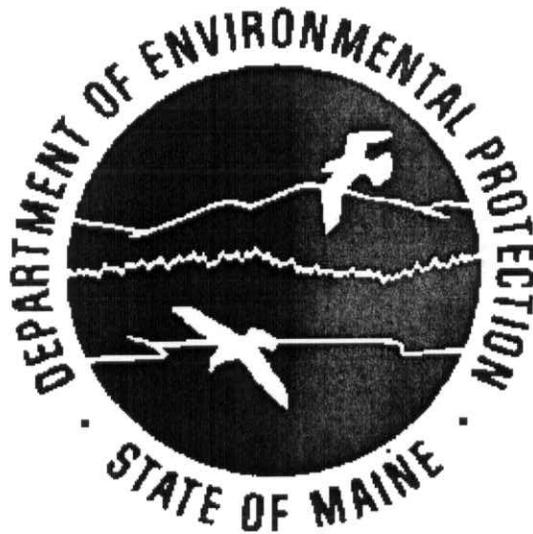
Date filed with Board of Environmental Protection:

This Order prepared by Donald T. Witherill, BUREAU OF LAND & WATER QUALITY
#W-9052-5Y-A-N November 6, 2009

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

***General Permit – Post Construction Discharge of
Stormwater in the Long Creek Watershed***

*Maine Pollutant Discharge Elimination System Permit
Maine Waste Discharge License*



Bureau of Land and Water Quality
MEPDES Permit #MEG190000
Wastewater Discharge License #W-9052-5Y-A-N

November 6, 2009
(corrected)

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

**GENERAL PERMIT -- POST CONSTRUCTION DISCHARGE OF STORMWATER IN THE
LONG CREEK WATERSHED**

MEPDES Permit #MEG190000
Wastewater Discharge License #W-9052-5Y-A-N

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PART I. General Permit Coverage

A. General coverage of this permit. An operator of property from which there is a designated discharge¹ is required to obtain a Maine Pollutant Discharge Elimination System permit. A designated discharge is a post-construction storm water discharge from a property (parcel) in the Long Creek Watershed on which there is impervious area equal to or greater than one acre. This general permit authorizes the direct discharge of stormwater from such a parcel to Long Creek or its tributaries, including discharges to municipal separate storm sewer systems or other private or public conveyance systems that convey stormwater to Long Creek or its tributaries. Discharges must meet the requirements of this general permit and applicable provisions of Maine's waste discharge and water classification statutes and rules. Compliance with this general permit authorizes a person to discharge stormwater, pursuant to Water Pollution Control Law, 38 M.R.S.A. § 413, as described below. Discharges listed in Part I(E) are excluded from coverage under this general permit.

The Department has determined that the cumulative effect of the designated dischargers' compliance with this general permit, or equally stringent individual permits or alternative general permits, will result in compliance with the water quality standards applicable to the Long Creek and its tributaries by December 31, 2020.

Coverage under this general permit is required if the total impervious area on a parcel is equal to or greater than one acre on or after the effective date of this permit, unless the discharge is authorized under an individual permit or alternate general permit (as described in Part V), or the Department determines that there is no discharge from the property to waters of the state within the Long Creek Watershed other than groundwater.

This general permit is effective October 29, 2009 and authorization to discharge under this general permit expires at midnight October 29, 2014.

B. Authority. A waste discharge permit is required for the direct discharge of pollutants to waters of the State.²

¹ U.S. Environmental Protection Agency Residual Designation (Residual Designation) pursuant to Clean Water Act Region 1 for Long Creek, October 29, 2009.

² See 38 M.R.S.A. § 413.

A general permit may be issued for point discharges (direct discharges) of stormwater.³ A violation of a condition or requirement of a general permit constitutes a violation of Maine's water quality laws and the federal Clean Water Act, and subjects the discharger to penalties under Organization and Powers, 38 M.R.S.A. § 349, and § 309 of the Clean Water Act. Nothing in this general permit is intended to limit the Department's authority under the waste discharge and water classification statutes or rules. This general permit does not affect requirements under other applicable Maine statutes such as Site Location of Development (Site Law), Stormwater Management, and Natural Resources Protection (NRPA).

This general permit does not prevent a municipality from adopting stricter standards than contained in this general permit, or in state or federal law.

