



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM  
COMMISSIONER

Sent Via Electronic Mail

January 14, 2025

To: Interested Parties of Record

*Re: Maine Pollutant Discharge Elimination System (MEPDES) General Permit #MEG100000*

*Maine Waste Discharge License #W009256-5Y-B-R*

*Construction General Permit for Stormwater Discharges from Construction Activity **Finalized***  
***General Permit Renewal***

Dear Interested Party:

Attached , please find a reissued Maine Pollutant Discharge Elimination System General Permit #MEG100000 - *Construction General Permit for Stormwater Discharges from Construction (MCGP)Activity.*

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.

If you have any questions regarding this matter, please reach out to me directly at [mark.n.stebbins@maine.gov](mailto:mark.n.stebbins@maine.gov) or 207-592-4810.

Sincerely

Mark Stebbins

Field Services Director

Bureau of Land Resources

AUGUSTA  
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# DEP INFORMATION SHEET

## Appeals to the Board of Environmental Protection

Date: November 2024 Contact: [Clerk.BEP@maine.gov](mailto:Clerk.BEP@maine.gov) or (207) 314-1458

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### SUMMARY

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of: (1) a final license decision made by the Commissioner of the Department of Environmental Protection ("DEP"); or (2) an insurance claim-related decision ("Clean-up and Response Fund decision") made by the Commissioner or the Office of State Fire Marshal pursuant to [38 M.R.S. § 568-A](#).

Except as explained below, there are two methods available to an aggrieved person seeking to appeal a license decision made by the Commissioner or a Clean-up and Response Fund decision: (1) an administrative appeal before the Board of Environmental Protection ("Board"); or (2) a judicial appeal before Maine's Superior Court. An aggrieved person seeking review of a license decision or Clean-up and Response Fund decision made by the Board may seek judicial review in Maine's Superior Court.

An appeal of a license decision made by the DEP Commissioner or the Board regarding an application for an expedited wind energy development ([35-A M.R.S. § 3451\(4\)](#)), 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.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### **LEGAL REFERENCES**

A person filing an appeal with the Board should review the applicable rules and statutes, including the DEP's Chapter 2 rule, [Processing of Applications and Other Administrative Matters \(06-096 C.M.R. ch. 2\)](#); Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); and the Maine Administrative Procedure Act, [5 M.R.S. § 11001](#).

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

Within 30 calendar days of the date of: (1) a final license decision of the Commissioner; or (2) a Clean-up and Response Fund decision, an aggrieved person may appeal to the Board for review of that decision. "Aggrieved person" means any person whom the Board determines may suffer a particularized injury as a result of a Commissioner's license decision or a Clean-up and Response Fund decision. A complete appeal must be received by the Board no later than 5:00 p.m. on the 30<sup>th</sup> calendar day of the decision being appealed. With limited exception, untimely appeals will be dismissed.

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

An appeal to the Board may be submitted via postal mail or electronic mail (e-mail) and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection  
c/o Board Clerk  
17 State House Station  
Augusta, ME 04333-0017  
[Clerk.BEP@maine.gov](mailto:Clerk.BEP@maine.gov)

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee, if the appellant is not the licensee; and (3) if a hearing was held on the application, any intervenors in that hearing proceeding. For appeals of Clean-up and Response Fund decisions made by the State Fire Marshal, the appellant must also send a copy of the appeal to the State Fire Marshal. **Please contact the Board Clerk at [clerk.bep@maine.gov](mailto:clerk.bep@maine.gov) or DEP staff at 207-287-7688 with questions or for contact information regarding a specific license or Clean-up and Response Fund decision.**

#### **REQUIRED APPEAL CONTENTS**

A written appeal must contain the information specified in Chapter 2, section 23(B) or section 24(B), as applicable, at the time the appeal is submitted. **Please carefully review these sections of Chapter 2**, which is available online at <https://www.maine.gov/sos/cec/rules/06/chaps06.htm>, or contact the Board Clerk to obtain a copy of the rule. Failure to comply with the content of appeal requirements may result in the appeal being dismissed pursuant to Chapter 2, section 23(C) or section 24(C).

#### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

1. *Be familiar with the administrative record.* Generally, the record on which the Board decides an appeal is limited to the record prepared by the agency in its review of the application, any supplemental evidence admitted to the record by the Board Chair and, if a hearing is held on the appeal, additional evidence admitted during the hearing. A person who seeks to appeal a decision to the Board is encouraged to contact the DEP (or State Fire Marshal for Clean-up and Response Fund decisions made by that agency) to inspect the record before filing an appeal.
2. *Be familiar with the applicable rules and laws.* An appellant is required to identify the licensing criterion or standard the appellant believes was not satisfied in issuing the decision, the bases of the objections or challenges, and the remedy sought. Prior to filing an appeal, review the decision being appealed to identify the rules and laws that are applicable to the decision. An appellant may contact the DEP or Board staff with any questions regarding the applicable rules and laws or the appeal procedure generally.
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 separate stay of the decision is requested and granted (*see* Chapter 2, section 23(M)), the licensee may proceed with an approved project pending the outcome of the appeal. Any activity initiated in accordance with the approved license during the pendency of the appeal comes with the risk of not knowing the outcome of the appeal, including the possibility that the decision may be reversed or modified by the Board.
4. *Alternative dispute resolution.* If the appeal participants agree to use mediation or another form of alternative dispute resolution (“ADR”) to resolve the appeal and so notify the Board, the Board will not hear the matter until the conclusion of that effort, provided the participants engaged in the alternative dispute resolution demonstrate satisfactory progress toward resolving the issues. *See* Chapter 2, section 23(H) or contact the Board Executive Analyst (contact information below) for more information on the ADR provision.

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

The Board will acknowledge receipt of each appeal and develop a service list of appeal participants and any interested persons for use in the appeal proceeding. Electronic mail (e-mail) is the preferred method of communication during an appeal proceeding; however, the Board reserves the right to require paper copies of all filings. Once the Board Chair rules on the admissibility of all proposed supplemental evidence, the licensee (if the licensee is not the appellant) may respond to the merits of the appeal. Instructions specific to each appeal will be provided in correspondence from the Board Executive Analyst or Board Chair. Generally, once all filings in an appeal proceeding are complete, the DEP staff will assemble a packet of materials for the Board (Board packet), including a staff recommendation in the form of a proposed Board Order. Once available, appeal participants will receive a copy of the Board packet and an agenda with the meeting location and start time. Once finalized, the meeting agenda will be posted on the Board's webpage <https://www.maine.gov/dep/bep/index.html>. Appeals will be considered based on the administrative record on appeal and oral argument at a regular meeting of the Board. *See* Chapter 2, Section 23(I). The Board may affirm all or part of the decision under appeal; affirm all or part of the decision under appeal with modifications, or new or additional conditions; order a hearing to be held as expeditiously as possible; reverse the decision under appeal; or remand the decision to the Commissioner or State Fire Marshal, as applicable, for further proceedings.

### **II. JUDICIAL APPEALS**

The filing of an appeal with the Board is not a prerequisite for the filing of a judicial appeal. Maine law generally allows aggrieved persons to appeal final license decisions to Maine's Superior Court (*see* [38 M.R.S. § 346\(1\)](#); [Chapter 2](#); [5 M.R.S. § 11001](#); and [M.R. Civ. P. 80C](#)). A judicial appeal by a party to the underlying proceeding 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 aggrieved 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), the Maine Administrative Procedure Act, statutes governing a particular license decision, and the Maine Rules of Civil Procedure for substantive and procedural details applicable to judicial appeals.

### **ADDITIONAL INFORMATION**

If you have questions or need additional information on the appeal procedure, for administrative appeals contact the Board Clerk at [clerk.bep@maine.gov](mailto:clerk.bep@maine.gov) or 207-287-2811 or the Board Executive Analyst at [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov) or 207-314-1458, or for judicial appeals contact the court clerk's office in which the appeal will be filed.

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**Note: This information sheet, in conjunction with a review of the statutory and rule provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal, and to comply with notice requirements of the Maine Administrative Procedure Act, 5 M.R.S. § 9061. This information sheet is not intended to supplant the parties' obligations to review and comply with all statutes and rules applicable to an appeal and insofar as there is any inconsistency between the information in this document and the applicable statutes and rules, the relevant statutes and rules apply.**

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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

CONSTRUCTION GENERAL PERMIT FOR	) MAINE POLLUTANT DISCHARGE
STORMWATER DISCHARGES FROM	) ELIMINATION SYSTEM
CONSTRUCTION ACTIVITY	)
STATE OF MAINE	) AND
#MEG100000	) MAINE WASTE DISCHARGE LICENSE
#W009256-5Y-B-R (APPROVAL)	) RENEWAL

Pursuant to the provisions of Federal law Title 33 USC, §1251, and Maine Law 38 M.R.S., Section 414-A et seq., and applicable regulations of the Maine Department of Environmental Protection (Department) has considered the renewal of Maine Pollutant Discharge Elimination System (MEPDES) General Permit (GP) #MEG100000/Maine Waste Discharge License #W009256-5Y-B-R, for a five year term with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

Pursuant to applicable laws and rules of the State's MEPDES program, the Department has developed a GP for discharge of stormwater from construction activity to surface waters of the State.

**REGULATORY SUMMARY**

On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. From that point forward, the program has been referred to as the MEPDES permit program. The terms and conditions of this GP are consistent with the requirements established in the MEPDES permit program.

**CONCLUSIONS**

Based on the findings in this GP, and subject to the terms and conditions listed in Parts I-VII of this GP and a list of required actions and corresponding schedules of compliance for each permit specific Department Order, the Department makes the following conclusions:

1. The discharge(s) covered under this GP, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge(s) covered under this GP, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, Maine law, 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 natural resource, that water quality will be maintained and protected;
  - (c) Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge(s) covered under this GP will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S. § 414-A(1)(D).

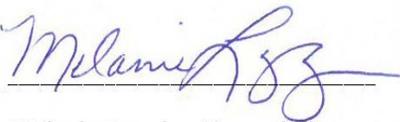
**ACTION**

Based on the findings and conclusions as stated above, the Department APPROVES the renewal of, *General Permit for Stormwater Discharges from Construction Activity*, MEG100000, for the discharge of stormwater from construction activity to surface waters of the State, SUBJECT TO THE ATTACHED CONDITIONS, including:

1. The attached conditions included as Part I-VII of this GP.
2. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits*, revised July 1, 2002, attached.
3. This GP becomes effective on January 14, 2025, and expires at midnight five (5) years after that date. If the GP is to be renewed, it will remain in force until the Department takes final action on the renewal. Persons wishing to obtain coverage under this GP must apply for coverage by way of the submission of a Notice of Intent (NOI).

DONE AND DATED AT AUGUSTA, MAINE, THIS 14TH DAY OF JANUARY 2025.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 

Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of Public Notice: March 17, 2024

This Order is prepared by Mark Stebbins, Bureau of Land Resources

MCGP Final Permit January 14, 2025

**STATE OF MAINE**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Maine Construction General Permit (MCGP)**

**Maine Pollutant Discharge Elimination System (MPDES)  
With Basic Performance Standards Appendices**



**GENERAL PERMIT -- CONSTRUCTION ACTIVITY**  
Maine Pollutant Discharge Elimination System

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**PART I -- General Permit Coverage**

**A. General coverage of this permit.** This general permit authorizes the direct discharge (point source discharge) of stormwater associated with construction activity to waters of the state other than groundwater, provided that the discharge meets the requirements of this general permit and applicable provisions of Maine's waste discharge and water classification statutes and rules. This general permit also authorizes the direct discharge of stormwater from support activities. "Construction activity" is defined in Part II (page 2).

To be covered under this general permit, you must be an operator of a construction site for which discharges will be covered under this permit.

This general permit is effective on January 14, 2025. This general permit applies in those parts of the State of Maine for which the Department has received delegated authority under the federal NPDES program. See Part V (page 12) for a list of specific limitations on coverage of this general permit.

**B. Authority.** A permit is required for the direct or indirect discharge of pollutants to waters of the State.<sup>1</sup> A general permit may be issued for point discharges (direct discharges) of stormwater.<sup>2</sup> A violation of a condition or requirement of a general permit constitutes a violation of Maine's water quality laws and the federal Clean Water Act, and subjects the discharger to penalties under 38 M.R.S. § 349, and § 309 of the Clean Water Act. Nothing in this general permit is intended to limit the Department's authority under the waste discharge and water classification statutes or rules. This general permit does not affect requirements under other applicable Maine statutes such as Site Location of Development Act (Site Law), Stormwater Management Law, Land Use Planning Commission (LUPC), and Natural Resources Protection Act (NRPA).

**C. Continuation of expired General Permit.** If this permit is not reissued, revoked or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative

<sup>1</sup> See 38 M.R.S. § 413.

<sup>2</sup> See 06-096 CMR 529(2)(a)(2)(i).

Procedures Act and remain in force and effect. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

1. Reissuance or replacement of this general permit, at which time the permittee must comply with the notice of intent conditions of the new permit to maintain authorization to discharge.
2. The permittee's submittal of a Notice of Termination.
3. Issuance of an individual permit for the permittee's discharges; or
4. A formal permit decision by the Department not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or individual permit.

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

## **PART II -- Definitions**

The following terms have the following meanings when used in this general permit. Additional definitions are found in 06-096 CMR 520 and in the waste discharge and classification laws.

**A. Construction activity.** "Construction activity" or "activity" means:

1. Construction activity including one acre or more of disturbed area, or activity with less than one acre of total land area that is part of a common plan of development or sale, if the common plan of development or sale will ultimately disturb equal to or greater than one acre; or
2. Any other construction activity designated by the Department based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.

Note: Based upon Maine's soils, topography, and extensive water resources, the Department has determined that the great majority of construction activities disturbing one acre or more will result in discernable concentrated flows (direct discharges) to waters of the state.

