

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

General Permit
Application of Piscicides for the Control of
Invasive Fishes

Maine Pollutant Discharge Elimination System Permit
Maine Waste Discharge License



Bureau of Land and Water Quality

August 29, 2014

MEPDES Permit #MEG180000
Waste Discharge #W009045-5Y-A-N

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

GENERAL PERMIT FOR APPLICATION OF PISCICIDES FOR THE CONTROL OF
INVASIVE FISHES

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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

APPLICATION OF PISCICIDES FOR THE)	MAINE POLLUTANT DISCHARGE
CONTROL OF INVASIVE FISHES)	ELIMINATION SYSTEM PERMIT
GENERAL PERMIT)	AND
STATE OF MAINE)	WASTE DISCHARGE LICENSE
#MEG180000)	
#W009045-5Y-B-R)	
APPROVAL)	RENEWAL

In compliance with the applicable provisions of *Pollution Control*, 38 M.R.S.A. §§ 411 – 424-B, *Water Classification Program*, 38 M.R.S.A. §§ 464 – 470 and *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, and applicable rules of the Maine Department of Environmental Protection (Department), the Department has considered the renewal of Maine Pollutant Discharge Elimination System (MEPDES) Permit / Maine Waste Discharge License (WDL) for the APPLICATION OF PISCICIDES FOR THE CONTROL OF INVASIVE FISHES (GENERAL PERMIT), with its supportive data, agency review comments, and other related materials on file, and FINDS THE FOLLOWING FACTS:

PROCEDURAL AND REGULATORY SUMMARY

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

On September 9, 2009, the Department issued a General Permit for the application (discharge) of piscicides for the control of invasive fishes. This General Permit authorized the Maine Department of Inland Fisheries & Wildlife (MDIFW) and its qualifying agents to discharge aquatic piscicides to Class GPA, AA, A, B and C waters of the State, tributaries to Class GPA waters, and those waters having drainage areas of less than ten square miles, that contain populations of invasive fishes. The September 9, 2009 General Permit was issued for a five-year term.

On or about May 29, 2014, the Department provided public notice of its intent to renew the September 9, 2009 General Permit in the Bangor Daily, Kennebec Journal, Sun-Journal, and Portland Press Herald newspapers. The notice solicited comments on a draft permit, when available, and provided an opportunity to request a public hearing.

CONCLUSIONS

Based on the findings summarized in the attached Fact Sheet, dated May 30, 2014, and subject to the special and standard conditions that follow, the Department concludes that:

1. The provisions of the State's antidegradation policy, *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(F), will be met in that while the discharge will result in lowering the existing water quality of waters within the project area, the Department has made a finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
2. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in *Conditions of licenses*, 38 M.R.S.A. § 414-A(1)(D).

ACTION

Based on the findings and conclusions as stated above, the Department APPROVES the renewal of General Permit #MEG180000, *Application of Piscicides for the Control of Invasive Fishes*, for the discharge of certain pollutants resulting from the execution of a piscicide treatment plan to waters of the State classified as Class GPA, AA, A, B, and C including tributaries to Class GPA waters and those waters having drainage areas of less than ten square miles, SUBJECT TO THE ATTACHED CONDITIONS, including:

1. The attached Special Conditions, including any effluent limitations and monitoring requirements.
2. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached.
3. This General Permit and the authorization to discharge become effective upon the date of signature below and expire at midnight five (5) years from the effective date. Prior to expiration of this General Permit, the Department must make a determination if it is to be renewed, and, if so, must commence renewal proceedings. If the General Permit is to be renewed, it must remain in force until the Department takes final action on the renewal. [*Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002, *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (last amended August 25, 2013), and *General Permits for Certain Wastewater Discharges*, 06-096 CMR 529(3)(c) (last amended June 27, 2007)]

DONE AND DATED AT AUGUSTA, MAINE THIS 29th DAY OF August, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: /s/ Michael Kuhns

for PATRICIA W. AHO, Commissioner

Date filed with Board of Environmental Protection _____

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of Public Notice: May 29, 2014

This Order prepared by Bill Hinkel, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

A. AUTHORITY

A permit is required for the direct or indirect discharge of pollutants to waters of the State and United States pursuant to *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. 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. *General Permits for Certain Wastewater Discharges*, 06-096 CMR 529(3)(c) (last amended June 27, 2007). The Department has determined that discharges resulting from the application of authorized aquatic piscicides located within the geographic area of coverage and that conform to the applicability and coverage standards established herein may be authorized by a General Permit.