- C. Authorization.** To be covered under this general permit, an operator of a property with a designated stormwater discharge must submit to the Department a Notice of Intent (NOI) form and associated materials in accordance with the requirements of Part III of this permit. Upon review of the NOI, the Department may grant or deny authorization to discharge in accordance with Part III. If denied, the operator(s) must resubmit an NOI or submit an application for an individual or an alternative General Permit.
- D. Continuation of general permit coverage.** Once granted, coverage under this general permit continues provided there are no changes in the discharge as described in the NOI and all requirements of this general permit are met. If changes occur or are proposed, the permittee who filed the NOI must notify the Department, as specified in this general permit. Upon reissuance of an updated general permit, a permittee wishing to continue coverage shall submit a new NOI to the Department.

If this permit is not revoked or replaced prior to the expiration date, and the Department makes a determination that it is to be reissued, with or without changes, this permit will be administratively continued and remain in force and effect until the Department issues a new general permit. In that case, any permittee who was granted permit coverage prior to the expiration date remains covered by the continued permit provided there are no changes in the discharge and all requirements of this permit are met.

Coverage under this general permit ceases if:

- 1. Notice of termination.** The permittee submits a Notice of Termination;
- 2. Individual permit.** An individual permit is issued for the permittee's discharges;
- 3. General permit not reissued.** This general permit expires following a formal decision by the Department not to reissue this permit; or
- 4. Reissuance or replacement of general permit.** This general permit is replaced by a new general permit and the permittee does not submit a new NOI to the Department in accordance with the new general permit to maintain authorization to discharge.

E. Limitations on coverage.

- 1. Compliance with this general permit.** This general permit does not authorize a stormwater discharge unless it is in compliance with the requirements of this general permit. If the Department determines that the requirements of this general permit have not been met, the Department may notify the Long Creek Watershed Management District and the permittee and may:

³ See 06-096 CMR 529(2)(a)(2)(i).

- a. Authorize coverage under this general permit after appropriate controls and implementation procedures designed to bring the discharge into compliance with this general permit have been implemented as determined by the Department;
- b. Require an individual waste discharge permit;
- c. Inform the permittee that the discharge is prohibited; or
- d. Take enforcement action to address the violation(s).

Compliance with Part I(E)(1) does not preclude any enforcement activity under Maine law for an underlying violation.

2. **Other permit.** A stormwater discharge is not authorized by this general permit if it requires an individual waste discharge permit or coverage under another waste discharge general permit. Other waste discharge general permits include the Maine Construction General Permit, which applies to disturbances of 1 or more acres, only during a site's construction phase, and the Long Creek Post Construction Discharge and Multisector Combined General Permit.
3. **Discharge of hazardous substances, chemicals, or oil.** This general permit does not authorize the discharge of stormwater containing hazardous substances, chemicals, or oil.
4. **Waste discharge license (groundwater).** A waste discharge license ("WDL") may be required for the discharge of stormwater through any well or wells, including drywells and subsurface fluid distribution systems. For complete requirements, see *Rules To Control The Subsurface Discharge of Pollutants*, 06-096 CMR 543 (effective October 6, 2006), and *Stormwater Management*, 06-096 CMR 500 Appendix D (last amended December 27, 2006).

A "subsurface fluid distribution system" is an assemblage of perforated pipes, drain tiles, or similar mechanisms intended to distribute fluids below the surface of the ground. A "well" is a bored, drilled, or driven shaft the depth of which is greater than the largest surface dimension, whether the shaft is typically dry or contains liquid; or a dug hole the depth of which is greater than the largest surface dimension; or a subsurface fluid distribution system. "Well injection" means the subsurface discharge of fluids into or through a well.

PART II. Definitions

In addition to the definitions found in Chapter 520 of the Department's rules, and applicable statutory definitions, the following terms have the following meanings as used in this general permit.

- A. **Applicant.** "Applicant" means a person who files an NOI pursuant to Part III of this general permit.
- B. **Department.** "Department" means the State of Maine Department of Environmental Protection.
- C. **Discharge.** "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to waters of the State other than groundwater. "Direct discharge" or "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.⁴ For the purposes of this permit, the Department views a direct discharge of stormwater as occurring when the runoff is not attenuated (infiltrated, filtered and/or detained for a long enough period to allow treatment), as evidenced either by channelized flow, or by the lack of sufficient land area (based on soils, vegetative cover, slope, flow path distance and relative size of contributing impervious area) before it becomes channelized or reaches a receiving waterway or water body.

D. Impervious area. "Impervious area" means the total area of a parcel, right-of-way or easement that consists of building and associated constructed facilities; areas such as asphalt or concrete, that are covered with a low-permeability material,; or areas such as gravel roads and unpaved parking areas that are compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, roads, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater.

The demolition and removal of impervious area is subtracted from the total impervious area when calculating the total impervious area, provided that the area where impervious area has been demolished and removed is restored so that it no longer has reduced permeability, and is permanently stabilized using vegetation in conformance with standards in the Maine Construction General Permit, Appendix A.