**B. Common plan of development or sale.** A "common plan of development or sale" means a subdivision as determined by the Land Use Planning Commission (LUPC), or a subdivision under municipal law as determined by the municipality where the subdivision is located.

**C. Department.** "Department" means the State of Maine Department of Environmental Protection.

**D. Direct discharge.** "Direct discharge" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.<sup>3</sup>

**E. Direct watershed of a waterbody or wetland.** "Direct watershed of a waterbody or wetland" is the land area that drains, via overland flow, natural or man-made drainage systems, or waterbodies or wetlands, to a given waterbody or wetland without first passing through an upstream waterbody classified as GPA.

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<sup>3</sup> 38 M.R.S. § 466(5) (definition of "direct discharge") and 06-096 CMR 520 (definition of "point source").

- F. Disturbed area.** "Disturbed area" is clearing, grading and excavation, which means all the land areas that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a project. "Disturbed area" does not include routine maintenance but does include redevelopment and new impervious areas. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving an impervious gravel surface while maintaining the original line and grade, hydraulic capacity and original purpose of the facility is considered *routine* maintenance. Cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "disturbed area". "Open disturbed area" refers to the disturbed areas of a project that have not been stabilized by temporary or permanent measures.
- G. Drainageway.** "Drainageway" is a natural or man-made channel or course within which and from which surface discharge of water may occur. Drainageways include, but are not limited to rivers, streams and brooks (whether intermittent or perennial), swales, ditches, pipes, culverts, and wetlands with localized discharge of water.
- H. Elevated erosion risk subcatchment.** An "elevated erosion risk subcatchment" is a subcatchment that has a soil erosion factor ( $K_w$ ) equal to or greater than 0.37 and an average slope equal to or greater than 5%.
- I. Emergency-related construction activities.** "Emergency-related construction activities" are earth-disturbing activities associated with a project initiated in response to a public emergency (e.g. natural disaster, widespread disruption of essential public services), for which the related work requires immediate authorization to avoid imminent endangerment to human health or the environment, or to reestablish essential public services.
- J. Impaired waterbody.** An "impaired waterbody" means a waterbody that is not attaining water quality criteria or standards, as determined by the Department, and listed in Chapter 502.<sup>4</sup>
- 1. Best currently available data.** The Department may use the best currently available data to determine the status of a waterbody, rather than relying upon the list published in Chapter 502, Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams, when the activity itself may have caused or contributed to the impairment, or when the Department reviews an application for a permit such as an individual Waste Discharge license or Site Law permit.
- K. Impervious area.** "Impervious area" means the total area of a parcel covered with a low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater.
- L. Large construction activity.** "Large construction activity" results in a disturbed area equal to or greater than five acres. An activity that results in less than five acres but is a part of a larger common development or sale that will ultimately result in five or more acres of disturbed area is also a "large construction activity". Large construction activity does not include routine maintenance.

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<sup>4</sup> See 06-096 CMR 502.

**M. Notice of Intent ("NOI").** "Notice of Intent" or "NOI" means a notification of intent to seek coverage under this general permit made by the applicant to the Department on a notification form provided by the Department.

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

**O. Operator.** "Operator" means any party that has day-to-day operational control of the activities at a project that are necessary to ensure compliance with the permit conditions.

Subcontractors generally are not considered operators for the purposes of this permit.

**P. Person.** "Person" means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency, or other legal entity.<sup>5</sup>

**Q. Resident Inspector.** "Resident Inspector" means a qualified individual representing the operator on the activity site who has a valid Department certification in erosion control practices, or an equivalent certification accepted by the Department.

**R. Stormwater.** "Stormwater" means the part of precipitation, including runoff from rain or melting ice and snow that flows across the surface as sheet flow, shallow concentrated flow, or in drainageways. "Stormwater" has the same meaning as "storm water".

**S. Stormwater Pollution Prevention Plan ("SWPPP").** "SWPPP" is a site-specific written document that, among other things: (1) identifies potential sources of stormwater pollution at the construction site; (2) describes stormwater controls to reduce or eliminate pollutants in stormwater discharges from the construction site; and (3) identifies procedures the operator will implement to comply with the terms and conditions of this general permit.

**T. Stream.** "Stream" means a river, stream or brook as defined in the Natural Resources Protection Act at 38 M.R.S. § 480-B.

**U. Subcatchment.** "Subcatchment" means an activity area that drains into a specific point.

**V. Support activities.** "Support activities" means support activities associated with a construction activity (e.g., concrete or asphalt batch plants, equipment storage yards, material storage areas, excavated material disposal areas, borrow areas) provided the following requirements are met.

**1. Direct relationship.** The support activity is directly related to a construction site that requires a waste discharge permit coverage for discharges of storm water associated with construction activity.

**2. Type of operation.** The support activity is not a commercial operation serving multiple unrelated construction projects by different persons and does not operate beyond the completion of the construction activity at the last construction project it supports.

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<sup>5</sup> See 38 M.R.S. § 361-A(4).

### **PART III -- Requirements**

A person may not construct or cause to be constructed or operate or cause to be operated or, in the case of a common plan of development or sale (subdivision), sell or lease, offer for sale or lease or cause lease or cause to be sold or leased any area affected by construction activity without obtaining approval from the Department. A person who has an interest in or undertakes an activity on a parcel of land affected by this general permit may not act contrary to this general permit.

- A. Construction activity.** A construction activity, as defined in Part II (A), must meet the following requirements.
1. Submit NOI for obtaining coverage under this general permit.
  2. Submit a SWPPP meeting the standards in Appendices A-D of this general permit.
  3. Submit NOT for terminating coverage under this general permit.
- B. SWPPP.** Material submitted with an application for a Site Law or Stormwater Management Law permit may be referenced to the extent it substantively addresses the standards in Appendices A through D. If all the standards are not addressed, supplementary material must be provided with the NOI. If an applicant wishes the Department to rely in whole or part on a submission that is part of a Site Law or Stormwater Management Law application, the applicant should submit a letter with the NOI describing the previous submission and the extent to which it should be relied upon, and listing the standards addressed by any supplementary material.

All erosion and sedimentation control (ESC) and stormwater pollution prevention measures must be designed in accordance with good engineering practices, including applicable design specifications. Design specifications may be found in manufacturer specifications, and/or the Department's ESC Best Management Practices (BMPs) manual.

The Stormwater Pollution Prevention Plan must be prepared by a professional who has a valid Department certification in erosion control practices, or an equivalent certification accepted by the Department.

- C. Total maximum daily load (TMDL).** If the activity discharges to an impaired waterbody which has an EPA approved TMDL, then the discharge must be consistent with any waste load allocation (WLA) contained in the TMDL and any implementation plan.

### **PART IV – Procedure**

- A. Obtaining Coverage.** An operator seeking coverage under the general permit must submit an NOI and other information for the Department's review and approval. Also, if the activity is located in Essential Habitat, approval from the Department of Inland Fisheries and Wildlife (IF&W) must also be submitted. The operator agrees to comply with the standards and requirements of this general permit through submitting the NOI.
1. **Submittals.** The items listed in this subsection (Part IV (A)(1)) must be submitted to obtain coverage under the general permit:

- a. NOI Form.** The operator must provide the following information in the NOI form provided by the Department. The Department may update the form and require additional information if necessary.
- i.** The legal name, address, telephone number, and any email address of the landowner or leasehold owner.
  - ii.** The legal name, address, telephone number, and any email address of the operator.
  - iii.** Address of the activity parcel (if applicable).
  - iv.** A narrative describing in detail how to get to and access the parcel and construction activities, and a USGS or similar map with the location marked.
  - v.** A narrative describing the project and its purpose.
  - vi.** Anticipated construction begin date.
  - vii.** UTM Northing and UTM Easting (if known).
  - viii.** Total disturbed area proposed.
  - ix.** Name of the receiving water(s) or if the discharge is through a municipal separate storm sewer system, the name of the municipal operator of the storm sewer.
  - x.** Signature of applicant (operator) or authorized representative with documentation showing authorization. For signatory requirements, see 06-096 CMR 521(5).
- b. IF&W Approval.** For any construction activity occurring within an Essential Habitat or that may violate protection guidelines, written approval of the activity from the Department of Inland Fisheries and Wildlife (IF&W). The applicant must follow any conditions stated in the IF&W approval.<sup>6</sup>

Note: Maps showing areas of essential habitat are available from the Department of Inland Fisheries and Wildlife regional headquarters, municipal offices, the Land Use Planning Commission (or areas within 'LUPC's jurisdiction) and DEP website. If the activity is located in Essential Habitat, IF&W must be contacted to request and obtain a "certification of review and approval."

- c. Location map.** A 7.5-minute USGS topographic map or an equivalent map showing the site's location and approximate property boundaries if the size of the parcel and scale of the map allows it. A USGS topographic map can be useful for showing the general contour and topography of the project site.
- d. Photos.** Provide photographs of the project site that show the existing character and topography of the area proposed for development.
- e. SWPPP.** SWPPP must consist of the following:
- i. Site plan.** The site plan must be scaled and show, at a minimum, the locations of structures and roads, the extent of disturbed land, pre-construction site topography, post-construction site topography, on-site and adjacent surface waterbodies. Identify protected natural resources, such as wetlands, streams, significant wildlife habitats, or high-water line of ponds or coastal wetlands on the site plan. It is not necessary to have the plan professionally prepared except for the large construction activities. The plan must be legible and drawn to a scale that allows clear representation of distances and measurements on it.

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<sup>6</sup> A state agency may not license a project that will significantly alter habitat of any species designated as threatened or endangered, or violate protection guidelines, without a determination from IF&W. See 12 M.R.S. § 7755-A.

An applicant may substitute the following information for surveyed pre-development and post-development site topography on the location plans except for the large construction activities:

- (a) The locations of high points on the site,
- (b) The locations of any ponds or other runoff storage depressions on the site,
- (c) The locations and flow direction of any drainage ditches, brooks, or streams,
- (d) The locations of any catch basin inlets or culvert inlets, and
- (e) Arrows showing the general direction(s) of overland drainage for the site.

**ii. Erosion and Sedimentation Control.** The plan must address the ESC requirements described in Appendix A. At a minimum, the following ESC information must be provided in the plan:

- (a) **Location plan.** A scaled plan showing the location of all ESC measures to be used on the site. Such measures include, but are not limited to, sedimentation barriers, temporary sediment basins, ditch lining, rip rap, and culvert inlet and outlet designs. Identify retained down gradient buffers or explain in a narrative why such buffers will not be retained (see Pollution Prevention standard, Appendix A (1)). Identify the location of any temporary access roads.
- (b) **ESC notes.** ESC notes must include, but are not limited to, permanent stabilization measures, seeding and mulching rates, and a construction schedule for clearing, grubbing, major earth moving and other construction events.
- (c) **Construction and installation details.** Construction and installation details of the ESC measures proposed to be used. Include cross-sectional details for new access roads and temporary roads that will be reconstructed.

**iii. Inspection and Maintenance.** The plan must address the inspection and maintenance requirements described in Appendix B and contain, at a minimum, the following information:

- (a) **List of measures.** Submit a list of all erosion and sedimentation control, stormwater management measures to be inspected and maintained during the activity site is covered under the general permit.
- (b) **Inspection and maintenance tasks.** Submit a list of inspection and maintenance tasks specific to each erosion control measure or stormwater management measure. Submit the specific qualifications of the person performing each task.
- (c) **Task frequency.** Indicate the required frequency of each inspection and maintenance task.
- (d) **Responsible parties.** Submit the name, job title, employer, employer address, phone number, and current email contact information for the person responsible for ensuring that inspection and maintenance tasks are completed. Submit the names, job titles, employer addresses, phone number, and any current email contact information of the engineers or other design professionals who designed the erosion control measures and stormwater management measures for the site. Include suppliers of proprietary erosion control measures or proprietary stormwater management measures used on the site.

**iv. Housekeeping.** Housekeeping requirements are described in Appendix C. Submit a plan to address spill prevention, groundwater protection, fugitive sediment and dust, debris

and other materials, trench or foundation de-watering, or non-stormwater discharges, as applicable to the specific site.

- v. **Large Construction Activities.** Submit the following information in SWPPP addressing the requirements described in Appendix D:
  - (a) **Civil construction sequence.** A scaled plan sheet delineating areas to be disturbed in sequence.
  - (b) **Setback lines.** Show 50-ft setback line from the downgradient abutting parcels, and 100-ft setback line from the downgradient protected natural resources in the site plan.
  - (c) **Temporary sediment basin.** If applicable, temporary sediment basins shall be shown along with their contributing drainage areas in the location plan. The basin details shall be provided.
  - (d) **Stump dump.** If applicable, the approximate location of stump storage areas shall be shown in the location plan.
  - (e) **Elevated erosion risk (EER) subcatchments.** If applicable, any EER subcatchments shall be shown in the location plan.
  - (f) **ESC notes.** If applicable, the following shall be provided:
    - (1) Temporary sediment basin sizing calculations.
    - (2) Narrative evaluating the condition of the existing dirt/gravel roads to be used by construction traffic.
    - (3) Narrative evaluating the ESC challenges and opportunities posed by the site soils (e.g., HSG D à marginal soils, HSG A & B à can be utilized for construction runoff and sediment control).
    - (4) Erosion Risk Assessment (ERA) data and narrative.
    - (5) Additional controls that apply to EER watersheds.
- 2. **Processing of NOI.** An NOI and accompanying submittals (Part IV (A)(1)) must be reviewed and approved by the Department prior to construction activity except for emergency-related construction activities or as provided in Part IV (K).

For emergency-related construction activities, a complete NOI must be submitted within 30 calendar days after commencing earth-disturbing activities. The NOI must provide documentation to substantiate the occurrence of a public emergency.

