



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

December 7, 2007

Mr. Stanley Bayley
Bayley's Quality Seafood
26 Eagle's Nest Drive
Scarborough, ME. 04074

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit # ME0110221
Maine Waste Discharge License (WDL) Application #W000990-5P-B-R
Final Permit

Dear Mr. Bayley:

Enclosed please find a copy of your **final** MEPDES permit/WDL which was approved by the Department of Environmental Protection. You must follow the conditions in the permit to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State Law and is subject to enforcement action.

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled "*Appealing a Commissioner's Licensing Decision.*"

Should you have questions regarding this matter, feel free to call me at (207) 287-7693 or send me an e-mail at gregg.wood@maine.gov.

Sincerely,

Gregg Wood
Division of Water Quality Management
Bureau of Land and Water Quality

Enc.

cc: Matt Hight, DEP/SMRO
Sandy Lao, USEPA

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 760-3143



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

DEPARTMENT ORDER

IN THE MATTER OF

BAYLEY'S QUALITY SEAFOOD)	MAINE POLLUTANT DISCHARGE
SCARBOROUGH, CUMBERLAND CO., MAINE)	ELIMINATION SYSTEM PERMIT
SHELLFISH PROCESSING FACILITY)	AND
ME0110221)	WASTE DISCHARGE LICENSE
W000990-5P-B-R)	RENEWAL
		APPROVAL

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et seq. and Maine Law 38 M.R.S.A., Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of BAYLEY'S QUALITY SEAFOOD (BQS hereinafter), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

The applicant has applied for renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0110221/Maine Waste Discharge License #W000990-5P-A-R (permit hereinafter) that was issued by the Department on August 13, 2002 and expired on August 13, 2007. The 8/13/02 permit authorized BQS to discharge up to 63,252 gallons per day (gpd) of treated seafood processing waste waters to tidewaters of Scarborough (Jones Creek), Class SB in Scarborough, Maine. Shrimp are processed by removing unmarketable portions (decapitated, peeled, and washed) and packaged on ice for distribution. Clams are processed by, heat shocking to remove byssal threads, shucking shells and washing before being packaged on ice for distribution. Sanitary waste waters are disposed of in an on-site subsurface waste water disposal system. The permittee is also seeking authorization to discharge the clam processing waste waters to their on-site subsurface waste waster disposal system as an alternative to discharging to Jones Creek.

PERMIT SUMMARY

The terms and conditions in this permitting action are different from the previous permitting action as production values used to calculate limitations for the permit were in error. More specifically, the permittee was requesting a permit based on finished product rather than raw material as required by federal National Effluent Guidelines (NEGs). In addition, water quality based limits established in the previous permit were based on an outfall pipe that terminated and discharged above the mean low water mark. Since issuance of the 8/13/02 permit, the outfall pipe has been relocated such that the discharge pipe is submerged to a depth of 6 feet below the mean low water mark resulting in rapid and complete mixing of the discharge with the receiving water under all tide cycles.

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- Beginning the effective date of this permit, the permittee is authorized to discharge treated **SHRIMP** processing and facility clean-up wastewater to the tidewaters of (Jones Creek) via **OUTFALL #001** only during January through March of any year. Such discharges shall be limited and monitored by the permittee as specified below.

December through April

Effluent Characteristic	Discharge Limitations			Monitoring Requirement			
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type	
	(Quantity or as specified)			(Concentration)			
Flow [50050]	42,350 GPD ⁽¹⁾ [07]	63,525 GPD [07]	---	---	Continuous [99/99]	Meter [MT]	
Settleable Solids [00545]	---	---	Report (ml/L) [25]	0.3 ml/L [25]	1/Week [01/07]	Grab [GR]	
TSS [00530]	648 lbs/ day [26]	1,920 lbs/day [26]	1,835 mg/L [19]	3,624 mg/L [19]	1/Week [01/07]	Composite ⁽²⁾ [CP]	
BOD [00310]	341 lbs/day [26]	604/day [26]	966 mg/L [19]	1,710 mg/L [19]	1/Week [01/07]	Composite ⁽²⁾ [CP]	
Oil & Grease [03582]	504 lbs/ day [26]	1,512 lbs/day [26]	1,426 mg/L [19]	2,854 mg/L [19]	1/Week [01/07]	Composite ⁽²⁾ [CP]	
Total Residual Chlorine (TRC) ⁽³⁾ [50060]	---	---	0.19 mg/L [19]	0.26 mg/L [19]	2/Week [02/07]	Grab [GR]	
Production ⁽⁴⁾ lbs/day [00145]	Report lbs/day [26]	Report lbs/day [26]	---	---	1/Day [01/01]	Measure [MS]	
pH (Std. Units) [00400]	The pH shall not be less than 6.0 or greater than 9.0 at any time.					1/Week [01/07]	Grab [GR]

The italicized numeric values bracketed in the table above and table that follows are code numbers that Department personnel use to code the monthly Discharge Monitoring Reports (DMR's).

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. Beginning the effective date of the permit, the permittee is authorized to discharge treated CLAM processing and facility clean-up waste water to the tidewaters of (Jones Creek) via **OUTFALL #001** or to the ground water. **Discharges to surface waters** shall be limited and monitored by the permittee as specified below.

June - September

Effluent Characteristic	Discharge Limitations		Daily Maximum	Monthly Average	Daily Maximum	Monitoring Requirement		
	Monthly Average	Quantity or as specified				Measurement Frequency	Sample Type	
Flow [50050]	7,140 GPD ⁽¹⁾ [07]	10,710 GPD [07]	---	---	---	Continuous [99/99]	Meter [MT]	
Settleable Solids [00545]	---	---	---	---	0.3 ml/L [25]	1/Week [01/07]	Grab [GR]	
TSS [00530]	9.0 lbs/day [26]	30 lbs/day [26]	151 mg/L [19]	---	336 mg/L [19]	1/Week [01/07]	Composite ⁽²⁾ [CP]	
BOD [00310]	Report, lbs/day [26]	Report, lbs/day [26]	Report mg/L [19]	---	Report mg/L [19]	1/Week [01/07]	Composite ⁽²⁾ [CP]	
Oil & Grease [03582]	0.12 lbs/day [26]	0.30 lbs/day [26]	2.0 mg/L [19]	---	3.3 mg/L [19]	1/Week [01/07]	Composite ⁽²⁾ [CP]	
Total Residual Chlorine (TRC) [50060]	---	---	---	---	1.0 mg/L [19]	1/Week [01/07]	Grab [GR]	
Production ⁽⁴⁾ lbs/day [00145]	Report [26]	Report [26]	---	---	---	1/Day [01/01]	Measure [MS]	
pH (Std. Units) [00400]	The pH shall not be less than 6.0 or greater than 9.0 at any time.						1/Week [01/07]	Grab [GR]

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- Beginning the effective date of the permit, the permittee is authorized to discharge treated CLAM processing and facility clean-up to the ground water via a sub-surface waste water disposal system via **OUTFALL #001**. Discharges to the sub-surface waste water disposal system shall be limited and monitored by the permittee as specified below.

June - September

Effluent Characteristic	Discharge Limitations			Monitoring Requirement	
	Monthly Average (Quantity or as specified)	Daily Maximum	Monthly Average (Concentration)	Measurement Frequency	Sample Type
Flow [50050]	Report gpd [07]	Report gpd [07]	---	Continuous [99/99]	Meter [MT]
Production ⁽⁴⁾ lbs/day [00145]	Report [26]	Report [26]	---	1/Day [01/01]	Measure [MS]

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

Effluent sampling shall be conducted for all parameters after the last treatment process on a year-round basis. Any change in sampling location(s) must be reviewed and approved by the Department in writing.

Sampling – Sampling and analysis must be conducted in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Human Services.

All testing shall be conducted using methods that permit detection of a pollutant at existing levels in the effluent or that achieve the most current minimum reporting levels (RL) of detection as specified by the Department. All detectable analytical test results shall be reported to the Department including results which are detected below the Department's respective RL's. If the concentration result is at or above the respective RL's, the concentration shall be reported at that level. If applicable, the mass shall be calculated based on the detected concentration and the flow discharged for the day in which the sample was taken. If the analytical test result is below the respective RL's, the concentration result shall be reported as <X where X is the detection level achieved by the laboratory for that test. Because a mass cannot be calculated with a less than value, report less than the applicable permit mass limit.

