

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR



MELANIE LOYZIM
ACTING COMMISSIONER

IN THE MATTER OF:

KENNEBEC SANITARY TREATMENT DISTRICT)	ADMINISTRATIVE CONSENT AGREEMENT
WATERVILLE, MAINE)	(38 M.R.S. § 347-A)
PROTECTION AND IMPROVEMENT OF WATERS)	
#2020-030-W)	

This Agreement, by and among Kennebec Sanitary Treatment District (“KSTD”), and the State of Maine, Department of Environmental Protection (“Department”), as approved by the Maine Board of Environmental Protection (“Board”), and the Office of the Attorney General (“OAG”) is entered into pursuant to the laws concerning the Department’s *Organization and Powers*, 38 M.R.S. §§ 347-A(1) and 341-D(6).

THE PARTIES AGREE AS FOLLOWS:

1. KSTD is a municipal corporation that is organized and exists under the laws of the State of Maine. KSTD operates a public wastewater collection system and treatment facility (“Facility”) located at 401 Water Street, Waterville, Maine.
2. On October 6, 2015, the Department issued KSTD a permit renewal for Waste Discharge License (“WDL”) # W000687-5M-J-R and Maine Pollutant Discharge Elimination System (“MEPDES”) Permit # ME0100854 (hereinafter collectively referred to as the “License”). The License authorizes the discharge of 12.7 million gallons per day (“MGD”) of secondary treated sanitary wastewater from the Facility to the Kennebec River in Waterville, which is classified as Class B pursuant to 38 M.R.S. § 467(4).
3. Throughout the period of time addressed by this Agreement, KSTD was subject to the terms and conditions of the License.
4. On August 19, 2015, November 2, 2016, and September 11, 2018, the Department issued inspection reports documenting KSTD’s failure to have a current, written, and comprehensive Operations and Maintenance (O&M) plan as required by Special condition G of the License. As of the effective date of this agreement, the facility still does not have a complete O&M plan.
5. Between November 29, 2019 and December 13, 2019, KSTD experienced a sanitary sewer force main break on Water Street that resulted in the discharge of an estimated 21.6 million gallons of untreated wastewater to the Kennebec River via the pump station emergency bypass at combined sewer overflow (CSO) outfall #003. When Department

staff arrived on the scene on December 4, 2019, KSTD lacked any plan to reroute the discharge. Department staff advised KSTD to establish a pump-around system to avoid discharging out of CSO outfall #003. On December 6, 2019, with the pump-around system installed, KSTD was able to manage daily average flow, although not daily peak flow, by diverting the flow from the CSO outfall #3 to the main line, hence it substantially alleviated the discharge to the Kennebec River.

6. Special Conditions K(2)(a-b) of KSTD's License states in relevant part:

K. CONDITIONS FOR COMBINED SEWER OVERFLOWS

Pursuant to Combined Sewer Overflow Abatement 06-096 CMR 570 (last amended February 8, 1978), the permittee is authorized to discharge from the following locations of combined sewer overflows (CSOs) (storm water and sanitary wastewater) subject to the conditions and requirements herein...

2. Prohibited Discharges

- a. *The discharge of dry weather flows is prohibited. All such discharges shall be reported to the Department in accordance with Standard Condition D(1) of this permit.*
- b. *No discharge shall occur as a result of mechanical failure, improper design or inadequate operation or maintenance.*

By discharging wastewater from the pump station emergency bypass via CSO outfall #003 during a mechanical failure of the force main, KSTD violated Special Conditions K(2)(a-b) of its License. Each day of the discharge described above, constitutes an individual and separate violation of Special Condition K.

7. Standard Condition B(1)(b) of KSTD's License states in relevant part:
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.

By failing to maintain the force main in good working order, KSTD violated Standard Conditions B(1)(b) of its License. Each day of this kind of failure as described above constitutes an individual and separate violation of Special Condition B(1)(b).

8. Standard Condition B(4) of KSTD's License states in relevant part:

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.

By failing to immediately initiate bypass pumping or make a plan to bypass pump the wastewater around the broken force main instead of discharging via CSO outfall

#003, KSTD violated Standard Condition B(4) of its License. Each day of this kind of failure as described above, beginning November 29 and ending December 6, prior to the implementation of the bypass pumping, constitutes an individual and separate violation of Special Condition B(4).

9. Special Condition G of KSTD's License states in relevant part:

This facility shall have a current written comprehensive Operation & Maintenance (O&M) Plan. The plan shall provide a systematic approach by which 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

By failing to have a current, written, and comprehensive O&M Plan, KSTD violated Special Condition G.

