

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

FACT SHEET

FEBRUARY 25, 2014

MEPDES GENERAL PERMIT: #MEG210000
WASTE DISCHARGE LICENSE: #W009106-5Y-A-N

**GENERAL PERMIT FOR THE DISCHARGE OF WASTE SNOW
ISSUED BY
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

AREA OF COVERAGE AND RECEIVING WATER CLASSIFICATION:

CLASS SB OR SC ESTUARINE OR MARINE WATERS OF THE STATE OF MAINE¹

DEPARTMENT CONTACTS:

BILL HINKEL
APPLICATION AND PERMITTING
Division of Water Quality Management
Maine Dept. of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
ph: 207-485-2281
e-mail: bill.hinkel@maine.gov

STERLING PIERCE
COMPLIANCE AND TECHNICAL ASSISTANCE
Division of Water Quality Management
Maine Dept. of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
ph: 207-287-4868
e-mail: sterling.pierce@maine.gov

Internet resources: <http://www.maine.gov/dep/> <http://www.maine.gov/dep/water/wd/gp.html>

1. PROCEDURAL AND REGULATORY SUMMARY

On January 12, 2001, the Maine Department of Environmental Protection (Department) received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. The Department administers the program as the Maine Pollutant Discharge Elimination System (MEPDES) permit program. This General Permit has been assigned MEPDES # MEG210000 / WDL #W009106-5Y-A-N.

¹ This General Permit does not apply to any coastal wetland, as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(2) that is not fully submerged during each high tide.

1. PROCEDURAL AND REGULATORY SUMMARY (cont'd)

On May 23, 2011, the Honorable Paul LePage, Governor of the State of Maine, signed Legislative Resolve Chapter 44, "*Resolve, Directing the Department of Environmental Protection To Amend Its Rules Regarding Snow Dumps*" (Resolves 2011 ch. 44) which directs the Department to review its rules regarding snow dumps to determine "[h]ow the rules may be amended to expedite the licensing process for municipalities that cannot be exempted from the waste discharge licensing requirement" and to ensure "the rules do not conflict with the Federal Water Pollution Control Act."

On October 31, 2013, 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 August 25, 2013).

On October 31, 2013, the Department issued a draft General Permit for public comment.

On February 10, 2014, the Department held a public meeting for the purpose of collecting comments on the draft General Permit.

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 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 waste snow removed from public or private ways or parking lots directly into estuarine or marine waters of the State and that conform to the applicability and coverage standards established in the General Permit may be authorized by a general permit.

3. GENERAL PERMIT SUMMARY

The Department acknowledges that upland disposal of waste snow is not practicable in all communities at all times due to lack of available land owned or controlled by the person responsible for snow removal, economic feasibility of hauling snow long distances, air and other pollution associated with hauling snow, limited capacity of upland alternative disposal and storage sites, particularly during winter seasons with abundant snowfall, and inability to comply with resource setbacks established in *Snow Dumps: Best Management Practices for Pollution Prevention*, 06-096 CMR 573 (effective July 29, 2012). Pursuant to *Conditions of licenses*, 38 M.R.S.A. § 414-A(1)(D), this General Permit establishes best management practices as best practicable treatment for the discharge of waste snow to estuarine and marine waters of the State classified as Class SB or Class SC. Best management practices required by the General Permit include restrictions on the timing of discharges after snow fall

3. GENERAL PERMIT SUMMARY (cont'd)

events, litter control and minimization of sand, salt and sand-salt mixtures in waste snow. In addition, the applicability of the General Permit is limited to open waters and intertidal areas that are submerged with each high tide. Discharges to coastal wetlands that are not submerged on a daily basis, and discharges to any fresh surface water are not authorized under this General Permit. Pursuant to *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B(1)(C), there may be no direct discharge of pollutants associated with snow disposal to Class SA waters; therefore, discharges to Class SA waters are also excluded from coverage under this General Permit.