- (1) **Flow** – Monthly average flow shall be calculated as follows: The total gallons discharged during the calendar month divided by the number of days in the month that the facility was operating.
- (2) **Grab samples** - Shall consist of a composite sample of four flow proportioned grab samples collected over the operating day or a sample collected by an automatic flow proportioning compositor over the day.
- (3) **Total residual chlorine (TRC)** – Monitoring for TRC is only required when elemental chlorine or chlorine-based compounds are in use for effluent disinfection. TRC shall be tested using Amperometric Titration or the DPD Spectrophotometric Method. The USEPA approved methods are found in Standard Methods for the Examination of Water and Waste Water, (most current edition), Method 4500-CL-E and Method 4500-CL-G or USEPA Manual of Methods of Analysis of Water and Wastes
- (4) **Production** – Gross weight of pounds of raw material in the form in which it is received at the processing plant to be processed on any given day.

SPECIAL CONDITIONS

B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time or which would impair the usage designated by the classification of the receiving waters.
2. The effluent shall not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usage designated by the classification of the receiving waters.
3. The discharge shall not cause visible discoloration or turbidity in the receiving waters which would impair the usages designated by the classification of the receiving waters.
4. Notwithstanding specific conditions of this permit the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

C. UNAUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on September 6, 2007 and amended on October 19, 2007; 2) the terms and conditions of this permit; and 3) only from Outfall #001A to Jones Creek or the on-site sub-surface waste water disposal system. Discharges of waste water from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

D. NOTIFICATION REQUIREMENT

In accordance with Standard Condition D, the permittee shall notify the Department of the following:

1. Any substantial change in the volume or character of pollutants being introduced into the waste water treatment system.
2. For the purpose of this section, adequate notice shall include information on:
 - a. The quality or quantity of waste water introduced to the waste water collection and treatment system; and
 - b. Any anticipated impact of the change in the quality or quantity of the waste water to be discharged from the treatment system.

SPECIAL CONDITIONS

E. OPERATIONS AND MAINTENANCE (O&M) PLAN

This facility shall have a current written comprehensive Operations & Maintenance Plan. The Plan shall provide a systematic approach by which the permittee shall at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades, the permittee shall evaluate and modify the O&M plan for the wastewater treatment facility to ensure that it is up-to-date. The O&M plan shall be kept on-site at all times and made available to Department and EPA personnel upon request.

For new and substantial upgrades, the permittee shall, within 90 days, submit an updated O&M plan to the Department for review and approval.

F. MONITORING AND REPORTING REQUIREMENT

Monitoring results obtained during the previous monthly shall be summarized for each month and reported on separate Discharge Monitoring Report (DMR) forms provided by the Department and postmarked on or before the thirteenth (13th) day of the month or hand-delivered to a Department Regional Office such that the DMR's are **received by the Department on or before the fifteenth (15th) day of the month** following the completed reporting period. A signed copy of the DMR and all other reports required herein shall be submitted to the Department's compliance inspector (unless otherwise specified) at the following addresses:

Department of Environmental Protection
Bureau of Land & Water Quality
Division of Water Quality Management
Southern Maine Regional Office
312 Canco Road
Portland, Maine 04103

G. RE-OPENER CLAUSE

Upon evaluation of the tests results required by Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at anytime and with notice to the permittee, modify this permittee to: (1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded; (2) require additional monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

SPECIAL CONDITIONS

H. SEVERABILITY

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

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

FACT SHEET

Date: **October 30, 2007**

PERMIT NUMBER: **ME0110221**
LICENSE NUMBER: **W000990-5P-B-R**

NAME AND ADDRESS OF APPLICANT:

**BAYLEY'S QUALITY SEAFOOD
26 Eagles Nest Road
Scarborough, Maine 04074**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**Bayley's Quality Seafood
314 Pine Point Road
Scarborough, Maine 04074**

RECEIVING WATER/CLASSIFICATION: **Tidewaters of Scarborough, Class SB
Ground Water, Class GW-A**

COUNTY: **Cumberland County**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Stanley Bayley
(207) 883-4587**

1. APPLICATION SUMMARY

- a. Application - The applicant has applied for renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0110221/Maine Waste Discharge License #W000990-5P-A-R (permit hereinafter) that was issued by the Department on August 13, 2002 and expired on August 13, 2007. The 8/13/02 permit authorized BQS to discharge up to 63,252 gallons per day (gpd) of treated seafood processing waste waters to tidewaters of Scarborough (Jones Creek), Class SB in Scarborough, Maine. See Attachment A of this Fact Sheet for a location map. Sanitary waste waters are disposed of in an on-site subsurface wastewater disposal system. The permittee is also seeking authorization to discharge the clam processing waste waters to an on-site sub-surface waste waters disposal system as an alternative to discharging to Jones Creek.

1. APPLICATION SUMMARY (cont'd)

- b. Source Description: The facility processes shrimp and clams from bulk suppliers and packages the processed shrimp in 4 pound packages for distribution and live clams in 5 pound packages for consumption at the retail level. Waste water is generated from the cleaning, deheading, carapace and leg removal, and washing the shrimp carcass. The permittee has indicated that cooking of shrimp does take place occasionally but is not a normal business practice. Clams are processed by, heat shocking to remove byssal threads, shucking shells and washing before packaged on ice for distribution. All water utilized to process the seafood and used for clean-up is purchased from the Biddeford & Saco Water Company.
- c. Waste Water Treatment: Waste water receives treatment by means of a 30-micron screen located in a pit adjacent to the processing area. The waste water is directed to the screen and solids that have a diameter greater than the screen mesh holes will fall out of the waste water stream. Solids are augered to a holding bin for disposal at a landfill operation. Waste water that passes through the screen is directed to a culvert measuring 6 inches in diameter that conveys waste water to Jones Creek approximately 400 feet from the screen pit.

On October 19, 2007, the permittee provided the Department with a plan and profile drawing of the outfall indicating the outfall has been relocated since issuance of the last permit. The 6-inch outfall pipe has been extended out into the middle of Jones Creek (just below the outfall of a large culvert under Pine Point Road) whereby there is approximately six (6) feet of water over the crown of the outfall pipe at mean low water, approximately nine (9) feet of water over the crown of the pipe at mean tide and approximately 14 feet of water over the crown of the pipe at mean high tide. The pipe contains a single outfall orifice that is strategically located to maximize mixing of the discharge with the receiving waters.

2. PERMIT SUMMARY

- a. Terms and conditions – The terms and conditions in this permitting action are different from the previous permitting action as production values used to calculate limitations for the previous permit were in error. More specifically, the permittee was requesting a permit based on finished product rather than raw material as required by federal National Effluent Guidelines (NEGs). In addition, water quality based limits established in the previous permit were based on an outfall pipe that terminated and discharged above the mean low water mark. Since issuance of the 8/12/02 permit, the outfall pipe has been relocated as described in section 1(c) above.

2. PERMIT SUMMARY (cont'd)

- b. History: The most recent relevant licensing/permitting actions include:

October 27, 1976—The Department issued Waste Discharge License (WDL) #990 authorizing the discharge of up to 5,000 gallons per day of treated seafood processing waste water.

January 11, 1978—The Department modified the 10/27/76 WDL by increasing the flow limitation to 14,000 gallons per day.

January 11, 1991—The Department issued a draft denial Order (#W000990-WA-A-R) for the seafood processing waste water. In the draft denial order, the Department found that the seafood processing waste water from the BQS contained high concentrations of BOD, suspended and floating solids, turbidity and, oil and grease. The Department also found that the discharge in combination with the limited dilution available would cause the receiving waters to be unsuitable for the designated uses assigned to the receiving waters. Further, the Department Order found that the Scarborough Sanitary District (SSD) provided sewerage collection and treatment services for the local area and that consignment of the waste water to the SSD is the best practicable treatment for the waste water. The draft denial order was never issued as a final document.

January 25, 1991—The Town of Scarborough wrote to the Department concurring with the findings and decision of the draft order that continuation of the discharge may (1) lower the water quality of Jones Creek below the assigned classification, (2) eliminate the possibility of opening the adjacent shellfish harvesting area, and (3) be discontinued because of the availability of municipal sewer connection near the property boundary with BQS.

February 7, 2001—The Department issued a Notice of Violation requiring the submittal of an application for renewal of the WDL or discontinuation of the discharge.

April 5, 2001—BQS submitted an application to the Department for renewal of the WDL.

April 25, 2001—The Department accepted the WDL application as submitted by BQS for processing.