The NOI is deemed approved 14 calendar days after the Department receives the NOI, unless the Department approves the NOI or finds the NOI deficient prior to that date. Within the 14-day period, the Department may notify the applicant in writing or through verbal communication that the project is ineligible for coverage under this general permit, or that additional information is needed, or further review is required. If the DEP does not inform the applicant that the NOI is unacceptable within this 14-day period, the NOI is deemed accepted by the Department and the applicant may proceed to carry out the activity.

The Department may consolidate the NOI materials filed for an activity that also requires review under other programs (Part VI). When application materials are consolidated, the review period for the NOI is extended to coincide with the longest processing time associated with the other applications or program.

**B. Terminating Coverage.** The operator shall submit a Notice of Termination (NOT) on a form provided by the Department within 30 days of the completion of permanent stabilization or within 30 days of obtaining coverage under an alternative MEPDES permit.

**1. Common plan of development or sale.** A person who has filed an NOI for a common plan of development or sale shall file an NOT as follows:

- a.** For areas of the site over which the developer has control, the NOT must be filed after permanent stabilization has been completed.
- b.** For areas of the site over which the developer does not have control (ex. lots sold in an undeveloped or partially undeveloped state), the NOT must be filed after (i) temporary stabilization including perimeter controls for individual lots have been completed if the developer has done prep work (stripping or grading) on the lots, (ii) the developer has informed the lot buyers of the requirements of this general permit, and (iii) the developer has provided the buyers with copies of any erosion control plan, or portion of a plan applicable to the lots, required to be certified or provided to the Department under the requirements of this general permit.

A buyer of a lot within a common plan of development or sale is required to meet the standards of this general permit, except that residential lot buyers are not required to maintain inspection logs as provided in Appendix B(3).

**2. Timing.** A permittee's authorization to discharge under this permit terminates at midnight on the day the NOT is signed.

**3. Submission.** The NOT must include the minimum information given below. For a permanently stabilized project, the Department can specify additional materials to be submitted with the NOT demonstrating compliance with the conditions of the licenses and permits issued for the project by other programs, including but not limited to, the Stormwater Management Law and Site Law.

- a.** The legal name, address, telephone number, and any email address of the landowner or leasehold owner.
- b.** The legal name, address, telephone number, and any email address of the operator.
- c.** Photographs showing the completed project and the affected area. Exception: a person filing a NOT for a common plan of development is not required to include photographs of disturbed areas created by lot buyers or lessees.
- d.** Signature of the permittee or authorized person together with documentation demonstrating authorization. If documentation has been previously submitted and is still current, it may be referenced.

**G. Submitting forms/materials.** The notification forms must be electronically submitted to the DEP by email. Refer to the DEP website (<https://www.maine.gov/dep/land/permits/pbr/index.html>) for additional information on filing an electronic permit application.

**H. Retention of records**

1. **Documents.** The permittee shall retain copies of the SWPPP, and any forms, submissions, reports, or other materials required by this general permit for a period of at least three years from the completion of permanent stabilization. This period may be extended at the request of the Department.
2. **Accessibility.** Employees and agents of the Department may enter any property at reasonable hours in order to determine compliance.<sup>7</sup> The permittee shall retain a copy of the SWPPP and this general permit at the construction site or other location accessible to the Department, local government officials, and any operator of a municipal separate stormwater sewer receiving discharges from the site, from project initiation to permanent stabilization. The permittee shall ensure that a copy of the SWPPP and this general permit are available for the use of any contractors on the site undertaking work regulated by this general permit.

- I. Changes in the activity or operator.** Coverage under this general permit will be continued provided there are no changes in the discharge as described in the NOI and associated submissions. If any changes are proposed in the activity, the person having filed the NOI must notify the Department through the submission of updated information in writing; including submitting or obtaining certification for any revisions to a SWPPP required in Part III.

The updated information must be submitted with a new NOI if the permittee proposes to expand or relocate disturbed area of one acre or more beyond what was indicated in the original NOI, or to change the waterbody to which the stormwater will be discharged. Information concerning other changes may be submitted in a letter.

If the operator of the land changes, the new operator must file an NOI to continue coverage under this general permit within 30 days. Materials submitted with an NOI by a prior operator may be referenced if they are still current. Exception: a lot buyer or subsequent transferee of a lot within a common plan of development or sale is not required to file an NOI unless they propose a construction activity as defined in Part II (A).

- J. Request to be excluded.** A person may request that an activity be excluded from coverage under this general permit and apply for an individual waste discharge permit pursuant to the Department's rules. When an individual permit is issued to a person otherwise subject to this general permit, the applicability of this general permit to that person is automatically terminated on the effective date of the individual permit.

**K. Effect of prior approvals**

1. **Construction activity including one acre or more of disturbed areas.** This subsection applies for the purpose of determining jurisdiction under the "one acre" threshold only.
  - a. Persons disturbing less than 5 acres. A person with on-going construction activity as of January 14, 2025, who received authorization to discharge under a prior MCGP(s) and whose activity includes less than 5 acres of disturbed area and, that have not submitted a NOT shall submit a new NOI prior to or on March 14, 2025. The new NOI may reference information in prior NOI submissions to the extent it is still current.
  - b. Persons disturbing 5 or more acres. A person with on-going construction activity as of January 14, 2025, who received authorization to discharge for the activity under a prior MCGP(s) and

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<sup>7</sup> See 38 M.R.S. § 347-C (in part).

have or will disturb five or more acres shall submit a new NOI prior to or on April 14, 2025. The new NOI may reference information in prior NOI submissions to the extent it is still current, and Appendix D requirements do not apply.

2. **Common plan of development or sale.** This subsection applies for the purpose of determining jurisdiction under the "common plan of development or sale" threshold only.

A common plan of development or sale (subdivision) is not required to meet the requirements of this general permit if it received approval from LUPC or the municipality where it is located before

- a. If a subdivision that received municipal or LUPC approval prior to January 14, 2025, is modified on or after the effective date of this permit so as to add three or more subdivision lots as determined by LUPC or the municipality, this general permit applies to those lots and their associated facilities as provided in Part III.
- b. If a subdivision receives approval on or after January 14, 2025, then this general permit does not apply to lots transferred before January 10, 2025.

Note: A person subdividing land must still file a NOI if they undertake construction activity on the parcel that includes one or more acres of disturbed area, as provided in Part III (A). Examples of such activity would be road or pad construction or stripping and grading. A single NOI may be filed for both the common plan of development or sale, and this disturbed area.

## **PART V -- Limitations on Coverage**

- A. **Individual permits or other general permits.** This general permit does not authorize a stormwater discharge associated with construction activity that requires an individual waste discharge permit or is required to obtain coverage under another waste discharge general permit. See Part VI (A) for information on related waste discharge permits.

The Department may require any person with a discharge authorized by this general permit to apply for and obtain an individual permit.<sup>8</sup> When the DEP notifies an applicant that an individual permit is required, no work may begin or continue unless and until the individual permit is obtained. Any interested person may petition the Department to act under this paragraph. Examples of when an individual waste discharge permit may be required are specified in rule.<sup>9</sup>

- B. **Compliance with this general permit.** This general permit does not authorize a stormwater discharge that is not in compliance with the requirements of this general permit. If the Department determines that the standards of this general permit have not been met, the Department shall notify the person and may:
  1. Authorize coverage under this general permit after appropriate controls and implementation procedures designed to bring the discharge into compliance with this general permit and water quality standards have been implemented as determined by the Department.
  2. Require an individual waste discharge permit; or

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<sup>8</sup> See 06-096 CMR 529(2)(B)(3).

<sup>9</sup> 06-096 CMR 529(2)(B)(3).

3. Inform the person that the discharge is prohibited.

Compliance with this subparagraph does not preclude any enforcement activity under Maine law for an underlying violation.

- C. **Non-stormwater.** This general permit does not authorize a discharge that is mixed with a source of non-stormwater, other than those discharges in compliance with Appendix C.
- D. **Total maximum daily load (TMDL).** This general permit does not authorize a direct discharge that is inconsistent with any EPA approved TMDL for the waterbody to which the direct discharge drains.
- E. **Discharge of hazardous substances, chemicals, or oil.** This general permit does not authorize the discharge of hazardous substances, chemicals, or oil resulting from an on-site spill.
- F. **Violation of water quality standards.** This general permit does not authorize a discharge that may cause or contribute to a violation of a water quality standard.
- G. **Related laws.** This general permit does not authorize stormwater discharges that are not in conformance with the terms and conditions of permits issued under: Site Location of Development Act, 38 M.R.S. §§ 481-490; Stormwater Management Law, 38 M.R.S. § 420-D; Natural Resources Protection Act, 38 M.R.S. §§ 480-A - 480-Z; or by the Land Use Regulation Commission §§ 481 et. seq. This general permit does not authorize stormwater discharges that are not in conformance with the Maine Erosion and Sedimentation Control Law, 38 M.R.S. § 420-C.
- H. **Post-construction discharges.** This general permit does not authorize stormwater discharges after the completion of permanent stabilization.
- I. **Metallic mineral mining or advanced exploration.** This general permit does not authorize discharges from metallic mineral mining or advanced exploration. Stormwater and erosion and sedimentation standards related to construction are specified in the Maine Metallic Mineral Mining Act and, if required, an individual waste discharge permit.
- J. **Exemptions.** Certain exemptions apply and are specified in the Maine Waste Discharge Law. An exemption in a Maine law other than the Maine Waste Discharge Law, such as the Site Law or Maine Stormwater Management Law, does not create an exemption to the Maine Waste Discharge Law or the requirements of this general permit. Each law has its own set of statutory exemptions.
- K. **Reopener.** This general permit may be modified or reopened as provided in 38 M.R.S. § 414-A (5).

## Part VI -- Relationship with other programs

An activity may include "construction activity" and also be regulated under other programs.

### A. Related waste discharge permits

1. **Multi-sector.** A stormwater discharge requiring approval as an industrial activity other than 06-096 CMR 521(b) (14) (x) is not authorized under this general permit.

2. **Waste discharge permit (surface water).** A waste discharge permit may be required for activities such as combined sewer overflows (CSOs), spray irrigation, process water treatment systems, metallic mine drainage, and other discharges inadequately covered by this general permit, as determined by the Department.
3. **Waste discharge permit (groundwater).** A waste discharge permit may be required for the discharge of stormwater through any well or wells, including drywells and subsurface fluid distribution systems. For complete requirements, see 06-096 CMR 543.

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

4. **Long Creek Watershed.** A person undertaking construction activity in the watershed of Long Creek in the municipalities of South Portland, Westbrook, Portland or Scarborough, within 6 months of creating one acre or more of impervious area, must either join the Participating Landowner Agreement with the Long Creek Watershed Management District, or must file for individual permit coverage for both construction and post-construction activity, complying with the requirements of 06-096 CMR 521, Applications for Waste Discharge Licenses.

**B. Quarry or an excavation for borrow, clay, topsoil, or silt.** Clearing, grading or excavation activities conducted as part of the exploration and construction phase of a borrow pit or quarry operation must meet the requirements of this general permit, if they will result in the direct discharge of stormwater to waters of the state other than groundwater and will disturb one or more acres of land. These requirements do not apply to an area that is internally drained. Construction activity includes the building of site access roads and removal of overburden and waste rock to expose mineable materials. If the activity must meet the requirements of this general permit, the following exceptions apply.

1. **Stabilization deadlines.** The 14-day time limit for temporary stabilization in Appendix A (4), and the one-year time limit for permanent stabilization in Appendix A (6) do not apply.
2. **If under the Gravel Pit or Quarry Program - may need to do a SWPPP.** If the clearing, grading, or excavation activity subject to this general permit is also required to meet the Performance Standards for Excavations for Borrow, Clay, Topsoil or Silt,<sup>10</sup> or Performance Standards for Quarries<sup>11</sup>, then the operator does not have to meet the requirements specified in Part III of this general permit, except for the SWPPP requirements given in Appendix A through C.

In some cases, an area that is not internally drained initially may become internally drained during construction. For an area that has become internally drained, it is not necessary to undertake stabilization as otherwise required under this general permit before filing the NOT.

**C. Other programs such as Site Law, Stormwater, and Waste.** Activities that require a permit under Site Law or Storm Water Management Law may not proceed until any required permit under those laws is obtained.

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<sup>10</sup> 38 M.R.S. §§ 490-A et. seq.

<sup>11</sup> 38 M.R.S. §§ 490-W et. seq.

The Department may combine application requirements for this general permit and other programs administered by the Department. Other programs may include facilities and projects regulated pursuant to programs such as 38 M.R.S. § 1310-N (Solid waste facility licenses), 1319-R (facility siting), 1319-X (criteria for development of waste oil facilities and biomedical facilities), 38 M.R.S. § 483-A (Site Law), 38 M.R.S. 420-D (Stormwater Management Law), and 12 M.R.S. § 685-A (LUPC). In case of a conflict between the standards in Appendix A, B, C and D and those adopted pursuant to any of these laws, the stricter standard applies, as determined by the Department. The review period for the NOI may be extended as provided in Part IV (A)(2). The Department may waive the fee required with the NOI pursuant to this general permit for certain combined applications.

- D. Silvicultural activities.** Authorization under this general permit is not required for non-point silvicultural activities as provided in 06-096 CMR 521(10).
- E. Maine Department of Transportation and Maine Turnpike Authority.** Construction activities conducted by or under the supervision of the Maine Department of Transportation (MaineDOT) or the Maine Turnpike Authority (MTA) pursuant to a Memorandum of Agreement between the Department, MaineDOT and MTA, are authorized under this general permit within the limits of coverage specified in this general permit. MaineDOT and MTA are considered qualifying state programs as provided in 40 CFR 122.44(s).