E. Long Creek Watershed. "Long Creek Watershed" means all areas that discharge to Long Creek or its tributaries from the headwaters down to, but not including, Clarks Pond.

F. Long Creek Watershed Management District. "Long Creek Watershed Management District" (or "District") means the entity established to provide oversight over implementation of the Long Creek Watershed Management Plan.

G. Long Creek Watershed Management Plan. "Long Creek Watershed Management Plan" (or "Plan") means a plan developed jointly by the municipalities of South Portland, Portland, Westbrook and Scarborough, along with other entities, and approved by the Maine Department of Environmental Protection, for the purpose of restoring the water quality of Long Creek.

H. Municipal separate storm sewer system ("MS4"). "Municipal Separate Storm Sewer System" or ("MS4") means conveyances for stormwater, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, Maine Department of Transportation (MaineDOT), Maine Turnpike Authority (MTA), State agency or Federal agency or other public entity that discharges directly to waters of the State other than groundwater.

I. Notice of Intent ("NOI"). "Notice of Intent" or "NOI" means a notification of intent to seek coverage under this general permit, as provided in Part III(A), made by the applicant to the Department on an NOI form(s) provided by the Department.

J. Notice of Termination ("NOT"). "Notice of Termination" or "NOT" means a notification of intent to end coverage under this general permit on a form provided by the Department.

⁴ See Water Classification Program, 38 M.R.S.A. § 466(5) (definition of "direct discharge") and 06-096 CMR 520 (definition of "point source").

- K. Operator .** “Operator ” means the person who has control over a parcel, or a right of way or easement located on a parcel, with a designated discharge of stormwater to Long Creek or its tributaries. The owner of a parcel will be considered by the Department to be the operator, unless there is a written agreement, which provides another person with authority to make decisions with respect to stormwater discharges from the impervious area and associated areas of the parcel needed for stormwater management.
- L. Parcel.** “Parcel” means the block or piece of land a person owns or has sufficient title, right or interest in regardless of size, and regardless of whether the block of land is divided into lots.
1. The parcel includes:
 - a. All contiguous land in the same ownership, where “contiguous land” is defined as two areas that touch at more than one point; and
 - b. Non-contiguous areas if the areas are considered part of the same parcel by the department for purposes of permitting under the Stormwater Management Law or Site Law, and a permit under one of those laws is required
 2. Areas located on opposite sides of a public or private road are considered separate parcels of land unless:
 - a. The road was established by the owner of land on both sides of the road on or after January 1, 1970; or
 - b. The areas are considered part of the same parcel by the department for purposes of permitting under the Stormwater Management Law or Site Law, and a permit under one of those laws is required.
- M. Permittee.** “Permittee” means a person who is authorized to discharge post-construction stormwater under this general permit.
- N. Person.** “Person” means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity. Each “person” is regarded as a separate and distinct entity, except that a combination of persons is treated as a single person if:
1. Together they pursue a common scheme of development, as defined in rules adopted pursuant to the Site Location of Development Law, 38 M.R.S.A. §481 et. seq., resulting in a discharge requiring authorization even though individual persons in the combination own separate parcels that may not result in a discharge requiring approval if the parcels were considered separately; or
 2. One person engages in a transaction, with another person with the intent to evade the intent and purpose of the designation.
- O. Post-construction stormwater discharges.** Stormwater discharges from or associated with impervious area.
- P. Stormwater.** “Stormwater” means the part of precipitation including runoff from rain or melting ice and snow that flows across the surface as sheet flow, shallow concentrated flow, or in drainageways. “Stormwater” has the same meaning as “storm water”.
- Q. Stream.** “Stream” means a river, stream, or brook as defined in the Natural Resources Protection Act at 38 M.R.S.A. § 480-B.
- R. Watershed.** “Watershed” means the land area that drains, via overland flow, drainage ways, waterbodies, or wetlands to a given waterbody or wetland.

Part III. Procedure

- A. Who must submit the Notice of Intent (NOI).** An NOI must be filed by the operator or an agent of the operator if the total impervious area on a parcel in the Long Creek watershed is equal to or greater than one acre at any point in time on or after the effective date of this permit.

If the project also requires a permit pursuant to the Stormwater Management Law or Site Law, then the NOI must be filed at the same time as the Stormwater Management or Site Law application.