B. DEFINITIONS

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

1. **Licensed applicator.** “Licensed applicator” means a person licensed by the State of Maine Department of Agriculture, Conservation, and Forestry’s Board of Pesticides Control to apply aquatic piscicides.
2. **Notice of Intent (“NOI”).** “Notice of Intent” or “NOI” means a notification of intent to seek coverage under this General Permit, submitted by Maine Department of Inland Fisheries & Wildlife to the Department on a form provided by the Department.
3. **Piscicide.** “Piscicide” means any substance applied in, on or over waters of the State or in such a way as to enter those waters for the purpose of inhibiting the growth or controlling the existence of any fish species in those waters. Piscicides may be composed of granular, solid, powder, liquid, or other formulations, of which the active ingredient(s) is registered with both the USEPA and Maine Board of Pesticides Control (MBPC).
4. **Piscicide treatment plan.** “Piscicide treatment plan” means a written plan prepared by and executed by the Maine Department of Inland Fisheries and Wildlife, or qualified agents supervised by the Maine Department of Inland Fisheries and Wildlife, for a specific treatment area and submitted for approval as part of the Notice of Intent required for coverage under this General Permit. The piscicide treatment plan must identify all piscicide(s) proposed for use and any chemical(s) or compound(s) proposed to neutralize or deactivate the piscicide(s).

SPECIAL CONDITIONS

B. DEFINITIONS (cont'd)

5. **Project area.** “Project area” includes the treatment area and all waters of the State downstream of the treatment area where the Maine Department of Inland Fisheries and Wildlife estimates that piscicide concentrations may become lethal to aquatic organisms. The project area may include one or more bodies of water downstream of the treatment area in which decreasing concentrations of the piscicide may be detected. The project area will be defined by the Maine Department of Inland Fisheries and Wildlife in the treatment plan.
6. **Target species.** “Target species” means all invasive fish species identified by the Maine Department of Inland Fisheries and Wildlife in the piscicide treatment plan required by this General Permit.
7. **Treatment area.** “Treatment area” means a water of the State identified by the Maine Department of Inland Fisheries and Wildlife that contains invasive fish(es) for which a piscicide treatment plan has been developed. Piscicides may only be applied within the treatment area.

C. APPLICABILITY AND ELIGIBILITY

Only piscicide treatment plans that conform to the following conditions for applicability and coverage are eligible for coverage under this General Permit.

1. **Area of coverage.** The geographic area covered by this General Permit is the entire State of Maine. This General Permit covers application of piscicides by a licensed applicator in accordance with an approved piscicide treatment plan for a treatment area classified as Class GPA, Class AA, Class A, Class B, and Class C, including tributaries to Class GPA waters and those waters having drainage areas of less than ten (10) square miles at the point of discharge, and that meet the standards of their ascribed classification, or where not, only if the discharge does not cause or contribute to the failure of the water body to meet the standards of classification.
2. **Significant need to control target species.** The applicant must demonstrate, to the Department’s satisfaction, a significant need to control the target species and that piscicide control offers the only reasonable and effective means to achieve control of the target species. Demonstration of significant need may include, but not be limited to, health risk, economic hardship, or loss of use.
3. **Protection for non-target species.** The applicant must demonstrate, to the Department’s satisfaction, that the piscicide treatment plan provides adequate protection for non-target species.
4. **Exclusions and restrictions.** Piscicides must be applied in compliance with federal labeling restrictions and in compliance with applicable statute, Board of Pesticides Control rules and best management practices. Chemicals or compounds proposed to neutralize or deactivate the authorized aquatic piscicide must be identified on the Notice of Intent and may only be discharged to waters of the State with express approval in the Department’s final action on a Notice of Intent.

SPECIAL CONDITIONS

C. APPLICABILITY AND ELIGIBILITY (cont'd)

A water of the State that serves as a public water supply pursuant to 22 M.R.S.A. § 2601 is not eligible for coverage under this General Permit. Aerial spraying of piscicides from fixed wing or rotary wing aircraft is not authorized under this General Permit.