4. CONDITIONS OF PERMIT

Conditions of licenses, 38 M.R.S.A. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the 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.A. § 420 and *Surface Waters Toxics Control Program*, 06-096 CMR 530 (effective March 21, 2012) require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective July 29, 2012), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

5. RECEIVING WATER QUALITY STANDARDS

The applicability of this General Permit is restricted to discharges to estuarine or marine waters of the State classified as SB or SC pursuant to *Classifications of estuarine and marine waters*, 38 M.R.S.A. § 469, and that, 1) if located on a coastal wetland, are fully submerged with each daily high tide; and 2) that meet the standards of their ascribed classification, or where not, only if the discharge does not cause or contribute to the failure of the water body to meet the standards of classification. *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B(2) and (3) describe the standards for Class SB and Class SC waters, respectively.

Relevant standards for Class SB and SC waters:

- Class SB waters must be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat must be characterized as unimpaired.

5. RECEIVING WATER QUALITY STANDARDS (cont'd)

- The dissolved oxygen content of Class SB waters must be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration.
- Discharges to Class SB waters may not cause adverse impact to estuarine and marine life in that the receiving waters must be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There may be no new discharge to Class SB waters that would cause closure of open shellfish areas by the Maine Department of Marine Resources.
- Class SC waters must be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and other estuarine and marine life.
- The dissolved oxygen content of Class SC waters must be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration.
- Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

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 Class SB or Class SC classifications.

7. PUBLIC NOTICE

The Department provided public notice of its intent to issue a General Permit for the Discharge of Waste Snow in the *Bangor Daily*, *Kennebec Journal*, *Sun Journal*, and *Portland Press Herald* newspapers on or about October 31, 2013. Public notice provided a 30-day 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 May 29, 2013) and *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522(8)(b)(1) (effective January 12, 2001) and for public comment on the intent to issue a General Permit through issuance of the final agency action, pursuant to 06-096 CMR 2(16). In accordance with *National Pollutant Discharge Elimination System Memorandum of Agreement Between the State of Maine and the United States Environmental Protection Agency Region 1*, Section 8.E., each person who receives a copy of a draft permit is allowed 30 days within which to submit comments.

8. DEPARTMENT CONTACTS

Additional information concerning this General Permit may be obtained from:

Bill Hinkel
Division of Water Quality Management
Bureau of Land & Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
e-mail: bill.hinkel@maine.gov Telephone: (207) 485-2281

9. RESPONSE TO COMMENTS

In accordance with the *National Pollutant Discharge Elimination System Memorandum of Agreement Between the State of Maine and the United States Environmental Protection Agency Region 1* and 40 CFR 123.44(a)(2), the USEPA make take up to 90 days from receipt of the proposed General Permit to comment upon, object to or make recommendations with respect to the proposed permit. During the period of October 31, 2013 through the effective date of this final agency action, the Department solicited comments on the draft General Permit – Discharge of Waste Snow. The Department received comments, on the date indicated, from the following six (6) persons during the comment period. Responses to the comments are provided in this section.

C-1 Ivy Frignoca, Staff Attorney
Conservation Law Foundation

C-2 Nick Bennett
Natural Resources Council

C-3 Joseph Payne
Friends of Casco Bay

Note: C-1, C-2 and C-3 jointly submitted comments by letter dated November 26, 2013.

9. RESPONSE TO COMMENTS (cont'd)

C-4 Mary A. Colligan
Assistant Regional Administrator
National Marine Fisheries Service
November 22, 2013

C-5 Sean S. Heaney
Director for Regional Environmental Coordination
Department of the Navy
November 27, 2013

c/o

William Bullard
Senior Water Program Manager
Department of the Navy

1. **Comment:** The Commenters stated, “Snow dumps notoriously contain high amounts of environmental toxins...which pose grave risks to water quality for human consumption and for habitat.” (C-1, C-2, C-3)

Response: The Department recognizes that a snow dump, which is an area used for the storage and disposal of snow throughout the winter season, may contain concentrated pollutants and can be the source of a discharge that should be controlled through application of best management practices or, where necessary, a waste discharge license. The discharge of snow authorized under this General Permit is not snow that has been stored in a snow dump. The disposal of snow within three days following the end of a snow event and from an area where a litter removal program is employed to minimize the presence of litter in the collection area is not the same as a snow dump. Pollutant concentration in snow that is less than three days old is presumed to be similar to, or less than, typical storm water runoff. No changes were made based on this comment.