- 1. Existing impervious area.** If there is one acre or more of existing impervious area on the parcel on the effective date of this general permit, then the applicant must file an NOI within 180 days after receiving notice from the Department.
- 2. Future impervious area.** If a person will construct or cause to be constructed any impervious area on a parcel on or after the effective date of this general permit so that the total impervious area on the parcel will be one acre or more at any point in time, then the applicant shall file an NOI at least 14 days prior to the beginning of construction.

- B. Filing of NOI.** By submitting an NOI, the applicant agrees to comply with the standards of this general permit.

- C. Approval of NOI.** If Stormwater Management Law or Site Law approval is not required, the NOI is deemed approved 14 calendar days after the Department receives the complete NOI unless the Department approves or denies the NOI, or extends the review period, prior to that date. If the Department does not contact the applicant within this 14-day period regarding the NOI, the applicant's NOI is deemed approved. The Department may extend the 14-day review period if the Department notifies the applicant of such extension within the 14-day period.

If a Stormwater Management Law or Site Law permit or modification is required, the 14 day review period does not apply. The Department will approve or deny the NOI at the same time it issues a decision on the Stormwater Management Law or Site Law permit or modification application.

- D. Effective Date of Coverage under this General Permit.** The applicant is authorized to discharge post-construction stormwater under the terms and conditions of this general permit as follows:

- 1. Not under Construction.** If a project is not under construction, authorization under this general permit will take effect upon approval of the NOI.
- 2. Under Construction**
 - a.** If the project is under construction and no Construction General Permit is required, authorization under this general permit will take effect upon approval of the NOI.
 - b.** If the project is under construction and a Construction General Permit has been obtained, authorization under this general permit will take effect upon approval of the NOI and the filing of a Notice of Termination pursuant to the Construction General Permit.

- E. Submission.**

1. General procedure

- a. The operator shall file the NOI using a form provided by the Department.
- b. The NOI must contain all information specified by this General Permit and must be signed and certified in accordance with 06-096 CMR 521(5).
- c. Copies of the initial NOI form shall be provided by the applicant to the municipal office of the town or city in which the discharge will occur and to the District at the time it is submitted to the Department.

2. Contents of Notice of Intent (NOI)

- a. The designated discharge operator's contact's name, email (if any), address, and telephone number.
- b. Facility/Site information including name, address and location of the designated discharge, Global Positioning System (GPS) reference data if available, and ownership status as a Federal, State, Tribal, Private or other public entity.
- c. Evidence demonstrating that the operator has entered into a binding contract with the Long Creek Watershed Management District. The contract must provide for participation of the operator in implementation of the Long Creek Watershed Management Plan.
- d. Such other information as the Department may determine is reasonably necessary to determine that the requirements of this general permit will be met. Additional information may be required by the Department on a site specific basis following submission of the NOI, if the Department determines that such information is reasonably necessary to determine whether or not to authorize the discharge under this general permit.

- 3. Deficient NOI.** If any portion of the NOI does not meet one or more of the minimum requirements of this part, the applicant will be notified of the deficiency within the review period. It is the responsibility of the applicant to make all required changes and resubmit the NOI. The review period will commence anew upon the received submittal date of the revised NOI.

F. Notice of Termination (NOT) and Property Transfer. The permittee shall submit a Notice of Termination (NOT) on a form provided by the Department within 20 days of ceasing a designated stormwater discharge to the Long Creek watershed from the area subject to this general permit, or if impervious area discharging to Long Creek or its tributaries is reduced to less than one acre on the parcel.

G. Right of Entry. Employees and agents of the Department may enter any property at reasonable hours in order to determine compliance.

H. Changes in the activity or operator. Coverage under this general permit will be continued provided there are no changes in the discharge as described in the NOI and associated submissions, and all requirements of this general permit are met. If the permittee proposes to expand or relocate impervious area beyond what was indicated in the original NOI, or to change the location of the discharge, then updated information must be submitted with a new NOI prior to any earth-moving activity. Information concerning minor changes on a site that do not affect the nature or amount of stormwater runoff may be submitted in a letter to the Department that describes the changes.

If the operator of the property subject to this permit changes, the new operator must file an NOI if he or she wishes to continue coverage under this general permit within two weeks of the property transfer. The former

permittee is not required to file an NOT if the new operator files an NOI to continue authorization under this general permit for a continuing discharge.

If a parcel with one or more acres of impervious area is divided on or after the effective date of this general permit, then stormwater from or associated with the impervious area on the resulting parcels continues to require a permit for post-construction stormwater discharges without regard to the size of the impervious area on the resulting parcels. If a parcel with one or more acres of impervious area is divided on or after the effective date of this general permit and a resulting parcel contains no impervious area, then post-construction stormwater discharges from or associated with the resulting parcel no longer require a permit. However, if any amount of impervious area is later created on the resulting parcel that had no impervious area, post-construction discharges will require a permit.

