



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



GERALD D. REID  
COMMISSIONER

July 27, 2020

To: Interested Parties of Record

*Sent via electronic mail  
Delivery confirmation requested*

**RE: General Permit #MEG170000/#W009046-5Y-C-R  
General Permit-Antifouling Paint Contaminated Vessel Wash Water  
Finalized MEPDES Permit**

Dear Interested Party:

Enclosed please find a copy of the **final** MEPDES General Permit and Maine WDL which was approved by the Department of Environmental Protection.

The General Permit will cover the entire State of Maine. Coverage under the General Permit is contingent upon Department acceptance of a Notice of Intent (NOI) form from each applicant. Coverage under this General Permit is limited to Class SB or SC marine or estuarine waters of the State of Maine (except those Class SB or SC waters within the Saco River estuary and those Class SB or SC waters having a drainage area of less than 10 square miles at the point of discharge, as determined by the Department); that are in compliance with the standards of their ascribed classifications, or where not, only if the discharge does not cause or contribute to the failure of the water body to meet the standards of classification. The General Permit will be issued for a five-year term.

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.*"

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

Sincerely,

Aaron Dumont  
Division of Water Quality Management  
Bureau of Water Quality  
[Aaron.A.Dumont@maine.gov](mailto:Aaron.A.Dumont@maine.gov)  
ph: 207-287-1939

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

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

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

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

General Permit  
Antifouling Paint Contaminated Vessel Wash  
Water July 27, 2020  
Page 2 of 2

Enc.

Barry Mower, MDEP  
Pamela Parker, MDEP  
Sterling Pierce, MDEP  
Kathleen Leyden, MDACF  
Sean Mahoney, CLF  
Trevor White, Passamaquoddy Tribe-Indian Township  
Dale Mitchell, Passamaquoddy Tribal Government  
Dan Kusnierz, Penobscot Indian Nation  
Christine Vaccaro, NMFS  
Ellen Weitzler, USEPA  
Alex Rosenberg, USEPA  
Richard Carvalho, USEPA  
Shelly Puleo, USEPA  
Seal Cove Boatyard, Inc.



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: November 2018**

**Contact: (207) 287-2452**

### **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) an administrative process before the Board of Environmental Protection (Board); or (2) 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. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S. § 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. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 C.M.R. ch. 2.

#### **DEADLINE 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 more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

### **INFORMATION APPEAL PAPERWORK MUST CONTAIN**

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

1. *Aggrieved Status.* The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant 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.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing requirements that the appellant believes were not properly considered or fully addressed.
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 matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

### **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, and is made easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an 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 general questions regarding the appeal process.
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. Unless a stay of the decision is requested and granted, 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, and will provide 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, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. 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, the 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. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and 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. 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. § 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.

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**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.**

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**STATE OF MAINE**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**General Permit – Antifouling Paint Contaminated  
Vessel Wash Water**

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



Bureau of Water Quality  
MEPDES Permit #MEG170000  
Waste Discharge License #W009046-5Y-C-R

Effective Date: July 22, 2020

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION  
GENERAL PERMIT FOR ANTIFOULING PAINT CONTAMINATED VESSEL  
WASH WATER

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DEPARTMENT ORDER

IN THE MATTER OF

ANTIFOULING PAINT CONTAMINATED ) MAINE POLLUTANT DISCHARGE  
VESSEL WASH WATER ) ELIMINATION SYSTEM PERMIT  
GENERAL PERMIT )  
STATE OF MAINE ) AND  
W009046-5Y-C-R ) WASTE DISCHARGE LICENSE  
MEG170000 ) **APPROVAL** ) **RENEWAL**

In compliance with the applicable provisions of *Pollution Control*, 38 M.R.S. §411 – 424-B, *Water Classification Program*, 38 M.R.S. §464 – 470 and *Federal Water Pollution Control Act*, Title 33 U.S.C. §1251, and applicable rules of the Maine Department of Environmental Protection (Department) has considered the renewal of Maine Pollutant Discharge Elimination System (MEPDES) General Permit MEG170000/Maine Waste Discharge License (WDL) W009046-5Y-B-R, which was issued on October 14, 2014 for a five-year term, with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**PROCEDURAL AND 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. The Department administers the program as the above-referenced MEPDES permit program.

On October 14, 2009, the Department issued a new General Permit for applicable discharges of antifouling paint (AFP) contaminated vessel wash water. WDL #W009046-5Y-A-N authorized the discharge on 1,000 gallons per day of treated AFP contaminated vessel wash water to certain Class SB and SC waters of the State.<sup>1</sup>

On October 14, 2014, the Department issued a renewal for General Permit for applicable discharges of antifouling paint (AFP) contaminated vessel wash water. WDL #W009046-5Y-B-R authorized the discharge on 1,000 gallons per day of treated AFP contaminated vessel wash water to certain Class SB and SC waters of the State.<sup>2</sup>

Public notice of the Department’s intent to renew the October 14, 2014 General Permit was made on or about May 12, 2020 in the Bangor Daily News, Kennebec Journal, and Portland Press Herald newspapers. The notice solicited comments on the draft permit and provided an opportunity to request a public hearing.

<sup>1</sup> MEG170000 does not authorize discharges to the Saco River estuary or to any Class SB or SC water having a draining area of less than 10 square miles at the point of discharge.

<sup>2</sup> MEG170000 does not authorize discharges to the Saco River estuary or to any Class SB or SC water having a draining area of less than 10 square miles at the point of discharge.



## PERMIT SUMMARY

The Department is carrying forward all the terms and conditions of the October 14, 2014 General Permit.

## CONCLUSIONS

Based on the findings in the attached Fact Sheet, dated July 22, 2020, and subject to the special and standard conditions that follow, the Department makes the following **CONCLUSIONS**:

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

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**ACTION**

Based on the findings and conclusions as stated above, the Department APPROVES the renewal of General Permit #MEG170000, *Antifouling Paint Contaminated Vessel Wash Water*, for the discharge of certain pollutants resulting from antifouling paint maintenance at facilities that discharge to certain<sup>3</sup> Class SB and SC waters, SUBJECT TO THE ATTACHED CONDITIONS, including:

1. The attached Special Conditions, including any effluent limitations and monitoring requirements.
2. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached.
3. This General Permit and the authorization to discharge become effective 60 days following the date of signature below and expires at midnight five (5) years from the effective date. Prior to expiration of this General Permit, the Department must make a determination if it is to be renewed, and, if so, must commence renewal proceedings. If the General Permit is to be renewed, it must remain in force until the Department takes final action on the renewal. [*Maine Administrative Procedure Act*, 5 M.R.S. § 10002, *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (last amended June 9, 2018), and *General Permits for Certain Wastewater Discharges*, 06-096 CMR 529(3)(c) (last amended June 27, 2007)]

DONE AND DATED AT AUGUSTA, MAINE THIS 22 DAY OF July, 2020.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 

for GERALD D. REID, Commissioner

<b>FILED</b>
JULY 22, 2020
State of Maine
<b>Board of Environmental Protection</b>

Date filed with Board of Environmental Protection: \_\_\_\_\_

Date of Public Notice: May 12, 2020

This Order prepared by Aaron Dumont, BUREAU OF WATER QUALITY

<sup>3</sup> MEG170000 does not authorize discharges to the Saco River estuary or to any Class SB or SC water having a draining area of less than 10 square miles at the point of discharge.

