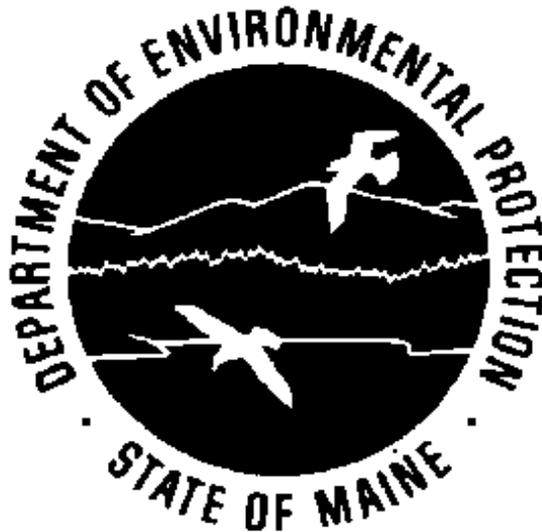


STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

**General Permit – Post Construction Discharge of
Stormwater in the Long Creek Watershed**

**Maine Pollutant Discharge Elimination System Permit
Maine Waste Discharge License**



Bureau of Land and Water Quality
MEPDES Permit #MEG190000
Wastewater Discharge License #W-9052-5Y-A-N

November 6, 2009
(corrected)

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

**GENERAL PERMIT -- POST CONSTRUCTION DISCHARGE OF STORMWATER IN THE
LONG CREEK WATERSHED**

MEPDES Permit #MEG190000
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PART I. General Permit Coverage

A. General coverage of this permit. An operator of property from which there is a designated discharge¹ is required to obtain a Maine Pollutant Discharge Elimination System permit. A designated discharge is a post-construction storm water discharge from a property (parcel) in the Long Creek Watershed on which there is impervious area equal to or greater than one acre. This general permit authorizes the direct discharge of stormwater from such a parcel to Long Creek or its tributaries, including discharges to municipal separate storm sewer systems or other private or public conveyance systems that convey stormwater to Long Creek or its tributaries. Discharges must meet the requirements of this general permit and applicable provisions of Maine's waste discharge and water classification statutes and rules. Compliance with this general permit authorizes a person to discharge stormwater, pursuant to Water Pollution Control Law, 38 M.R.S.A. § 413, as described below. Discharges listed in Part I(E) are excluded from coverage under this general permit.

The Department has determined that the cumulative effect of the designated dischargers' compliance with this general permit, or equally stringent individual permits or alternative general permits, will result in compliance with the water quality standards applicable to the Long Creek and its tributaries by December 31, 2020.

Coverage under this general permit is required if the total impervious area on a parcel is equal to or greater than one acre on or after the effective date of this permit, unless the discharge is authorized under an individual permit or alternate general permit (as described in Part V), or the Department determines that there is no discharge from the property to waters of the state within the Long Creek Watershed other than groundwater.

This general permit is effective October 29, 2009 and authorization to discharge under this general permit expires at midnight October 29, 2014.

B. Authority. A waste discharge permit is required for the direct discharge of pollutants to waters of the State.² A general permit may be issued for point discharges (direct discharges) of stormwater.³ A violation of a

¹ U.S. Environmental Protection Agency Residual Designation (Residual Designation) pursuant to Clean Water Act Region 1 for Long Creek, October 29, 2009.

² See 38 M.R.S.A. § 413.

³ See 06-096 CMR 529(2)(a)(2)(i).

condition or requirement of a general permit constitutes a violation of Maine's water quality laws and the federal Clean Water Act, and subjects the discharger to penalties under Organization and Powers, 38 M.R.S.A. § 349, and § 309 of the Clean Water Act. Nothing in this general permit is intended to limit the Department's authority under the waste discharge and water classification statutes or rules. This general permit does not affect requirements under other applicable Maine statutes such as Site Location of Development (Site Law), Stormwater Management, and Natural Resources Protection (NRPA).

