

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET
BOSTON, MASSACHUSETTS 02114-2023

FACT SHEET

DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES

PUBLIC NOTICE START/FINISH DATE: April 25, 2008 - May 24, 2008

PUBLIC NOTICE NUMBER: NH-006-08

NPDES PERMIT NO.: NH0020923

NAME AND ADDRESS OF APPLICANT:

Little Bay Seafood, LLC and
Lordco Pier Associates
18 Old Dover Road
Newington, New Hampshire 03801

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

Little Bay Seafood, LLC
18 Old Dover Road
Newington, New Hampshire 03801

RECEIVING WATER: Piscataqua River (Hydrologic Code 01060003)

CLASSIFICATION: B

SIC CODE: 2092, 5146

Table of Contents

I. Proposed Action, Type of Facility and Discharge Location.... 3

II. Description of Discharge..... 6

III. Limitations and Conditions..... 6

IV. Permit Basis and Explanation of Effluent Limitations
Derivation..... 6

A. Development of Water Quality Based Limits 9

B. Development of Effluent Limitations Specific to Outfalls
002, 003, 004, and 005..... 11

C. Essential Fish Habitat and Endangered Species..... 19

D. Additional Requirements and Conditions..... 25

V. Antidegradation..... 26

VI. State Certification Requirements..... 27

VII. Comment Period, Hearing Requests, and Procedures for Final
Decisions..... 28

ATTACHMENT A..... 30

ATTACHMENT B..... 32

ATTACHMENT C..... 34

ATTACHMENT D..... 36

I. Proposed Action, Type of Facility and Discharge Location.

The Little Bay Seafood (LBS)/Lordco Pier Associates Newington, NH facility is one of five entities comprising the Little Bay Lobster Group. See Attachment A for map location for LBS and associated site plan. This group owns and operates facilities in New Hampshire, Maine and Canada. At the Newington facility lobsters are processed for sale to wholesale seafood distributors, and baitfish is also processed for LBS's lobster fishing operation or sold to other lobstermen.

LBS is located on approximately three acres along the western shore of the Piscataqua River. The site includes (1) a 32,700 square foot building containing offices and lobster operations, (2) the baitfish processing area, and (3) docking facilities for LBS lobster and baitfish boats. The office/lobster operation building houses one 109,000-gallon lobster acclimatization tank and three 80,000-gallon lobster-holding reservoir tanks; mechanical equipment associated with pumping, filtering and cooling tank water; chilling system equipment; and emergency power diesel generators.

The operation depends upon water from the Piscataqua River (salt water) which is pumped continuously through LBS's facility. As shown on Attachment B, one of two 250 gallon per minute (GPM) intake pumps draws water from the Piscataqua River through a saltwater pipe main into LBS's facility. The water is used for holding and handling lobsters, and to adjust water levels in the holding tanks. These tanks are identified as Tank A (lobster acclimatization), and Tanks B, C, D (lobster-holding reservoirs). Each tank system has a standpipe to regulate water levels. As lobsters are processed, tank water levels fluctuate, and excess water discharges via the standpipes into Outfall 003. Make-up water for the tanks is drawn from the facility's saltwater pipe main.

The saltwater from the pipe main is also used to process baitfish. Baitfish process water drains back to the Piscataqua River through Outfall 002.

LBS constantly pumps seawater from the Piscataqua River into the facility's saltwater pipe main. Three pumps, each with its own intake pipe, are employed to pump seawater into the facility. One pump has a rated capacity of 600 gallons per minute (GPM), and each of the other two pumps is rated at a capacity of 200 GPM. Water use at LBS varies depending on what activity is

occurring; i.e. predominately lobster water tank filling or baitfish processing. The average pumping rate is estimated at 250 GPM (360,000 gallons per day).