## SPECIAL CONDITIONS

### A. AUTHORITY

A permit is required for the direct or indirect discharge of pollutants to waters of the State and United States. *Waste discharge licenses*, 38 M.R.S. § 413(1) and *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, *et seq.* The Department is authorized by the USEPA to administer the NPDES permit program in Maine. The Department may issue a General Permit authorizing the discharge of certain pollutants from multiple individual discharge sources and locations which all have the same type of discharges and which involve situations where the Department determines there is a relatively low risk for significant environmental impact. In accordance with *General Permits for Certain Wastewater Discharges*, 06-096 CMR 529. The Department has determined that the discharge of antifouling paint contaminated wash water to Class SB and SC waters that conform to the applicability and eligibility conditions established herein may be authorized by a General Permit.

### B. DEFINITIONS

In addition to the definitions found in *Definitions in the Waste Discharge Permitting Program*, 06-096 CMR 520 (effective January 12, 2001) and in the waste discharge and water classification laws, the following terms have the following meanings when used in this General Permit.

1. **Antifouling paint contaminated vessel wash water.** “Antifouling paint contaminated wash water” means wastewater that contains antifouling paint or residues thereof resulting from vessel washing activities that occur during drydock examination, and incidental uncontaminated bilge water.
2. **Antifouling paint.** “Antifouling paint” “AFP” means a pesticide, adjuvant, solvent, or pigment compound or coating applied to the submerged portion of a vessel’s hull to prevent growth of marine organisms. Antifouling paint’s active ingredients may include multiple pesticides.
3. **Incidental uncontaminated bilge water.** “Incidental uncontaminated bilge water” means water from the bottom of the vessel’s interior spaces that is drained at the time of vessel washing activities and conveyed to the wastewater treatment system prior to discharge. Incidental uncontaminated bilge water must not violate narrative limitations specified at Special Condition G of this General Permit.
4. **Drydock examination.** “Drydock examination” means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's topside or hull.
5. **Hull.** “Hull” means the exterior body frame of a vessel.
6. **Hull washing.** “Hull washing” means cleaning the exterior of a vessel using any means, including manual scrubbing, low pressure water washing, and pressure washing.
7. **Notice of Intent or NOI.** “Notice of Intent” or “NOI” means a notification of intent to seek coverage under this General Permit made by the owner or operator of a facility to the Department on a form provided by the Department.
8. **Pressure washing.** “Pressure washing” means the use of a device that increases the pressure of pumped water for the purpose of removing dirt, paint, or biological growth from a vessel.

## SPECIAL CONDITIONS

### B. DEFINITIONS (cont'd)

9. **Pressure wash water.** “Pressure wash water” means the wastewater generated during pressure washing.
10. **Topside.** “Topside” means the exterior of the vessel above the waterline.
11. **Vessel.** “Vessel” means a craft designed to navigate the water including but not limited to boats, yachts and ships.
12. **Vessel maintenance facility.** “Vessel maintenance facility” or “Facility” means a person engaged in the construction, repair, or maintenance of vessels at which antifouling paint contaminated wash water is generated and discharged to marine or estuarine waters of the State.
13. **Wash water collection area.** “Wash water collection area” means all areas within the facility that drain to surface waters or the wastewater treatment system.

### C. APPLICABILITY AND ELIGIBILITY

Only antifouling contaminated vessel wash water facilities that conform to the following condition for applicability and coverage are eligible for coverage under this General Permit.

1. **Area of coverage.** The geographic area covered by this General Permit is limited to Class SB or SC marine or estuarine waters of the State of Maine (except those Class SB or SC waters within the Saco River estuary and those Class SB or SC waters having a drainage area of less than 10 square miles at the point of discharge, as determined by the Department); that are in compliance with the standards of their ascribed classifications, or where not, only if the discharge does not cause or contribute to the failure of the water body to meet the standards of classification. The Department will determine on a case-by-case basis for each proposed discharge whether applicable water quality standards are currently achieved. This determination will be based on the status of water quality as specified in the State of Maine’s biennial Integrated Water Quality Monitoring and Assessment Report, prepared pursuant to Sections 303(d) and 305(b) of the *Federal Water Pollution Control Act*, or other available relevant data.

### D. NOTIFICATION, DECISIONS, AND EFFECTIVE TERM OF COVERAGE

1. **Notice of Intent (NOI).** A person meeting the requirements and seeking coverage under this general permit must submit a completed NOI to the Department for review and approval. NOI forms must be mailed or hand-delivered to:

Department of Environmental Protection  
Division of Water Quality Management  
Permitting Section  
17 State House Station  
Augusta, ME 04333-0017

## SPECIAL CONDITIONS

### D. NOTIFICATION, DECISIONS, AND EFFECTIVE TERM OF COVERAGE (cont'd)

The Department reserves the right to request additional information from the applicant based on review of the NOI. Permitting information, forms, and Augusta office directions may be obtained by contacting the Department's Waste Discharge Permitting Unit at 1-207-287-7688 or toll-free at 1-800-452-1942. Additionally, the General Permit, associated fact sheet and other forms are available for review and download at: [www.maine.gov/dep/water/wd/antifouling-paint/index.html](http://www.maine.gov/dep/water/wd/antifouling-paint/index.html)

2. **NOI Information.** A complete NOI must contain the following information.
  - a. The name and location of the facility, including the town and map coordinates (if available).
  - b. The name, address, telephone number, and email address of the applicant.
  - c. The legal name, address, telephone number, and email address of the owner or operator of the facility (if different from the applicant).
  - d. The signature of an authorized person in accordance with *Applications for Waste Discharge Licenses*, 06-096 CMR 521(5) (effective January 12, 2001).
  - e. Name of the waterbody into which the discharge is proposed.
  - f. Facility information, including, but not limited to: type of facility, number and size of vessels washed, pressure wash flow, etc.
  - g. A description of the antifouling paint contaminated wash water collection and treatment system(s).
  - h. Outfall information including the diameter of outfall pipe in inches, depth below mean low water at outlet in feet, and a description of any diffusers, mixers or similar structures used to disperse the effluent. Include drawings or diagrams as appropriate.
  - i. A topographic or similar type map (or copy thereof) clearly identifying the location of the facility, the collection system, the treatment system, and discharge pipe.
  - j. A site plan including property boundaries, buildings, roads, parking areas, streams and wetlands.
  - k. Evidence of title, right or interest (TRI) in all of the property that is proposed for development or use in accordance with 06-096 CMR 2(11)(D).
  - l. For corporations, a *Certificate of Good Standing* or a statement signed by a corporate officer affirming that the corporation is in good standing.
  - m. Copies of the published Notice of Intent to File and a list of abutters to whom notice was provided in accordance with Special Condition D.3 must be submitted with the application.