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

- C. Authorization.** To be covered under this general permit, an operator of a property with a designated stormwater discharge must submit to the Department a Notice of Intent (NOI) form and associated materials in accordance with the requirements of Part III of this permit. Upon review of the NOI, the Department may grant or deny authorization to discharge in accordance with Part III. If denied, the operator(s) must resubmit an NOI or submit an application for an individual or an alternative General Permit.
- D. Continuation of general permit coverage.** Once granted, coverage under this general permit continues provided there are no changes in the discharge as described in the NOI and all requirements of this general permit are met. If changes occur or are proposed, the permittee who filed the NOI must notify the Department, as specified in this general permit. Upon reissuance of an updated general permit, a permittee wishing to continue coverage shall submit a new NOI to the Department.

If this permit is not revoked or replaced prior to the expiration date, and the Department makes a determination that it is to be reissued, with or without changes, this permit will be administratively continued and remain in force and effect until the Department issues a new general permit. In that case, any permittee who was granted permit coverage prior to the expiration date remains covered by the continued permit provided there are no changes in the discharge and all requirements of this permit are met.

Coverage under this general permit ceases if:

- 1. Notice of termination.** The permittee submits a Notice of Termination;
 - 2. Individual permit.** An individual permit is issued for the permittee's discharges;
 - 3. General permit not reissued.** This general permit expires following a formal decision by the Department not to reissue this permit; or
 - 4. Reissuance or replacement of general permit.** This general permit is replaced by a new general permit and the permittee does not submit a new NOI to the Department in accordance with the new general permit to maintain authorization to discharge.
- E. Limitations on coverage.**
- 1. Compliance with this general permit.** This general permit does not authorize a stormwater discharge unless it is in compliance with the requirements of this general permit. If the Department determines that the requirements of this general permit have not been met, the Department may notify the Long Creek Watershed Management District and the permittee and may:
 - a.** Authorize coverage under this general permit after appropriate controls and implementation procedures designed to bring the discharge into compliance with this general permit have been implemented as determined by the Department;

- b. Require an individual waste discharge permit;
- c. Inform the permittee that the discharge is prohibited; or
- d. Take enforcement action to address the violation(s).

Compliance with Part I(E)(1) does not preclude any enforcement activity under Maine law for an underlying violation.

2. **Other permit.** A stormwater discharge is not authorized by this general permit if it requires an individual waste discharge permit or coverage under another waste discharge general permit. Other waste discharge general permits include the Maine Construction General Permit, which applies to disturbances of 1 or more acres, only during a site's construction phase, and the Long Creek Post Construction Discharge and Multisector Combined General Permit.
3. **Discharge of hazardous substances, chemicals, or oil.** This general permit does not authorize the discharge of stormwater containing hazardous substances, chemicals, or oil.
4. **Waste discharge license (groundwater).** A waste discharge license ("WDL") may be required for the discharge of stormwater through any well or wells, including drywells and subsurface fluid distribution systems. For complete requirements, see *Rules To Control The Subsurface Discharge of Pollutants*, 06-096 CMR 543 (effective October 6, 2006), and *Stormwater Management*, 06-096 CMR 500 Appendix D (last amended December 27, 2006).

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

PART II. Definitions

In addition to the definitions found in Chapter 520 of the Department's rules, and applicable statutory definitions, the following terms have the following meanings as used in this general permit.

- A. **Applicant.** "Applicant" means a person who files an NOI pursuant to Part III of this general permit.
- B. **Department.** "Department" means the State of Maine Department of Environmental Protection.
- C. **Discharge.** "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to waters of the State other than groundwater. "Direct discharge" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.⁴ For the purposes

⁴ See Water Classification Program, 38 M.R.S.A. § 466(5) (definition of "direct discharge") and 06-096 CMR 520 (definition of "point source").

of this permit, the Department views a direct discharge of stormwater as occurring when the runoff is not attenuated (infiltrated, filtered and/or detained for a long enough period to allow treatment), as evidenced either by channelized flow, or by the lack of sufficient land area (based on soils, vegetative cover, slope, flow path distance and relative size of contributing impervious area) before it becomes channelized or reaches a receiving waterway or water body.