2. **Comment:** The Commenters stated, “The legislative resolve directs DEP to consider adopting a general permit or permit by rule process for snow dumps; it does not mandate either approach. It is unclear from the documentation sent with the two proposed general permits, what type of analysis DEP conducted to justify shifting from individual to general permits. DEP should explain its scientific analysis and why it believes the general permit to be a more or equally effective approach to assuring that water quality standards are maintained during snow discharges to marine waters....” (C-1, C-2, C-3)

9. RESPONSE TO COMMENTS (cont'd)

Response: As stated in the draft Fact Sheet, Legislative Resolve Chapter 44, *Resolve, Directing the Department of Environmental Protection To Amend Its Rules Regarding Snow Dumps* directs the Department to review its rules regarding snow dumps to determine “[h]ow the rules may be amended to expedite the licensing process for municipalities that cannot be exempted from the waste discharge licensing requirement.” The decision on how the Department would comply with the legislative directive to expedite the licensing process was a regulatory and policy decision, not a scientific decision. The regulatory mechanism used to authorize a discharge does not affect the requirement to comply with applicable water quality standards. In other words, a general permit scheme provides an equal level of control over discharges and assurance that water quality standards will be achieved as does an individual permit. A general permit mechanism simply provides an expedited process for applicants, which is what was required by the legislative resolve, while retaining all administrative and judicial appeal rights for aggrieved persons. No changes were made based on this comment.

3. **Comment:** The generalized Best Management Practices (BMPs) incorporated into the general permit, without site specific data or oversight, may not be adequate to protect water quality. (C-1, C-2, C-3)

Response: The BMPs incorporated into the draft General Permit are consistent with the BMPs incorporated into individual MEPDES permits issued to entities for this category of discharge. A Department compliance inspector is assigned to each permitted facility to conduct inspections and evaluate compliance with the permit. The Department is not aware of any instances of failure of a waterbody to meet applicable standards due to the discharge of snow collected within three days of the snow event. Non-compliance with a General Permit is handled in the same manner as any non-compliance with a MEPDES permit, which range from requests to make corrective actions to initiating formal enforcement actions. No changes were made based on this comment.

4. **Comment:** The Department should consider regulating snow disposal activities through individual permits due to the current threats posed by global climate change, carbon emissions, acidification, nutrient loading from storm water runoff, and shortages in species caused by overharvesting. (C-1, C-2, C-3)

Response: The Department finds that regulating snow disposal activities through individual permits rather than through a general permit would not have any effect on the threats cited by the Commenter. No changes were made based on this comment.

5. **Comment:** Information pertaining to snow disposal activities required by individual permits will not be part of the General Permit and will be more difficult for the public to access. (C-1, C-2, C-3)

9. RESPONSE TO COMMENTS (cont'd)

Response: The Notice of Intent (NOI) required for coverage under the General Permit requires, among other submissions, detailed information pertaining to the applicant, an alternatives analysis, the location of discharge location(s), photographs of the proposed discharge area, a description of the collection area and treatments used within the collection area. A complete and timely NOI fulfills the requirements for permit applications for purposes *Applications for Waste Discharge Licenses*, 06-096 CMR 521 (effective January 12, 2001). 06-096 CMR 529(2)(b)(2)(i). Information provided in the NOI is available for review in accordance with the *Freedom of Access Act*, 1 M.R.S.A. §§ 400-505 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(6). No changes were made based on this comment.

6. **Comment:** Whereas the Department must still make decisions on proposals to discharge waste snow on a case-by-case basis, individual permits should be issued, rather than coverage under a General Permit, in order to maintain a record of the Department's review of each application and to allow stakeholder input into the review process. The General Permit does not require public notice to be published and does not provide an opportunity for stakeholders to comment on the information in the Notice of Intent (NOI) under consideration. There is no opportunity for public comment at the time a covered entity notifies the Department of its continued desire to be covered under a renewed General Permit. (C-1, C-2, C-3)

Response: Pursuant to 06-096 CMR 529, 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. Because the Department has determined that discharges of waste snow removed from public or private ways or parking lots directly into estuarine or marine waters of the State are similar and that there is a relatively low risk for significant environmental impact, a general permit is being developed for this category of discharge. A draft permit was issued for public comment and provided an opportunity to allow stakeholder input into the process.