## SPECIAL CONDITIONS

### D. NOTIFICATION, DECISIONS, AND EFFECTIVE TERM OF COVERAGE (cont'd)

Failure to submit all required NOI information may result in finding the NOI incomplete for processing and may delay processing or result in denial of the NOI.

3. **Public notice.** In accordance with 06-096 CMR 2(14)(A) and 06-096 CMR 529(3)(a), within 30 days prior to filing with the Department, an applicant must give public notice of Intent to File a NOI application using the form included with DEPLW1049. A NOI application that has been previously returned as incomplete for processing must comply with these requirements if the application is not resubmitted within 30 days of the date it was returned to the applicant. The notice must be mailed by certified mail or Certificate of Mailing to abutters, as determined by local tax records or other reliable means, to the municipal office of the municipality(ies) where the project is located and, if the project is located in the unorganized or deorganized areas of the state, to the appropriate county commissioners.
4. **Decisions.**
  - a. **Effective date of coverage.** The Department must approve or deny each NOI submitted for coverage under this General Permit: 1) within 30 calendar days of receipt of a complete NOI; 2) within 30 days of the date of public notice; or 3) on the effective date of this General Permit, whichever is later. If the Department does not notify the applicant within the specified timeframe, the NOI is automatically approved and becomes effective as if signed by the Commissioner in accordance with 06-096 CMR 2(19)(E). In the event coverage is denied, the Department must notify the applicant of the reason(s) for denial. Denial of coverage under this General Permit is not appealable to the Board of Environmental Protection and is not final agency action. The approval of coverage under this General Permit is appealable in accordance with 06-096 CMR 2(24)(B).
  - b. **Individual permit coverage.** The Department may require, or an interested party may request for consideration, that a facility covered under this General Permit obtain an individual MEPDES permit for any of the reasons specified at 06-096 CMR 529(2)(b)(3)(i)(A-G). The owner or operator of a facility discharging AFP contaminated vessel wash water eligible for coverage under this General Permit may request to be excluded from this General Permit and instead apply for an individual MEPDES permit as provided at 06-096 CMR 529(3)(iii).
5. **Effective term of coverage.** The term of this General Permit is five years. Coverage under this General Permit will be continued from year to year provided payment of an applicable annual fee pursuant to *Maine Environmental Protection Fund*, 38 M.R.S. §353-B, and that there are no significant changes in the facility or its operation as described in the NOI.

Upon reissuance of a renewal General Permit, persons wishing to continue coverage must apply for coverage under the renewal General Permit not later than 30 days following the issuance date of the new General Permit.

## SPECIAL CONDITIONS

### D. NOTIFICATION, DECISIONS, AND EFFECTIVE TERM OF COVERAGE (cont'd)

In the event that the ownership of a facility is transferred to a new owner, coverage under this General Permit may be transferred by the new owner notifying the Department in writing, provided the new owner proposes no significant changes in the facility or its operation. The notice must include documentation that the new owner has: 1) a *Certificate of Good Standing* or a statement signed by a corporate officer affirming that the corporation is in good standing; 2) title, right or interest in the facility; and 3) the technical and financial capacity to comply with this General Permit. Such notification must be made within two weeks of the transfer. If increases or significant changes in the discharge are proposed, a new NOI must be filed.

6. **Changed conditions.** In the event a permittee covered by this General Permit proposes to make significant changes in the nature or scope of the operations of facilities described in a NOI previously approved, the permittee must notify the Department as soon as becoming aware of and before implementing such changes. Based on its evaluation of the proposed changes, the Department may require the submittal of a new NOI or that an individual permit be obtained. Reportable changes include, but are not limited to, changes to the collection or treatment systems, changes to the location of the discharge line, and changes to the number or type of vessels to be serviced that would result in the elimination of the discharge or the expansion of the discharge volume beyond the permit limit.

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**SPECIAL CONDITIONS**

**E. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

The permittee is authorized to discharge treated antifouling paint contaminated wash water from **OUTFALL #001A** to the Class SB or SC waters identified in the approved NOI. Such discharges are limited and must be monitored by the permittee as specified below<sup>(1)</sup>.

**Reporting must take place annually from August through December<sup>(2)</sup>.**

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Mass		Concentration		Measurement Frequency	Sample Type
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum		
Flow <i>[50050]</i>	600 gpd <i>[07]</i>	1,000 gpd <i>[07]</i>	---	---	1/Discharge Day <sup>(2)</sup> <i>[01/DD]</i>	Measure <i>[MS]</i>
BOD <sub>5</sub> <i>[00310]</i>	2.82 lbs./Day <i>[26]</i>	7.56 lbs./Day <i>[26]</i>	Report mg/L <i>[19]</i>	Report mg/L <i>[19]</i>	1/Month <sup>(2)</sup> <i>[01/30]</i>	Grab <i>[GR]</i>
TSS <i>[00530]</i>	0.59 lbs./Day <i>[26]</i>	1.15 lbs./Day <i>[26]</i>	Report mg/L <i>[19]</i>	Report mg/L <i>[19]</i>	1/Month <sup>(2)</sup> <i>[01/30]</i>	Grab <i>[GR]</i>
Copper (Total) <i>[01042]</i>	0.004 lbs./Day <i>[26]</i>	0.015 lbs./Day <i>[26]</i>	---	---	1/Month <sup>(2)</sup> <i>[01/30]</i>	Grab <i>[GR]</i>
Lead (Total) <i>[01051]</i>	0.008 lbs./Day <i>[26]</i>	0.592 lbs./Day <i>[26]</i>	---	---	1/Month <sup>(2)</sup> <i>[01/30]</i>	Grab <i>[GR]</i>
Zinc (Total) <i>[01092]</i>	0.088 lbs./Day <i>[26]</i>	0.255 lbs./Day <i>[26]</i>	---	---	1/Month <sup>(2)</sup> <i>[01/30]</i>	Grab <i>[GR]</i>

The italicized numeric values bracketed in the table and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports.

**FOOTNOTES:** See Page 10 of this permit for applicable footnotes.



## SPECIAL CONDITIONS

### E. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

#### Footnotes:

1. **Sampling** – All effluent monitoring must be conducted at the end of the treatment system as to be representative of end-of-pipe effluent characteristics. The permittee must conduct all effluent sampling and analysis in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified for wastewater by the State of Maine's Department of Health and Human Services. Samples that are analyzed by laboratories operated by waste discharge facilities licensed pursuant to *Waste discharge licenses*, 38 M.R.S. §413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended December 19, 2018). Laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of 10-144 CMR 263. 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 this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the DMR.