## **PART VII -- Standard Conditions**

- A. General restrictions.** A discharge covered by a General Permit may not:
1. Contain any pollutant, including toxic substances, in quantities or concentrations, which may cause or contribute to any adverse impact on the receiving water.
  2. Be to a receiving water which is not meeting its classification standard for any characteristic which may be affected by the discharge; or
  3. Impart color, taste, turbidity, radioactivity, settleable materials, floating substances or other properties that cause the receiving water to be unsuitable for the designated uses ascribed to its classification.
- B. Removed substances.** Pollutants removed or resulting from the treatment of wastewaters must be disposed of in a manner approved by the Department.
- C. Monitoring requirement.** The Department may require monitoring of an individual discharge as may be reasonably necessary in order to characterize the nature, volume or other attributes of that discharge or its sources.
- D. Other information.** When the permittee becomes aware that they failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Department, they shall promptly submit such facts or information.
- E. Other applicable conditions.** The conditions in 06-096 CMR 523(2) also apply to discharges pursuant to this general permit<sup>12</sup> and are incorporated herein as if fully set forth. These conditions address areas such as: duty to comply; need to reduce or halt activity not a defense; duty to mitigate; permit actions; property rights; duty to provide information; and inspection and entry.

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<sup>12</sup> See 06-096 CMR 529(3)(i).

- F. Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of 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.
- G. Duty to reapply.** If the permittee wishes to continue an activity regulated by this general permit after the expiration date of this general permit, the permittee must apply for and obtain a new permit.
- H. Severability.** The conditions of this general permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

**APPENDICES -- BASIC PERFORMANCE STANDARDS**

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**APPENDIX A. Erosion and sedimentation control**

A person who conducts, or causes to be conducted, an activity that involves filling, displacing, or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource as defined in 38 M.R.S. § 480-B. Erosion control measures must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken.

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**NOTE:** The site must be maintained to prevent unreasonable erosion and sedimentation. See 38 M.R.S. § 420-C (in part). A license is required for any stormwater discharge that the department "determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State". 06-096 CMR 521(9)(a)(1)(v)(in part).

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**NOTE:** The Department has prepared protocols for the control of erosion and sedimentation. See "Maine Erosion and Sediment Control BMPs Maine Department of Environmental Protection."

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- 1. Pollution prevention.** Minimize disturbed areas and protect natural downgradient buffer areas to the extent practicable. Control stormwater volume and velocity within the site to minimize soil erosion. Minimize the disturbance of steep slopes. Control stormwater discharges, including both peak flow rates and volume, to minimize erosion at outlets. The discharge may not result in erosion of any open drainage channels, swales, stream channels or stream banks, upland, or coastal or freshwater wetlands off the project site.
  - a. Buffers.** Whenever practicable, no disturbance activities should take place within 50 feet of any protected natural resource. If disturbance activities take within 50 feet of any protected natural resource, and stormwater discharges through the disturbed areas toward the protected natural resource, perimeter sediment controls must be doubled.

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**NOTE:** Buffers improve water quality by helping to filter pollutants in run-off both during and after construction. Minimizing disturbed areas through phasing limits the amount of exposed soil on the site through retention of natural cover and by retiring areas as permanently stabilized. Less exposed soil results in fewer erosion controls to install and maintain. If work within an area is not expected to begin within two weeks' time, consider leaving the area in its naturally existing cover.

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**NOTE:** Many construction activities within 75 feet of a protected natural resource require a permit under the *Natural Resources Protection Act* prior to initiation. For more information regarding the applicability of the NRPA to your project, you can visit the Department's website at <http://www.maine.gov/dep/land/nrpa/index.html> or contact staff of the Division of Land Resource Regulation at the nearest regional office.

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2. **Preserve native topsoil, unless infeasible.** Topsoil which is stripped or removed must be stockpiled for use in reclaiming disturbed land areas. Soil stockpiles shall be seeded, mulched, or otherwise stabilized. Preserving native topsoil is not required where the intended function of a specific area of the site dictates that the topsoil is disturbed or removed.
3. **Minimize soil compaction.** In areas of your site where final vegetative stabilization will occur or where infiltration practices will be installed, restrict vehicle and equipment use. In these locations, avoid soil compaction and use techniques that rehabilitate and condition the soils as necessary to support vegetative growth.
4. **High Infiltration Capacity Soils.** To the extent practicable:
  - a. Hydrologic Soil Group (HSG) A and B soils must not be disturbed,
  - b. Stormwater must be directed to low-lying areas and depressions with HSG A and B soils,
  - c. Temporary sediment traps and basins must be installed over HSG A and B soils
5. **Sediment barriers.** Prior to soil disturbance, properly install sediment barriers at the downgradient edge of any area to be disturbed and adjacent to any drainage channels within the disturbed area. Sediment barriers should be installed downgradient of soil or sediment stockpiles and stormwater prevented from running onto the stockpile. Maintain the sediment barriers by removing accumulated sediment, or removing and replacing the barrier, until the disturbed area is permanently stabilized. Where a discharge to a storm drain inlet occurs, if the storm drain carries water directly to a surface water and you have authority to access the storm drain inlet, you must install and maintain protection measures that remove sediment from the discharge.
6. **Stabilized construction entrance.** Prior to construction, properly install a stabilized construction entrance (SCE) at all points of egress from the site. The SCE is a stabilized pad of aggregate underlain by a geotextile filter fabric or an equivalent measure used to prevent traffic from tracking material away from the site onto public right-of-way. Maintain the SCE until all disturbed areas are stabilized.
7. **Temporary sediment basins.** Temporary sediment basins must be designed to provide storage for either the calculated runoff from a 2-year, 24-hour storm or provide for 3,600 cubic feet of capacity per acre draining to the basin. Erosion controls and velocity dissipation devices must be used if the discharging waters are likely to create erosion. Accumulated sediment must be removed as needed from the basin to maintain at least ½ of the design capacity of the basin.
  - a. Utilize surface outlets. To the maximum extent practicable, outlet structures must be utilized to withdraw water from the surface of temporary sedimentation basins, in order to minimize the discharge of pollutants. Exceptions may include periods of extended cold weather, where alternate outlets are required during frozen periods. If such a device is infeasible for portions of or the entire construction period, justification must be made.
8. **Cationic treatment chemicals.** If you plan to use cationic treatment chemicals, such as polymers, flocculants, or other chemicals that contain an overall positive charge designed to reduce turbidity in stormwater, you are ineligible for coverage under this general permit unless you notify the Department in advance and the Department authorizes the use. When requesting approval to use cationic treatment chemicals, you must describe appropriate controls and implementation procedures to ensure the use will not lead to a violation of water quality standards. In addition, you must specify the type(s) of soil likely to be treated on the site,

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chemicals to be used and how they are to be applied and in what quantity, any manufacturer's recommendations, and any training had by personnel who will handle and apply the chemicals.

9. **Temporary stabilization.** Stabilize any exposed soil with mulch, or other non-erodible cover within 7 days of the temporary cessation of construction activities. Stabilize areas within 75 feet of a downgradient protected natural resource within 48 hours of the initial disturbance of the soil or prior to any storm event, whichever comes first.
10. **Removal of temporary measures.** Remove any temporary control measures, such as silt fence, within 30 days after permanent stabilization is attained. Remove any accumulated sediments and stabilize.

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**NOTE:** It is recommended that silt fences be removed by cutting the fence materials at ground level to avoid additional soil disturbance.

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11. **Permanent stabilization.** If the area will not be worked for more than one year or has been brought to final grade, then permanently stabilize the area within 7 days by planting vegetation, seeding, sod, or through the use of permanent mulch, or riprap, or road sub-base. If using vegetation for stabilization, select the proper vegetation for the light, moisture, and soil conditions; amend areas of disturbed subsoils with topsoil, compost, or fertilizers; protect seeded areas with mulch or, if necessary, erosion control blankets; and schedule sodding, planting, and seeding so to avoid die-off from summer drought and fall frosts. Newly seeded or sodded areas must be protected from vehicle traffic, excessive pedestrian traffic, and concentrated runoff until the vegetation is well-established. If necessary, areas must be reworked and restabilized if germination is sparse, plant coverage is spotty, or topsoil erosion is evident. One or more of the following may apply to a particular site.
  - a. **Seeded areas.** For seeded areas, permanent stabilization means a 90% cover of the disturbed area with mature, healthy plants with no evidence of washing or riling of the topsoil.
  - b. **Sodded areas.** For sodded areas, permanent stabilization means the complete binding of the sod roots into the underlying soil with no slumping of the sod or die-off.
  - c. **Permanent Mulch.** For mulched areas, permanent mulching means total coverage of the exposed area with approved mulch material. Erosion Control Mix may be used as mulch for permanent stabilization according to the approved application rates and limitations.
  - d. **Riprap.** For areas stabilized with riprap, permanent stabilization means that slopes stabilized with riprap have an appropriate backing of a well-graded gravel or approved geotextile to prevent soil movement from behind the riprap. Stone must be sized appropriately. It is recommended that angular stone be used.
  - e. **Agricultural use.** For construction projects on land used for agricultural purposes (e.g., pipelines across crop land), permanent stabilization may be accomplished by returning the disturbed land to agricultural use.
  - f. **Paved areas.** For paved areas, permanent stabilization means the placement of the compacted gravel subbase is completed.
  - g. **Ditches, channels, and swales.** For open channels, permanent stabilization means the channel is stabilized with mature vegetation at least three inches in height, with well-graded

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riprap lining, or with another non-erosive lining capable of withstanding the anticipated flow velocities and flow depths without reliance on check dams to slow flow. There must be no evidence of slumping of the lining, undercutting of the banks, or downcutting of the channel.

**12. Winter Construction.** "Winter construction" is construction activity performed during the period from November 1 through April 15, or outside of the said period if the ground is frozen or snow covered. If areas within the construction activity are not stabilized with temporary or permanent measures outlined above by November 15, then the site must be protected with additional stabilization measures that are specific to winter conditions.

- a. Site Stabilization.** For winter stabilization, hay mulch is applied at twice the standard temporary stabilization rate. At the end of each construction day, areas that have been brought to final grade must be stabilized. Mulch may not be spread on top of snow.
- b. Sediment Barriers.** All areas within 75 feet of a protected natural resource must be protected with a double row of sediment barriers.
- c. Ditch.** All vegetated ditch lines that have not been stabilized by November 1, or will be worked during the winter construction period, must be stabilized with an appropriate stone lining backed by an appropriate gravel bed or geotextile unless specifically released from this standard by the department.
- d. Slopes.** Mulch netting must be used to anchor mulch on all slopes greater than 8% unless erosion control blankets or erosion control mix is being used on these slopes.

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**NOTE:** The Department has prepared protocols for the control of erosion and sedimentation during the winter months. See "Maine Erosion and Sediment Control BMPs Maine Department of Environmental Protection."

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**13. Laydown & Staging Areas.** This section applies to the projects which will use areas within a project's limit of disturbance for material laydown and staging.

- a.** Upland areas must be selected for laydown and staging to the extent practicable,
- b.** Use of wet areas (e.g., minor depressions along drainageways) hydraulically connected to downgradient protected natural resources and/or parcel must be justified using specific site or operational limitations. Temporary structures (e.g., swales, dikes) must be provided to intercept upgradient stormwater and divert it away from these laydown and staging areas,
- c.** Provide stormwater quality treatment in compliance with the applicable Chapter 500 standard for the areas which will be used for more than 12 months.

**14. Parking areas.** Parking areas must be constructed to ensure runoff is delivered to adjacent swales, catch basins, curb gutters, or buffer areas without eroding areas downslope. The parking area's subbase compaction and grading must be done to ensure runoff is evenly distributed to adjacent buffers or side slopes. Catch basins must be located and set to provide enough storage depth at the inlet so to allow inflow of peak runoff rates without by-pass of runoff to other areas.

**15. Roads.** Gravel and paved roads must be designed and constructed with crowns or other measures, such as water bars, to ensure that stormwater is delivered immediately to adjacent stable ditches, vegetated buffer areas, catch basin inlets, or street gutters.

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**NOTE:** (1) Gravel and paved roads should be maintained so that they continue to conform to this standard to prevent erosion problems. (2) The Department recommends that impervious surfaces, including roads, be designed, and constructed so that stormwater is distributed in sheet flow to natural vegetated buffer areas wherever such areas are available. Road ditches should be designed so that stormwater is frequently (at least every 100 to 200 feet) discharged via ditch turnouts in sheet flow to adjacent natural buffer areas wherever possible.

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**16. Culverts.** Culverts must be sized to avoid unintended flooding of upstream areas or frequent overtopping of roadways. Culvert inlets must be protected with appropriate materials for the expected entrance velocity, and protection must extend at least as high as the expected maximum elevation of storage behind the culvert. Culvert outlet design must incorporate measures, such as aprons or plunge pools, to prevent scouring of the stream channel. Culvert inlet and outlet protection measures must be installed within 48 hours of culvert installation, or prior to a storm event, whichever is sooner. Outlet protection measures must be designed to stay within the channel limits. The design must take account of tailwater depth.

**17. Stormwater channels.** All disturbed ditches, swales, and other open stormwater channels must be stabilized by the end of each workday. Stabilization shall be maintained on a daily basis.

New ditches, swales, and other open stormwater channels must be designed, constructed, and stabilized using measures that achieve long-term erosion control. Ditches, swales and other open stormwater channels must be sized to handle, at a minimum, the expected volume runoff. Each channel should be constructed in sections so that the section's grading, shaping, and installation of the permanent lining can be completed the same day. If the channel's final grading or permanent lining installation must be delayed, then diversion berms must be used to divert stormwater away from the channel, properly spaced check dams must be installed in the channel to slow the water velocity, and a temporary lining installed along the channel to prevent scouring. Permanent stabilization for channels is addressed under Appendix A(11)(g) above.

- a. The channel should receive adequate routine maintenance to maintain capacity and prevent or correct any erosion of the channel's bottom or side slopes.
- b. When the subcatchment draining to a ditch or swale is less than 1 acre of total drainage and less than ¼ acre of impervious area, diversion of runoff to adjacent wooded or otherwise vegetated buffer areas is encouraged where the opportunity exists.