The General Permit provides that the Department may require, or an interested party may request for consideration, that a person authorized to discharge under this General Permit obtain an individual MEPDES permit for any of the reasons specified at 06-096 CMR 529(2)(b)(3)(i)(A-G), or, in the opinion of the Department, the discharge is more appropriately controlled under an individual permit. In that situation, all provisions for public participation would apply to an application for an individual permit and to issuance of a draft permit for public comment.

9. RESPONSE TO COMMENTS (cont'd)

The Department may specify in a general permit a procedure for providing public notice of the notice of intent or other coverage filings submitted to the Department. Whether such notice will be required, the type of notice and the timing of notice will be determined with consideration to the nature of the discharge, the anticipated level of public interest in the activity and the substance of the filing required by the general permit. Means of providing public notice may include but are not limited to publication in a newspaper, notifying abutters, filing a notice with the municipal office and/or county commissioners or posting on an internet web site maintained by the Department. 06-096 CMR 529(3)(a).

The public notice requirements specified by this General Permit are that within 15 days prior to filing a Notice of Intent with the Department, the person seeking coverage under this General Permit shall notify all abutters of each proposed discharge point. The notice must be mailed by certified mail or Certificate of Mailing to abutters, as determined by local tax records or other reliable means, to the municipal office of the municipality(ies) where the project is located and, if the project is located in the unorganized or deorganized areas of the state, to the appropriate county commissioners. The Department believes this level of public notice is appropriate for the nature of the discharge. No changes were made based on this comment.

7. **Comment:** The fifteen (15) day review period for NOIs filed under the General Permit is not sufficient for an understaffed Department to complete the necessary review and should be eliminated. (C-1, C-2, C-3)

Response: The Department must notify an applicant for coverage under a general permit within a time period specified in the general permit as to whether or not coverage for the specific discharge is accepted. 06-096 CMR 529(3)(b). The express intent of *Resolve, Directing the Department of Environmental Protection To Amend Its Rules Regarding Snow Dumps* is to expedite the licensing process. The Department selected a fifteen day review period for NOIs as a realistic time period in which to fully review and process NOIs for this category of discharge given the current number of staff assigned to waste discharge permitting. No changes were made based on this comment.

8. **Comment:** Effluent monitoring and / or testing is not addressed in the General Permit. “The Department should include monitoring and testing requirements because by not publishing a list of known contaminants likely to be present in waste snow and identifying the concentrations at which they become toxic, the State could inadvertently authorize the discharge of pollutants that may harm listed species or modify designated critical habitat.” (C-4)

Response: In compliance with *Conditions of licenses*, 38 M.R.S.A. § 414-A(1)(D), the discharge of snow under the General Permit is subject to effluent limitations that

9. RESPONSE TO COMMENTS (cont'd)

require application of best practicable treatment. Section 402(a)(1) of the *Federal Water Pollution Control Act* and 40 CFR 122.44(k) allow establishment of best management practices (BMPs) to control or abate the discharge of pollutants when numeric limitations and standards are infeasible. Best management practices means “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘waters of the United States.’” 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.” 40 CFR 122.2. A BMP is a “[p]ermit condition used in place of or in conjunction with effluent limitations to prevent or control the discharge of pollutants. BMPs may include a schedule of activities, prohibition of practices, maintenance procedure, or other management practice.”²

The Department has established best management practices for the discharge of waste snow in the General Permit under this authority. The Department has made a determination that analytical monitoring of waste snow prior to discharge is infeasible. The General Permit does, however, contain narrative conditions to prevent unreasonable impacts on receiving water quality. No changes were made based on this comment.

9. **Comment:** “[T]he exact GPS coordinates and spatial limits of each snow dump should be mandatory. The exact location of each snow dump and the identification of their boundaries will help planners to reduce the potential for adverse effects to listed species or the modification of designated critical habitat.” “As geological and geophysical information is readily available from State Office of GIS, the exact GPS coordinates and spatial limits of salt sensitive areas should be provided.” (C-4)

Response: The NOI information related to spatial data required by the General Permit is consistent with *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(11)(A), which requires GPS data “when available.” The General Permit requires a map showing the location of the discharge point(s) and is conditioned such that “[t]he permittee shall not discharge waste snow that causes an accumulation of debris, litter or sand on an intertidal area that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class.” General Permit at Special Condition D.6. The Department has not received any information from planners or others that the discharge of waste snow within 72 hours of the storm event has adverse effects to listed species or impacts on designated critical habitat. The Department has issued waste discharge licenses for this type of discharge for approximately two decades without any documented instances of non-attainment of receiving water quality standards, including those for aquatic life.