All monitoring results must be reported through the use of electronic DMR (eDMR) system unless the permittee is authorized to submit paper forms by the Department.

2. **Discharge Duration and Monitoring Schedule** – The permittee is authorized to discharge on a year-round basis in accordance with the terms and conditions of the General Permit. Monitoring and reporting is required during the months of August through December, inclusive. The Department reserves the right to require additional monitoring as necessary to determine compliance with the General Permit.

### F. AUTHORIZED DISCHARGES

A permittee covered under this General Permit is authorized to discharge: 1) only in accordance with the permittee's Notice of Intent; and 2) only in accordance with the terms and conditions of this General Permit. Discharges of pollutants from any other point source are not authorized under this General Permit and must be reported in accordance with Standard Condition D(1)(f), *Twenty-four hour reporting*, of this permit.

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## SPECIAL CONDITIONS

### G. NARRATIVE LIMITATIONS

1. The permittee must not discharge effluent that contains a visible oil sheen, foam or floating solids at any time which would impair the usages designated for the classification of the receiving waters.
2. The permittee must not discharge effluent that contains materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated for the classification of the receiving waters.
3. The permittee must not discharge wastewater that causes visible discoloration or turbidity in the receiving waters that causes those waters to be unsuitable for the designated uses and characteristics ascribed to their class.
4. 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.

### H. MONITORING AND REPORTING

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

Department of Environmental Protection  
Bureau of Water Quality  
Division of Water Quality Management  
17 State House Station  
Augusta, Maine 04333

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

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## **SPECIAL CONDITIONS**

### **I. GENERAL OPERATIONAL CONSTRAINTS**

1. The permittee must collect and treat, using a treatment system capable of achieving compliance with all terms and conditions specified in this General Permit, all antifouling contaminated wash water prior to discharge.
2. The permittee must provide an outfall that is submerged below the surface of the water to a depth of at least 5 feet at mean low water.
3. The permittee must ensure proper maintenance of the facility and the wash water collection area is maintained on a regular basis kept clean and free of paint debris, oils and greases to reduce the potential discharge through storm water. When not in use, the wash water collection area must be controlled in such a manner as to prevent rainwater and storm water from entering the wastewater treatment system.
4. The permittee must maintain a log of vessel washing activities conducted in the wash water collection area, including, at a minimum, the number of vessels washed per day and month and the duration of each batch discharge from the wastewater treatment system.

### **J. SEVERABILITY**

In the event that any provision, 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.

**MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
MAINE WASTE DISCHARGE LICENSE**

**FACT SHEET**

DATE: **July 22, 2020**

GENERAL PERMIT NUMBER: **MEG170000**  
WASTE DISCHARGE LICENSE: **W009046-5Y-C-R**

**ANTIFOULING PAINT CONTAMINATED VESSEL WASH WATER  
GENERAL PERMIT  
ISSUED BY  
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

AREA OF COVERAGE AND RECEIVING WATER CLASSIFICATION:

**CLASS SB OR SC MARINE OR ESTUARINE WATERS OF THE STATE OF MAINE, EXCEPT  
THOSE CLASS SB OR SC WATERS WITHIN THE SACO RIVER ESTUARY AND THOSE  
CLASS SB OR SC WATERS HAVING A DRAINAGE AREA OF LESS THAN 10 SQUARE MILES  
AT THE POINT OF DISCHARGE**

DEPARTMENT CONTACTS:

Aaron Dumont  
APPLICATION AND PERMITTING  
Division of Water Quality Management  
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COMPLIANCE AND TECHNICAL ASSISTANCE  
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17 State House Station  
Augusta, Maine 04333-0017  
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Internet resources: <http://www.maine.gov/dep/> <http://www.maine.gov/dep/water/wd/gp.html>

## 1. PROCEDURAL AND REGULATORY SUMMARY

On January 12, 2001, the Maine Department of Environmental Protection (Department) received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. The Department administers the program as the Maine Pollutant Discharge Elimination System (MEPDES) permit program.

On October 14, 2009, the Department issued a new General Permit for applicable discharges of antifouling paint (AFP) contaminated vessel wash water. WDL #W009046-5Y-A-N authorized the discharge on 1,000 gallons per day of treated AFP contaminated vessel wash water to certain Class SB and SC waters of the State.<sup>4</sup>

On October 14, 2014, the Department issued a renewal for General Permit for applicable discharges of antifouling paint (AFP) contaminated vessel wash water. WDL #W009046-5Y-B-R authorized the discharge on 1,000 gallons per day of treated AFP contaminated vessel wash water to certain Class SB and SC waters of the State.<sup>5</sup>

Public notice of the Department's intent to renew the October 14, 2014 General Permit was made on or about May 12, 2020 in the Bangor Daily, Kennebec Journal, and Portland Press Herald newspapers. The notice solicited comments on the draft permit and provided an opportunity to request a public hearing.

## 2. PERMIT SUMMARY

The Department is carrying forward all the terms and conditions of the October 14, 2014 General Permit.

## 3. DESCRIPTION OF PERMITTED ACTIVITIES

This General Permit authorizes the discharge of treated AFP contaminated wash water to certain surface waters of the state. Specifically, this General Permit regulates the washing of vessel hulls after removing the vessel from the water while the hull is still wet, or after the hull has dried. Hull washing involves a process that may include pressure washing using high pressure water jet(s) to remove marine growth, dirt and paint at and below the water line of the vessel or manually scrubbing the hull and rinsing with low pressure water. All vessel wash water contaminated with AFP must be captured and treated. Any solid waste not captured by the treatment system must be disposed of in accordance with applicable state and federal law.

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<sup>4</sup> MEG170000 does not authorize discharges to the Saco River estuary or to any Class SB or SC water having a draining area of less than 10 square miles at the point of discharge.

<sup>5</sup> MEG170000 does not authorize discharges to the Saco River estuary or to any Class SB or SC water having a draining area of less than 10 square miles at the point of discharge.

#### 4. AREA OF COVERAGE

The geographic area covered by this General Permit is limited to Class SB or SC marine or estuarine waters of the State of Maine that are in compliance with the standards of their ascribed classifications, except those Class SB or SC waters within the Saco River estuary and those Class SB or SC waters having a drainage area of less than 10 square miles at the point of discharge, as determined by the Department. The direct discharge of pollutants to Class SA waters is prohibited by *Standards for classification of estuarine and marine waters*, 38 M.R.S. §465-B(1)(c); thus, Class SA waters within the geographic area of coverage are excluded.

The Department will determine on a case-by-case basis for each proposed discharge whether applicable water quality standards are currently achieved. This determination will be based on the status of water quality as specified in the State of Maine's biennial Integrated Water Quality Monitoring and Assessment Report, prepared pursuant to Sections 303(d) and 305(b) of the *Federal Water Pollution Control Act*, or other available relevant data.