January 12, 2001 – The Department received authorization from the EPA to administer the National Pollutant Discharge Elimination System (NPDES) permitting program in Maine. From that point forward, the program has been referred to as the MEPDES permit program and MEPDES permit numbers will be utilized as the primary facility reference. It is noted BQS never obtained a NPDES permit from EPA for the discharges at the facility.

August 13, 2002 – The Department issued combination MEPDES permit #ME0110221/WDL #W000990-5P-A-R for a five-year term.

2. PERMIT SUMMARY (cont'd)

September 28, 2007 – BQS submitted an application to the Department to renew the 8/13/02 MEPDES permit/WDL. The Department accepted said application on October 4, 2007.

October 19, 2007 – The permittee submitted revised production data to the Department and provided the Department with an update plan and profile drawing of the outfall pipe that was relocated after the issuance of the previous permitting action. The production figures utilized to calculate permit limitations in the previous permitting action and the figures reported in the 9/28/07 permit application reflected finished product, not raw material processed. Federal guidelines utilize raw material production figures to calculate permit limits.

3. CONDITIONS OF PERMITS

Maine law, 38 M.R.S.A. Section 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 U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S.A., Section 420 and Department rule 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, require the regulation of toxic substances not to exceed levels set forth in Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

4. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A., Section 469 classifies the marine waters of (Jones Creek) Scarborough, Maine as a Class SB waterway and 38 M.R.S.A., Section 470 classifies the ground water as a GW-A waterbody. Maine law, 38 M.R.S.A., Section 465-B(2) and Section 465-C describe the classification standards for Class SB and Class GW-A waterbodies respectively.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2006 Integrated Water Quality Assessment Report, prepared by the Department pursuant to Section 305(b) of the Federal Water Pollution Control Act indicates that Jones Creek is not attaining its Class SB classification due to elevated bacteria from overboard discharges (OBDs). As a result, Department of Marine Resources Area #11 is restricted to shell fish harvesting. See Attachment B of this Fact Sheet for the delineation of the restricted area. According to the DMR, Area #11 was last posted as a restricted harvesting area on July 20, 2007. The DMR traditionally closes shellfish harvesting areas if there are known sources of discharges with unacceptable bacteria levels (instream thresholds established in the National Shellfish Sanitation Program) or keep areas

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

closed or restricts areas due to lack of updated information. The source of elevated bacteria levels is likely caused by a number of OBDs licensed by this Department. The Department has made the determination that the discharge from the BQS facility is not causing or contributing to the shellfish closure as the discharge is solely seafood processing and all sanitary waste waters generated at the facility are disposed of in a sub-surface waste water disposal system.

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

By this permit renewal, the effluent limitations and monitoring requirements are being established to address the quantity and quality of the seafood processing waste water. Effluent limitations for total suspended solids, oil & grease, and pH are based on the Code of Federal Regulations (CFR), National Effluent Guidelines (NEGs) found at Title 40, Sub-Part K, *Northern Shrimp Processing in the Contiguous State Subcategory*, §408.110. Subpart K is applicable to shrimp processing facilities that process 2,000 lbs or more of raw material per day on any given day during a calendar year. For clam processing, applicable NEGs can be found at federal regulation 40 CFR, Sub-Part W, *Hand Shucked Clam Processing Category*, §408.23. Subpart W is applicable to clam processing facilities that process more than 2,000 lbs or more of raw material per day on any given day during a calendar year. As discussed below, BQS only processes up to a daily maximum of 800 lbs/day. However, in the absence of any State effluent guidelines, the Department is making a BPJ determination to give deference to the federal NEG and therefore, calculating technology based limits on said NEGs.

- a. Production – The previous permitting action established technology based mass and concentration limits based on incorrect production figures. In their 5/5/01 application for permit renewal, the permittee cited representative production figures for shrimp as follows: monthly average – 1,500 lbs/day, daily maximum 3,000 lbs/day, total annual 200,000 lbs/year. The permittee cited the same production figures in their 9/28/07 application for permit renewal. On October 16, 2007, Department staff met with BQS personnel and discovered the production figures cited to date have been finished product and not raw material as received at the processing facility. Federal guidelines require that raw production material shall be used when calculating permit limits. On 10/19/07, the permittee amended their application by reporting raw material processed. The amendment materials indicated the facility processes shrimp for a 20-week period time from December – April inclusively. Raw shrimp production is up to 12,000 lbs/day as a monthly average with a daily maximum of 20,000 lbs/day for a total production of 1,260,000 lbs/season. Therefore, for the purposes of this permitting action, a monthly average shrimp production figure of 12,000 lbs/day will be used to calculate technology based permit limits.

For raw clam production, the 5/5/01 and 9/28/07 applications for permit renewal indicated finished product production figures for clam production were as follows: monthly average – 200 lbs/day, daily maximum 300 lbs/day, total annual 120,000 lbs/year. As was the case with shrimp, the permittee amended their 9/28/07 application indicating the facility processes raw clams from June – September of each year.

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

Production ranges from up to 500 lbs/day as a monthly average with 800 lbs/day as a daily maximum for a total of 45,000 lbs/year. Therefore, for the purposes of this permitting action, a monthly average clam production figure of 500 lbs/day will be used to calculate technology based permit limits.

It is noted, in calculating limits in the previous permitting action the Department calculated technology based limitations using an incorrect methodology. Rather than calculating the limits based on a fixed monthly average raw material figure, the permit writer used monthly average production figures to calculate monthly average limits and used daily maximum production figures to calculate daily maximum limits. This methodology is incorrect as the NEGs already take into consideration the variability in production and compensate for said variability by establishing separate monthly and daily BPT standards (monthly – 95% confidence level, daily 99% confidence level) for calculating monthly and daily limitations.

b. Antibacksliding - Federal regulation 40 CFR, §122(l) and Department rules Chapter 523.5(1) contain the criteria for what is often referred to as the anti-backsliding provisions of the Federal Water Pollution Control Act (Clean Water Act). In general, the regulation states that except for provisions specified therein, effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards or conditions in the previous permit. Applicable allowable exceptions to the anti-backsliding provisions include when:

- (1) information is available which was not available at the time of the permit issuance (other than revised regulations, guidance or test methods) and which would justify the application of less stringent effluent limitations at the time of permit issuance.
- (2) The Administrator determines that technical mistakes or mistaken interpretations of law were made when issuing the permit under section 401(a)(1)(b) of the CWA.

As described in section 6(a) of this Fact Sheet, technology based limits were based on erroneous production figures and water quality based limits were based on a 1:1 dilution factor. The permittee has provided new production information and plan and profile information for a relocated outfall pipe that were not available at the time of the issuance of the previous permit. In addition, the Department made technical mistakes in its methodology for calculating permit limitations. Both circumstances justify the application of less stringent effluent limitations in this permitting action. Therefore, this permitting action revises previously established effluent limitations and monitoring requirements for pollutants including TSS, oil & grease, and total residual chlorine. The rationale for these actions is contained in this section (section 6) of this Fact Sheet. The Department makes the determination that these actions are consistent with the anti-backsliding provisions.

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

- b. Flow – The previous permitting action established monthly average and daily maximum flows as follows:

	<u>Monthly Avg.</u>	<u>Daily Max.</u>
Shrimp	42,359 gpd	63,525 gpd
Clams	7,140 gpd	10,710 gpd

The Fact Sheet of the previous permitting action contained the following italicized text;

This permitting action establishes effluent limitations and monitoring requirements based on a peak monthly flow (March 2000) of 849,728 gallons per month of shrimp and clam processing and clean-up water. BQS obtains all of its domestic and process water supply from the Biddeford & Saco Water Company. According to customer meter reading detail from the Biddeford & Saco Water Company, BQS was provided water according to the following schedule:

Shrimp are generally processed during January, February, and March for approximately 15 weeks per year. Clams are generally processed during June, July, August, and September over approximately 25 weeks per year. According to the information submitted by BQS contained in the Customer Meter Reading Detail from the Biddeford & Saco Water Company, for the shrimp processing month with the greatest flow for which data was provided (March 2000) BQS used a total of 849,728 gallons at the facility, or a peak monthly average of 42,486 gallons per day given 20 working days per month. During the clam processing month with the highest flow (September 1999) for which data was provided, BQS used a total of 142,868 gallons, or an daily maximum average of 7,143 gallons per day.