² USEPA web site Water: Industry Effluent Guidelines
http://water.epa.gov/scitech/wastetech/guide/questions_index.cfm#bmp (visited January 16, 2014)

9. RESPONSE TO COMMENTS (cont'd)

Geological and geophysical information pertaining to the spatial limits of salt sensitive areas is not readily available from the Maine Office of GIS.

No changes were made based on this comment.

10. **Comment:** “If the water body fails to meet its water quality classification standard for any reason during the permitted period, future permitting actions for the failed water body should require further evaluation under this GP.” (C-4)

Response: Special Condition A, *Applicability and Eligibility*, of the General Permit specifies that the General Permit applies only to discharges to waters, that among other conditions, meet the standards of their ascribed classification, or where not, only if the discharge does not cause or contribute to the failure of the water body to meet the standards of classification. This provision is consistent with the requirements of the State’s antidegradation policy, *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(F). No changes were made based on this comment.

11. **Comment:** “Details on, or links to, estuarine and marine water quality designations, as well as chemical constituents likely found in waste snow and information regarding their potential for toxicity should be included in the GP.” (C-4)

Response: The Integrated Water Quality Monitoring and Assessment Report summarizes water quality data collected by the Department as well as numerous other state, federal and tribal government agencies, volunteer water monitoring organizations, and other sources. The Integrated Report is also known as the 305(b) report and 303(d) list because it is required by Section 305(b) of the Clean Water Act. The Clean Water Act requires states to submit an Integrated Report to the USEPA every even-numbered year. Monitoring information is analyzed by the Department to assess the ability of Maine's water resources to meet uses such as drinking water, aquatic life support, fishing or recreation as established by Maine's water classification laws. The 303(d) list of impaired waters identifies the waters not meeting one or more of their designated uses, and is included in appendices in the Integrated Report. The Integrated Water Quality Monitoring and Assessment Report is available for download at:

<http://www.maine.gov/dep/water/monitoring/305b/index.htm>.

Chemical constituents and potential for toxicity associated with the discharge of waste snow is considered to be less than the stormwater runoff that would ultimately be generated if the snow was not rapidly removed from the collection area following a storm event. “Stormwater runoff is generated when precipitation from rain and snowmelt events flows over land or impervious surfaces and does not percolate into the ground. As the runoff flows over the land or impervious surfaces (paved streets, parking lots, and building rooftops), it accumulates debris, chemicals, sediment or other pollutants that could adversely affect water quality if the runoff is discharged

9. RESPONSE TO COMMENTS (cont'd)

untreated.”³ Removing snow within the collection area within 3 days of the end of a storm event reduces the potential for additional pollutant loading associated with stormwater runoff during periods of snow melt.

No changes were made based on this comment.

12. **Comment:** The reference to 38 M.R.S.A. § 414-A(5)(B)(4) in Section 6 of the fact sheet should be accurate or removed. (C-4)

Response: The Department agrees that the reference to 38 M.R.S.A. § 414-A(5)(B)(4) in Section 6 of the fact sheet should be removed to avoid confusion related to the Department’s authority to require an individual permit, which is addressed in Special Condition B.4.b. of the General Permit. This change has been made.

13. **Comment:** “References to standards for dissolved oxygen and bacterial concentration for receiving waters during the May-September timeframe are irrelevant and should be omitted.” (C-4)

Response: *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B(2) and (3) describe the standards for Class SB and Class SC waters, respectively. Nothing in Section 6 of the fact sheet contradicts the statutory requirements for dissolved oxygen or bacteria content of the receiving waters. No changes we made based on this comment.