The 2016 Integrated Water Quality Monitoring and Assessment Report lists the Saco River Estuary in Category 5-A: *Estuarine and Marine Waters Impaired by Pollutants Other Than Those Listed in 5-B Through 5-D (TMDL Required)* for copper. Because the discharge of AFP vessel wash water may contain copper, this General Permit is excluding the Saco River estuary from the area of coverage.

#### 5. ADMINISTRATIVE REQUIREMENTS

The General Permit's administrative procedures and requirements are drawn from *Rules Concerning the Processing of Applications and Other Administrative Matters* 06-096 CMR 2, *General Permits for Certain Wastewater Discharges* 06-096 CMR 529 and applicable Maine laws. Individuals seeking coverage under this General Permit must file a Notice of Intent (NOI) containing sufficient information and facts as to allow the Department to determine if the proposed facilities are anticipated to comply with the General Permit terms and conditions. Pursuant to 06-096 CMR 2, within 30 days prior to filing the NOI with the Department, an applicant for coverage under this General Permit is required to give public notice of its intent to submit a NOI to the Department, and an original or photocopy of the public notice must be submitted to the Department with the NOI.

Once a completed NOI is received, the Department has a maximum of 30 days in which to act on it. If no other action is taken within that 30-day period, the NOI is considered approved on the 31<sup>st</sup> day following the Department's receipt of the NOI.

The term of this General Permit is five years. Coverage under this General Permit will be continued from year to year through payment of an applicable annual fee pursuant to *Maine Environmental Protection Fund*, 38 M.R.S. §353-B, provided there are no changes in the facility or its operation as described in the NOI. Prior to expiration of this General Permit, the Department must make a determination if it is to be renewed, and, if so, will commence renewal proceedings. Upon reissuance of a renewal General Permit, persons wishing to continue coverage must apply for coverage under the renewal General Permit not later than 30 days following the issuance date of the renewal General Permit.

## 6. CONDITIONS OF PERMITS

*Conditions of licenses*, 38 M.R.S. §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, *Certain deposits and discharges prohibited*, 38 M.R.S. §420 and *Surface Waters Toxics Control Program* 06-096 CMR 530 (effective March 21, 2012) require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective 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.

## 7. RECEIVING WATER QUALITY STANDARDS

The State's water quality standards establish water quality objectives for all State waters by: (1) designating uses and related characteristics of those uses for each class of water, and (2) prescribing water quality criteria necessary to protect those uses and related characteristics. In addition, the State's antidegradation policy protects and maintains certain existing uses.

The applicability of this General Permit is restricted to discharges to certain estuarine or marine waters of the State classified as SB or SC pursuant to *Classifications of estuarine and marine waters*, 38 M.R.S. §469 and that meet the standards of their ascribed classification, or where not, only if the discharge does not cause or contribute to the failure of the water body to meet the standards of classification. 38 M.R.S. §465-B(2) and (3) describe the standards for Class SB and Class SC waters, respectively.

Relevant standards for Class SB and SC waters:

- Designated Uses. Class SB waters must be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat must be characterized as unimpaired.
- Water Quality Criteria. The dissolved oxygen content of Class SB waters must be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration (USFDA).

## 7. RECEIVING WATER QUALITY STANDARDS (cont'd)

Discharges to Class SB waters may not cause adverse impact to estuarine and marine life in that the receiving waters must be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community<sup>6</sup>. There may be no new discharge to Class SB waters that would cause closure of open shellfish areas by DMR.

- Designated Uses. Class SC waters must be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and other estuarine and marine life.
- Water Quality Criteria. The dissolved oxygen content of Class SC waters must be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, USFDA.

Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

- Antidegradation Policy. State waters are protected by the State's antidegradation policy which provides that certain existing in-stream water uses and the level of water quality necessary to protect those existing uses must be maintained and protected. *Classification of Maine waters*, 38 M.R.S. § 464(4)(F).

38 M.R.S. §464(4)(A)(4) states "(A) Notwithstanding section 414-A, the department may not issue a water discharge license for any of the following discharges (4) Discharge of pollutants to waters of the State that imparts color, taste, turbidity, toxicity, radioactivity or

other properties that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class."

38 M.R.S. §464(4)(B) states "All surface waters of the State must be free of settled substances which alter the physical or chemical nature of bottom material and of floating substances, except as naturally occur, which impair the characteristics and designated uses ascribed to their class."

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<sup>6</sup> "Without detrimental changes in the resident biological community" is defined as "no significant loss of species or excessive dominance by any species or group of species attributable to human activity." 38 M.R.S.A. § 466(12). The term "indigenous" means "supported in a reach of water or known to have been supported according to historical records compiled by State and Federal agencies or published scientific literature." 38 M.R.S.A. § 466(8).



## 8. RECEIVING WATER QUALITY CONDITIONS

*The State of Maine 2016 Integrated Water Quality Monitoring and Assessment Report (Report)*, prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Control Act, indicates there are a total of 1,821,293 acres listed under SA, SB, and SC classifications. A total of 1,721,748 acres are listed under Category 2: Total Attaining At Least One Standard. Class SA waters (waters not covered under this General Permit) make up 7.98% of the total marine waters. Including Class SA waters, 93% of the marine and estuarine waters within the State are attaining standards for some uses with insufficient information on other uses, and 6.7% as being impaired for one or more uses (Category 4 and 5). Of the total impaired waters, 5.3% are impaired due to bacteria. The Saco River Estuary is the only waterbody with an impaired use due to copper in combination with other pollutants (elevated fecals) and is excluded from the area of coverage.

As permitted, the discharges will not cause or contribute to the non-attainment of the receiving waters since their ambient concentration will be below applicable water quality criteria after a reasonable opportunity for dilution at the point of discharge.

## 9. DESCRIPTION OF TREATMENT

All AFP contaminated wash water that will be discharged under this General Permit must be collected and treated prior to discharge.

This General Permit requires: 1) that the discharge receives best practicable treatment; and 2) that the discharge does not cause or contribute to non-attainment of water quality standards. The previous General Permit gave examples of potential treatment systems. The Department does not prescribe or specify the method by which a permittee complies with this General Permit. The permittee must provide a description of the proposed treatment system and include a basis statement for how the proposed treatment system will achieve compliance with the terms and conditions established in the General Permit.

## 10. DISCHARGE LIMITATIONS & CONTROLS

USEPA has not promulgated effluent guideline limitations for this category of discharge. Limitations on discharges contained in this General Permit are specified to ensure that ambient water quality standards are maintained and that BPT technology is applied to the discharge. This General Permit imposes the more stringent of either a water quality-based or BPT-based limit.

Since 1915, when Danish manufacturer J.C. Hempel invented the first marine AFPs, they have protected virtually all seagoing vessel hulls, primarily through the use of cuprous oxide in a paint base. The primary AFP used on these vessels contained tributyltin. Due to its persistence in the environment and very high broad spectrum toxicity, the use of tributyltin in AFPs is tightly regulated, and discharge of tributyltin is banned in Maine. Other pesticides that have been used in AFPs historically include: Diuron; dichlofluanid; tolylfluanid; Zineb, and deltamethrin. Although some of these continue to be registered in Maine for use in AFPs, they are not found in most commercially available vessel AFPs.