Based on the period from July 2006 to October 2007, LBS on average used approximately 31,274 gallons per month to process baitfish (the Outfall 002 discharge) and 327,942 gallons per month for maintaining lobster tank water levels; which is discharged from Outfall 003 discharge. On average, LBS uses 0.29% of the water drawn from the Piscataqua River for baitfish processing, and 2.9% of that drawn water for maintaining lobster tank levels. Most of the Piscataqua River water which is pumped into LBS, therefore, flows through the facility's saltwater main and is discharged directly back to the River through Outfall 003.

Lobster Holding/Grading Operations

LBS obtains lobsters by lobster fishing with the company's own fishing fleet or by buying lobsters from independent lobstermen.

The company installed a new lobster handling holding system in the fall of 2005. The system was specifically designed to minimize stress on the lobster and to reduce excessive handling. Unlike traditional multi-tank systems, each tank holding a specific grade/size of lobster, the new system works on the principal of a "waterfall." The lobsters, after grading, are held in plastic totes that are stacked underneath waterspouts. The system is a re-circulating system with the capability to add make-up water or remove water on an as-needed basis.

Referring to the diagram in Attachment B, lobsters are first placed in Tank A to acclimatize for approximately 24-hours. Tank A continually recirculates 1200 to 1400 GPM of oxygenated water. From here, the lobsters are graded according to their weight range and placed in 16 cubic foot plastic totes. Totes containing similarly graded lobsters are stacked vertically on a cement floor which is situated over Tank B, C or D. Each tank acts as a reservoir, holding 140,000 gallons of saltwater. Two 900 GPM pumps direct saltwater to a distribution manifold located above the concrete cover of each of these tanks. The manifold is constructed with 180 valve/nozzle assemblies, each of which are oriented vertically downward. Each nozzle supplies water to the top lobster tote. As the tote fills and overflows, water cascades to the totes below it. From the bottom tote of a stack, water flows along the concrete floor to one of the numerous, evenly spaced drains in the floor, and then back into Tank B, C or D,

from which it was originally pumped. (Note: Tank A is used only for the 24-hour acclimatization period, and has no nozzle system.)

A separate system chills and filters water in Tanks A, B, C, and D. First, a 450 GPM pump transfers saltwater from the tanks to four automatic flush filters. Next, the flow is directed to two sets of chillers which drop the water temperature, if required, to approximately 60°F. Finally, 350 GPM of the flow is directed to a biological filter and the remaining 100 GPM is directed to a foam fractionator to remove/prevent foam from forming in the tanks.

Bait Fish Wetting

Baitfish used by the LBS fishing fleet or sold to other lobstermen has been processed in Newington since 1986. Generally, a variety of fish get delivered by truck or boat. The fish are salted, refrigerated or frozen and finally either loaded onto fishing boats or shipped to external customers. Depending on availability and demand of baitfish, LBS processes between 20 and 30 million pounds of baitfish per year in this manner. LBS processes herring, pogies, redfish, or baitfish and fish carcasses purchased from other fish processors.

Baitfish processing consists of unloading 1,800 pound capacity boxes (these boxes are called "exactics" by LBS) into a hopper and then onto a conveyer, which transports the baitfish into LBS's facility. As the baitfishes are on the conveyer they are sprayed with a fine mist of saltwater from the Piscataqua River. After the fish enter the facility, they leave the conveyer and pass through a machine that automatically coats each fish with salt. Finally, the fish are placed in 55-gallon plastic barrels for transport.

The wetting water is sprayed at a rate of 3 GPM. The water that does not adhere to the baitfish drops through the conveyer into a storm water catch basin that discharges to Outfall 002. Other wastewater flowing to this catch basin includes fish gurry (body fluids from fish stored in the exactics), and rinse water from cleaning the exactics, conveyer hopper and conveyer drains. Outfall 002 is an 8-inch pipe that extends out under LBS's pier, and its terminus is 10 feet under water at mean low tide.