14. **Comment:** “There needs to be clarification regarding what waste snow discharges are regulated by the draft permits. The permits themselves and the definitions in 06-096 CMR 573 are not sufficiently clear. As currently written, any snow removal that creates a pile of waste snow (even a couple full shovels) that discharges to the ground or surface waters specified in the permits could be regulated.” Consider clarifying the Department rules and draft permit to “further define regulated waste snow/snow dumps, and provide exemptions for waste snow/snow dump discharges of "de minimis" size, from certain persons or size facilities (ex. homeowners), and that remain on site vice hauled to and dumped on a different property.” (C-5)

Response: The draft General Permit applies to the direct discharge of snow to certain estuarine or marine waters of the State classified as SB or SC pursuant to *Classifications of estuarine and marine waters*, 38 M.R.S.A. § 469. These discharges are not snow dumps as defined by 38 M.R.S.A. § 361-A(4-A-1)⁴. The Clean Water

³ USEPA web site Stormwater Program http://cfpub.epa.gov/npdes/home.cfm?program_id=6 (visited January 22, 2014)

⁴ 38 M.R.S.A. § 361-A(4-A-1) defines snow dump as “a facility that is used for the storage of snow and incidental materials collected from public or private ways.”

9. RESPONSE TO COMMENTS (cont'd)

Act does not provide authority to establish exemptions for discharges of waste snow. However, the Maine Office of the Attorney General has advised that the DEP may use enforcement discretion for discharges of snow that it deems “de minimus.” Historically, and as a default presumption, the Department has considered pushing, plowing, or blowing snow from bridges, docks, wharves, roadways and other areas that abut water bodies to be “de minimus.” The Department will continue to regulate discharges of snow in the same manner as it has historically. No changes we made based on this comment.

15. **Comment:** “The permit does not address snow melt runoff from commercial snow melting units. Are these discharges exempt from permitting? We understood these discharges were previously allowed through the MS4 permit. However, the MS4 permit does not allow discharges that require an individual waste discharge permit or are required to obtain coverage under another waste discharge general permit.” “Consider discussing commercial snow melting units in the fact sheets, permits themselves, or Department guidance.” (C-5)

Response: The General Permit addresses the discharge of frozen snow within three (3) days following the end of a snow event. Snow melt runoff, either as stormwater or from a point source such as a commercial snow melting unit, is not a component of this General Permit. No changes we made based on this comment.

16. **Comment:** The permit discusses the use of salt/sand, but not the use of pre-treatment liquids or alternative treatments like beet juice products that are also used. “Consider adding the use of pre-treatment liquids to the permit and discussing any restrictions or BMPs for their use.” (C-5)

Response: One of the best management practices established in the General Permit requires that the use of sand, salt, or sand/salt mixtures in areas from which snow is removed for discharge must be restricted, where appropriate, or consistent with application rates provided by the Maine Department of Transportation. The Department’s primary objective related to this BMP is to minimize or prevent discharges of sand, which has the potential to adversely affect the benthic community of the receiving waters. The General Permit requires the applicant to provide a description of snow and ice treatments used within the collection area(s). Based on this information, the Department will determine whether the discharge is more appropriately controlled under an individual permit. No changes we made based on this comment.

17. **Comment:** It might not be possible to remove the snow within 3 days under all circumstances. Provide a technical basis for the 3 day window and consider exceptions for extenuating circumstances. (C-5)

9. RESPONSE TO COMMENTS (cont'd)

Response: The decision to establish the best management practice limiting authorization to discharge only that snow which is removed from the collection area within three (3) days following the end of a snow event is based on Department best professional judgment. An entity that cannot comply with this condition may apply for an individual permit. No changes we made based on this comment.

18. **Comment:** “[M]easuring a quantity of waste snow will be crude at best. This data collection may not serve a useful purpose or facilitate analysis of the efficacy of the BMPs in protecting water quality.” Reconsider this record keeping requirement. (C-5)

Response: The General Permit requirement to maintain records on the approximate quantity (gallons, cubic yards or other measure) of waste snow discharged per day is a reasonable requirement in order to quantify the discharge of snow. The Department respectfully disagrees that these data may not serve a useful purpose or facilitate analysis of the efficacy of the BMPs in protecting water quality. No changes we made based on this comment.

19. **Comment:** This comment is in regard to the condition that requires a person covered under the General Permit to employ a litter removal program to minimize the presence of litter in the collection area prior to snow events or screening of snow prior to discharge.