A portion of the water provided to BQS from the Biddeford & Saco Water Company is used for domestic purposes (lavatories, wash basins, workers meal preparation) and is discharged to an on-site subsurface wastewater disposal system and not to the wastewater disposal outfall pipe to be discharge to receiving waters. According to the Maine Subsurface Waste Water Disposal Rules, (144A CMR 241, Table 501.2, Design Flows for Other Facilities) domestic wastewater generation from a facility similar to BQS is (based on the number of employees at the place of employment) 15 gallons per day per employee. Since BQS uses 10 employees during the shrimp season and 4 employees during the clam processing season, the facility will generate approximately a total of 150 gallons (during the shrimp processing season) and a total of 60 gallons (during the clam processing season) of domestic wastewater of per day, respectively.

BQS processes seafood on a five day work week schedule. Discharge from outfall #001 can be calculated by subtracting the domestic wastewater that is not discharged through the outfall (150 and 60 gallons per day for shrimp and clam processing, respectively). Therefore, the peak month average daily discharge is (42,500 – 150) 42,350 gallons at outfall pipe #001 during the shrimp season. During the clam season the peak month average daily discharge is (7,200 – 60) 7,140 gallons.

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

The Department is establishing shrimp and clam monthly average flow limits of 42,350 and 7,140 gallons per day, respectively. For the shrimp and clam daily maximum flow limit, given the variable nature of the industry, the Department is establishing a limit 1.5 times the calculated monthly average flow limit (42,350 and 7,140 gallons, respectively) at no more than 63,525 and 10,710 gallons per day, respectively. The 1.5 multiplier factor is based on the Maine Subsurface Waste Water Disposal Rules, (144A CMR 241, Section 503.2, Adjustments for Peak Days) when water meter records are recorded on a monthly basis, which is the case for BQS.

This permitting action is carrying forward the respective monthly average and daily maximum flow limitations for both the shrimp and clam processes. For shrimp processing, a review of the Discharge Monitoring Report (DMR) data for the period January 2003 – March 2007 (n=8) indicates monthly average flows range from 96 gpd to 22,418 gpd with an arithmetic mean of 6,410 gpd. For the daily maximum (n=8), flows have ranged from 96 gpd to 25,408 gpd with an arithmetic mean of 7,253 gpd.

Shrimp Processing

c. Dilution Factors: Department Regulation Chapter 530 Surface Water Toxics Control Program, §4(a)(2) states:

- (1) *For estuaries where tidal flow is dominant and marine discharges, dilution factors are calculated as follows. These methods may be supplemented with additional information such as current studies or dye studies.*
 - (a) *For discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model.*
 - (b) *For discharges to estuaries, dilution must be calculated using a method such as MERGE, CORMIX or another predictive model determined by the Department to be appropriate for the site conditions.*
 - (c) *In the case of discharges to estuaries where tidal flow is dominant and marine waters, the human health criteria must be analyzed using a dilution equal to three times the chronic dilution factor.*

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

Shrimp Processing

Using the updated (10/19/07) plan and profile information of the outfall and permitting information developed for other like discharges utilizing the CORMIX model, the Department has made a best professional judgment (BPJ) determination that the dilution factors for the discharge of 0.042 MGD are as follows:

Acute = 20:1 Chronic = 25:1 Harmonic mean = 75:1⁽¹⁾

(1) Pursuant to Department rule Chapter 530, "Surface Water Toxics Control Program", §4(2)(c), the harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by a factor of three (3).

- d. **Settleable solids** – The previous permitting action established a daily maximum technology based concentration limit for settleable solids of 0.3 ml/L that is being carried forward in this permitting action. The limit is based on BPJ of best practicable treatment (BPT) determination by the Department. A review of the DMR data for the period January 2003 – March 2007 indicates the daily maximum settleable solids concentration has ranged from <0.1 ml/L to 2.2 ml/L with an arithmetic mean (n=6) of 0.67 ml/L. It is noted several non-representative samples results were submitted to the Department in calendar year 2006 that skew the mean value. During calendar year 2007, the permittee has reported all values as <0.1 ml/L.

The previous permitting action established a monitoring frequency of 1/Day for settleable solids. Based on the 10/16/07 meeting between the Department and BQS it was agreed that placing more weight on the 2007 sampling regime and test results was appropriate given the improvement in the sampling program at BQS. The Department has made the determination the 1/Day monitoring frequency is excessive and is therefore reducing the monitoring frequency to 1/Week. The Department has made a BPJ determination this monitoring frequency is adequate to determine on-going compliance with the daily maximum concentration limitation.

- e. **Total Suspended Solids (TSS)** The previous permitting action established technology based mass and concentration limits for TSS as follows:

Monthly Avg		Daily Max	
lbs/day	mg/L	lbs/day	mg/L
81	230	480	906

The limitations above were calculated based on erroneous production figures and an inappropriate methodology. As a result the limits established are in error as well. See the discussion in section 6(a) of this Fact Sheet. The NEG's for shrimp processing are specified in federal regulation 40 CFR 408.110.

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

Shrimp Processing

According to 40 CFR 408.112, BPT for TSS is as follows:

Monthly average – 54 lbs/1,000 lbs of production
Daily maximum – 160 lbs/1,000 lbs of production

With a monthly average production figure of 12,000 lbs for shrimp, technology based mass limits are calculated as follows:

$$\text{Monthly average: } \frac{12,000 \text{ lbs} \times 54 \text{ lbs}}{\text{day } 1,000 \text{ lbs}} = 648 \text{ lbs/day}$$

$$\text{Daily maximum: } \frac{12,000 \text{ lbs} \times 160 \text{ lbs}}{\text{day } 1,000 \text{ lbs}} = 1,920 \text{ lbs/day}$$

Department rule Chapter 523, *Waste Discharge License Conditions*, Section 6, *Calculating NPDES permit conditions*, sub-section f(2) states that "... pollutants limited in terms of mass additionally may be limited in terms of other units of measurement and the permit shall require the permittee to comply with both limitations." Due to the large fluctuations in daily production and to ensure BPT is being applied at all production levels, the Department is establishing monthly average and daily maximum concentration limits for TSS. The concentration limits were derived by a back-calculation using the respective monthly average and daily maximum mass and flow limitations. The calculations are as follows:

$$\text{Monthly average: } \frac{648 \text{ lbs/day}}{(8.34 \text{ lbs/gal.})(0.042350 \text{ MGD})} = 1,835 \text{ mg/L}$$

$$\text{Daily maximum: } \frac{1,920 \text{ lbs/day}}{(8.34 \text{ lbs/gal.})(0.063525 \text{ MGD})} = 3,624 \text{ mg/L}$$

A review of the DMR data for the period January 2005 – March 2007 indicates the following:

	<u>TSS Mass (lbs/day)</u>	
	<u>Month Avg.</u>	<u>Daily Max.</u>
Range	0.006 - 11 lbs/day	0.006 – >12 lbs/day
Arithmetic mean	4.1 lbs/day	34 lbs/day

	<u>TSS concentration (mg/L)</u>	
	<u>Month Avg.</u>	<u>Daily Max.</u>
Range	15 - 220 mg/L	24 – 310 mg/L
Arithmetic mean	116 mg/L	151 mg/L

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

Shrimp Processing

The monitoring frequency of 1/Week in the previous permitting action is being carried forward in this permitting action and is considered by the Department to be adequate to determine on-going compliance with the applicable mass and concentration limitations.

- e. Oil & grease (O&G) The previous permitting action established a technology concentration limit as follows:

Monthly Avg		Daily Max	
lbs/day	mg/L	lbs/day	mg/L
---	---	Report	15

The daily maximum concentration limitation was in error as 15 mg/L is the Department's BPJ of a water quality based threshold at which an oil sheen is visible for petroleum based oil and grease not fish oil and grease. The NEG's for O&G for shrimp processing are specified in federal regulation 40 CFR 408.112.

According to 40 CFR 408.112, BPT for O&G is as follows:

Monthly average – 42 lbs/1,000 lbs of production
Daily maximum – 126 lbs/1,000 lbs of production

With a monthly average production figure of 12,000 lbs for shrimp, technology based mass limits are calculated as follows:

$$\text{Monthly average: } \frac{12,000 \text{ lbs} \times 42 \text{ lbs}}{\text{day } 1,000 \text{ lbs}} = 504 \text{ lbs/day}$$

$$\text{Daily maximum: } \frac{12,000 \text{ lbs} \times 126 \text{ lbs}}{\text{day } 1,000 \text{ lbs}} = 1,512 \text{ lbs/day}$$

To ensure BPT is being achieved at lower levels of production, the Department is establishing monthly average and daily maximum concentration limits for O&G. The concentration limits were derived by a back-calculation using the respective monthly average and daily maximum mass and flow limitations. The calculations are as follows:

$$\text{Monthly average: } \frac{504 \text{ lbs/day}}{(8.34 \text{ lbs/gal.})(0.042350 \text{ MGD})} = 1,426 \text{ mg/L}$$

$$\text{Daily maximum: } \frac{1,512 \text{ lbs/day}}{(8.34 \text{ lbs/gal.})(0.063525 \text{ MGD})} = 2,854 \text{ mg/L}$$

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

Shrimp Processing

A review of the DMR data for the period January 2005 – March 2007 indicates the following:

	<u>O&G mass (lbs/day)</u>	<u>O&G concentration (mg/L)</u>
	<u>Daily Max.</u>	<u>Daily Max.</u>
Range	<0.01 - >7 lbs/day	13 - 68 mg/L
Arithmetic mean	1.7 lbs/day	33 mg/L

The monitoring frequency of 1/Week in the previous permitting action is being carried forward in this permitting action and considered by the Department to be adequate to determine on-going compliance with the applicable mass concentration limitations.