Little Bay Seafood Existing NPDES Permit

Little Bay Seafood, LLC existing permit was issued on May 15, 1987 and expired at midnight May 14, 1992. The expired permit (hereafter referred to as the "existing permit") has been administratively extended pursuant to 40 Code of Federal Regulations (C.F.R.) § 122 due to timely reapplication by LBS. The

existing permit authorizes discharge of wastewater from seafood processing through Outfall 001; wastewater (meeting the limitations of Outfall 001), non-contact cooling water, and lobster pond water through Outfall 002; and storm water runoff through Outfall 003.

Seafood processing at LBS ceased in 1989 and Outfall 001 was eliminated. LBS on June 2, 2005, filed an updated NPDES reapplication for effluent discharged from Outfalls 002, 003, 004 and 005. However, EPA had determined that LBS had been discharging rinse water from cleaning fish transportation boxes and processing baitfish from Outfall 002 since at least December 31, 2001. The EPA further determined LBS was discharging water associated with baitfish transfer from fishing boats through Outfall 003 since at least December 31, 2001. Additionally, EPA determined storm water containing tributyltin (TBT) originating from an area of contaminated soil at LBS' facility was being discharged from Outfall 004. All these discharges were determined as unauthorized discharges by the EPA. The EPA issued an Administrative Order (AO), Docket No. 06-26, to LBS on June 23, 2006 to address these and other violations. This AO set interim effluent limitations and/or monitoring requirements for discharges from Outfalls 002, 003, 004 and 005.

II. Description of Discharge.

A quantitative description of effluent parameters is presented in Attachment C.

III. Limitations and Conditions.

Effluent limitations and monitoring requirements are found in PART I of the Draft Permit. The basis for each limit and condition is discussed in Section IV.

IV. Permit Basis and Explanation of Effluent Limitations Derivation.

Congress enacted the Clean Water Act ("CWA" or "Act"), "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA § 101(a). To achieve this objective, the CWA makes it unlawful for any person to discharge any pollutant into the waters of the United States from any point source, except as authorized by specified permitting sections of the Act, one of which is Section 402. See CWA §§ 301(a), 402(a). Section 402 establishes one of the CWA's principal permitting programs, the National Pollutant Discharge Elimination System or NPDES. Under this section of the Act, EPA may "issue a permit for the discharge of any pollutant, or combination of pollutants" in accordance with certain conditions. See CWA § 402(a). NPDES permits generally contain discharge limitations and establish related monitoring and reporting requirements. See CWA § 402(a)(1), (2).

Section 301 of the CWA provides for two types of effluent limitations to be included in NPDES permits: "technology-based" limitations and "water quality-based" limitations. See CWA §§ 301, 303, 304(b); 40 C.F.R. Parts 122, 125 and 131. Technology-based limitations, generally developed on an industry-by-industry basis, reflect a specified level of pollutant-reducing technology available and economically achievable for the type of facility being permitted. See CWA § 301(b). EPA established minimum technology requirements for the seafood processing industry in the form of effluent guidelines promulgated under 40 C.F.R. § 408. These guidelines specify the maximum mass (lbs per day) of Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS) and Oil and Grease which can be discharged per mass (pounds) per 1000 pounds of seafood processed. The maximum amount of BOD, TSS and Oil and Grease allowed varies for the different types of aquatic species as well as manufacturing methods. Part 408, however, contains no technology based limits for effluent discharged from the seafood processing operations conducted at LBS; baitfish wetting and lobster holding. Further, none of the seafood processing methods regulated by Part 408 can be construed as equivalent to baitfish wetting. Since there are no similar seafood processes, it is not appropriate to directly apply Part 408 technology based effluent limits to Outfall 002. Any technology-based limitations contained in the draft permit, therefore, have been developed based on Best Professional Judgment (BPJ).

Water quality-based effluent limits, on the other hand, are designed to ensure that state water quality standards are met regardless of the decision made with respect to technology and economics in establishing technology-based limitations. In particular, Section 301(b)(1)(C) requires achievement of, "any

more stringent limitation, including those necessary to meet water quality standards...established pursuant to any State law or regulation..." See 40 C.F.R. §§ 122.4(d), 122.44(d)(1) (providing that a permit must contain effluent limits as necessary to protect state water quality standards, "including State narrative criteria for water quality") (emphasis added) and 122.44(d)(5) (providing in part that a permit incorporate any more stringent limits required by Section 301(b)(1)(C) of the CWA).