## 10. DISCHARGE LIMITATIONS & CONTROLS (cont'd)

With the heightened awareness of the potential impacts of AFPs on the environment, paint manufacturers have been developing pesticides that are targeted more specifically to the fouling organisms and have less persistence in the environment while still providing effective protection of vessels. The compounds frequently found in current AFPs include: copper oxide(s), copper pyrithione, copper thiocyanate; zinc oxide, zinc pyrithione; SeaNine<sup>tm</sup> (4,5-dichloro-2-n-octyl-4-isothiazolin-3-one); and Irgarol<sup>tm</sup> (1,3,5-triazine-2,4-diamine).

The addition of the “booster biocides” SeaNine<sup>tm</sup> and Irgarol<sup>tm</sup> can result in effective paints with lower copper levels. However, because the compounds are relatively new, their long term persistence in the environment and impacts on non-target organisms through food chain disruption is not well understood. Several paint manufacturers now offer AFPs that do not contain any copper by using only zinc pyrithione as the active biocide.

During end-of-season cleaning and storage, most vessels are hauled from the water and pressure washed before being transported to their winter storage location. During the hull pressure washing, high pressure water is used to remove marine growth. However, along with the marine growth, AFP still adhering to the hull is also normally removed resulting in AFP contaminated wastewater. The level of AFP contamination can vary significantly depending on type of paint used, how well the paint adheres to the vessel, and how the washing is performed.

- a. **Flow:** The previous General Permit established, and this permitting action is carrying forward, a monthly average discharge flow limit of 600 gpd and a daily maximum discharge flow limit of 1,000 gpd. This permit requires the facility to measure flows once per discharge day, which is consistent with the flow monitoring requirement for other similar facilities.

All effluent limitation calculations in this permit are based on the flow as estimated via pressure washer flow rates and actual measured times for various vessel lengths. The Department estimates that it takes 1.3 minutes (on average) to pressure wash one linear foot of vessel length based on a 40-foot vessel normally taking 30 minutes to pressure wash. Pressure washers vary in flow rate from 1.5 to 4.5 gpm, so the Department assumed an average flow of 3.0 gpm. Based on Department of Inland Fisheries and Wildlife registration data, the average size of vessel that would normally be hauled at a vessel maintenance facility is 32'. Using the above assumptions results in a discharge of 125 gallons per 32' vessel. Most boatyards and marinas in Maine will haul 5-8 vessels per day, resulting in a daily maximum discharge of 1,000 gpd.

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## 10. DISCHARGE LIMITATIONS & CONTROLS (cont'd)

b. Dilution Factors: 06-096 CMR 530(4)(A)(2)(a-c) states:

- (a) For discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model.
- (b) For discharges to estuaries, dilution must be calculated using a method such as MERGE, CORMIX or another predictive model determined by the Department to be appropriate for the site conditions.
- (c) In the case of discharges to estuaries where tidal flow is dominant and marine waters, the human health criteria must be analyzed using a dilution equal to three times the chronic dilution factor.

Using the assumptions that follow and the CORMIX model, the Department has determined that the dilution factor for the discharge of an average of 600 gpd of treated AFP contaminated wash water to waterbodies defined in the area of coverage and meeting the permit requirements is 272:1 at a discharge depth of 10 feet at mid-tide, or 5 feet at low tide, and a continuous even flow over a 24-hour period. This is the most conservative estimate for dilution, assuming a 0 foot per second ambient velocity and will be considered the chronic dilution ratio. It is likely that the discharge will occur during a more concentrated time period. Modeling indicates that discharging the maximum permitted volume during a shorter period of time, 12 hours, results in an increased dilution of 428:1 due to the increased velocity of the effluent as it exits the outfall, resulting in greater initial mixing. The 428:1 ratio will be considered the acute dilution factor.

c. BOD<sub>5</sub>: BOD is generated by the decay of marine growth that is removed from the hull during pressure washing. Marine growth may include but is not limited to; various forms of bacteria, algae, mollusks, and shellfish.

In the absence of promulgates standards for this category, the 2009 General Permit established daily maximum and monthly average BOD<sub>5</sub> concentration limits of 50 mg/L and 30 mg/L, respectively, based on secondary treatment standards for publicly owned treatment works (POTWs) as a Department best professional judgment (BPJ) of BPT.

Since that time, the Department has amassed effluent BOD<sub>5</sub> data from permittees with appropriate treatment technologies. This data indicates that even with appropriate technologies, effluent quality cannot meet the previous permit limits established in the 2009 General Permit. Therefore, the Department used the data to calculate 95<sup>th</sup> and 99<sup>th</sup> percentile concentrations (below), for facilities with treatment:

Daily Maximum: 906 mg/L  
Monthly Average: 564 mg/L

## 10. DISCHARGE LIMITATIONS & CONTROLS (cont'd)

Based on this data, the Department applied the following calculation for mass conversion from concentration:

Daily Maximum:  $(0.001 \text{ MGD})(8.34 \text{ lbs/gallon}) (906 \text{ mg/L}) = 7.56 \text{ lbs/day}$

Monthly average:  $(0.0006 \text{ MGD})(8.34 \text{ lbs./gallon})(564 \text{ mg/L}) = 2.82 \text{ lbs/day}$

These technology-based thresholds represent achievable effluent quality levels for BOD while also being protective of water quality standards as analyzed by the Department's Division of Environmental Assessment.

The Department believes that these limits represent BPJ of BPT for this category of discharge. This General Permit is carrying forward the monthly average and daily maximum mass limits of 2.82 lbs./day and 7.56 lbs./day that were established in the previous 2014 General Permit.

Increasing the numeric mass limit for BOD complies with the anti-backsliding provision at 40 CFR 122.44(l)(2)(i)(B)(1), as the data used for the revised limits is information which was not available at the time the previous permit was issued and which would have justified the application of less stringent effluent limitations at the time of permit issuance.

- d. TSS: The suspended solids in the wash water come from the coloring pigments in the paint residue, as well as from marine growth. Marine growth may include but is not limited to; various forms of bacteria, algae, mollusks, and shellfish.

As with BOD<sub>5</sub>, in the absence of promulgates standards for this category, the 2009 General Permit established daily maximum and monthly average TSS concentration limits of 50 mg/L and 30 mg/L, respectively, based on secondary treatment standards for POTWs as a Department BPJ of BPT.