D. NOTIFICATION, DECISION, AND EFFECTIVE TERM OF COVERAGE

1. **Notice of Intent (NOI).** The Maine Department of Inland Fisheries and Wildlife, as an applicant, and seeking coverage under this General Permit must submit a completed NOI to the Department for review and approval. NOI forms must be mailed or hand-delivered to:

Wastewater Permitting Section
Department of Environmental Protection
Bureau of Land and Water Quality
Division of Water Quality Management
25 Tyson Drive
17 State House Station
Augusta, ME 04333-0017

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

2. **NOI Information.** A complete NOI must contain the following information.
 - a. The legal name, address and telephone number of the cognizant official from MDIFW responsible for execution of the piscicide treatment plan.
 - b. The legal name, address and telephone number and affiliation of any agents assisting with the execution of the piscicide treatment plan.
 - c. The legal name, address, telephone number and Maine Board of Pesticides Control license number of the licensed applicator responsible for execution of the piscicide treatment plan.
 - d. A signed, dated piscicide treatment plan prepared in accordance with Special Condition G of this General Permit.
 - e. A copy of the product label for each piscicide proposed for use and material safety data sheets for any chemicals or compounds proposed for use.
 - f. A topographic or similar type map extending approximately one mile beyond the boundaries of the project area.

SPECIAL CONDITIONS

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

- g. A map or schematic of the treatment area showing treatment and monitoring location(s).
- h. A statement demonstrating the date and location of the public informational meeting as described in Special Condition G.3.
- i. Copies of the published Notice of Intent to File and a list of abutters to whom notice was provided in accordance with Special Condition D.3 must be submitted with the application.
- j. The signature of an authorized person in accordance with *Applications for Waste Discharge Licenses*, 06-096 CMR 521(5) (effective January 12, 2001).

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

- 3. **Public informational meeting.** Prior to submitting a NOI for coverage under this General Permit, MDIFW must hold a public informational meeting in the vicinity of the treatment area or, if the treatment area is extremely remote, in a location convenient to most abutting landowners to all affected resources. The purpose of the meeting is for MDIFW to inform the public of the project and its anticipated environmental impacts, address public concerns as appropriate and to educate the public about the opportunities for public comment to the Department during the application process. In accordance with 06-096 CMR 529(3)(a), notice of the meeting must be mailed by certified mail or Certificate of Mailing at least 10 days prior to the public informational meeting to:
 - a. The Department using the contact information in Special Condition D.1 of this General Permit;
 - b. All abutters of the treatment area and project area, as determined by local tax records or other reliable means;
 - c. The municipal office of the municipality(ies) where the project is located;
 - d. If the project is located in the unorganized or deorganized areas of the State, to the appropriate county commissioners; and
 - e. Any known affected lake associations / watershed associations.

Notice of the meeting must be published once in a newspaper circulated in the area where the project is located.

SPECIAL CONDITIONS

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

4. **Public notice.** In accordance with 06-096 CMR 2(14)(A) and 06-096 CMR 529(3)(a), within 30 days prior to filing with the Department, an applicant must give public notice of Intent to File a NOI application using the form included with DEPLW1046-A. A NOI application that has been previously returned as incomplete for processing must comply with these requirements if the application is not resubmitted within 30 days of the date it was returned to the applicant. The notice must be mailed by certified mail or Certificate of Mailing to:
 - a. All abutters of the treatment area and project area, as determined by local tax records or other reliable means;
 - b. The municipal office of the municipality(ies) where the project is located;
 - c. If the project is located in the unorganized or deorganized areas of the State, to the appropriate county commissioners;
 - d. Any known affected lake associations / watershed associations;
 - e. Maine Department of Marine Resources (only if marine or estuarine waters are within the project area); and
 - f. National Oceanic and Atmospheric Administration's National Marine Fisheries Service (only if marine or estuarine waters are within the project area).

The notice must also be published once in a newspaper circulated in the area where the project is located.