The CWA requires that states develop water quality standards for all water bodies within the state. CWA § 303. These standards have three parts: (1) one or more "designated uses" for each water body or water body segment in the state; (2) water quality "criteria," consisting of numerical concentration levels and/or narrative statements specifying the amounts of various pollutants that may be present in each water body without impairing the designated uses of that water body; and (3) an antidegradation provision, focused on protecting high quality waters and protecting and maintaining water quality necessary to protect existing uses. CWA § 303(c)(2)(A); 40 C.F.R. § 131.12. The limits and conditions of the permit reflect the goal of the CWA and EPA to achieve and then to maintain water quality standards.

The applicable New Hampshire water quality standards can be found in Surface Water Quality Regulations, Chapter Env-Ws 1700 et seq. See generally, Title L, Water Management and Protection, Chapter 485-A, Water Pollution and Waste Disposal Section. Hereinafter, New Hampshire's Surface Water Quality Regulations are referred to as the NH Standards.

Receiving stream requirements are established according to numeric and narrative standards adopted under state law for each stream classification. When using chemical-specific numeric criteria from the state's water quality standards to develop permit limits, both the acute and chronic aquatic life criteria are used and expressed in terms of maximum allowable in stream pollutant concentrations. Acute aquatic life criteria are generally implemented through maximum daily limits and chronic aquatic life criteria are generally implemented through average monthly limits. Where a State has not established a numeric water quality criterion for a specific chemical pollutant that is present in the effluent in a concentration that causes or has a reasonable potential to cause a violation of narrative water quality standards, the permitting authority must establish effluent limits in one of three ways: based on a "calculated numeric criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria

and fully protect the designated use"; on a "case-by-case basis" using CWA Section 304(a) recommended water quality criteria, supplemented as necessary by other relevant information; or, in certain circumstances, based on an "indicator parameter." 40 C.F.R. § 122.44(d) (1) (vi) (A-C).

All statutory deadlines for meeting various treatment technology-based effluent limitations established pursuant to the CWA have expired. When technology-based effluent limits are included in a permit, compliance with those limitations is from the date the issued permit becomes effective. See 40 C.F.R. § 125.3(a) (1). Compliance schedules and deadlines not in accordance with the statutory provisions of the CWA cannot be authorized by an NPDES permit. The regulations governing EPA's NPDES permit program are generally found in 40 C.F.R. Parts 122, 124, 125 and 136.

A. Development of Water Quality Based Limits.

The permit must limit any pollutant or pollutant parameter (conventional, non-conventional, toxic and whole effluent toxicity) that is or may be discharged at a level that causes or has "reasonable potential" to cause or contribute to an excursion above any water quality standard, including narrative water quality criteria. 40 C.F.R. § 122.44(d) (1). An excursion occurs if the projected or actual in-stream concentration exceeds the applicable criterion.

Reasonable Potential

In determining reasonable potential, EPA considers: (1) existing controls on point and nonpoint sources of pollution; (2) pollutant concentration and variability in the effluent and receiving water as determined from permit application, monthly DMRs and State and Federal water quality reports; (3) sensitivity of the species to toxicity testing; (4) statistical approach outlined in *Technical Support Document for Water Quality-based Toxics Controls*, March 1991, EPA/505/2-90-001 in Section 3; and, where appropriate, (5) dilution of the effluent in the receiving water. In accordance with New Hampshire regulations (RSA 485-A:8, VI, Env-Ws 1705.02), available dilution for rivers and streams is based on a known or estimated value of the lowest average flow which occurs for seven (7) consecutive days with a recurrence interval of once in ten (10) years (7Q10) for aquatic life and human health criteria for non-carcinogens, or the long-term harmonic mean flow for human health (carcinogens only) in the receiving water at the point just upstream of the outfall. For tidal waters, the low flow condition shall be equivalent to the conditions that result in a dilution that is exceeded 99 percent of the time. Furthermore, 10 percent

(%) of the receiving water's assimilative capacity is held in reserve for future needs in accordance with New Hampshire's Surface Water Quality Regulations Env-Ws 1705.01.