Since that time, the Department has amassed effluent TSS data from permittees with appropriate treatment technologies. This data indicates that even with appropriate technologies, effluent quality cannot meet the previous permit limits established in the 2009 General Permit. Therefore, the Department used the data to calculate 95<sup>th</sup> and 99<sup>th</sup> percentile concentrations (below), for facilities with treatment:

Daily Maximum: 138 mg/L

Monthly Average: 118 mg/L

Based on this data, the Department applied the following calculation for mass conversion from concentration:

Daily Maximum:  $(0.001 \text{ MGD})(8.34 \text{ lbs/gallon}) (138 \text{ mg/L}) = 1.15 \text{ lbs/day}$

Monthly average:  $(0.0006 \text{ MGD})(8.34 \text{ lbs./gallon})(118 \text{ mg/L}) = 0.59 \text{ lbs/day}$

These technology-based thresholds represent achievable effluent quality levels for TSS while also being protective of water quality standards as analyzed by the Department's Division of Environmental Assessment.

**10. DISCHARGE LIMITATIONS & CONTROLS (cont'd)**

The Department believes that these limits represent BPJ of BPT for this category of discharge. This General Permit is carrying forward the monthly average and daily maximum mass limits of 0.59 lbs./day and 1.15 lbs./day that were established in the previous 2014 General Permit.

Increasing the numeric mass limit for TSS complies with the anti-backsliding provision at 40 CFR 122.44(l)(2)(i)(B)(1), as the data used for the revised limits is information which was not available at the time the previous permit was issued and which would have justified the application of less stringent effluent limitations at the time of permit issuance.

- e. Metals - 38 M.R.S. §414-A and 38 M.R.S. §420 prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA.

06-096 CMR 584 sets forth AWQC for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters. The following is a list of applicable marine AWQC for metals (total) regulated by this General Permit for this category of discharge:

<u>Copper</u>	
Acute	Chronic
5.78 µg/L	3.73 µg/L
<u>Lead</u>	
Acute	Chronic
221 µg/L	8.52 µg/L
<u>Zinc</u>	
Acute	Chronic
95 µg/L	86 µg/L

06-096 CMR 530(3)(D) states, “*Expression of effluent limits. Where the need for effluent limits has been determined, limits derived from acute water quality criteria must be expressed as daily maximum values. Limits derived from chronic or human health criteria must be expressed as monthly average values.*” This permit is carrying forward monthly average (chronic) and daily maximum (acute) EOP mass limits for copper, lead and zinc as these metals are anticipated to be present in the discharge. The derivation for these limits is as follows:

$$\text{Concentration Limit Formula} = [(\text{Dilution Factor})(0.75)(\text{criterion})] + [(0.25)(\text{criterion})]$$

$$\text{Mass Limit Formula} = \frac{(\text{Conc. Limit, } \mu\text{g/L})(8.34\text{lbs/gal})(\text{flow limit, mgd})}{1000 \mu\text{g/mg}}$$

In May 2012, 38 M.R.S. §464 was enacted which reads as follows, “Unless otherwise required by an applicable effluent limitation guideline adopted by the department, any limitations for metals

## 10. DISCHARGE LIMITATIONS & CONTROLS (cont'd)

in a waste discharge license may be expressed only as mass-based limits.” The 2014 this General Permit is eliminated the concentration limits for metals.

### Copper

Copper as cuprous oxide(s) is a nearly ubiquitous contaminant in municipal, industrial, and storm water discharges. Industrial point sources include electronics manufacturing, metals products and machine shops. Municipal sources include copper leaching from residential plumbing affected by acidic potable water supplies. Copper has long been used as an effective fungicide in orchards and to prevent moss and lichen growth on house roofs. The aqueous cupric ion, not complexed with organic and inorganic compounds, is acutely toxic to a wide variety of terrestrial and marine organisms particularly in the larval and planktonic forms by disrupting adenosine triphosphate (ATP) exchange in the cellular metabolism. Copper is rapidly and readily complexed in the marine environment, making it less biologically available and less toxic. However, it is a persistent contaminant and can have significant impacts on non-target organisms. It is considered most effective against “hard” fouling organisms including mussels and barnacles.

The previous permitting action established monthly average and daily maximum mass limitations based on the formulas listed above, however, an error in the calculation for total Copper was identified in the previous General Permit. Correction of the calculation resulted in the limit going from 0.016 lbs./day to 0.015 lbs./day. End-of-pipe (EOP), water quality-based daily maximum and monthly average limits for copper (total) are calculated as follows:

#### Copper (Total):

Acute AWQC = 5.78 µg/L or .00578 mg/L

Acute dilution = 428:1

Chronic AWQC = 3.73 µg/L or .00373 mg/L

Chronic dilution factor = 272:1

$$\begin{aligned} \text{Daily Maximum Conc.} &= [(428)(0.75)(5.78 \mu\text{g/L})] + (0.25)(5.78 \mu\text{g/L}) \\ &= 1855.38 + 1.445 \\ &= 1856.83 \mu\text{g/L} \end{aligned}$$

$$\text{Daily Maximum Mass} = \frac{(1,856.83 \mu\text{g/L})(8.34 \text{ lbs/gal})(0.001 \text{ mgd})}{1000 \mu\text{g/mg}} = \mathbf{0.015 \text{ lbs./day}}$$

$$\begin{aligned} \text{Monthly Average Conc.} &= [(272)(0.75)(3.73 \mu\text{g/L})] + (0.25)(3.73 \mu\text{g/L}) \\ &= 760.92 + 0.93 \\ &= 761.85 \mu\text{g/L} \end{aligned}$$

$$\text{Monthly Average Mass} = \frac{(761.85 \mu\text{g/L})(8.34 \text{ lbs/gal})(0.0006 \text{ mgd})}{1000 \mu\text{g/mg}} = 0.0038 \text{ lbs./day} \text{ *Rounded to } \mathbf{0.004 \text{ lbs./day}}$$

## 10. DISCHARGE LIMITATIONS & CONTROLS (cont'd)

### Lead

Lead is not identified as an active ingredient in AFPs, but appears to be a contaminant of zinc compounds used in the paints. Before being eliminated from gasoline, lead was a nearly ubiquitous contaminant in stormwater discharges and already widely contaminates coastal sediments.

Historical sources of lead discharges in Maine include metal finishing, electronics, textile, pulp and paper manufacturers. It is still widely used in lead acid batteries, vessel ballast, fishing line sinkers, and diving weights. Lead is a potent neurotoxin, and due to its stability, it also bioaccumulates.