- f. Total Residual Chlorine (TRC): The previous permitting action established a daily maximum water quality based concentration limit of 0.013 mg/L. The limit was based on an acute (continuous maximum concentration) ambient water quality criteria (AWQC) of 0.013 mg/L and an acute dilution factor of 1:1 as the outfall pipe was exposed at mean low tide at the time of permitting.

Limits on total residual chlorine are specified to ensure attainment of the in-stream water quality criteria for chlorine and that BPT technology is utilized to abate the discharge of chlorine. Permits issued by this Department impose the more stringent of the calculated water quality based or BPT based limits. The Department has established a daily maximum BPT limitation of 1.0 mg/L for facilities that disinfect their effluent with elemental chlorine or chlorine based compounds unless the calculated acute water quality based threshold is lower than 1.0 mg/L. For facilities that need to de-chlorinate the discharge to meet water quality based thresholds (BQS has done so to date), the Department has established daily maximum and monthly average BPT limits of 0.3 mg/L and 0.1 mg/L respectively. Water quality based thresholds for TRC may be calculated from the acute and chronic AWQC of 0.013 mg/L and 0.0075 mg/L, respectively.

Acute (A) Criterion	Chronic (C) Criterion	Dilution Factors		Calculated Acute Limit	Calculated Chronic Limit
		(A)	(C)		
0.013 mg/L	0.0075 mg/L	20:1	25:1	0.26 mg/L	0.19 mg/L

The monthly average and daily maximum water quality based limits calculated above are more stringent than the Department's BPT limits of 0.1 mg/L and 0.3 mg/L respectively. Therefore, the water quality based limits are being established in this permitting action.

The monitoring frequency of 1/Day in the previous permitting action is being reduced to 2/Week in this permitting action and considered by the Department to be adequate to determine on-going compliance with the applicable mass concentration limitations.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

Shrimp Processing

- g. Biochemical oxygen demand (BOD) – The previous permitting action establishing a monthly average and daily maximum concentration limit of 2,011 mg/L along with “report” only requirements for mass. The NEGs have not established BPT limitations for BOD in the shrimp processing subpart. The Fact Sheet for the 8/13/02 permit contained the following italicized text:

This permitting action establishes a weekly monitoring requirement and effluent mass and concentration limit for discharges of BOD. According to the information provided by BQS in its application, the Scarborough Sanitary District, (SSD) (by letter dated March 16, 2001) has identified BOD loading from shrimp processing facilities. SSD indicates that shrimp processing will result in wastewater with a BOD concentration of approximately 2,011 mg/L. Future permitting actions may establish BOD effluent limits based on effluent data collected by BQS. If, after 18 months of weekly monitoring, the Department determines that BOD sample results indicate little or no risk of pollutant loading or variability of pollutant strength, the permittee may request (in writing to the Department) that the frequency of BOD measurement be reduced or modified.

DMR data for the period January 2005 – March 2007 indicates the following:

	<u>BOD Mass (lbs/day)</u>	
	<u>Month Avg.</u>	<u>Daily Max.</u>
Range	0.034 - 60 lbs/day	0.034 – >120 lbs/day
Arithmetic mean	20 lbs/day	32 lbs/day

	<u>BOD concentration (mg/L)</u>	
	<u>Month Avg.</u>	<u>Daily Max.</u>
Range	122 – 1,800 mg/L	200 – 1,800 mg/L
Arithmetic mean	692 mg/L	825 mg/L

In keeping with the text of the previous permitting action, the Department is establishing monthly average and daily maximum mass and concentration limits based on a statistical evaluation of the historic effluent data cited above. Being that concentration values are representative of the treatment of the waste water being discharged, the Department calculated a monthly average concentration of 966 mg/L as representing the 95th percentile (two standard deviations) of the data and the daily maximum concentration of 1,710 mg/L as being representative of the 99th percentile of the data. These respective values have been established as technology based

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

Shrimp Processing

concentration limits in this permit. Holding the respective concentrations limits, technology based mass limits can be calculated as follows:

Monthly average: $966 \text{ mg/L} \left(\frac{8.34 \text{ lbs}}{\text{gal}} \right) (0.042359 \text{ MGD}) = 341 \text{ lbs/day}$

Daily maximum: $1,710 \text{ lbs} \left(\frac{8.34 \text{ lbs}}{\text{gal}} \right) (0.042359 \text{ MGD}) = 604 \text{ lbs/day}$

- h. pH – The previous permitting action established a pH range limitation of 6.0 – 9.0 standard units based on the BPT pH limitation in 40 CFR, §408.112 and is being carried forward in this permitting action. A review of the monthly DMR data for the period January 2005 – March 2007 indicates the range limitation has never been violated.

Clam processing

- i. Production – Based on the discussion in section 6(a) of this Fact Sheet, a monthly average clam production figure of 500 lbs/day will be used to calculate technology based limits in this permitting action.
- j. Flow – The previous permitting action established monthly average and daily maximum flows of 7,410 gpd and 10,710 gpd. See the discussion in section 6(a) of this Fact Sheet. A review of the DMR data indicates the permittee has not reported monthly average or daily maximum flow data (or for any other permitted parameter for clam processing) since October of 2003. In the 10/16/07 meeting between the permittee and the Department, the absence of data reflects the fact clam processing waste waters have historically been conveyed to their on-site waste water disposal system due to the low volume. The flow limitations are being carried forward in this permitting action and are applicable when discharging to surface waters but “Report” only when discharge to the on-site sub-surface waste water disposal system.
- k. Dilution – Given the monthly average flow cited in section 6(j) above are approximately $1/6^{\text{th}}$ of the flows for shrimp processing for which the dilution factors in section 6(c) of this Fact Sheet were derived, the Department is making a BPJ determination to establish the dilution factors for the clam processing as six times higher than the dilution factors for the shrimp processing discharge. As a result, the dilution factors for the discharge of clam processing waste waters to Jones Creek are as follows:

Acute = 120:1

Chronic = 150:1

Harmonic mean = 450:1⁽¹⁾

(1) Pursuant to Department rule Chapter 530, “*Surface Water Toxics Control Program*”, §4(2)(c), the harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by a factor of three (3).

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

Clam Processing

- l. Settleable solids - The previous permitting action established a daily maximum technology based concentration limit for settleable solids of 0.3 ml/L that is being carried forward in this permitting action. The limit is based on a Department BPJ of BPT determination.

The previous permitting action established a monitoring frequency of 1/Day for settleable solids. Based on the 10/16/07 meeting between the Department and BQS the Department has made the determination the 1/Day monitoring frequency is excessive. The Department is therefore reducing the monitoring frequency to 1/Week and made a BPJ determination this monitoring frequency is adequate to determine on-going compliance with the daily maximum concentration limitation.

- m. Total Suspended Solids (TSS) The previous permitting action established technology based mass and concentration limits for TSS as follows:

Monthly Avg		Daily Max	
lbs/day	mg/L	lbs/day	mg/L
3.6	60	28	198

The limitations above were calculated based on erroneous production figures and an inappropriate methodology. As a result the limits established are in error as well. See the discussion in section 6(a) of this Fact Sheet. The NEG's for clam processing are specified in federal regulation 40 CFR 408.230.