5. Decisions.

- a. **Effective Date of Coverage.** The Department must approve or deny each NOI submitted for coverage under this General Permit: 1) within 31 calendar days of receipt of a complete NOI; 2) within 31 days of the date of public notice; or 3) on the effective date of this General Permit, whichever is later. If the Department does not notify the applicant within the specified timeframe, the NOI is automatically approved and becomes effective as if signed by the Commissioner in accordance with 06-096 CMR 2(19)(E). In the event coverage is denied, the Department must notify the applicant of the reason(s) for denial. Denial of coverage under this General Permit is not appealable to the Board of Environmental Protection and is not final agency action. The approval of coverage under this General Permit is appealable in accordance with 06-096 CMR 2(24)(B).
- b. **Individual permit coverage.** The Department may require, or an interested party may request for consideration, that a permittee covered under this General Permit obtain an individual MEPDES permit for any of the reasons specified at 06-096 CMR 529(2)(b)(3)(i)(A-G). An entity eligible for coverage under this General Permit may request to be excluded from this General Permit and instead apply for an individual MEPDES permit as provided at 06-096 CMR 529(2)(b)(3)(iii).

SPECIAL CONDITIONS

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

- 6. Effective term of coverage.** The term of this General Permit is five years. Coverage under this General Permit will be continued from year to year provided payment of an applicable annual fee pursuant to 38 M.R.S.A. § 353-B, and that there are no significant changes in the approved treatment plan that warrant submission of a new NOI for Department review and decision.

Prior to expiration of this General Permit, the Department must make a determination if it is to be renewed, and, if so, will commence renewal proceedings. Not less than 24 months prior to expiration of this General Permit, the Department must notify all permittees covered under this General Permit of the decision to renew or not renew this General Permit. If the General Permit is to be renewed, it must remain in force until the Department takes final action on the renewal. Upon reissuance of a renewal General Permit, persons wishing to continue coverage must apply for coverage under the renewal General Permit not later than 30 days following the issuance date of the new General Permit.

- 7. Changed Conditions.** In the event that the permittee proposes to make significant changes in the nature or scope of the piscicide treatment plan described in a NOI previously approved, the permittee must notify the Department as soon as becoming aware of and before implementing such changes. Based on its evaluation of proposed changes, the Department may require the submission of a new NOI or that an individual permit be obtained. Significant changes include, but are not limited to, changes in the extent of the waterbody or areas to be treated, changes in the hydrology that expand the size of the project area, changes in facts or information described in the NOI previously submitted and approved, changes in anticipated impacts to non-target resources or organisms, or proposed discharges of chemicals or compounds not previously disclosed, and proposed additional piscicides treatments within the same treatment area ("booster treatments") not previously considered by the Department.

E. AUTHORIZED DISCHARGES

A permittee covered under this General Permit is authorized to discharge: 1) only in accordance with specific approval provided by the Department based on an accepted Notice of Intent; and 2) only in accordance with the terms and conditions of this General Permit. Discharges of pollutants from any other point source are not authorized under this General Permit, and must be reported in accordance with Standard Condition B(5), *Bypasses, of Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, attached to this General Permit.

SPECIAL CONDITIONS

F. NARRATIVE EFFLUENT LIMITATIONS

1. The permittee must not discharge pollutants that cause a visible oil sheen, foam or floating solids at any time which would impair the usages designated for the classification of waters of the State beyond the project area.
2. The permittee must not discharge pollutants that contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated for the classification of waters of the State beyond the project area.
3. The permittee must not discharge pollutants that cause visible discoloration or turbidity in waters of the State beyond the project area that causes those waters to be unsuitable for the designated uses and characteristics ascribed to their class.
4. The permittee must not discharge pollutants that that lower the quality of any water of the State beyond the project area below such classification, or lowers the existing quality of any water of the State beyond the project area if the existing quality is higher than the classification.

G. PISCICIDE TREATMENT PLAN

The permittee must develop a piscicide treatment plan that provides at least the following information. The piscicide treatment plan is subject to review and approval by the Department in its decision-making authority on a Notice of Intent for coverage under this General Permit.

1. A description of the treatment area, including, but not limited to, water depths, substrate character (sand, gravel, mud/organic, etc.), identification of all significant inlets or outlets associated with the treatment area anticipated at the time of treatment.
2. A description and definition of the project area, and statement explaining how the size of the project area has been minimized to the greatest extent practicable.
3. The USEPA registration number, formulation, concentration, maximum application rate, and frequency of application for all piscicides proposed for use.
4. A list of all chemicals and compounds proposed for use in addition to piscicides, such as compounds to deactivate the active ingredient in the piscicide(s).
5. Identification of all target species.
6. A statement describing significant need to control the target species and that piscicide control offers the only reasonable and effective means to achieve control of the target species. Demonstration of significant need may include, but not be limited to, health risk, economic hardship, or loss of use.
7. A statement describing efforts to protect non-target species.

