

WASTE DISCHARGE LICENSE

FACT SHEET

FEBRUARY 25, 2014

GENERAL PERMIT #: **MEG220000**
WASTE DISCHARGE LICENSE #: **W9107-5Y-A-N**

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

AREA OF COVERAGE AND RECEIVING WATER CLASSIFICATION:

GROUND WATER OF THE STATE OF MAINE, CLASS GW-A

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1. PROCEDURAL AND REGULATORY SUMMARY

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 May 29, 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 license is required for the direct or indirect discharge of pollutants to waters of the State. *Waste discharge licenses*, 38 M.R.S.A. § 413(1). *Snow Dumps: Best Management Practices for Pollution Prevention*, 06-096 CMR 573(3) (effective July 29, 201) states that a waste discharge license is required for “[d]ischarges of meltwater to ground water from snow dumps that are located wholly or partially within a significant sand and gravel aquifer.” 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 pollutants contained within snow to ground 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 avoiding upland disposal of waste snow on land that is located wholly or partially within a significant sand and gravel aquifer 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 06-096 CMR 573. 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 ground waters, Class GW-A, from snow storage areas that are on land that is located wholly or partially within a significant sand and gravel aquifer. Best management practices required by the General Permit include restrictions on the timing of discharges after snow fall events, litter control and minimization of salt and sand-salt mixtures in waste snow.

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 requires the regulation of toxic substances not to exceed levels identified or regulated as toxic and that existing and designated uses of ground waters are maintained and protected.

5. RECEIVING WATER QUALITY STANDARDS

The applicability of this General Permit is restricted to discharges to ground waters of the State classified as GW-A pursuant to *Classification of ground water*, 38 M.R.S.A. § 470. *Standards for classification of ground waters*, 38 M.R.S.A. § 465-C describe the standards for Class GW-A waters. Class GW-A shall be the highest classification and shall be of such quality that it can be used for public water supplies. These waters shall be free of radioactive matter or any matter that imparts color, turbidity, taste or odor which would impair usage of these waters, other than that occurring from natural phenomena.

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 GW-A.

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, Morning Sentinel*, 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).

8. DEPARTMENT CONTACTS

Additional information concerning this General Permit may be obtained from:

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8. RESPONSE TO COMMENTS

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.

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|-----|---|---|---|
| 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. | |
| 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 | | |
| C-6 | John Perry
Environmental Review Coordinator
Maine Department of Inland Fisheries and Wildlife
December 2, 2013 | | |

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

8. RESPONSE TO COMMENTS (cont'd)

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)

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 Waste Discharge Licenses 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 Waste Discharge License, which range from requests to make corrective actions to initiating formal enforcement actions. No changes were made based on this comment.

8. RESPONSE TO COMMENTS (cont'd)

4. **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)

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.

5. **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.

8. 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.

6. **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.

7. **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*

8. RESPONSE TO COMMENTS (cont'd)

Administrative Matters, 06-096 CMR 2(11)(A), which requires GPS data “when available.” 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.

8. **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.

9. **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.

10. **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: *Snow dumps: Best Management Practices for Pollution Prevention*, 06-096 CMR 573(3) states that a waste discharge license is required for “[d]ischarges of meltwater to ground water from snow dumps that are located wholly or partially within a significant sand and gravel aquifer.” The draft General Permit applies only to discharge of wastewaters from waste snow disposal activities to the surface of the earth and the underlying ground waters of the State classified as GW-A pursuant to *Classifications of ground waters*, 38 M.R.S.A. § 470, and that meet the standards of their ascribed classification, or where not, only if the discharge does not cause or

8. RESPONSE TO COMMENTS (cont'd)

contribute to the failure of the water body to meet the standards of classification. If a snow disposal area created by hauling snow from one area to another is located wholly or partially within a significant sand and gravel aquifer, a person may apply for coverage under this General Permit.

11. **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 chlorides, which has the potential to adversely affect ground water. 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.

12. **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)

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.

13. **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.

8. RESPONSE TO COMMENTS (cont'd)

14. **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).

15. **Comment:** “Of chief concern is the potential to site snow disposal areas in Significant Vernal Pools, which are protected as Significant Wildlife Habitats under Maine’s Natural Resource Protection Act (NRPA).” “[W]e recommend that the Applicant receive written approval from the Department of Inland Fisheries and Wildlife that must be submitted to the Department of Environmental Protection with the Notice of Intent form, and that the Applicant must follow conditions stated in the MDIFW approval, to ensure that Significant Vernal Pools and State-listed species are not adversely affected.” Significant Wildlife Habitats can include upland areas out to 250 feet, so simply prohibiting discharges to surface waters of the State is not sufficient protection.

Response: A permit is required for the discharge of pollutants to waters of the State and United States. The term “waters of the State” means “any and all surface and subsurface waters that are contained within, flow through, or under or border upon this State or any portion of the State, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.” 38 M.R.S.A. § 361-A(7). The General Permit does not authorize discharges to surface waters, including Significant Vernal Pools. The Department’s authority to regulate discharges to waters of the State does not extend to upland areas in proximity to surface waters. The General Permit requires submission of photographs of the proposed discharge

8. RESPONSE TO COMMENTS (cont'd)

area(s) which will be reviewed by Department staff in determining whether the proposed discharge complies with the applicability and eligibility criteria established in Special Condition A of the General Permit. The Department has added a clarifying statement to Special Condition A that the General Permit does not authorize the discharge of wastewaters from waste snow disposal activities to any fresh surface water of the State.

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

16. **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.

17. **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.