**18. Utility Trench.** Trenches shall be backfilled and temporarily stabilized (including spoil and/or backfill piles) at the end of each working day.

**19. Additional requirements.** Additional requirements may be applied on a site-specific basis.

## APPENDIX B. Inspection and maintenance

The following standards must be met during a construction activity. The Operator must know that additional inspection and maintenance standards may apply for the permanent, post-construction stormwater best management practices (BMPs) to be installed during the activity.

- 1. Inspection.** Inspect disturbed areas, erosion control measures, materials storage areas that are exposed to precipitation, and locations where vehicles enter or exit the site. Inspect these areas at least once a week as well as before and within 24 hours after a storm event (rainfall), and prior to completing permanent stabilization measures. A person with knowledge of erosion and stormwater control, including the standards and conditions in the permit, shall conduct the inspections.
- 2. Maintenance and corrective action.** If best management practices (BMPs) need routine maintenance (i.e., minor repairs or other upkeep performed to ensure the BMP remains in effective operating condition), the repair work should be initiated upon discovery of the problem but no later than the end of the next workday. If the same routine maintenance requirements are required repeatedly, you must either: complete work to fix any subsequent repeat occurrences of this same problem, or document in your inspection report why the specific reoccurrence of this same problem should still be addressed as a routine maintenance item.

If BMPs need significant repair or if additional BMPs are necessary, implementation must be completed within 7 calendar days and prior to any storm event (rainfall). If it is infeasible to complete the repair or installation within 7 calendar days, you must document in your inspection report why it is infeasible to complete the repair or installation and document your schedule for installing the stormwater BMP(s) and making it operational.

All temporary measures must be maintained in effective operating condition until disturbed areas are permanently stabilized.

- 3. Documentation.** Keep a log (report) summarizing the inspections and any corrective action taken. The log must include the name(s) and qualifications of the person making the inspections, the date(s) of the inspections, and major observations about the operation and maintenance of erosion and sedimentation controls, materials storage areas, and vehicles access points to the parcel. Major observations must include BMPs that need maintenance, BMPs that failed to operate as designed or proved inadequate for a particular location, and location(s) where additional BMPs are needed. For each BMP requiring maintenance, BMP needing replacement, and location needing additional BMPs, note in the log the corrective action taken and when it was taken.

The log must be made accessible to Department staff and a copy must be provided upon request. The permittee shall retain a copy of the log for a period of at least three years from the completion of permanent stabilization.

- 4. Perimeter Fence.** If perimeter fence is installed before the project's permanent stabilization, the perimeter fence shall not restrict inspection and maintenance of temporary BMPs. At a minimum, access points shall be provided along the fence line for the vehicles and equipment to maintain the BMPs.
- 5. Additional requirements.** Additional requirements may be applied on a site-specific basis.

**APPENDIX C. Housekeeping**

- 1. Spill prevention.** Controls must be used to prevent pollutants from construction and waste materials stored on site to enter stormwater, which includes storage practices to minimize exposure of the materials to stormwater. The Operator must develop, and implement as necessary, appropriate spill prevention, containment, and response planning measures.

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**NOTE:** Any spill or release of toxic or hazardous substances must be reported to the Department. For oil spills, call 1-800-482-0777 which is available 24 hours a day. For spills of toxic or hazardous material, call 1-800-452-4664 which is available 24 hours a day. For more information, visit the Department's website at: <http://www.maine.gov/dep/spills/emergspillresp/>

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- 2. Groundwater protection.** During construction, liquid petroleum products and other hazardous materials with the potential to contaminate groundwater may not be stored or handled in areas of the site draining to an infiltration area. An "infiltration area" is any area of the site that by design or because of soils, topography and other relevant factors accumulates runoff that infiltrates into the soil. Dikes, berms, sumps, and other forms of secondary containment that prevent discharge to groundwater may be used to isolate portions of the site for the purposes of storage and handling of these materials. Any project proposing infiltration of stormwater must provide adequate pre-treatment of stormwater prior to discharge of stormwater to the infiltration area, or provide for treatment within the infiltration area, to prevent the accumulation of fines, reduction in infiltration rate, and consequent flooding and destabilization.

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**NOTE:** Lack of appropriate pollutant removal best management practices (BMPs) may result in violations of the groundwater quality standard established by 38 M.R.S. §465-C(1).

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- 3. Fugitive sediment and dust.** Actions must be taken to ensure that activities do not result in noticeable erosion of soil or fugitive dust emissions during or after construction. Oil may not be used for dust control, but other water additives may be considered as needed. A stabilized construction entrance (SCE) should be included to minimize tracking of mud and sediment. If off-site tracking occurs, public roads should be swept immediately and no less than once a week prior to significant storm events. Operations during dry months, that experience fugitive dust problems, should wet down unpaved access roads once a week or more frequently as needed with a water additive to suppress fugitive sediment and dust.
- 4. Debris and other materials.** Minimize the exposure of construction debris, building and landscaping materials, trash, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials to precipitation and stormwater runoff. These materials must be prevented from becoming a pollutant source.

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**NOTE:** To prevent these materials from becoming a source of pollutants, activities may be required to comply with applicable provision of rules related to solid, universal, and hazardous waste, including, but not limited to, the Maine solid waste and hazardous waste management rules; Maine hazardous waste management rules; Maine oil conveyance and storage rules; and Maine pesticide requirements.

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5. **Excavation de-watering.** Excavation de-watering is the removal of water from trenches, foundations, coffer dams, ponds, and other areas within the construction area that retain water after excavation. In most cases the collected water is heavily silted and hinders correct and safe construction practices. The collected water removed from the ponded area, either through gravity or pumping, must be spread through natural wooded buffers or removed to areas that are specifically designed to collect the maximum amount of sediment possible, like a cofferdam sedimentation basin. Avoid allowing the water to flow over disturbed areas of the site. Equivalent measures may be taken if approved by the Department.

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**NOTE:** Dewatering controls are discussed in the “Maine Erosion and Sediment Control BMPs, Maine Department of Environmental Protection.”

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6. **Vehicle and equipment washing.** Provide an effective means of minimizing the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other types of wash water. Ensure there is no discharge of soaps solvents, or detergents in equipment and vehicle wash water. For washing applicators and containers used for concrete, form release oils, curing compounds, or other materials, direct wash water into a leak-proof container or leak-proof and lined pit designed so no overflows can occur due to inadequate sizing or precipitation. Locate any washout or cleanout activities as far away as possible from receiving waters, constructed or natural site drainage features, and storm drain inlets, and, to the extent feasible, designate areas to be used for these activities and conduct such activities on in these areas.
7. **Authorized non-stormwater discharges.** Identify and prevent contamination by non-stormwater discharges. Where allowed non-stormwater discharges exist, they must be identified, and steps should be taken to ensure the implementation of appropriate pollution prevention measures for the non-stormwater component(s) of the discharge. Authorized non-stormwater discharges are:
  - a. Discharges from firefighting activity.
  - b. Fire hydrant flushing.
  - c. Vehicle wash water if detergents are not used and washing is limited to the exterior of vehicles (engine, undercarriage and transmission washing is prohibited).
  - d. Dust control runoff in accordance with permit conditions and Appendix (C)(3).
  - e. Routine external building washdown, not including surface paint removal, that does not involve detergents.
  - f. Pavement wash water (where spills/leaks of toxic or hazardous materials have not occurred unless all spilled material has been removed) if detergents are not used.
  - g. Uncontaminated air conditioning or compressor condensate.
  - h. Uncontaminated groundwater or spring water.
  - i. Foundation or footer drain-water where flows are not contaminated.
  - j. Uncontaminated excavation dewatering (see requirements in Appendix C(5)).
  - k. Potable water sources including waterline flushing; and
  - l. Landscape irrigation.

Allowable non-stormwater discharges cannot be authorized under this permit unless they are directly related to and originate from a construction site or dedicated support activity (e.g., a pressure washing company cannot broadly use this general permit for their business operations, because general vehicle washing is not associated with a construction site). It is not necessary to list these sources of non-stormwater in the NOI.

8. **Unauthorized non-stormwater discharges.** The Department’s approval under this Chapter does not authorize a discharge that is mixed with a source of non-stormwater, other than those

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discharges in compliance with Appendix C (7). Specifically, the Department's approval does not authorize discharges of the following:

- a.** Wastewater from the washout or cleanout of concrete, stucco, paint, form release oils, curing compounds or other construction materials.
- b.** Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance.
- c.** Soaps, solvents, or detergents used in vehicle and equipment washing; and
- d.** Toxic or hazardous substances from a spill or other release.

**9. Additional requirements.** Additional requirements may be applied on a site-specific basis.

**APPENDIX D. Large Construction Activities**

The requirements of this appendix apply to large construction activities as defined in the general permit. If a requirement in this appendix contradicts another requirement of the general permit, the more stringent requirement applies.

“Project” is used to refer to a “large construction activity” in the remainder of the appendix for brevity.

Unless explicitly stated, the requirements in this appendix apply to projects that create a total disturbed area (TDA) of 5 acres or more. However, the applicability of certain requirements depends on the level of TDA as defined in Table 1.

**Table 1**

Level	TDA* (acres)
I	Equal to or greater than 5 & less than 20
II	Equal to or greater than 20 & less than 100
III	Equal to or greater than 100
	*: See definition of "disturbed area" in Part II(F) of the general permit. If the project results in soil disturbance in more than one subcatchment, TDA is calculated by summing each subcatchment's disturbed area.

- 1. Construction Sequencing.** For all projects, open disturbed areas must be minimized in accordance with the SMART development strategy outlined in the Department’s ESC manual.

Level I projects must:

- sequence soil disturbance in upslope-downslope direction.
- have no more than five acres of open disturbed area at a given time

Level II projects must:

- sequence soil disturbance in an upslope-downslope direction, and
- has no more than 10 acres of open disturbed area at a given time.

Level III projects must:

- sequence soil disturbance in an upslope-downslope direction in each subcatchment, and
- limit open disturbed area in each subcatchment that drains into an outlet point on the parcel boundary to no more than 10 acres at a given time.

These requirements do not apply to soil disturbance necessary for the construction of stormwater control measures, including conveyances.

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2. **On-site Minimum Mulch Storage.** Projects must have the following amount of mulch readily available on site for emergency temporary stabilization of exposed soil during storm events:
  - a. **Level I:** Minimum 9 tons of straw/hay mulch.
  - b. **Level II:** Minimum 18 tons of straw/hay mulch,
  - c. **Level III:** Minimum 18 tons of straw/hay mulch for each subcatchment that drains into an outlet point on the parcel boundary.
3. **Dedicated Environmental Crew.** Level III projects must have a dedicated environmental crew tasked with installation, inspection, maintenance, and repair of ESC measures.
4. **Inspection During Construction.** Projects must have a resident inspector, certified in erosion control practices by the Department, to carry out the requirements in Appendix B(1).

Level II and III projects must have a Department-approved third-party inspector to ensure overall compliance with the general permit.

Any project that has a third-party inspection condition under its Site Law license is considered to meet the third-party inspector requirements of this section.

5. **Contractor Certification.** Projects must have a civil contractor who is certified in erosion control practices by the Department. .
6. **Buffers.** This requirement applies to the non-linear portions of all projects. Whenever practicable:
  - a. no disturbance should take place within 100 feet of any downslope protected natural resource, and
  - b. no disturbance should take place within 50 feet of any downslope parcel.

Natural vegetation within the buffer area must be preserved during construction to slow down stormwater runoff and filter sediment. If existing vegetation in the buffer area is sparse (e.g., a cleared forest lacking understory vegetation), the operator must evaluate the practicability of revegetating the buffer area considering the construction schedule. If revegetating, the buffer area soil should be tested, amended per the test results, seeded, and mulched at the rates described for winter conditions in the Department's ESC Manual as soon as practicable upon the start of the construction.

If buffers meeting the above width and vegetation requirements cannot be provided, sections 7 and 8 of this appendix apply.

7. **Temporary Sediment Basin.** A temporary sediment basin is required upslope of a perimeter control if the subcatchment of the perimeter control is greater than ten acres and if the buffer requirements in section 6 cannot be met.

The temporary sediment basin must be designed by a Professional Engineer licensed in Maine in accordance with the Department's ESC manual.

Once the disturbed area within the subcatchment is sufficiently stabilized, the temporary sediment basin may be decommissioned and backfilled with the Department's approval.

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- 8. Erosion Risk Assessment (ERA).** If the buffer recommendations in section 6 cannot be met, a basic ERA must be conducted for the project subcatchments. The subcatchment's average slope and soil erodibility (Erosion Factor for whole soil,  $K_w$ ) must be considered using a conservative approach.

The best available soil survey data must be used in the ERA, which includes:

- a. **Level I:** The NRCS county soil survey is acceptable. It is recommended that the county soil survey data should be confirmed in the field by a qualified professional.
- b. **Level II & III:** The soil survey completed as a requirement of the Site Law application must be used (see "Section 11. Soils" of the Department's Site Law application). No additional field work is required.

If area-weighted  $K_w$  value is equal to or greater than 0.37 and the average slope, calculated using pre-development grades, is equal to or greater than 5% for a given subcatchment, the subcatchment will be considered to have elevated erosion risk (EER).

Alternatively, the operator may elect to classify the subcatchments as EER subcatchments without performing the ERA and implement the minimum additional controls listed below.