According to 40 CFR 408.232, BPT for TSS is as follows:

Monthly average – 18 lbs/1,000 lbs of production

Daily maximum – 59 lbs/1,000 lbs of production

With a monthly average production figure of 500 lbs for clams, technology based mass limits are calculated as follows:

$$\text{Monthly average: } \frac{500 \text{ lbs} \times 18 \text{ lbs}}{\text{day } 1,000 \text{ lbs}} = 9.0 \text{ lbs/day}$$

$$\text{Daily maximum: } \frac{500 \text{ lbs} \times 59 \text{ lbs}}{\text{day } 1,000 \text{ lbs}} = 30 \text{ lbs/day}$$

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

Clam Processing

Department rule Chapter 523, *Waste Discharge License Conditions*, Section 6, *Calculating NPDES permit conditions*, sub-section f(2) states that "... pollutants limited in terms of mass additionally may be limited in terms of other units of measurement and the permit shall require the permittee to comply with both limitations." Due to the large fluctuations in daily production and to ensure BPT is being applied at all production levels, the Department is establishing monthly average and daily maximum concentration limits for TSS. The concentration limits were derived by a back-calculation using the respective monthly average and daily maximum mass and flow limitations. The calculations are as follows:

Monthly average: $\frac{9.0 \text{ lbs/day}}{(8.34 \text{ lbs/gal.})(0.007140 \text{ MGD})} = 151 \text{ mg/L}$

Daily maximum: $\frac{30 \text{ lbs/day}}{(8.34 \text{ lbs/gal.})(0.010710 \text{ MGD})} = 336 \text{ mg/L}$

The monitoring frequency of 1/Week in the previous permitting action is being carried forward in this permitting action and is considered by the Department to be adequate to determine on-going compliance with the applicable mass and concentration limitations.

- n. Oil & grease (O&G) The previous permitting action established a technology concentration limits as follows:

Monthly Avg		Daily Max	
lbs/day	mg/L	lbs/day	mg/L
---	---	Report	15

As with shrimp processing, the daily maximum concentration limitation was in error as 15 mg/L is the Department's BPJ of a water quality based threshold at which an oil sheen is visible for petroleum based oil and grease not fish oil and grease. The NEGs for O&G for clam processing are specified in federal regulation 40 CFR 408.230.

According to 40 CFR 408.232, BPT for O&G is as follows:

- Monthly average – 0.23 lbs/1,000 lbs of production
- Daily maximum – 0.60 lbs/1,000 lbs of production

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

Clam Processing

With a monthly average production figure of 500 lbs for clams, technology based mass limits are calculated as follows:

$$\text{Monthly average: } \frac{500 \text{ lbs}}{\text{day}} \times \frac{0.23 \text{ lbs}}{1,000 \text{ lbs}} = 0.12 \text{ lbs/day}$$

$$\text{Daily maximum: } \frac{500 \text{ lbs}}{\text{day}} \times \frac{0.60 \text{ lbs}}{1,000 \text{ lbs}} = 0.3 \text{ lbs/day}$$

To ensure BPT is being achieved at lower levels of production, the Department is establishing monthly average and daily maximum concentration limits for O&G. The concentration limits were derived by a back-calculation using the respective monthly average and daily maximum mass and flow limitations. The calculations are as follows:

$$\text{Monthly average: } \frac{0.12 \text{ lbs/day}}{(8.34 \text{ lbs/gal.})(0.007140 \text{ MGD})} = 2.0 \text{ mg/L}$$

$$\text{Daily maximum: } \frac{0.30 \text{ lbs/day}}{(8.34 \text{ lbs/gal.})(0.010710 \text{ MGD})} = 3.3 \text{ mg/L}$$

It is noted these water quality based limitations are more stringent than the daily maximum limit in the previous permitting action and are therefore being imposed.

The monitoring frequency of 1/Week in the previous permitting action is being carried forward in this permitting action and considered by the Department to be adequate to determine on-going compliance with the applicable mass and concentration limitations.

- o. Total Residual Chlorine (TRC): The previous permitting action established a daily maximum water quality based concentration limit of 0.013 mg/L. The limit was based on an acute AWQC of 0.013 mg/L and an acute dilution factor of 1:1 as the outfall pipe was exposed at mean low tide at the time of permitting.

The Department has established a daily maximum BPT limitation of 1.0 mg/L for facilities that disinfect their effluent with elemental chlorine or chlorine based compounds unless the calculated acute water quality based threshold is lower than 1.0 mg/L. For facilities that need to de-chlorinate the discharge to meet water quality based thresholds, the Department has established daily maximum and monthly average best practicable treatment limits of 0.3 mg/L and 0.1 mg/L respectively. Water quality based thresholds for TRC may be calculated from the water quality based acute and chronic criterion of 0.013 mg/L and 0.0075 mg/L, respectively.

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

Clam Processing

Acute (A) Criterion	Chronic (C) Criterion	Dilution Factors		Calculated Acute Limit	Calculated Chronic Limit
		(A)	(C)		
0.013 mg/L	0.0075 mg/L	120:1	150:1	1.6 mg/L	1.1 mg/L

The Department’s BPT limit of 1.0 mg/L is more stringent than the monthly average and daily maximum water quality based thresholds calculated above. Therefore, the BPT limit of 1.0 mg/L is being established as a daily maximum limit for the discharge to Jones Creek.

As for sampling, this permitting action is modifying the TRC sampling regime. When discharging to Jones Creek, the permittee shall sample the discharge at a frequency of 1/Week. When discharging to the sub-surface waste water disposal system, the permittee is not required to sample for TRC.

- p. Biochemical oxygen demand (BOD) – The previous permitting action did not establish any numeric limitations for BOD. The permit did require the permittee to report both monthly average and daily maximum mass and concentration results for BOD. Federal regulation 40 CFR §408.230 does not establish NEGs for BOD. Therefore, the Department is carrying forward the “report” only requirements of the previous permitting action.
- q. pH – The previous permitting action established a pH range limitation of 6.0 – 9.0 standard units based on the BPT pH limitation in 40 CFR, §408.232 and is being carried forward in this permitting action.

7. ANTI-DEGRADATION / IMPACT ON RECEIVING WATER QUALITY

Maine’s anti-degradation policy is included in 38 M.R.S.A., Section 464(4)(F) and addressed in the *Conclusions* section of this permit. Pursuant to the policy, where a new or increased discharge is proposed, the Department shall determine whether the discharge will result in a significant lowering of existing water quality. Increased discharge means a discharge that would add one or more new pollutants to an existing effluent, increase existing levels of pollutants in an effluent, or cause an effluent to exceed one or more of its current licensed discharge flow or effluent limits, after the application of applicable best practicable treatment technology. As revisions to previous effluent limitations for some pollutants may appear less stringent, the Department is addressing the implications under the anti-degradation policy.

This permitting action revises previously established effluent limitations and monitoring requirements for several pollutants including TSS, oil and grease and total residual chlorine. The rationale for these actions is contained in Section 6 of this Fact Sheet. Based on the information provided in the referenced section, the Department has made the

7. ANTI-DEGRADATION / IMPACT ON RECEIVING WATER QUALITY

determination that the discharge approved by this permit will not result in a significant lowering of water quality. As permitted, the Department has determined the existing and designated water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the waterbodies (Jones Creek or ground water) to meet standards for Class SB or GW-A classifications.

8. PUBLIC COMMENTS

Public notice of this application was made in the Portland Press Herald newspaper on or about May 20, 2007. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

9. DEPARTMENT CONTACTS

Additional information concerning this permitting action may be obtained from and written comments should be sent to:

Gregg Wood
Division of Water Quality Management
Bureau of Land and Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
e-mail: gregg.wood@maine.gov

Telephone (207) 287-7693

10. RESPONSE TO COMMENT

During the period October 2007, through the issuance date of the permit/license, the Department solicited comments on the proposed draft license for the BQS facility. The Department did not receive comments from the permittee, state or federal agencies or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