“Consider defining ‘prior.’ Immediately prior to each snow event is not practical. Consider discussing what would be considered an acceptable ‘litter removal program.’ We assume street and parking lot sweeping by mechanical means would be acceptable, but not practical or cost effective for smaller facilities. Street sweeping requirements in Maine MS4 permits are currently annual, scheduled after the snow season. Would mechanical sweeping prior to the snow season meet the requirements of this section? Consider defining ‘screening.’ Is this visual observation or actual physical screening? (C-5)

Response: The Department recognizes that various terms used in this condition are not defined in water quality statutes or rules. The intent of this best management practice is to minimize the discharge of incidental litter to the greatest extent practicable and to ensure the narrative effluent limitations established in the General Permit are achieved. There are a variety of strategies that an entity may employ to satisfy this condition. The Department has added a requirement in the General Permit to submit as part of the NOI a description of the litter removal program used within the collection area(s).

On February 10, 2014, the Department held a public meeting in Augusta, Maine, in accordance with *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(8), for the purpose of collecting comments on the draft General Permit. Two people, Nick Bennett (C-2) and Joseph Payne (C-3), provided comment in

9. RESPONSE TO COMMENTS (cont'd)

opposition to the draft General Permit at the public meeting. Responses to the oral comments are provided in this section.

20. **Comment:** With respect to snow discharges, the Department regulates fresh waters differently than it does salt water. Salt water should be protected for the sources of food it provides. The commenter expressed concern that the discharges would cause non-attainment of applicable water quality standards. (C-3)

Response: The discharge of snow removed from public or private ways or parking lots directly into the fresh surface waters of the State is prohibited. 38 M.R.S.A. § 413(2-B). Such discharges may not be licensed pursuant to 38 M.R.S.A. § 413(1). A similar statutory prohibition does not exist for estuarine or marine waters.

Class SB and SC waters must be of such quality that they are suitable for the designated uses of fishing, aquaculture, propagation and harvesting of shellfish. 38 M.R.S.A. §§ 465-B(2)(A) and 465-B (3)(A). The Department has made a determination that discharges that comply with the terms and conditions established in the General Permit will not cause the receiving water to be unsuitable for the designated uses of fishing, aquaculture, propagation and harvesting of shellfish. No waters in Maine are listed in the State of Maine 2010 Integrated Water Quality Monitoring and Assessment Report as impaired due to the discharge of waste snow. No changes were made based on this comment.

21. **Comment:** A general permit should not be issued for this category of discharge. Individual permits should be issued to better control the variable quality of snow discharged. (C-2, C-3)

Response: Legislative Resolve Chapter 44, “*Resolve, Directing the Department of Environmental Protection To Amend Its Rules Regarding Snow Dumps*” (Resolves 2011 ch. 44) directs the Department to determine “[h]ow...to expedite the licensing process for municipalities that cannot be exempted from the waste discharge licensing requirement.” The Department may issue a general permit for a category of discharge that involve the same or substantially similar types of operations and that is the same types of waste and that requires the same effluent limitations or operating conditions. 06-096 CMR 529(2)(a)(2)(ii). Historically, the Department has regulated the discharge of waste snow through individual permits that contained substantially similar terms and conditions. The Department has determined that this category of discharge is satisfactorily regulated under a general permit and that individual permits offer no added regulatory benefit. No changes were made based on this comment.

22. **Comment:** Arsenic is added to salt to prevent clumping and the aquatic toxicity of arsenic in salt waters is much lower than it is in fresh water. (C-2)

9. RESPONSE TO COMMENTS (cont'd)

Response: The discharges authorized under this General Permit are for snow that has been collected within three days following the end of a storm event. Typically, salt is not applied during snow events and is used as a de-icing treatment after plowing and snow removal is completed. Snow discharged under this General Permit is considered to be similar to or less polluted than storm water runoff that would otherwise be discharged to the receiving water during periods of snowmelt. No changes were made based on this comment.

23. **Comment:** A person who seeks coverage under this General Permit or an individual permit for the discharge of snow should consider alternatives to the discharge. (C-2, C-3)

Response: The General Permit contains a requirement to provide a statement addressing alternatives to the direct discharge of waste snow, including efforts to avoid the discharge through upland disposal and storage, as part of the Notice of Intent information. The Department will take this information into consideration when reviewing an applicant's NOI for a decision either approving or denying authorization to discharge under the General Permit. No changes were made based on this comment.