10. **By discharging untreated wastewater in a manner not authorized by the License as described in paragraph 5, KSTD violated 38 M.R.S. § 413(1) on each of the days identified above.**
11. **Each of the License violations identified in paragraphs 4-9 above is also a violation of 38 M.R.S. § 414(5).**
12. On February 10, 2019, the Department issued a Notice of Violation (NOV) to KSTD for the activities described in paragraphs 4 and 5 of this Agreement, in accordance with 38 M.R.S. § 347-A(1)(B). The parties agree that this Agreement constitutes a legally sufficient NOV pursuant to 38 M.R.S. § 347-A(1)(B) for any violations specifically cited in this Agreement but not previously noticed, and that KSTD has been adequately noticed for all respective violations described herein.
13. This Agreement is not effective until it is approved and signed by the Board and OAG.
14. To resolve the violations described in paragraphs 4-11 of this Agreement, KSTD agrees to do each of the following:
- a. Immediately upon signing this Agreement, pay a civil monetary penalty through a Supplemental Environmental Project ("SEP") to *Maine Rivers* in the amount of thirty-three thousand nine hundred twelve dollars (\$33,912.00) for the purpose of completing the Ladd impoundment erosion control project, which is more fully described in Appendix A;
 - b. Any public statement, oral or written, in print, film, or other media, made by KSTD making reference to the SEP described above shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Maine Department of Environmental Protection for violations of *Maine's Protection and Improvement of Waters law*";

- c. Any payment made by KSTD pursuant to the SEP described above is not tax deductible and is ineligible for certification as tax exempt pollution control facilities pursuant to 36 M.R.S. §§ 105, 211;
 - d. Upon the effective date of this Agreement, submit to the Department for review and approval a standard operating procedure (“SOP”) for responding to events similar to the force main break described in paragraph 5 of this agreement;
 - e. Within 90 days of the effective date of this Agreement, submit to the Department for review and approval a complete capacity, management, operations and maintenance (“CMOM”) self-assessment checklist of the collection system, specifically identifying data gaps, missing information, or missing supporting documents;
 - f. Within 120 days of the effective date of this Agreement, submit to the Department a progress report for items completed from the self-assessment checklist described in paragraph 14(e);
 - g. Within 360 days of the effective date of this Agreement, develop and submit to the Department for review and approval a complete collection system CMOM plan that includes a schedule to address deficiencies, fill data gaps, and supply missing information or documents based on the results of the self-assessment process described in paragraph 14(e);
 - h. Within 120 days of the effective date of this Agreement, submit to the Department for review and approval an outline of the treatment facility wide O&M plan;
 - i. Within 360 days of receiving the Department’s approval of the O&M plan submitted pursuant to paragraph 14(h) of this Agreement, complete and implement the approved O&M plan; and
 - j. Immediately upon demand by the Department, pay to the *Treasurer, State of Maine* the amount of one hundred dollars (\$100.00) per day per violation for violating any provision of this Agreement.
15. The Department and OAG grant a release of their causes of action against KSTD for the specific violations listed in paragraphs 4-11 of this Agreement on the express condition that all actions listed in paragraph 14 of this Agreement are completed in accordance with the terms and conditions of this Agreement to the satisfaction of the Department and the OAG. This release shall not become effective until all requirements of this Agreement are satisfied, as determined by the Department and the OAG in their sole discretion.
16. Any non-compliance with any term or condition of this Agreement, as determined by the Department or the OAG in their sole discretion, voids the release set forth in paragraph

15 of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S. §§ 347-A(1)(A), 347-A(5), or 348, as well as the pursuit of other remedies.

- 17. Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all applicable local, state, and federal laws, rules, and orders including but not limited to licensing requirements.
- 18. The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.
- 19. By signing and executing this Agreement, KSTD knowingly, voluntarily, intentionally, permanently, and irrevocably waives any and all defenses related to the enforcement of this Agreement, including enforcement by the Department or the OAG.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of five (5) pages:

KENNEBEC SANITARY TREATMENT DISTRICT

BY:  DATE: 10/23/2020
NICHOLAS CHAMPAGNE, SUPERINTENDENT

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY: _____ DATE: _____
MARK C. DRAPER, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____ DATE: _____
LAURA JENSEN, ASSISTANT ATTORNEY GENERAL

Appendix A: Supplemental Environmental Project

Kennebec Sanitary Treatment District

Name of Project:

China Lake Alewife Restoration Initiative, Ladd Impoundment Erosion Control
(Ladd Impoundment Erosion Control Project)

Project implementer:

Maine Rivers, P.O. Box 782, Yarmouth, ME 04096
Landis Hudson, Executive Director, landis@mainerivers.org,
phone: 207-847-9277 or cell: 207-831-3223

Geographic area to benefit the project:

Towns of Vassalboro and China in Kennebec County.