D. Impervious area. “Impervious area” means the total area of a parcel, right-of –way or easement that consists of building and associated constructed facilities; areas such as asphalt or concrete, that are covered with a low-permeability material;; or areas such as gravel roads and unpaved parking areas that are compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, roads, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater.

The demolition and removal of impervious area is subtracted from the total impervious area when calculating the total impervious area, provided that the area where impervious area has been demolished and removed is restored so that it no longer has reduced permeability, and is permanently stabilized using vegetation in conformance with standards in the Maine Construction General Permit, Appendix A.

E. Long Creek Watershed. “Long Creek Watershed” means all areas that discharge to Long Creek or its tributaries from the headwaters down to, but not including, Clarks Pond.

F. Long Creek Watershed Management District. “Long Creek Watershed Management District” (or “District”) means the entity established to provide oversight over implementation of the Long Creek Watershed Management Plan.

G. Long Creek Watershed Management Plan. “Long Creek Watershed Management Plan” (or “Plan”) means a plan developed jointly by the municipalities of South Portland, Portland, Westbrook and Scarborough, along with other entities, and approved by the Maine Department of Environmental Protection, for the purpose of restoring the water quality of Long Creek.

H. Municipal separate storm sewer system (“MS4”). “Municipal Separate Storm Sewer System” or (“MS4”) means conveyances for stormwater, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, Maine Department of Transportation (MaineDOT), Maine Turnpike Authority (MTA), State agency or Federal agency or other public entity that discharges directly to waters of the State other than groundwater.

I. Notice of Intent (“NOI”). "Notice of Intent" or "NOI" means a notification of intent to seek coverage under this general permit, as provided in Part III(A), made by the applicant to the Department on an NOI form(s) provided by the Department.

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

K. Operator . “Operator ” means the person who has control over a parcel, or a right of way or easement located on a parcel, with a designated discharge of stormwater to Long Creek or its tributaries. The owner of a parcel will be considered by the Department to be the operator, unless there is a written agreement, which provides

another person with authority to make decisions with respect to stormwater discharges from the impervious area and associated areas of the parcel needed for stormwater management.

L. Parcel. “Parcel” means the block or piece of land a person owns or has sufficient title, right or interest in regardless of size, and regardless of whether the block of land is divided into lots.

1. The parcel includes:

- a. All contiguous land in the same ownership, where “contiguous land” is defined as two areas that touch at more than one point; and
- b. Non-contiguous areas if the areas are considered part of the same parcel by the department for purposes of permitting under the Stormwater Management Law or Site Law, and a permit under one of those laws is required

2. Areas located on opposite sides of a public or private road are considered separate parcels of land unless:

- a. The road was established by the owner of land on both sides of the road on or after January 1, 1970; or
- b. The areas are considered part of the same parcel by the department for purposes of permitting under the Stormwater Management Law or Site Law, and a permit under one of those laws is required.

M. Permittee. “Permittee” means a person who is authorized to discharge post-construction stormwater under this general permit.

N. Person. “Person” means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity. Each “person” is regarded as a separate and distinct entity, except that a combination of persons is treated as a single person if:

1. Together they pursue a common scheme of development, as defined in rules adopted pursuant to the Site Location of Development Law, 38 M.R.S.A. §481 et. seq., resulting in a discharge requiring authorization even though individual persons in the combination own separate parcels that may not result in a discharge requiring approval if the parcels were considered separately; or
2. One person engages in a transaction, with another person with the intent to evade the intent and purpose of the designation.

O. Post-construction stormwater discharges. Stormwater discharges from or associated with impervious area.

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

Q. Stream. “Stream” means a river, stream, or brook as defined in the Natural Resources Protection Act at 38 M.R.S.A. § 480-B.

R. Watershed. “Watershed” means the land area that drains, via overland flow, drainage ways, waterbodies, or wetlands to a given waterbody or wetland.