At a minimum, the following additional controls must be used in an EER subcatchment:

- c. A double sediment barrier must be installed along the perimeter.
  - d. Temporary seeding of disturbed soil must be completed as soon as practicable.
  - e. Mulch or an equivalent measure shall be applied to all work areas at the end of the workday.
  - f. No earth moving (e.g., grading, trenching, rock removal, or grubbing) shall be done in an EER subcatchment during mud days, to be determined by the third-party inspector. If the project does not have a third-party inspector, the resident inspector will make the determination.
  - g. In the areas brought to final grade, slope interruption measures (e.g., erosion control mix berms, sediment retention fiber rolls) must be placed parallel to the contours with a maximum spacing of 100 ft.
- 9. Soil Testing.** This section applies to projects that will permanently stabilize 50% or more of the disturbed area by revegetation. After the area to be revegetated is brought to final grade, soil testing must be performed to determine any soil amendments necessary for revegetation. Topsoil, compost, fertilizers, and other soil amendments must be applied at rates based on the soil test results to facilitate rapid growth of the plants selected for permanent stabilization.
- 10. Documentation.** The resident inspector is responsible for the "Inspection and Maintenance Log" required by Appendix B(3). The resident inspector or another designee of the permittee shall be responsible for fulfilling the remaining requirements listed below. If the responsible parties change, the Department must be notified within seven calendar days.
- a. **Level I & II:** The inspection and maintenance log must be in an electronic format.
  - b. **Level II & III:** A plan sheet with scale must be submitted to the Department monthly which delineates up to date "Cleared" area (only for projects proposing tree clearing) and "Open", "Temporarily Stabilized", and "Permanently Stabilized" disturbed areas within the limits of work.
  - c. **Level III:** The inspection and maintenance log must be in an electronic format and be made available to the Department using a "cloud" service. An automated weather station continuously recording precipitation and ambient air temperature must be used on site. If

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there is a National Weather Service-certified station within 10 miles of the project site, that facility can be designated as the weather data source for the project. Weather data must be submitted to the Department every month in an electronic format.

**11. Additional requirements.** Additional requirements may be applied on a site-specific basis.

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

**FACT SHEET**

**January 2025**

MEPDES GENERAL PERMIT: #MEG100000  
WASTE DISCHARGE LICENSE: #W009256-5Y-B-R

**MAINE CONSTRUCTION GENERAL PERMIT  
ISSUED BY  
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

AREA OF COVERAGE AND RECEIVING WATER CLASSIFICATION:

**ALL WATERS OF THE STATE OF MAINE<sup>1</sup>**

**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 permit program. This General Permit has been assigned MEPDES # MEG100000 / WDL # W009256-5Y-B-R

On July 21, 2006, the Department reissued the Maine Construction General Permit (CGP). The CGP expired on January 20, 2008 but was administratively continued pursuant to Part I.C and remains in effect until such time as the CGP is reissued or replaced.

On March 17, 2024, the Department provided public notice of its intent to issue a new General Permit in accordance with *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (last amended September 15, 2024).

**2. 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.A. § 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. Pursuant to *General Permits for*

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<sup>1</sup> This General Permit authorizes the discharge of stormwater from construction activities to waters of the State other than groundwater.

*Certain Wastewater Discharges*, 06-096 CMR 529 (last amended June 27, 2007), 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. The Department has determined that discharges of stormwater from construction activities into waters of the State other than groundwater that conform to the applicability and coverage standards established in the Construction General Permit may be authorized by a general permit.

### 3. GENERAL PERMIT SUMMARY

The Environmental Protection Agency (EPA) regulates discharges of stormwater from construction activities of one or more acres in size pursuant to the Clean Water Act and the Department has been delegated authority by EPA to regulate these discharges. The Department has determined that the great majority of construction activities will result in discernible concentrated flows of stormwater that will leave the construction site and discharge to surface waters. Soil is classified as a “pollutant” if discharged to waters of the State and stormwater runoff from disturbed areas invariably contains dislodged soil particles. Properly installed erosion controls and the use of best management practices will eliminate most, but not all, sediment carried in runoff. Pursuant to *Conditions of licenses*, 38 M.R.S. § 414-A(1)(D), this General Permit establishes best management practices as best practicable treatment for the discharge of stormwater to waters of the State.

Operators 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 construction activity is anticipated to comply with the General Permit terms and conditions. An NOI is considered approved 14 days after DEP receives a complete and accurate form if the DEP does not notify you otherwise. If the notice is found to be deficient, the DEP will notify you within 14 days of receiving it. This period may be extended if the NOI is combined with an application with a longer review period. You may begin work after waiting the 14 days unless otherwise notified.

The MCGP sets standards for managing stormwater that may pick up pollutants, including soil, and discharge them to waters of the State, such as lakes, streams, and wetlands. The requirement for a MCGP is triggered by the amount of disturbed area created during construction, and whether the site will directly discharge to surface waters of the state.

Best management practices required by the General Permit include erosion and sedimentation controls, inspection, and maintenance requirements, housekeeping standards and new requirements for large construction activities.

A significant change the CGP is the requirement of additional measures and standards for large scale construction projects. Large construction projects that disturb five or more acres often pose significant erosion and sedimentation control (ESC) challenges. In recent years, the Department of Environmental Protection (“Department” or “DEP”) has provided enhanced review of such projects in response to the increasing frequency of ESC challenges

observed at project sites, including unauthorized sediment discharges into protected natural resources. In some cases, the DEP has conditioned permits by limiting the amount of disturbed area that may be open at one time during construction, requiring a third-party compliance inspector, and requiring ESC plans to be developed by DEP-certified ESC contractors.

While these steps have improved outcomes, the Department has identified additional measures that can help further limit unauthorized discharges and ESC-related issues at project sites. These recommendations are intended to help applicants prepare strong ESC plans and thereby prevent and minimize erosion and sedimentation associated with large construction projects. These requirements are rooted in the experience and expertise of DEP stormwater engineering staff, information from third-party inspector reports, and measures included in recently approved Construction General Permits in other jurisdictions.

#### 4. CONDITIONS OF PERMIT

*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 requirements of the *Federal Water Pollution Control 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 February 16, 2020), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

#### 5. RECEIVING WATER QUALITY STANDARDS

In 2015, EPA disapproved Maine's current statutory exemption (1999) from Clean Water Act discharge licensing for stormwater discharges to AA waters because AA waters are defined as Outstanding Natural Resources. Under the Clean Water Act, Outstanding National Resource Waters are required to have the highest level of protection that strictly limits discharges. The Department worked with EPA in 2021 to craft new legislation that narrows the exemption in a way that it would be approvable by EPA as a new water quality standard. This legislation was enacted under P.L. 2021 Chapter. 503. On June 14, 2022, EPA approved the revised water quality standards under Section 303(c) of the Clean Water Act.

Relevant standards for Class AA waters:

Except as provided in this paragraph, there may be no direct discharge of pollutants to Class AA waters.

- (1) Storm water discharges that are in compliance with state and local requirements are allowed if one or more of the following conditions are met:

- (a) The storm water discharge existed prior to the waters' being classified as Class AA with a designation as an outstanding national resource as described in [section 464, subsection 4, paragraph F](#), subparagraph (2), including storm water discharges that existed prior to designation of the waters as an outstanding national resource and are not licensed by the department or were not relicensed for some duration after the waters' designation as an outstanding national resource. This division does not authorize new or increased storm water discharge.
- (b) For storm water discharges requiring a general permit for construction, the discharge is temporary and short term and does not permanently degrade water quality. For the purposes of this division, a discharge is temporary and short term if the discharge occurs only during the time necessary to construct a facility to make it operational. Best management practices must be used during such construction; or
- (c) The Class AA water is not designated as an outstanding national resource as described in [section 464, subsection 4, paragraph F](#), subparagraph (2) and [sections 467](#) and [468](#).

## **6. DISCHARGE IMPACT ON RECEIVING WATER QUALITY**

As permitted, the Department has determined the existing water uses will be maintained and protected and that the discharge will not cause or contribute to the failure of the waters to meet the applicable standards for surface waters of the State. In accordance with 38 M.R.S. § 414-A(5)(B)(4), the Department may revoke authorization to discharge under this General Permit if a pollutant is present in the discharge in quantities sufficient to require application of treatment that exceeds the level prescribed by the General Permit and that contributes to water quality violations.

## 7. PUBLIC NOTICE

The Department provided public notice of its intent to renew a General Permit for stormwater runoff from construction sites on March 17, 2024. The public notice provided a 60-day public comment period and an opportunity to request a hearing on the proposed issuance of the General Permit in accordance with *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(7)(A) (last amended September 15, 2024) and *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522(8)(b)(1) (effective January 12, 2001).

## 8. DEPARTMENT CONTACTS

Additional information concerning this General Permit may be obtained from:

Mark Stebbins  
Division of Field Services  
Bureau of Land Resources  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017  
e-mail: [mark.n.stebbins@maine.gov](mailto:mark.n.stebbins@maine.gov) Telephone: (207) 592-4810

## 8. RESPONSE TO COMMENTS

The Department made the draft CGP permit available for a formal 60-day public comment period, consistent with the MEPDES rules. The MDEP received comments from the following entities: Peter Newkirk, Maine Department of Transportation, Friends of Casco Bay, Maine Turnpike Authority and the City of Saco. Comments and responses are summarized in Appendix A.

#	Ch. 500 Reference	Comment/Response
1	Part I, A	<p><b>Comment:</b> This permit covers Construction Activities. It does not cover post-construction maintenance and good housekeeping activities, see Section V.H. Post-construction activities will be flagged for deletion.</p> <p><b>Response:</b> Reference to post-construction specific activities have been removed. Certain maintenance and housekeeping activities related to permanent erosion and sedimentation control and stormwater BMPs will remain if the applicant must maintain those features as part of meeting the requirements of this permit.</p>
2	Part I, A	<p><b>Comment:</b> Make it clear who's who. Is the applicant the owner or the operator? This says the permit is for the operator. For violations, who is liable?</p> <p><b>Response:</b> This section has been revised for clarity; the contractor intends to be the operator and therefore the applicant for a MCGP.</p>
3	Part I, A.1-2	<p><b>Comment:</b> Remove. Operator is defined in Part II.</p> <p><b>Response:</b> This section has been removed.</p>
4	Part II, F "... an activity..."	<p><b>Comment:</b> Paving of gravel surfaces is acceptable but in a different context may not be considered a "maintenance." Substituting "activity" removes any ambiguity.</p> <p><b>Response:</b> Noted. The wording will remain as is.</p>
5	Part II, F "... "Open disturbed area" refers to..."	<p><b>Comment:</b> This term is only used in Appendix D to limit the amount of area that has not had erosion control BMPs applied. If you are going to apply this standard, consider calling it, "Unstablized Area" and define it as disturbed areas that do not have temporary or permanent EC BMPs applied and meet the BMP manual standard.</p> <p><b>Response:</b> This sentence has been revised for clarification.</p>
6	Part II, I	<p><b>Comment:</b> This term does not appear anywhere in this document other than here. Okay if recommended changes made to Part III C.</p> <p><b>Response:</b> The section that relies on this definition has been revised for clarity. In the previous MCGP text "Impaired waterbody" was not directly referenced.</p>
7	Part III, A.3 "... An ESC plan is required pursuant to..."	<p><b>Comment:</b> What about Stormwater Management Law? It is my understanding that the Basic Standard in Chapter 500 would be dropped and deferred to this CGP. But you mention Stormwater Management Law in III B and D.</p> <p><b>Response:</b> Refences to Stormwater Management Law and other related laws have been restricted to Part VI.</p> <p>Chapter 500 is currently in review; the intent is for Basic Standards to be dropped from Chapter 500 language. If that change is implemented, then there will be less overlap between the MCGP and Stormwater Law.</p>
8	Part III, C	<p><b>Comment:</b> Changed made to match definition of "Impaired Waterbody"</p>

		<b>Response:</b> See response to Comment #5 above.
9	Part III, E	<b>Comment:</b> Wouldn't this be better as a Note?  <b>Response:</b> This section has been moved to Part VI.
10	Part IV, A "... he or she..."	<b>Comment:</b> Are these pronouns acceptable?  <b>Response:</b> Pronouns have been revised throughout the MCGP text.
11	Part IV, A.2	<b>Comment:</b> Its assumed items listed here are called out on the DEP form although items B-F are also submittals. Consider relabeling as "General Information" or something similar and state up front that they are on form, have it as a subset of NOI, then have NOI on the same level as B-F under "Submissions" so it is clear what must be submitted and when.  <b>Response:</b> The submission requirements have been revised here and in the NOI form for continuity.
12	Part IV, A.2 "... listed in this subsection..."	<b>Comment:</b> I assume these items, a-j will be listed on the DEP form. If so, say so.  <b>Response:</b> See response to Comment #11 above.
13	Part IV, A.2.j "... essential habitat..."	Capitalized  <b>Response:</b> The sentence has been revised as necessary.
14	Part IV, B "... DeLorme Atlas..."	<b>Comment:</b> This is a hold-over from days of yore. There are many other sources to present a location map that provides the needed detail for processing the permit. Plus, calling out DeLorme could be perceived as a bias.  <b>Response:</b> This section has been revised as necessary.
15	Part IV, C "... adjacent..."	<b>Comment:</b> Legal definition is "lying near or close to: contiguous." Where adjoining or abutting are attached. If there are adjacent the reviewer can make that determination from the Location Map.  <b>Response:</b> Noted. This section will remain as it is.
16	Part IV, E	I moved this up to group with other supporting data before the ESC plan. Also, if you keep the same section format, don't you want to include "The NOI form must be accompanied by..."  <b>Response:</b> The MCGP sections have been reorganized as necessary for added clarity.
17	Part IV, D "... designed by a professional..."	<b>Comment:</b> In talking with Kerem and David, my understanding was that DEP was going to have the Operator (Contractor) author the ESC plan, like what DOT has successfully required since 1997. As written, you will still have the design engineers submit an ESC plan sheet with the general canned specs whether they apply to the project or not and a line of sedimentation control BMPs down-gradient.  If the Operator writes it, it would be difficult to have it submitted with the NOI and needs to be a separate submittal.