Enforcement action:

This Supplemental Environmental Project (SEP) is being funded as part of the settlement of an Administrative Consent Agreement with between the Maine Department of Environmental Protection and the Kennebec Sanitary Treatment District pursuant to the provisions of 38 M.R.S. § 349(2-A).

Background:

Maine Rivers helps manage and implement plans to remove obsolete dams and establish free fish passage. In 2019, the China Lake Alewife Restoration Initiative targeted the Ladd Dam to remove a barrier to alewives making their way to China Lake. As the Ladd Dam had created a swimming hole that is valued by local families, a project was implemented to install a complex upstream fishway at the Ladd Dam rather than remove the dam. Over the course of completing the project, the erosion problem became more apparent.

Type of project:

This project is a pollution prevention and reduction project to minimize or eliminate a pollutant, namely soil, from eroding into the Outlet Stream, a water of the state.

Project description:

In the summer of 2019, a complex, large and expensive upstream technical fishway was installed at the Ladd Dam, the second barrier that incoming alewives will face making their way upstream to spawn in China Lake. That project was completed successfully.

Appendix A: Supplemental Environmental Project

[Ladd impoundment erosion control]

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However, as part of completing that work, project partners and community members have become aware of a notable erosion problem in the impounded section of Outlet Stream above the dam. A 224-foot section of stream bank has been undercut by wave action over the years and has been slumping into the stream. Old wooden cribwork that holds up part of the impoundment wall has become exposed, is deteriorating and in danger of collapsing altogether.

Maine Rivers proposes reinforcing the failing section of bank with a combination of riprap (9") and heavy riprap (24"). Heavy riprap will be placed at the toe of the eroding bank, and the riprap would be used to fill to the top of the bank at a relatively gradual slope. Non-woven geotextile fabric would be placed the length of the repair between the stone and the existing bank material.

Sediment has been steadily entering the stream at this site, and if not addressed will continue. There is a very real risk that large sections of the bank could collapse suddenly and introduce a large quantity of sediment to the stream in a single event.

Existing Regulatory Requirements:

This SEP complies with 38 M.R.S. § 349(2-A)(B) by being a voluntary project that is neither required by law nor previously planned or budgeted for by the violator.

Total project budget:

Riprap-12"/Heavy Riprap-24"	\$21,000
Non-woven filter fabric	\$1,500
Erosion Control materials	\$500
Equipment Rental, transportation & Fuel	\$3,000
Equipment operator	\$3,000
Laborers	\$2,000
Project Planning	\$1,500
Project Management/Permitting/Construction Oversight	\$1,412
TOTAL	\$33,912

Project schedule:

Task	Responsible	Due Date
Start permitting pre-application process	Maine Rivers	Completed
Pre-Application Conference with permitting agencies	Maine Rivers	Pending SEP approval
Permit application to be submitted	Maine Rivers	January 1, 2021
Select contractor, finalize schedule	Maine Rivers	April 15, 2021

Appendix A: Supplemental Environmental Project
 [Ladd impoundment erosion control]
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Complete erosion control project	Maine Rivers	September 30, 2021
Final report	Maine Rivers	November 15, 2021

Expected project benefits:

China Lake Alewife Restoration Initiative, Ladd impoundment erosion control will stop the continued movement of material into the Ladd impoundment to:

- Minimize the movement of sediment and road runoff into the impoundment to protect water quality.
- Minimize the risk of sediment being flushed into the impoundment during the period when migratory fish are moving through the system, thereby protecting the fishery resource.

Reporting:

May 2021: Interim report and construction schedule
 September 2021: Update on construction
 November 2021: Final report

Remaining Funds:

Within 30 days of submission of the Final Report, any and all remaining, not expended, funds provided by Kennebec Sanitary Treatment District as part of this enforcement action shall be paid by Maine Rivers to the *Treasurer, State of Maine*, to be entered into the General Fund.

Certification:

Kennebec Sanitary Treatment District certifies that this proposed SEP project is not result of substantive planning that occurred prior to this enforcement action.

Kennebec Sanitary Treatment District

BY:  DATE: 10/23/2020
 Nicholas Champagne, Superintendent

Appendix A: Supplemental Environmental Project
[Ladd impoundment erosion control]
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Recipient Acknowledgment:

For and in consideration of the payments described herein Maine Rivers agrees to perform, or be responsible for obtaining performance of, the services, study, or projects described in this document pursuant to the terms set forth herein.

Maine Rivers

BY:  DATE: 11.02.2020
Landis Hudson, Executive Director

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