Part III. Procedure

- A. Who must submit the Notice of Intent (NOI).** An NOI must be filed by the operator or an agent of the operator if the total impervious area on a parcel in the Long Creek watershed is equal to or greater than one acre at any point in time on or after the effective date of this permit.

If the project also requires a permit pursuant to the Stormwater Management Law or Site Law, then the NOI must be filed at the same time as the Stormwater Management or Site Law application.

- 1. Existing impervious area.** If there is one acre or more of existing impervious area on the parcel on the effective date of this general permit, then the applicant must file an NOI within 180 days after receiving notice from the Department.
- 2. Future impervious area.** If a person will construct or cause to be constructed any impervious area on a parcel on or after the effective date of this general permit so that the total impervious area on the parcel will be one acre or more at any point in time, then the applicant shall file an NOI at least 14 days prior to the beginning of construction.

- B. Filing of NOI.** By submitting an NOI, the applicant agrees to comply with the standards of this general permit.

- C. Approval of NOI.** If Stormwater Management Law or Site Law approval is not required, the NOI is deemed approved 14 calendar days after the Department receives the complete NOI unless the Department approves or denies the NOI, or extends the review period, prior to that date. If the Department does not contact the applicant within this 14-day period regarding the NOI, the applicant's NOI is deemed approved. The Department may extend the 14-day review period if the Department notifies the applicant of such extension within the 14-day period.

If a Stormwater Management Law or Site Law permit or modification is required, the 14 day review period does not apply. The Department will approve or deny the NOI at the same time it issues a decision on the Stormwater Management Law or Site Law permit or modification application.

- D. Effective Date of Coverage under this General Permit.** The applicant is authorized to discharge post-construction stormwater under the terms and conditions of this general permit as follows:

- 1. Not under Construction.** If a project is not under construction, authorization under this general permit will take effect upon approval of the NOI.
- 2. Under Construction**
 - a.** If the project is under construction and no Construction General Permit is required, authorization under this general permit will take effect upon approval of the NOI.
 - b.** If the project is under construction and a Construction General Permit has been obtained, authorization under this general permit will take effect upon approval of the NOI and the filing of a Notice of Termination pursuant to the Construction General Permit.

- E. Submission.**

1. General procedure

- a.** The operator shall file the NOI using a form provided by the Department.

- b. The NOI must contain all information specified by this General Permit and must be signed and certified in accordance with 06-096 CMR 521(5).
- c. Copies of the initial NOI form shall be provided by the applicant to the municipal office of the town or city in which the discharge will occur and to the District at the time it is submitted to the Department.

2. Contents of Notice of Intent (NOI)

- a. The designated discharge operator's contact's name, email (if any), address, and telephone number.
- b. Facility/Site information including name, address and location of the designated discharge, Global Positioning System (GPS) reference data if available, and ownership status as a Federal, State, Tribal, Private or other public entity.
- c. Evidence demonstrating that the operator has entered into a binding contract with the Long Creek Watershed Management District. The contract must provide for participation of the operator in implementation of the Long Creek Watershed Management Plan.
- d. Such other information as the Department may determine is reasonably necessary to determine that the requirements of this general permit will be met. Additional information may be required by the Department on a site specific basis following submission of the NOI, if the Department determines that such information is reasonably necessary to determine whether or not to authorize the discharge under this general permit.

- 3. Deficient NOI.** If any portion of the NOI does not meet one or more of the minimum requirements of this part, the applicant will be notified of the deficiency within the review period. It is the responsibility of the applicant to make all required changes and resubmit the NOI. The review period will commence anew upon the received submittal date of the revised NOI.

F. Notice of Termination (NOT) and Property Transfer. The permittee shall submit a Notice of Termination (NOT) on a form provided by the Department within 20 days of ceasing a designated stormwater discharge to the Long Creek watershed from the area subject to this general permit, or if impervious area discharging to Long Creek or its tributaries is reduced to less than one acre on the parcel.

G. Right of Entry. Employees and agents of the Department may enter any property at reasonable hours in order to determine compliance.