- I. **Individual permit.** A permittee whose discharge is covered under this general permit may at any time apply for an individual waste discharge permit pursuant to the Department's rules. When an individual permit is issued to a person previously subject to this general permit, the applicability of this general permit to that person is automatically terminated on the effective date of the individual permit. Alternatively, an individual permit may be required by the Department in accordance with the provisions of *General Permits for Certain Discharges*, 06-096 CMR 529(2)(b)(3).

Part IV. Requirements

- A. **Plan participation.** The permittee must participate in implementation of and comply with the Long Creek Watershed Management Plan dated July 2009, or a subsequent modification of the Plan, provided the modification has been approved by the Department. Annual progress reports shall be submitted by the permittee. The Long Creek Watershed Management District may submit an annual report on behalf of all permittees participating in the Plan.
- B. **Implementation of Plan.** The permittee shall support implementation of the Plan through the Long Creek Watershed Management District, including making appropriate payments, supplying the necessary easements within an agreement with the District, and cooperating with the District on Plan implementation in accordance with the schedule approved by the Department (See Parts IV.C., D and E.). The District determines the cost amount that each permittee shall pay based upon factors listed in the plan. If a permittee agrees to carry out some activity on the property in exchange for a reduced cost, then that activity is also an enforceable requirement of this general permit for that permittee. The failure of the permittee to make timely payments of costs for implementation of the plan, or to carry out agreed upon activities, will be grounds for termination of coverage under this general permit. In addition, if the Long Creek Watershed Management District fails to implement the plan as approved by the Department, the Department will take action to modify or revoke the general permit, if appropriate.
- C. **Funding mechanism.** The funding mechanism for the Plan must be operational and the Long Creek Watershed Management District must be able to receive contributions within 180 days of the effective date of this general permit, unless the Department extends the Notice of Intent filing period, in which case the funding mechanism must be operational at the end of the filing period. Otherwise, coverage under this general permit will cease, and individual permits for stormwater discharges will be required. The Plan must result in compliance with the water quality standards applicable to Long Creek and its tributaries by December 31, 2020.
- D. **Required activities.** The permittee shall abide by its agreement with the Long Creek Watershed Management District and support implementation of the following activities as described in the Plan.

Otherwise, coverage under this permit may be terminated and an individual permit required.

- 1. Construction of Tier 1, Tier 2, in-stream and riparian projects.** Construction of Tier 1, Tier 2, in-stream and riparian projects must be completed as follows.
 - a. If operators on 100% of properties from which there is a designated discharge participate in implementation of the Plan through this permit, permittees shall support the Long Creek Watershed Management District implementation of all identified Tier 1 and Tier 2 projects in the plan, along with all identified in-stream and riparian projects in the plan, by December 31, 2020.
 - b. If less than 100% of all impervious area is covered under this general permit, then permittees shall support the Long Creek Watershed Management District construction of projects that provide a commensurate percentage of water quality benefits as provided in the Plan. For example, if permittees representing 80% of the total impervious area covered by the Residual Designation submit NOIs, then the projects that would produce 80% of the benefits of the entire plan, as determined by the Department, must be constructed.
 - c. Once a funding rate for a permittee is established, it cannot be increased during the term of the general permit due to another permittee defaulting on payment. The funding rate may be adjusted during the next re-issuance of the general permit.
 - d. Required projects may change as new opportunities for stormwater treatment projects emerge over time, provided any revised project would accomplish at least as much benefit to Long Creek and its tributaries as the project it would replace in the Plan, and is approved by the department.
 - 2. Inspection and Maintenance.** Inspection and maintenance of stormwater treatment practices constructed in accordance with sub-section 1 above is required, along with pollution prevention and good housekeeping practices on property covered by the Plan, as approved by the Department.
 - 3. Monitoring and assessment.** Implementation of a monitoring and assessment plan, as approved by the Department, is required for use in measuring progress in restoring Long Creek.
- E. Periodic assessment of the Plan.** The Department will periodically reassess whether the Plan and its implementation are sufficient to provide for necessary improvement in water quality prior to any reissuance of this general permit and will provide for stricter or more relaxed requirements as necessary. In approving the Plan and any modifications, the Department is making a determination that implementation of the Plan will result in attainment of water quality standards by December 31, 2020. The Department may require any or all dischargers to apply for individual permits if the Department determines that any requirements in this general permit are not met.
- F. Conditional authorization.** Authorization to discharge under this general permit is conditioned upon the Long Creek Watershed Management District's satisfactory implementation of the Long Creek Watershed Management Plan, as approved by the Department.