Sub-lethal doses of lead can result in behavioral changes that can disrupt entire ecosystems. EOP, water quality-based daily maximum and monthly average limits for lead (total) are calculated as follows:

#### Lead (Total):

Acute AWQC = 221 µg/L or 0.221 mg/L

Acute dilution = 428:1

Chronic AWQC = 8.52 µg/L or 0.00852 mg/L

Chronic dilution factor = 272:1

$$\begin{aligned}\text{Daily Maximum Conc.} &= [(428)(0.75)(221 \mu\text{g/L})] + (0.25)(221 \mu\text{g/L}) \\ &= 70,941 + 55.25 \\ &= 70,996.25 \mu\text{g/L}\end{aligned}$$

$$\text{Daily Maximum Mass} = \frac{(70,996.25 \mu\text{g/L})(8.34 \text{ lbs/gal})(0.001 \text{ mgd})}{1000 \mu\text{g/mg}} = \mathbf{0.592 \text{ lbs./day}}$$

$$\begin{aligned}\text{Monthly Average Conc.} &= [(272)(0.75)(8.52 \mu\text{g/L})] + (0.25)(8.52 \mu\text{g/L}) \\ &= 1738.08 + 2.13 \\ &= 1740.21 \mu\text{g/L}\end{aligned}$$

$$\text{Monthly Average Mass} = \frac{(1740.21 \mu\text{g/L})(8.34 \text{ lbs/gal})(0.0006 \text{ mgd})}{1000 \mu\text{g/mg}} = \mathbf{0.008 \text{ lbs./day}}$$

### Zinc

Zinc as zinc oxide and its salts (zinc pyrithione) is also a ubiquitous contaminant. In addition to non-point sources from land, a significant source of zinc contamination in marine waters is due to the use of sacrificial zinc anodes use to prevent structural loss of steel on steel vessels. Zinc oxide and zinc pyrithione are primarily an anti-fungal and antibacterial compound, zinc oxides are the primary ingredient in soothing protective ointments for children effective against streptococcus and staphylococcus bacteria. Zinc pyrithione is best known in its use for treating dandruff and seborrheic dermatitis. Its antifungal effect is probably by disrupting cellular membrane transport. In AFP zinc compounds are considered algacides.

Zinc pyrithione has been demonstrated to be unstable in the marine environment, readily trans-chelating with copper, resulting in copper pyrithione and zinc salts. Zinc pyrithione is quickly

## 10. DISCHARGE LIMITATIONS & CONTROLS (cont'd)

photodegradable but in conditions typical to marine AFP use, the low light conditions of Maine waters would result in a much longer persistence and potential effect on non-target organisms and potential accumulations in the sediments.

EOP, water quality-based daily maximum and monthly average limits for zinc (total) are calculated as follows:

### Zinc (Total):

Acute AWQC = 95 µg/L or 0.095 mg/L

Acute dilution = 428:1

Chronic AWQC = 86 µg/L or 0.086 mg/L

Chronic dilution factor = 272:1

$$\begin{aligned}\text{Daily Maximum Conc.} &= [(428)(0.75)(95 \mu\text{g/L})] + (0.25)(95 \mu\text{g/L}) \\ &= 30,495 + 23.75 \\ &= 30,518.75 \mu\text{g/L}\end{aligned}$$

$$\text{Daily Maximum Mass} = \frac{(30,518.75 \mu\text{g/L})(8.34 \text{ lbs/gal})(0.001 \text{ mgd})}{1000 \mu\text{g/mg}} = \mathbf{0.255 \text{ lbs./day}}$$

$$\begin{aligned}\text{Monthly Average Conc.} &= [(272)(0.75)(86 \mu\text{g/L})] + (0.25)(86 \mu\text{g/L}) \\ &= 17,544 + 21.5 \\ &= 17,565.5 \mu\text{g/L}\end{aligned}$$

$$\text{Monthly Average Mass} = \frac{(17,565.5 \mu\text{g/L})(8.34 \text{ lbs/gal})(0.0006 \text{ mgd})}{1000 \mu\text{g/mg}} = \mathbf{0.088 \text{ lbs./day}}$$

## 11. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

Specific pollutants generated during the authorized activity include: BOD from the marine growth that may have adhered to the vessel hull; suspended solids from the AFP pigment residue; copper, lead, zinc, chromium and several other pesticide compounds from the AFP residue; and minor amounts of oil and grease from engine exhaust discharges or other exposed portions of the propulsion system (if present). Narrative limitations are protective of water quality standards as they prohibit discharges that result in a visible sheen, turbidity, discoloration, etc. to the waterbody.

The Department has considered impacts from each of these pollutants and developed permit limits to address or control each. As permitted, facilities that discharge AFP contaminated wash water operating in compliance with the terms of conditions of this General Permit, will not cause or contribute to non-attainment of applicable water quality standards.



## 12. ANTIDegradation

The State's antidegradation policy is set forth at 38 M.R.S. §464(4)(F). The Department has determined that the discharge of treated AFP contaminated vessel wash water in accordance with the terms and conditions of this General Permit will not violate the provisions of the antidegradation policy.

## 13. PUBLIC COMMENTS

Public notice of this intent to renew the October 14, 2014 General Permit was made available on or May 12, 2020 in the Bangor Daily, Kennebec Journal, and Portland Press Herald. 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).

## 14. RESPONSE TO COMMENTS

During the period of May 13, 2020 through the issuance date of this permit, the Department solicited comments from state and federal agencies, the public and parties that expressed interest in the proposed draft of this general permit. The Department did not receive comments that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

In accordance with the National Pollutant Discharge Elimination System Memorandum of Agreement Between the State of Maine and the United States Environmental Protection Agency, finalized on January 12, 2001, and 40 CFR 123.44(a)(2), the USEPA make take up to 90 days from receipt of the proposed General Permit to comment upon, object to or make recommendations with respect to the proposed permit.

## 15. DEPARTMENT CONTACTS

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

Aaron Dumont  
Division of Water Quality Management  
Bureau of Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 287-1939 Fax: (207) 287-3435  
e-mail: [Aaron.A.Dumont@maine.gov](mailto:Aaron.A.Dumont@maine.gov)

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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).

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**7. Oil and hazardous substances.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject under section 311 of the Federal Clean Water Act; section 106 of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; or 38 MRSA §§ 1301, et. seq.

**8. Property rights.** This permit does not convey any property rights of any sort, or any exclusive privilege.

**9. Confidentiality of records.** 38 MRSA §414(6) reads as follows. "Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part or any record, report or information, other than the names and addresses of applicants, license applications, licenses, and effluent data, to which the department has access under this subchapter would, if made public, divulge methods or processes that are entitled to protection as trade secrets, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, as long as this disclosure is material and relevant to any issue under consideration by the department."

**10. Duty to reapply.** If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

**11. Other laws.** The issuance of this permit does not authorize any injury to persons or property or invasion of other property rights, nor does it relieve the permittee of its obligation to comply with other applicable Federal, State or local laws and regulations.

**12. Inspection and entry.** The permittee shall allow the Department, or an authorized representative (including an authorized contractor acting as a representative of the EPA Administrator), upon presentation of credentials and other documents as may be required by law, to:

- (a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

**B. OPERATION AND MAINTENANCE OF FACILITIES**

**1. General facility requirements.**

- (a) The permittee shall collect all waste flows designated by the Department as requiring treatment and discharge them into an approved waste treatment facility in such a manner as to

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- 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.

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- (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.

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**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.

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**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



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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).

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- (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.

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

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

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

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

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

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

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

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

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

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

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

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**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.

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**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.