H. Changes in the activity or operator. Coverage under this general permit will be continued provided there are no changes in the discharge as described in the NOI and associated submissions, and all requirements of this general permit are met. If the permittee proposes to expand or relocate impervious area beyond what was indicated in the original NOI, or to change the location of the discharge, then updated information must be submitted with a new NOI prior to any earth-moving activity. Information concerning minor changes on a site that do not affect the nature or amount of stormwater runoff may be submitted in a letter to the Department that describes the changes.

If the operator of the property subject to this permit changes, the new operator must file an NOI if he or she wishes to continue coverage under this general permit within two weeks of the property transfer. The former permittee is not required to file an NOT if the new operator files an NOI to continue authorization under this general permit for a continuing discharge.

If a parcel with one or more acres of impervious area is divided on or after the effective date of this general permit, then stormwater from or associated with the impervious area on the resulting parcels continues to require a permit for post-construction stormwater discharges without regard to the size of the impervious area on the resulting parcels. If a parcel with one or more acres of impervious area is divided on or after the effective date of this general permit and a resulting parcel contains no impervious area, then post-construction stormwater discharges from or associated with the resulting parcel no longer require a permit. However, if any amount of impervious area is later created on the resulting parcel that had no impervious area, post-construction discharges will require a permit.

- I. **Individual permit.** A permittee whose discharge is covered under this general permit may at any time apply for an individual waste discharge permit pursuant to the Department's rules. When an individual permit is issued to a person previously subject to this general permit, the applicability of this general permit to that person is automatically terminated on the effective date of the individual permit. Alternatively, an individual permit may be required by the Department in accordance with the provisions of *General Permits for Certain Discharges*, 06-096 CMR 529(2)(b)(3).

Part IV. Requirements

- A. **Plan participation.** The permittee must participate in implementation of and comply with the Long Creek Watershed Management Plan dated July 2009, or a subsequent modification of the Plan, provided the modification has been approved by the Department. Annual progress reports shall be submitted by the permittee. The Long Creek Watershed Management District may submit an annual report on behalf of all permittees participating in the Plan.
- B. **Implementation of Plan.** The permittee shall support implementation of the Plan through the Long Creek Watershed Management District, including making appropriate payments, supplying the necessary easements within an agreement with the District, and cooperating with the District on Plan implementation in accordance with the schedule approved by the Department (See Parts IV.C., D and E.). The District determines the cost amount that each permittee shall pay based upon factors listed in the plan. If a permittee agrees to carry out some activity on the property in exchange for a reduced cost, then that activity is also an enforceable requirement of this general permit for that permittee. The failure of the permittee to make timely payments of costs for implementation of the plan, or to carry out agreed upon activities, will be grounds for termination of coverage under this general permit. In addition, if the Long Creek Watershed Management District fails to implement the plan as approved by the Department, the Department will take action to modify or revoke the general permit, if appropriate.
- C. **Funding mechanism.** The funding mechanism for the Plan must be operational and the Long Creek Watershed Management District must be able to receive contributions within 180 days of the effective date of this general permit, unless the Department extends the Notice of Intent filing period, in which case the funding mechanism must be operational at the end of the filing period. Otherwise, coverage under this general permit will cease, and individual permits for stormwater discharges will be required. The Plan must result in compliance with the water quality standards applicable to Long Creek and its tributaries by December 31, 2020.
- D. **Required activities.** The permittee shall abide by its agreement with the Long Creek Watershed Management District and support implementation of the following activities as described in the Plan. Otherwise, coverage under this permit may be terminated and an individual permit required.
 - 1. **Construction of Tier 1, Tier 2, in-stream and riparian projects.** Construction of Tier 1, Tier 2, in-

stream and riparian projects must be completed as follows.