PART V. Relationship to Other General and Individual Permits

- A.** The requirements of this general permit apply unless one of the following conditions applies:
1. An individual permit is applied for and obtained; or

2. An operator with a project having both post-construction stormwater and industrial stormwater discharges obtains authorization through an alternative general permit, such as a combined general permit that includes both the Long Creek Post Construction Discharge of Stormwater and Multisector discharge requirements.
- B.** For construction activity, the requirements of this permit apply upon termination of requirements under the Maine Construction General Permit (MCGP), pursuant to Part III.D.2.b., if applicable. The MCGP authorizes stormwater discharges from construction activity including, but not limited to, clearing, grading, excavation, and filling, where total land disturbance is equal to or greater than one acre, and where stormwater runoff discharges to waters of the state in the Long Creek Watershed other than groundwater.

PART VI. Standard Conditions

- A. Removed substances.** Solids, sludges, filter backwash or other pollutants removed or resulting from the treatment of wastewaters shall be disposed of in a manner approved by the Department.
- B. Monitoring requirement.** The Department may require monitoring of an individual discharge as may be reasonably necessary in order to characterize the nature, volume or other attributes of that discharge or its sources.
- C. Other information.** When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Department, he or she shall promptly submit such facts or information.
- D. Endangered species.** Pursuant to State and Local Cooperation Law, 12 M.R.S.A. § 12806, a state agency or municipal government shall not permit, license, fund or carry out projects that will:
1. Significantly alter the habitat identified under Conservation of Endangered Species Law, 12 M.R.S.A. § 12804, subsection 2 of any species designated as threatened or endangered under this subchapter; or
 2. Violate protection guidelines set forth in 12 M.R.S.A. § 12804, subsection 3.
- E. Individual permit or alternative general permit.** When an individual permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative general permit, the applicability of this permit to the individual permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual permit is denied to an operator otherwise subject to this permit, or the operator is denied coverage under an alternative general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Commissioner.
- F. Other standard conditions.** Pursuant to General Permits for Certain Wastewater Discharges, 06-096 CMR 529(3)(h), the following conditions also apply to discharges pursuant to this general permit and are incorporated herein as if fully set forth.
1. Chapter 523, Section 2 (applicable to all discharges)
 2. Chapter 523, Section 3 (applicable to certain categories of discharges)

Maine Pollutant Discharge Elimination System (MEPDES) Fact Sheet and Supplemental Information for Issuance of a General Permit for Post-Construction Discharge of Stormwater in the Long Creek Watershed

AGENCY: Maine Department of Environmental Protection (DEP)

ACTION: Notice to Issue MEPDES General Permit

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Reference Sites: This document references Maine statutes (M.R.S.A citations), Maine rules (CMR citations), Federal Clean Water Act, and Federal rules (CFR citations). See the specific web sites for further information.

- The texts of Maine statutes can be found at:
<http://www.mainelegislature.org/legis/statutes/>
- The text of Department rules can be found at:
<http://www.state.me.us/sos/cec/rcn/apa/06/chaps06.htm>
- The text of the Clean Water Act can be found at:
<http://www.epa.gov/npdes/pubs/cwatxt.txt>
- The text of Title 40, Part 122 of the Federal rules can be found at:
http://www.access.gpo.gov/nara/cfr/waisidx_08/40cfr122_08.html
- The text of the U.S. Environmental Protection Agency Preliminary Residual Designation of stormwater discharges to Long Creek pursuant to the Clean Water Act may be found at:
<http://www.epa.gov/region1/npdes/stormwater/assets/pdfs/LongCreekRD.pdf>
- The Long Creek Watershed Management Plan and supporting information can be found at
www.restorelongcreek.org.
- Additional information concerning stormwater in Maine may be found at:
<http://www.maine.gov/dep/blwq/docstand/stormwater/index.htm>

Summary: The Maine Department of Environmental Protection (“DEP”) is issuing a MEPDES general permit for post-construction discharges of stormwater from property with one acre or more of impervious area in the Long Creek watershed located in the municipalities of South Portland, Westbrook, Portland and Scarborough, Maine. This permit covers the discharge of stormwater from such properties to Long Creek and its tributaries, or to a municipal separate storm sewer system or other conveyance that discharges to Long Creek or its tributaries. The general permit describes permit coverage and limitations, definitions, requirements, procedures, and standard conditions. There is also a section addressing the relationship of this permit to other programs.