		<p><b>Response:</b> The SWPPP author’s requirements are now shown in Part III.C. and have been updated to allow any professional that has a valid Department certification in erosion control practices to prepare the plan.</p>
18	Part IV, D “... department-sponsored...”	<p><b>Comment:</b> Call out the Nonpoint Source Training Center! General Contractors must be DEP or CPESC certified, no exceptions. We require it for Shoreland Zoning and doing so would provide consistency statewide.</p> <p><b>Response:</b> See response to Comment #17 above.</p>
19	Part IV, D.1	<p><b>Comment:</b> Appendix A is almost 20 years old and inadequate for developing and ESC plan. It is incomplete and a mix of standards and specifications. As a separate document I have included a draft revision of Appendix A for your consideration.</p> <p><b>Response:</b> Thank you for the proposed draft. Appendix A has been revised as necessary and considered some of the proposed changes.</p>
20	Part IV, D.1.a-c	<p><b>Comment:</b> Need to rewrite with an outline of all required elements and refer to the appendix for standards and to the BMP manual for specifications. As a separate document I have included a draft outline of elements required in an ESC plan for your consideration.</p> <p><b>Response:</b> See response to Comment #11 above.</p>
21	Part IV, D.2.b “... retention pond embankment...”	<p><b>Comment:</b> Post Construction</p> <p><b>Response:</b> References to post-construction specific maintenance activities have been removed.</p>
22	Part IV, D.2.d	<p><b>Comment:</b> Move to ESC Plan intro. These are the people listed for the Operator who is implementing the ESC plan, not just I&amp;M or Housekeeping.</p> <p><b>Response:</b> This section has been reorganized for added clarity.</p>
23	Part IV, D.4	<p><b>Comment:</b> Size of soil disturbance is a factor, but slope, soil type and proximity to a water resource are as much, if not more important. I made comments in Appendix D, but recommend this section be removed and rely on proper implementation of the ESC plan required above. If you choose to keep this section, consider my comments herein.</p> <p><b>Response:</b> The Department has decided to keep Appendix D; however, some changes have been made to Appendix D in response to these comments.</p>
24	Part IV, D.4.a “... construction sequence...”	<p><b>Comment:</b> Should be part of every ESC plan regardless of size. And note this will be an estimate from the contractor because of availability of materials, subcontractors, and weather.</p> <p><b>Response:</b> A civil construction sequence plan will remain as a requirement solely for Large Construction Activities. A construction schedule for major earth moving events is a requirement of all projects; see Part VI, A.1.e.ii.</p>

25	Part IV, D.4.b.ii “... temporary sediment basins...”	<p><b>Comment:</b> I assume you mean for engineered structures. Do you want design calcs too. Many times, a contractor will spoon out a small “sediment basin” to handle a single rain event with no structural outlet.</p> <p><b>Response:</b> Design calculations are already required per this section.</p>
26	Part IV, D.4.b.ii “... shown along with their contributing drainage areas...”	<p><b>Comment:</b> Don’t put on a plan sheet. If you want, include it in a separate design submittal for the engineered structure, including item c.i. below.</p> <p><b>Response:</b> The drainage areas will continue to be required on the ESC plans.</p>
27	Part IV, D.4.b.iv	<p><b>Comment:</b> From Appendix D, but if you do keep this, shouldn’t it be defined in Definitions?</p> <p><b>Response:</b> A definition for Elevated erosion risk subcatchment has been added to Part II.</p>
28	Part IV, D.4.c “... The narrative shall be provided only on a plan sheet...”	<p><b>Comment:</b> Why? Is this separate from the ESC plan required for all other jobs?</p> <p><b>Response:</b> This section has been revised and the comment is no longer applicable.</p>
29	Part IV, D.4.i	<p><b>Comment:</b> If they are engineered structures and should be a separate document.</p> <p><b>Response:</b> See response to Comment #28 above.</p>
30	Part IV, D.4.iii-iv	<p><b>Comment:</b> See comments in Appendix D.</p> <p><b>Response:</b> Comments for Appendix D have been responded to below.</p>
31	Part VII, D “... he or she...”	<p><b>Comment:</b> Pronouns, okay?</p> <p><b>Response:</b> Pronouns have been revised throughout the MCGP text.</p>
32	Appendix A	<p><b>Comment:</b> When this appendix was written for the 2006 revision to Chapter 500, it was not intended to be a guide for development of an ESC Plan. It includes standards but also specifications that should be referenced in the BMP manual. I have not commented herein but please see attached draft for your consideration.</p> <p><b>Response:</b> The Department reviewed the attached draft document file named “2024 MCGP Appendix A Revision PJN 5-16-24.docx” and decided that restructuring the appendix is not crucial to improve the effectiveness of the general permit. Specific suggestions on the “winter construction”, “stormwater channels”, and “culverts” standards were incorporated into Appendix A.</p>
33	Appendix C, 3 “... Water withdrawal for dust suppression from...”	<p><b>Comment:</b> Clarifying intent.</p> <p><b>Response:</b> Since the note is directly under Appendix C(3), sufficient context is provided for readers to infer that dewatering a stream for fugitive sediment and dust suppression may violate the applicable standards and law. No revision was made.</p>
34	Appendix C, 3	<p><b>Comment:</b> Double check that this is true. DOT has never gotten a permit, but they do not withdrawal from potential milfoil sources.</p>

	<i>"... may violate state water quality standards..."</i>	<b>Response:</b> The note concerning stream dewatering was removed.
35	Appendix D	<p><b>Comment:</b> A lot of these requirements will be unnecessary with a comprehensive plan of phasing construction, proper application of temporary/permanent erosion control, and inspection and maintenance. The size of the project is a factor, but slope and proximity to a water resource matter more, neither of which are addressed.</p> <p>I recommend removal of this appendix and inclusion of useful practices into Appendix A.</p> <p><b>Response:</b> Appendix D standards are based on the Department's construction site inspections, input from the third-party inspectors, and the Department's review of the out-of-compliance construction activities. Slope and proximity to the natural resources protected under the Natural Resources Protection Act (NRPA) are considered in Appendix D Section 11 and 9, respectively.</p> <p>The Department decided to retain Appendix D in the general permit. Appendix D will serve as a quick reference for the operators of large construction activities indicating additional standards that apply to these activities.</p>
36	Appendix D <i>"... watershed..."</i>	<p><b>Comment:</b> What's a watershed? From the point of discharge to the Waters of the State? A NRPA stream? Property boundary?</p> <p><b>Response:</b> "Watershed" and "contributing drainage area" terms used in Appendix D has been replaced with "subcatchment". A "subcatchment" definition has been provided in Part II of the general permit. The subcatchment discharge point has been clarified in Appendix D(1).</p>
37	Appendix D, 1.a	<p><b>Comment:</b> Backwards! Work from the bottom up, ensuring flow capacity and stabilization of all conveyances before opening the contributing catchment.</p> <p><b>Response:</b> Intent of the standard is to reduce the risk of permit violations in the early stages of an activity due to discharges from soil disturbance in the downgradient sections of an activity parcel which often have saturated soils and wetlands or streams in proximity. The "upslope-downslope" approach has been successfully implemented in various large construction projects (e.g., ground-mounted solar arrays). Construction of permanent and temporary stormwater control measures, including conveyances, is an exception that is allowed. This clarification has been provided in Appendix D(1).</p>
38	Appendix D, 1.b	<p><b>Comment:</b> Yes, if it is all within the same catchment, but if it is multiple smaller areas discharging to separate outfalls this is too restrictive. If you must, give it a qualifier, e.g. preapproval. Also, slope, soil type and contributing drainage area are critical, as are, adequate sedimentation control and timing of temporary erosion control.</p> <p><b>Response:</b> "Level I" two-acre open disturbed area requirement only applies to large activities that will disturb an area less than 20 acres in total. Any disturbed area that is temporarily stabilized via mulching is</p>

		not open (Part II(F)). An operator can meet the open disturbed area requirement through construction sequencing and mulching.
39	Appendix D, 1.d	<p><b>Comment:</b> See 1.b. comment. But if you only allow 2 acres there, why 10 here? Size is not a restriction if they are following their ESC plan.</p> <p><b>Response:</b> The Department has been requiring disturbed area limitations through the Site Location of Development Act permits for several years. The ten-acre open disturbed area requirement in Appendix D(1)(d) is based on this permitting practice which considers both practicability and effective erosion control. The “Level III” requirements have been successfully followed in the largest ground-mounted solar array project permitted by the Department. Size of open disturbed area can pose ESC implementation challenges, particularly for Level III projects (e.g., mulch shortage).</p>
40	Appendix D, 1.f	<p><b>Comment:</b> See 1.b.and d.</p> <p><b>Response:</b> Please see the responses provided for Comment #39 and 40. Overall, the Department considers tiered “open disturbed area” limitation for large activities as a key erosion control measure which is straightforward to understand and implement.</p>
41	Appendix D, 2	<p><b>Comment:</b> All levels should have a dedicated crew, not that that it is their full-time job, but that they must perform these duties daily and document.</p> <p><b>Response:</b> The Department expects that the “dedicated environmental crew” is primarily tasked with the inspection, maintenance, and repair of the ESC measures and does not have other responsibilities related to the activity. Considering the practicability of this standard, it only applies to “Level III” projects which may require several person-hours solely for routine ESC inspection and maintenance.</p>
42	Appendix D, 3	<p><b>Comment:</b> What’s a resident inspector?</p> <p><b>Response:</b> A definition has been provided for the “Resident Inspector” in Part II(Q) of the general permit.</p>
43	Appendix D, 3 “... certified...”	<p><b>Comment:</b> As what? Third party or Cert Contractor?</p> <p><b>Response:</b> “Resident Inspector” is a qualified individual representing the operator on the activity site. Certification requirements for the “Resident Inspector” are provided in Part II(P) of the general permit.</p>
44	Appendix D, 5	<p><b>Comment:</b> This is the same as any other construction activity. If you are compelled to call them out, state that these areas are treated as any other disturbed area on the project and shall meet all standards of the permit.</p> <p><b>Response:</b> This standard has been moved to Appendix A to apply to all activities regulated by the general permit.</p>
45	Appendix D, 7 “... at the end of each working day...”	<p><b>Comment:</b> Good. As should all disturbed areas</p> <p><b>Response:</b> This standard has been moved to Appendix A to apply to all activities regulated by the general permit. Although it is desirable, it is</p>

		not practicable to temporarily stabilize all open disturbed areas of the large activities at the end of each working day.
46	Appendix D, 8.a-b	<p><b>Comment:</b> Won't this already be required by Site Law, Stormwater Management Law or LUPC requirement?</p> <p><b>Response:</b> None of the state-mentioned regulations currently require the setbacks provided in Appendix D(8). Chapter 500 stakeholders are considering potential setback requirements to promote low impact development in the state. It is uncertain that new Chapter 500 will contain setback standards.</p>
47	Appendix D, 8.d	<p><b>Comment:</b> Isn't this already required?</p> <p><b>Response:</b> Correct, this is required in Appendix A(2). The redundant sentence has been removed from Appendix D.</p>
48	Appendix D, 8 "... If buffer/setback requirement cannot be met..."	<p><b>Comment:</b> No! This infers that a buffer, regardless of slope, soil type or "natural vegetation" with a run of sedimentation barrier, is adequate.</p> <p><b>Response:</b> Sediment load reduction efficiency of natural buffers is recognized in EPA's Construction General Permit (CGP) (see Section 2.2.1). Maine CGP uses a 100-ft buffer width for the protected natural resources whereas EPA CGP has a 50-ft buffer width for the waters of the United States. The Department has amended this section of Appendix D: the operators must consider factors that can reduce sedimentation control performance of the buffers.</p>
49	Appendix D, 9.b	<p><b>Comment:</b> If they have 10 acres of DA that is disturbed without adequate temporary mulch or intermittent sedimentation controls, they are doomed from the start. Require those practices.</p> <p><b>Response:</b> Minimum subcatchment area requirement for the temporary sediment basins is an objective criterion which will help with consistent application of an important sediment containment measure. Temporary sediment basins must not be construed as a measure replacing other erosion and sedimentation control measures. Appendix A still applies to the large construction activities.</p>
50	Appendix D, 9 "... Certified Professional in Erosion and Sedimentation Control..."	<p><b>Comment:</b> You sure about this? Should only be PEs.</p> <p><b>Response:</b> The Department concurs. CPESC phrases have been removed.</p>
51	Appendix D, 9 "... Section C.2..."	<p><b>Comment:</b> When I reviewed the ESC manual for Marianne back in '15, I suggested that this design spec wasn't likely to be employed as a temporary BMP unless it was used as a wet pond for post-construction.</p> <p><b>Response:</b> The Department agrees that the "Sediment Containment" chapter of the ESC manual must be reviewed and improved to support the implementation of the new construction general permit.</p>
52	Appendix D, 10	<p><b>Comment:</b> Only when D9 can't be met? You're assuming that a natural buffer standard, regardless of soil type, slope or surface cover is an adequate BMP and if not, they must map for USLE soil erodibility factor and then have a limit for that. Not justified.</p>

		<p><b>Response:</b> See the response for Comment #48. The operators are not required to map the whole-soil erodibility factor (<math>K_w</math>); they can use <math>K_w</math> values readily available from NRCS Web Soil Survey website. Vermont's construction general permit also uses <math>K_w</math> for erosion risk assessment.</p>
53	Appendix D, 10.b	<p><b>Comment:</b> Should be required for all projects greater than 1 ac.</p> <p><b>Response:</b> Considering practicability limitations, the Department limits daily mulching requirement to the elevated erosion risk subcatchments of the large construction activities.</p>
54	Appendix D, 10.c	<p><b>Comment:</b> Good. Work it into the required phasing.</p> <p><b>Response:</b> The comment is unclear. The slope interruption measures are required after the grading phase is complete in an elevated erosion risk area.</p>