SPECIAL CONDITIONS

G. PISCICIDE TREATMENT PLAN (cont'd)

8. A statement describing the proposed/anticipated timeline for implementation and completion of the treatment plan.
9. A statement describing how the proposed piscicide treatment plan is necessary to achieve important economic or social benefits to the State.
10. An ambient water quality monitoring plan as required by Special Condition H of this General Permit.

H. AMBIENT WATER QUALITY MONITORING

The permittee must develop an ambient water quality monitoring plan for the treatment area and the project area that incorporates conditions for biological monitoring, water quality monitoring, and in-stream piscicide concentration monitoring. All proposed sampling locations must be labeled and denoted on a map included as part of the ambient water quality monitoring plan. The ambient water quality monitoring plan is subject to review and approval by the Department in its decision-making authority on a Notice of Intent for coverage under this General Permit. Recent, relevant biological monitoring and water chemistry data may be proposed for consideration provided such data are representative of conditions at the time the piscicide treatment plan is executed.

1. Biological monitoring. Biological monitoring must consist of a fish survey and an assessment for the presence of threatened or endangered species that may be adversely affected by the treatment and measures proposed to protect threatened or endangered species.
2. Water quality. Water quality must consist of dissolved oxygen, water temperature profile, pH, alkalinity, conductivity, and Secchi disk transparency for Class GPA waters.
3. Piscicide monitoring. Piscicide monitoring must consist of samples collected from the treatment area and project area, or in the alternative if direct analysis is not possible, through sentinel species cage(s) placed at representative locations within the treatment and project areas. Species utilized for sentinel monitoring must represent resident species within the project area.
4. Timing.
 - a. Biological and water quality monitoring must be conducted as soon as possible prior to execution of a piscicide treatment plan and within one year following completion of the piscicide treatment plan.

SPECIAL CONDITIONS

H. AMBIENT WATER QUALITY MONITORING (cont'd)

- b. Piscicide monitoring must be conducted at the downstream boundary of the project area at the time the piscicide is anticipated, through modelling or best professional judgment of the Maine Department of Inland Fisheries and Wildlife, to be present. Monitoring must continue once a week until analytical results for the piscicide are non-detectable or until tests demonstrate 100% survival of sentinel species, or until winter weather conditions inhibit the ability to obtain water quality samples.
5. Sampling methodology. The permittee must conduct sampling and analysis in accordance with methods approved by 40 Code of Federal Regulations (CFR) Part 136; alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136; or as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services.
6. Reporting. MDIFW must submit a summary report to the Department within 3 months following completion of post treatment biological and water quality monitoring that contains the following information.
 - a. Biological, water quality, and piscicide monitoring results, including results of sentinel species cage testing.
 - b. A narrative discussing results and effectiveness of the piscicide treatment plan.
 - c. A narrative discussing unanticipated events or circumstances that had potential to adversely affect water quality within or beyond the project area.

The report must be sent to:

Maine Department of Environmental Protection
Bureau of Land and Water Quality
Division of Water Quality Management
Compliance Section Leader
17 State House Station
Augusta, ME 04333-0017

I. PLACARDING OF TREATMENT AND PROJECT AREAS

The permittee must placard all access areas to the treatment area and project area in accordance with instructions presented in applicable manuals or piscicide product labels. Placards must be placed not less than 1 day prior to execution of the piscicides treatment plan and must remain posted in accordance with instructions presented in applicable manuals or piscicide product labels.

SPECIAL CONDITIONS

J. REOPENING OF PERMIT FOR MODIFICATION

In accordance with 38 M.R.S.A. § 414-A(5) and upon evaluation of the test results in the Special Conditions of this permitting action, new site-specific information, or any other pertinent test results or information obtained during the term of this General Permit, the Department may, at any time and with notice to the permittee, modify this General Permit to: 1) add or change conditions or effluent limitations for toxic compounds; 2) require additional monitoring if results on file are inconclusive; or 3) change monitoring requirements or limitations based on new information.

K. SEVERABILITY

In the event that any provision, or part thereof, of this General Permit is declared to be unlawful by a reviewing court, the remainder of the General Permit must remain in full force and effect, and must be construed and enforced in all aspects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.