A. Introduction

In 1987, Congress amended the Clean Water Act and added Section 402(p). This section required the Environmental Protection Agency (EPA) to develop a comprehensive program for addressing storm water discharges. Section 402(p)(1) requires EPA, or states that are delegated to implement the Clean Water Act to address through permits the specific following types of storm water discharges:

- Discharge subject to an NPDES permit before February 4, 1987;
- Discharge associated with industrial activity, including construction;
- Discharge from a municipal separate storm sewer system serving a population of 250,000 or more;
- Discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

In addition, Section 402(p) allows a permitting authority to designate other stormwater discharges for permitting where the authority finds that the discharge is contributing to a violation of a water quality standard or is a significant contributor of pollutants the waters of the United States.

On January 12, 2001, the EPA authorized the Department to administer the NPDES program in most areas of the State. The Department has incorporated certain requirements that were previously part of the federal program into Maine's stormwater program.

On December 3, 2008, EPA Region 1, in consultation with the State of Maine, determined that a designation of certain stormwater discharges in the Long Creek watershed was appropriate because they are contributing to applicable water quality violations. EPA's "Preliminary Residual Designation Pursuant to Clean Water Act" can be found online at: (<http://www.epa.gov/region1/npdes/stormwater/assets/pdfs/LongCreekRD.pdf>).

This preliminary designation was published in the Federal Register on December 31, 2008 (http://www.restorelongcreek.org/docs/FR_notice_12-31-08.pdf). The preliminary designation requires that property with one acre or more of impervious area that discharges to Long Creek obtain a permit under the Clean Water Act.

On October 28, 2009 EPA issued its final designation decision order.

In 2006, prior to EPA's designation determination, the City of South Portland had received an EPA grant to develop a comprehensive watershed management plan for Long Creek. A steering committee was established, consisting of both private and public sector stakeholders. Subcommittees were also established to work through the technical and policy issues for Long Creek. Participants sought to develop a plan that would provide an economically efficient approach to restoring water quality in Long Creek. EPA's determination caused participants to become interested in developing a plan to provide an implementation scheme that would allow for complying with permit requirements.

This general permit provides designated property owners with a means to comply with the requirements of the designation and provides a means for restoration of Long Creek to proceed through implementation of the Long Creek Watershed Management Plan.

B. Use of the General Permit Option

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants to waters of the United States is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit, unless such a discharge is otherwise authorized by the Act. Title 38 M.R.S.A. Section 413 of Maine's waste discharge law provides that no person may directly or indirectly discharge or cause to be discharged any pollutants without first obtaining a license from the Department. Standards and requirements are specified in statute and rule. Although such permits are generally issued to individual discharges, EPA's and Maine's regulations authorize the issuance of "general permits" to categories of discharges (see 40 CFR Section 122.28 and 06-096 CMR 529(2)).

As the NPDES permitting authority in Maine, DEP is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

- Involve the same or substantially similar types of operations;
- Discharge the same types of wastes;
- Require the same effluent limitations or operating conditions;
- Require the same or similar monitoring requirements; and
- In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

Upon reviewing these factors and the circumstances of the Long Creek designation, DEP has determined that designated stormwater discharges may be appropriately controlled through a general permit process given that they are of similar nature, largely from roads, commercial parking lots and buildings and will best be dealt with using a collective, watershed-wide approach. This general permit meets the requirements of 06-096 CMR 529, "General Permits for Certain Wastewater Discharges" and 06-096 CMR 521(9), "Storm water discharges."

C. The General Permit -- Information concerning certain provisions.

"Parts" as used below, refer to the enumerated parts of the general permit.

Part I -- General permit coverage

The general permit authorizes the direct discharge of stormwater from designated discharges in the Long Creek watershed. Designated discharges are those discharges from property with one acre or more of impervious area that flow to Long Creek or its tributaries, or to a municipal separate storm sewer or other public or private system that discharges to Long Creek or its tributaries.

Part II -- Definitions

The general permit makes use of existing state definitions when possible. These include "impervious area," "parcel," "common scheme of development" (within "parcel" definition), "peak flow," "person," "stormwater," "stream," and "watershed." Federal definitions used in the general permit include "municipal separate storm sewer system (MS4)," "Notice of Intent" (NOI), and "Notice of Termination." (NOT). The term "direct discharge" in the permit and fact sheet refers to a "point source" discharge. "Discharge" is a separately defined term. These definitions differ from the use of the terms in EPA's residual designation, where "direct discharge" refers to the conveyance of stormwater from a property directly to Long Creek or its

tributaries and “indirect discharge” refers to the discharge of stormwater from a property to Long Creek and its tributaries through an MS4 system or other public or private storm sewer conveyance. In the latter case, a discharge that reaches Long Creek indirectly through an MS4 may still meet the definition of a “direct discharge” as it is used in Maine regulations and as it appears in the Part II definitions of this permit.