#	Ch. 500 Reference	Comment/Response
55	-	<p><b>Comment:</b> We have been told, through the Chapter 500 stakeholder process, that Maine intends to regulate erosion and sediment control from construction through the MCGP. The State intends to pull those elements out of Chapter 500 and have Chapter 500 solely regulate post construction measures to address stormwater pollution. Given that we do not fully understand how Chapter 500 will be revised and will not even see a draft rule for a while, can the State better explain its intent to decouple regulation of construction from post construction? Can you discuss more how this permit will now satisfy both the tenets of the federal Clean Water Act and the State’s Erosion and Sediment Control (ESC) Statute? Also, if, as everyone agrees, Chapter 500 is outdated and inadequate to meet today’s stormwater challenges, what advances have you made in this permit to the prior ESC elements in Chapter 500? The bottom line is we strongly support a new MCGP. The current version has been administratively continued since 2008. Nonetheless, with the opportunity upon us for clearer, specific and measurable permit terms to reduce erosion and sediment pollution, it will be important to avoid creating gaps, losing content or failing to advance measures in the shifts between Chapter 500 and the MCGP. Please take time in the Chapter 500 process and in the Fact Sheet and content of the MCGP to fully explain these shifts and advance permit terms.</p> <p><b>Response:</b> The revisions to MCGP contain more robust erosion controls and stormwater controls than Chapter 500 and the 2006 MCGP. Specifically, the Department has added certification requirements, additional buffer requirements for large scale construction projects and stormwater control designs. The MCGP is designed to meet the delegation requirements under the CWA and the draft MCGP is similar to EPA’s 2022 CGP.</p>
56	-	<p><b>Comment:</b> The revisions to the MCGP and Chapter 500 must be designed to be forward thinking and advance stormwater controls in light of ever changing and more challenging storm conditions caused by climate change. This edict is encompassed in the Sea Level Rise Resolve introduced by the Mills Administration and passed by the legislature in 2021. Please ensure that the storm events to plan for and control measures to be implemented by this permit consider the latest updates from the Science and Technical Subcommittee of Maine’s Climate Council and that winter stormwater controls truly reflect the increasingly frequent major rainstorms we have during winter months.</p> <p><b>Response:</b> Climate change has been considered throughout the proposed MGCP, including the following: Appendix D, Section 1 – where we limit the amount of area allowed to be open at one time; Appendix D, Section 8 – where elevated erosion risk areas are established and additional erosion and sedimentation control measures have been introduced for these areas; and additional standards have been incorporated which indirectly address climate adaptation on construction sites.</p>

57	-	<p><b>Comment:</b> The MCGP currently sets the threshold for coverage at one acre or more of disturbed area. That is 43,560 square feet. Studies presented by the University of New Hampshire Stormwater Center during the Chapter 500 process indicate that this threshold only captures 30% of development. Based on verbal information, in Maine it may capture as little as 10% of development. We cannot address the serious threat posed by stormwater pollution unless we lower the threshold for coverage. Nothing in Maine’s ESC statute precludes lowering the threshold. According to the UNH study, a threshold of 5000 square feet captures 90% of new development. While we realize that setting a 5000 square feet threshold state-wide may not be realistic, the State should contemplate a threshold of 20,000 square feet and possibly apply a lower threshold in areas where it is imperative to protect and restore water quality, such as in more urbanized areas, threatened watersheds, and along known development corridors. Because this permit is now intended to satisfy both federal and state law, it can evaluate and set limits more stringent than what may be required by the Clean Water Act.</p> <p><b>Response:</b> The MCGP relates to the Department’s delegation under the CWA which requires a 1-acre threshold of disturbed areas. The Maine ESC Law is not a permit granting program and only covers the organized areas of the State. It’s designed with no threshold requirement but requires proper ES controls for any activity that exposes soil.</p>
58	Part II, A.1	<p><b>Comment:</b> Focusing on construction that disturbs one or more acres, according to information provided to us, at best captures 10-30% of construction. The enabling law provides: <i>A person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource as defined in section 480-B. Erosion control measures must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken, and the site must be maintained to prevent unreasonable erosion and sedimentation. 38 MRS § 420-C.</i></p> <p><b>Response:</b> Maine’s ES Law is not enabling law for the CGP. The MCGP is part of the Department’s delegation under the CWA.</p>
59	Part II, R.2	<p><b>Comment:</b> Should definitions also include protection of sensitive waters or threatened waters? see section 420-D which incl at risk waterbodies and degraded, sensitive and threatened regions.</p> <p><b>Response:</b> Sensitive and threatened regions and watersheds are being considered in Chapter 500 stakeholder process. The Department plans on revisiting and modifying the general construction permit after the final adoption of new Chapter 500 to ensure that Chapter 500 and the general construction permit are consistent.</p>
60	Part III, B.1.a	<p><b>Comment:</b> Explain this in the fact sheet please and maybe add clarifying content here. Ch 500 is intended to be revised to not address construction, so what do you mean by a person who can comply with that section to meet the requirements of this GP?</p>

		<p><b>Response:</b> As requested by EPA, the Department is making a change to require the operator of the construction activity to submit the NOI.</p>
61	Part III, B.2	<p><b>Comment:</b> Maine's stormwater law and regulations should be revised to set a lower threshold. Until such time as they do, under Maine's Erosion and Sediment Control law there is an opportunity to set a lower threshold. Can we take that opportunity.</p> <p><b>Response:</b> See response to Comment #57</p>
62	Part III, C	<p><b>Comment:</b> How will this work for the IC-TMDL and other urban impaired streams where IC is the cause of the impairment?</p> <p><b>Response:</b> The MCGP only addresses construction phase stormwater management. Post-construction stormwater management will be addressed via Chapter 500.</p>
63	Part III, E	<p><b>Comment:</b> How will DEP ensure that new construction and redevelopment in that watershed does not increase %IC, the cause of the impairment? This is likely to fall outside of this GP process but must be considered to help the restoration of Long Creek.</p> <p><b>Response:</b> Long Creek Watershed has its own sperate GP and is not part the MCGP update (see W-9052-5Y-B-N).</p>
64	Part IV, A.1 “... he or she...”	<p><b>Comment:</b> Given the current use of gender pronouns, he/she/they, DEP should convert all gender specific pronouns to "the applicant" or "the person"?</p> <p><b>Response:</b> Pronouns have been revised throughout the MCGP.</p>
65	Part IV, A.1 “...approved 14 calendar days...”	<p><b>Comment:</b> Is this enough review time, or will this lead to permitting coverage being granted without adequate review? DEP should set a 30-day review period to account for more applications and to allow for lowering the threshold applicable to this permit.</p> <p><b>Response:</b> The 14-day review period has been the standard timeframe for the MCGP since its inception. The internal review process will be changed for large scale construction projects (5-acres of disturbed area) with the review of these projects performed by our engineering staff instead of field staff. The Department may consolidate the NOI materials filed for an activity that also requires review under other programs (Part VI). When application materials are consolidated, the review period for the NOI is extended to coincide with the longest processing time associated with the other applications or program</p>
66	Part IV, D “... in a related land-use field...”	<p><b>Comment:</b> What does this mean? At a minimum, can you explain this in the Fact Sheet and answers to questions to ensure appropriate technical expertise goes into developing the ESC plans?</p> <p><b>Response:</b> This sentence has been removed and new certification requirements have been identified in Part III, C.</p>
67	Part VII, D “... he or she...”	<p><b>Comment:</b> Same comment as above. Change to gender neutral language throughout document.</p> <p><b>Response:</b> Pronouns have been revised throughout the MCGP text.</p>

68	Appendix A, 7	<p><b>Comment:</b> How do these measures account for climate change and what does "winter conditions" mean as we see increasing major rain events in winter months when soils are frozen?</p> <p><b>Response:</b> See response to Comment 56 above.</p>
69	Appendix A, 9	<p><b>Comment:</b> Here is an example: is this enough considering the intensity of storms we have seen in recent years? What data does DEP have to support selecting the 2-year, 24-hour storm as the right design requirement?</p> <p><b>Response:</b> The 2-year, 24-hour storm is the storm frequency used by the EPA in the 2022 CGP.</p>
70	Appendix C, 7.a	<p><b>Comment:</b> Does this raise concerns from a PFAS perspective? Revised to state: "Discharges from firefighting activity that do not contain PFAS."</p> <p><b>Response:</b> At this time, PFAS is outside the scope of the MCGP. The EPA 2022 CGP does not contain any restrictions on firefighting activity.</p>
71	Appendix C, 7.l	<p><b>Comment:</b> Add "uncontaminated" to landscape irrigation. This is a standard list but what if this washes off fertilizers, pesticides or other pollutants?</p> <p><b>Response:</b> The proposed language is consistent with EPA's 2022 CGP. In addition, landscape irrigation is typically not associated with the construction phase of the development.</p>

#	Ch. 500 Reference	Comment/Response
72	-	<p><b>Comment:</b> Is the MGCP being issued to the landowner or contractor (operator)? Who is considered the permittee?</p> <p><b>Response:</b> The permit is issued to the operator of the construction site.</p>
73	-	<p><b>Comment:</b> How are transfers handled for the MGCP?</p> <p><b>Response:</b> The MCGP requires the submittal of a new NOI.</p>
74	Part IV, D.4.b.i	<p><b>Comment:</b> Where do these setbacks come from? How practical is the 50' setback from downgradient property lines? Why is the 100' setback from downgradient natural resources greater than 75' NRPA regulated setback? Has the NRPA setback been increasing? How are (permitted) encroachments into these areas handled?</p> <p><b>Response:</b> The setbacks originate from EPA's CGP, other New England states and the Department's experience with large scale construction projects. These sites typically have large-disturbed areas and require additional buffers to protect natural resources. Adjacency under the Natural Resources Protection Act has not been changed.</p>
75	Part IV, D.4.b.ii	<p><b>Comment:</b> What are HSG C soils?</p> <p><b>Response:</b> HSG is the acronym for hydrological soil group used to calculate curve numbers.</p>
76	Part IV, D.4.b.vii	<p><b>Comment:</b> Need definition for "Elevated Erosion Risk (EER) Watersheds".</p> <p><b>Response:</b> A definition has been added for EER subcatchment.</p>
77	Part IV, D.4.c.iv-v	<p><b>Comment:</b> Define or explain what is to be included.</p> <p><b>Response:</b> These sections have been removed.</p>
78	Part IV, F	<p><b>Comment:</b> Transfer language removed. Was that intentional?</p> <p><b>Response:</b> Yes, the transfer provision no longer applies. If the operator of the construction site changes, a new NOI must be submitted to the Department.</p>
79		<p><b>Comment:</b> Contact information for permittee?</p> <p><b>Response:</b> This should be contact information for the operator and this change was made in MCGP.</p>
80	Part IV, F.3.c	<p><b>Comment:</b> How are NOT handled for the areas disturbed by lot buyers? Is this intended to be covered under paragraph I on page 11?</p> <p><b>Response:</b> Terminating coverage for a common plan of development or sale is described in Part IV, Section B(1). Typically, it's the operator who files the NOI.</p>
81	Part IV, F.3.d	<p><b>Comment:</b> Signature of permittee or authorized person – Clarify, is that the landowner or operator? The term permittee is used in several paragraphs (i.e. paragraph H.2, etc.)</p>

		<b>Response:</b> The MCGP has been clarified throughout to identify the operator is the applicant/permittee. Please see the new operator definition in Part II.
82	Part VI, C	<b>Comment:</b> Is this section remaining? I thought the intent was to separate the MGCP from the Site Law, Stormwater and Waste permitting.  <b>Response:</b> Yes, this section states that other State permits may be required and allows the Department processing flexibility in reviewing application requirements of the MCGP when it's submitted in conjunction with other state permit programs. The intent of revamping the Department stormwater rules (Chapter 500) is to focus on post construction stormwater management activity and place construction activity in the MCGP.
83	Part VII, A.2	<b>Comment:</b> How does this apply to projects within UIS, etc.?  <b>Response:</b> The discharges covered by the MCGP do not relate to Urban Impaired Stream classification.
84	Appendices	<b>Comment:</b> Appendix A, B, and C are pulled from Chapter 500. Will these appendices no longer be in Chapter 500?  <b>Response:</b> The Department is proposing to remove these Appendices from Chapter 500. These Appendices have been revised in the MCGP with the addition of a new appendix for large scale construction.
85	Appendix A, 7	<b>Comment:</b> Second line, add the word "disturbed". The second sentence should start with the words "If disturbed areas".  <b>Response:</b> Appendix A has been revised as necessary.
86	Appendix C, 8	<b>Comment:</b> I believe the cross reference in the first paragraph should be changed from Appendix C(6) to Appendix C(7).  <b>Response:</b> This reference has been updated to refer to the correct section.
87	Appendix D	<b>Comment:</b> This appendix is entirely new and has received many comments during the Chapter 500 update process. Recommend this section be modified to incorporate final recommendations from the Chapter 500 process.  <b>Response:</b> The Department plans on revisiting and modify the construction general permit after the final adoption of new Chapter 500 to ensure that Chapter 500 and the construction general permit are consistent.
88	Appendix D, 1.g	<b>Comment:</b> Watershed outlets are sufficiently apart from each other as determined by the Department. What does this mean? How is this defined? What are the standards for this?  <b>Response:</b> The Department intends to use its discretion to determine if sediment-laden stormwater discharged from multiple subcatchments of a large activity has the potential of impacting the same stream reach or wetland area.
89	Appendix D, 9	<b>Comment:</b> Minimum setbacks from downgradient parcel and natural resources (see comment 3 above).

		<b>Response:</b> See response to Comment #74.
#	Ch. 500 Reference	Comment/Response
90	-	<b>Comment:</b> DEP reinstate the current CGP language in Part VI (E) in its entirety. <b>Response:</b> Part VI (E) has been returned to its previous language in its entirety.
91	-	<b>Comment:</b> DEP exempt linear transportation projects from the new Appendix D. <b>Response:</b> See response to Comment #90. The transportation agencies (MTA and MaineDOT) are considered qualifying state programs which meet the intent of the construction general permit and its appendices.

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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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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.