- a. If operators on 100% of properties from which there is a designated discharge participate in implementation of the Plan through this permit, permittees shall support the Long Creek Watershed Management District implementation of all identified Tier 1 and Tier 2 projects in the plan, along with all identified in-stream and riparian projects in the plan, by December 31, 2020.
 - b. If less than 100% of all impervious area is covered under this general permit, then permittees shall support the Long Creek Watershed Management District construction of projects that provide a commensurate percentage of water quality benefits as provided in the Plan. For example, if permittees representing 80% of the total impervious area covered by the Residual Designation submit NOIs, then the projects that would produce 80% of the benefits of the entire plan, as determined by the Department, must be constructed.
 - c. Once a funding rate for a permittee is established, it cannot be increased during the term of the general permit due to another permittee defaulting on payment. The funding rate may be adjusted during the next re-issuance of the general permit.
 - d. Required projects may change as new opportunities for stormwater treatment projects emerge over time, provided any revised project would accomplish at least as much benefit to Long Creek and its tributaries as the project it would replace in the Plan, and is approved by the department.
2. **Inspection and Maintenance.** Inspection and maintenance of stormwater treatment practices constructed in accordance with sub-section 1 above is required, along with pollution prevention and good housekeeping practices on property covered by the Plan, as approved by the Department.
 3. **Monitoring and assessment.** Implementation of a monitoring and assessment plan, as approved by the Department, is required for use in measuring progress in restoring Long Creek.
- E. Periodic assessment of the Plan.** The Department will periodically reassess whether the Plan and its implementation are sufficient to provide for necessary improvement in water quality prior to any reissuance of this general permit and will provide for stricter or more relaxed requirements as necessary. In approving the Plan and any modifications, the Department is making a determination that implementation of the Plan will result in attainment of water quality standards by December 31, 2020. The Department may require any or all dischargers to apply for individual permits if the Department determines that any requirements in this general permit are not met.
- F. Conditional authorization.** Authorization to discharge under this general permit is conditioned upon the Long Creek Watershed Management District's satisfactory implementation of the Long Creek Watershed Management Plan, as approved by the Department.

PART V. Relationship to Other General and Individual Permits

- A.** The requirements of this general permit apply unless one of the following conditions applies:
1. An individual permit is applied for and obtained; or
 2. An operator with a project having both post-construction stormwater and industrial stormwater discharges obtains authorization through an alternative general permit, such as a combined general

permit that includes both the Long Creek Post Construction Discharge of Stormwater and Multisector discharge requirements.

- B.** For construction activity, the requirements of this permit apply upon termination of requirements under the Maine Construction General Permit (MCGP), pursuant to Part III.D.2.b., if applicable. The MCGP authorizes stormwater discharges from construction activity including, but not limited to, clearing, grading, excavation, and filling, where total land disturbance is equal to or greater than one acre, and where stormwater runoff discharges to waters of the state in the Long Creek Watershed other than groundwater.

PART VI. Standard Conditions

- A. Removed substances.** Solids, sludges, filter backwash or other pollutants removed or resulting from the treatment of wastewaters shall be disposed of in a manner approved by the Department.
- B. Monitoring requirement.** The Department may require monitoring of an individual discharge as may be reasonably necessary in order to characterize the nature, volume or other attributes of that discharge or its sources.
- C. Other information.** When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Department, he or she shall promptly submit such facts or information.
- D. Endangered species.** Pursuant to State and Local Cooperation Law, 12 M.R.S.A. § 12806, a state agency or municipal government shall not permit, license, fund or carry out projects that will:
1. Significantly alter the habitat identified under Conservation of Endangered Species Law, 12 M.R.S.A. § 12804, subsection 2 of any species designated as threatened or endangered under this subchapter; or
 2. Violate protection guidelines set forth in 12 M.R.S.A. § 12804, subsection 3.
- E. Individual permit or alternative general permit.** When an individual permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative general permit, the applicability of this permit to the individual permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual permit is denied to an operator otherwise subject to this permit, or the operator is denied coverage under an alternative general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Commissioner.
- F. Other standard conditions.** Pursuant to General Permits for Certain Wastewater Discharges, 06-096 CMR 529(3)(h), the following conditions also apply to discharges pursuant to this general permit and are incorporated herein as if fully set forth.
1. Chapter 523, Section 2 (applicable to all discharges)
 2. Chapter 523, Section 3 (applicable to certain categories of discharges)