Part III -- Procedure

This part of the general permit specifies NOI and NOT requirements, including associated submissions. The NOI must include evidence that the owner has a contract with the Long Creek Watershed Management District to participate in implementation of the Long Creek Watershed Management Plan. An NOT is required within 20 days of ceasing stormwater discharge. In cases of property transfer, the seller is not required to file an NOT if the buyer files an NOI to continue general permit coverage within 14 days of the property transfer. An owner may also choose to file an application for an individual permit at any time. When an individual permit is issued, prior coverage under the general permit ceases.

Part IV -- Requirements

This part of the general permit specifies that the permittee must participate in implementation of and comply with the Long Creek Watershed Management Plan. Implementation of the plan is the legal responsibility of the permittee, even though work will be carried out by a third party, the Long Creek Watershed Management District (District). The permittee is therefore responsible for both making necessary payments and carrying out other work as agreed to in a contract with the District, and for ensuring that the District carries out the specified restoration work in the watershed.

The Long Creek Watershed Management Plan (Plan) identifies restoration projects, including structural best management practices (BMPs) that can be installed in specified catchment areas of the watershed (the land area from which stormwater flows to a single runoff discharge point), and in-stream and riparian work. A technical committee recommended these projects after an assessment of various options. Structural BMP projects were sorted into Tiers 1, 2 and 3 based on the amount of benefit in relation to installation costs, with Tier 1 projects being the most economical and Tier 3 projects being the least economical for the benefits they produced. Based on its evaluation of the proposed projects, the DEP has concluded that installation of all of the Tier 1 and 2 projects, implementation of all of the proposed in-stream and riparian projects, along with on-going maintenance work, will be sufficient to allow Long Creek to meet the state’s water quality standards. The Plan provides for treatment of stormwater within priority catchment areas, which in combination with the identified in-stream and riparian restoration work, and non-structural management practices, such as street sweeping, provides the most treatment for a given amount of funding. The DEP recognizes that retrofitting existing developed area may be expensive and that the most economical approaches should be taken first. The DEP further recognizes that this approach means that the stormwater runoff on some individual properties may not be treated by on-site structural controls. This is an acceptable and appropriate approach to take so long as the collective effort of all permitted parties, both under the general permit and under individual permits, results in water quality standards being met in Long Creek.

The general permit requirements include flexibility in terms of the amount of work that must be completed under the Plan. The funding level of projects that must be completed, in terms of percentage of total cost funded, must equal or exceed the percentage of impervious area that is included on the property of participating operators. Operators that do not participate in the Plan will be responsible for treating their own discharges through an individual permit, which will reduce to overall amount of projects needing to be completed under the Plan. The permit also

provides that a fee rate for a permittee cannot be increased due to another permittee defaulting on payment during the term of the general permit. This provision was included to provide predictability to property owners, who might otherwise not feel comfortable in entering into a contract to participate in the Plan. If a large number of property owners were to default on payments to the District, the amount of time needed to implement the required projects may necessarily be extended to a subsequent permit cycle. Rates would then be adjusted during the following cycle to allow completion of the projects, in addition to on-going costs for monitoring and maintenance work.

The DEP recognizes that over the life of the Plan, conditions in the watershed will change. New opportunities to provide economical stormwater treatment will arise, particularly with redevelopment projects that will involve soil disturbance. The Plan and the list of required projects may be changed from time to time, provided a new project provides at least as much benefit as the project it would replace, and is approved by the DEP.

The general permit requires that continual inspection and maintenance of stormwater treatment practices be carried out in accordance with the Plan, and that a water quality monitoring plan for Long Creek be established and carried out by the Long Creek Watershed Management District in order to measure progress in restoring Long Creek. The Department will periodically assess progress being made with respect to meeting water quality standards in Long Creek by December 31, 2020.

Part V -- Relationship to other General and Individual Permits

This part of the general permit addresses the fact that it may not apply where an individual permit has been issued for a discharge, or where an owner is already required to have separate NPDES stormwater coverage, such as for an industrial discharge, or for a construction activity. In the case of industrial activities requiring coverage for stormwater discharges, the DEP expects to issue a combined Industrial and Long Creek Post-Construction General Permit that will cover stormwater discharges from both industrial activity and from impervious area. In the case of construction projects, this post-construction general permit would apply upon termination of the construction general permit.

Part VI -- Standard Conditions

This part lists a short set of standard conditions applicable to all MEPDES permits, and references other standard conditions applicable under existing rules.