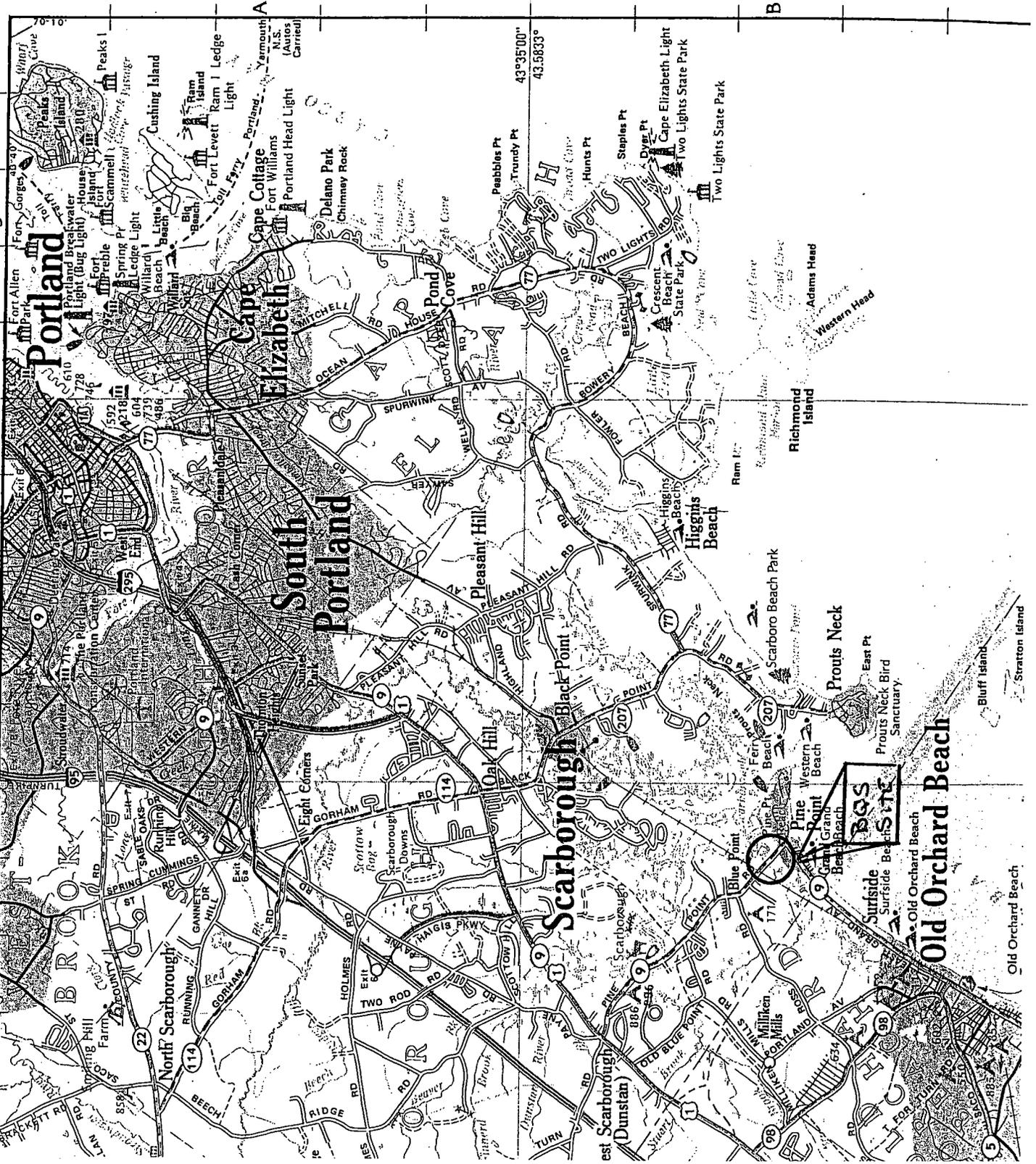
ATTACHMENT A

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Portland

South Portland

Scarborough

Old Orchard Beach

BOS SITE

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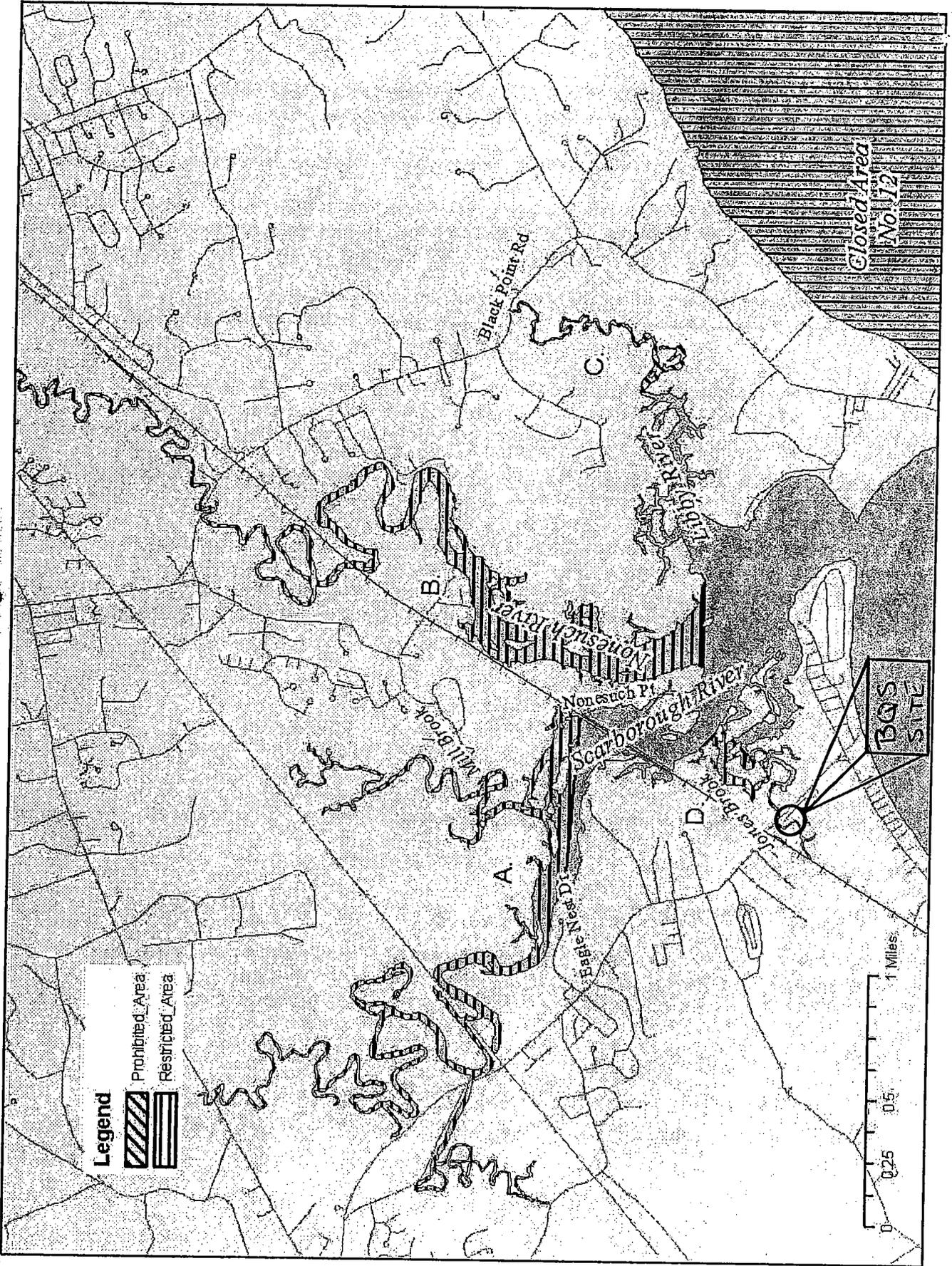
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ATTACHMENT B



Maine Department of Marine Resources
Pollution Closed Area No. 11
Scarborough River

7/20/07



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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A. GENERAL PROVISIONS

1. **General compliance.** All discharges shall be consistent with the terms and conditions of this permit; any changes in production capacity or process modifications which result in changes in the quantity or the characteristics of the discharge must be authorized by an additional license or by modifications of this permit; it shall be a violation of the terms and conditions of this permit to discharge any pollutant not identified and authorized herein or to discharge in excess of the rates or quantities authorized herein or to violate any other conditions of this permit.

2. **Other materials.** Other materials ordinarily produced or used in the operation of this facility, which have been specifically identified in the application, may be discharged at the maximum frequency and maximum level identified in the application, provided:

(a) They are not

- (i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
- (ii) Known to be hazardous or toxic by the licensee.

(b) The discharge of such materials will not violate applicable water quality standards.

3. **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of State law and the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

- (a) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act, and 38 MRSA, §420 or Chapter 530.5 for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- (b) Any person who violates any provision of the laws administered by the Department, including without limitation, a violation of the terms of any order, rule license, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

4. **Duty to provide information.** The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

5. **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

6. **Reopener clause.** The Department reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedule of compliance or other provisions which may be authorized under 38 MRSA, §414-A(5).

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7. Oil and hazardous substances. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject under section 311 of the Federal Clean Water Act; section 106 of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; or 38 MRSA §§ 1301, et. seq.

8. Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

9. Confidentiality of records. 38 MRSA §414(6) reads as follows. "Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part or any record, report or information, other than the names and addresses of applicants, license applications, licenses, and effluent data, to which the department has access under this subchapter would, if made public, divulge methods or processes that are entitled to protection as trade secrets, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, as long as this disclosure is material and relevant to any issue under consideration by the department."

10. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

11. Other laws. The issuance of this permit does not authorize any injury to persons or property or invasion of other property rights, nor does it relieve the permittee of its obligation to comply with other applicable Federal, State or local laws and regulations.

12. Inspection and entry. The permittee shall allow the Department, or an authorized representative (including an authorized contractor acting as a representative of the EPA Administrator), upon presentation of credentials and other documents as may be required by law, to:

- (a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

- (a) The permittee shall collect all waste flows designated by the Department as requiring treatment and discharge them into an approved waste treatment facility in such a manner as to

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

maximize removal of pollutants unless authorization to the contrary is obtained from the Department.

- (b) The permittee shall at all times maintain in good working order and operate at maximum efficiency all waste water collection, treatment and/or control facilities.
- (c) All necessary waste treatment facilities will be installed and operational prior to the discharge of any wastewaters.
- (d) Final plans and specifications must be submitted to the Department for review prior to the construction or modification of any treatment facilities.
- (e) The permittee shall install flow measuring facilities of a design approved by the Department.
- (f) The permittee must provide an outfall of a design approved by the Department which is placed in the receiving waters in such a manner that the maximum mixing and dispersion of the wastewaters will be achieved as rapidly as possible.

2. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

3. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

5. Bypasses.

(a) Definitions.

- (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.

(c) Notice.

- (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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- (ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D(1)(f), below. (24-hour notice).
- (d) Prohibition of bypass.
 - (i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:
 - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (C) The permittee submitted notices as required under paragraph (c) of this section.
 - (ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (d)(i) of this section.

6. Upsets.

- (a) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- (c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
 - (ii) The permitted facility was at the time being properly operated; and
 - (iii) The permittee submitted notice of the upset as required in paragraph D(1)(f), below. (24 hour notice).
 - (iv) The permittee complied with any remedial measures required under paragraph B(4).
- (d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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C. MONITORING AND RECORDS

1. General Requirements. This permit shall be subject to such monitoring requirements as may be reasonably required by the Department including the installation, use and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). The permittee shall provide the Department with periodic reports on the proper Department reporting form of monitoring results obtained pursuant to the monitoring requirements contained herein.

2. Representative sampling. Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. If effluent limitations are based wholly or partially on quantities of a product processed, the permittee shall ensure samples are representative of times when production is taking place. Where discharge monitoring is required when production is less than 50%, the resulting data shall be reported as a daily measurement but not included in computation of averages, unless specifically authorized by the Department.

3. Monitoring and records.

- (a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (b) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.
- (c) Records of monitoring information shall include:
 - (i) The date, exact place, and time of sampling or measurements;
 - (ii) The individual(s) who performed the sampling or measurements;
 - (iii) The date(s) analyses were performed;
 - (iv) The individual(s) who performed the analyses;
 - (v) The analytical techniques or methods used; and
 - (vi) The results of such analyses.
- (d) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in the permit.
- (e) State law provides that any person who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule license, permit approval or decision is subject to the penalties set forth in 38 MRSA, §349.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

D. REPORTING REQUIREMENTS

1. Reporting requirements.

- (a) Planned changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - (i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or
 - (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D(4).
 - (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;
- (b) Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- (c) Transfers. This permit is not transferable to any person except upon application to and approval of the Department pursuant to 38 MRSA, § 344 and Chapters 2 and 522.
- (d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
 - (i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices.
 - (ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.
 - (iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.
- (e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- (f) Twenty-four hour reporting.
 - (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit.

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

(iii) The Department may waive the written report on a case-by-case basis for reports under paragraph (f)(ii) of this section if the oral report has been received within 24 hours.

(g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this section.

(h) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

2. Signatory requirement. All applications, reports, or information submitted to the Department shall be signed and certified as required by Chapter 521, Section 5 of the Department's rules. State law provides that any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any order, rule, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

3. Availability of reports. Except for data determined to be confidential under A(9), above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. As required by State law, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal sanctions as provided by law.

4. Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under this Section, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) One hundred micrograms per liter (100 ug/l);

(ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or

(iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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- (b) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
- (i) Five hundred micrograms per liter (500 ug/l);
 - (ii) One milligram per liter (1 mg/l) for antimony;
 - (iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
 - (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

5. Publicly owned treatment works.

- (a) All POTWs must provide adequate notice to the Department of the following:
- (i) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA or Chapter 528 if it were directly discharging those pollutants.
 - (ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
 - (iii) For purposes of this paragraph, adequate notice shall include information on (A) the quality and quantity of effluent introduced into the POTW, and (B) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
- (b) When the effluent discharged by a POTW for a period of three consecutive months exceeds 80 percent of the permitted flow, the permittee shall submit to the Department a projection of loadings up to the time when the design capacity of the treatment facility will be reached, and a program for maintaining satisfactory treatment levels consistent with approved water quality management plans.

E. OTHER REQUIREMENTS

1. Emergency action - power failure. Within thirty days after the effective date of this permit, the permittee shall notify the Department of facilities and plans to be used in the event the primary source of power to its wastewater pumping and treatment facilities fails as follows.

- (a) For municipal sources. During power failure, all wastewaters which are normally treated shall receive a minimum of primary treatment and disinfection. Unless otherwise approved, alternate power supplies shall be provided for pumping stations and treatment facilities. Alternate power supplies shall be on-site generating units or an outside power source which is separate and independent from sources used for normal operation of the wastewater facilities.
- (b) For industrial and commercial sources. The permittee shall either maintain an alternative power source sufficient to operate the wastewater pumping and treatment facilities or halt, reduce or otherwise control production and or all discharges upon reduction or loss of power to the wastewater pumping or treatment facilities.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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2. Spill prevention. (applicable only to industrial sources) Within six months of the effective date of this permit, the permittee shall submit to the Department for review and approval, with or without conditions, a spill prevention plan. The plan shall delineate methods and measures to be taken to prevent and or contain any spills of pulp, chemicals, oils or other contaminants and shall specify means of disposal and or treatment to be used.

3. Removed substances. Solids, sludges trash rack cleanings, filter backwash, or other pollutants removed from or resulting from the treatment or control of waste waters shall be disposed of in a manner approved by the Department.

4. Connection to municipal sewer. (applicable only to industrial and commercial sources) All wastewaters designated by the Department as treatable in a municipal treatment system will be cosigned to that system when it is available. This permit will expire 90 days after the municipal treatment facility becomes available, unless this time is extended by the Department in writing.

F. DEFINITIONS. For the purposes of this permit, the following definitions shall apply. Other definitions applicable to this permit may be found in Chapters 520 through 529 of the Department's rules

Average means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For bacteria, the average shall be the geometric mean.

Average monthly discharge limitation means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. Except, however, bacteriological tests may be calculated as a geometric mean.

Average weekly discharge limitation means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best management practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. 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.

Composite sample means a sample consisting of a minimum of eight grab samples collected at equal intervals during a 24 hour period (or a lesser period as specified in the section on monitoring and reporting) and combined proportional to the flow over that same time period.

Continuous discharge means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

Daily discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

Discharge Monitoring Report ("DMR") means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by approved States as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

Flow weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

Grab sample means an individual sample collected in a period of less than 15 minutes.

Interference means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

- (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

Maximum daily discharge limitation means the highest allowable daily discharge.

New source means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or
- (b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

Pass through means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

Permit means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of 40 CFR parts 122, 123 and 124. Permit includes an NPDES general permit (Chapter 529). Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

Person means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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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.

Pollutant means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or byproducts, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Publicly owned treatment works ("POTW") means any facility for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity.

Septage means, for the purposes of this permit, any waste, refuse, effluent sludge or other material removed from a septic tank, cesspool, vault privy or similar source which concentrates wastes or to which chemicals have been added. Septage does not include wastes from a holding tank.

Time weighted composite means a composite sample consisting of a mixture of equal volume aliquots collected over a constant time interval.

Toxic pollutant includes any pollutant listed as toxic under section 307(a)(1) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing section 405(d) of the CWA. Toxic pollutant also includes those substances or combination of substances, including disease causing agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism, including humans either directly through the environment or indirectly through ingestion through food chains, will, on the basis of information available to the board either alone or in combination with other substances already in the receiving waters or the discharge, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in such organism or their offspring.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Whole effluent toxicity means the aggregate toxic effect of an effluent measured directly by a toxicity test.



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