Anti-Backsliding

Section 402(o) of the CWA generally provides that the effluent limitations of a renewed, reissued, or modified permit must be at least as stringent as the comparable effluent limitations in the previous permit. EPA has also promulgated anti-backsliding regulations, which are found at 40 C.F.R. § 122.44(1). Unless applicable anti-backsliding requirements are met, the limits and conditions in the reissued permit must be at least as stringent as those in the previous permit.

State Certification

Section 401(a)(1) of the CWA requires all NPDES permit applicants to obtain a certification from the appropriate state agency stating that the permit will comply with all applicable federal effluent limitations and state water quality standards. See CWA § 401(a)(1). The regulatory provisions pertaining to state certification provide that EPA may not issue a permit until a certification is granted or waived by the state in which the discharge originates. 40 C.F.R. § 124.53(a). The regulations further provide that, "when certification is required....no final permit shall be issued...unless the final permit incorporates the requirements specified in the certification under § 124.53(e)." 40 C.F.R. § 124.55(a)(2). Section 124.53(e) in turn provides that the State certification shall include "any conditions more stringent than those in the draft permit which the State finds necessary" to assure compliance with, among other things, state water quality standards, See 40 C.F.R. § 124.53(e)(2), and shall also include, "[a] statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of State law, including water quality standards," 40 C.F.R. § 124.53(e)(3).

However, when EPA reasonably believes that a state water quality standard requires a more stringent permit limitation than that reflected in a state certification, it has an independent duty under CWA § 301(b)(1)(C) to include more stringent permit limitations. See 40 C.F.R. §§ 122.44(d)(1) and (5). It should be noted that under CWA § 401, EPA's duty to defer to considerations of state law is intended to prevent EPA from relaxing any requirements, limitations or conditions imposed by state law. Therefore, "[a] State may not condition or deny a certification on

the grounds that State law allows a less stringent permit condition." 40 C.F.R. § 124.55(c). In such an instance, the regulation provides that, "The Regional Administrator shall disregard any such certification conditions or denials as waivers of certification." *Id.* EPA regulations pertaining to permit limits based upon water quality standards and state requirements are contained in 40 C.F.R. § 122.4(d) and 40 C.F.R. § 122.44(d).

B. Development of Effluent Limitations Specific to Outfalls 002, 003, 004, and 005.

Outfall 002

a. Baitfish Wetting. Technology-based effluent limitations for seafood processing are contained in 40 C.F.R. Part 408, *Canned and Preserved Seafood Processing Point Source Category*. Part 408, however, contains no technology based limits for effluent discharged from a baitfish wetting operation. Further, none of the seafood processing methods regulated by Part 408 can be construed as equivalent to baitfish wetting. Since there are no similar seafood processes EPA is not applying Part 408 technology based effluent limits to Outfall 002. Any limitations contained in the draft permit, therefore, were developed based on Best Professional Judgment (BPJ).

On June 20, 2006, EPA issued Administrative Order (AO), Docket No. 06-26, to LBS. One of the AO stipulations directed LBS to sample Outfall 002's discharge for BOD₅, TSS, Nitrite, Nitrate, Total Phosphorous, Oil and Grease and pH. The intent of this directive was to characterize the components of Outfall 002's discharge. These components are considered those most likely to be found in the processing of marine fish. LBS has periodically sampled Outfall 002's discharge from July 13, 2006 to the present date. The results of that sampling are contained in Attachment C.

The most noticeable characteristic of Outfall 002's discharge is the extreme variability over time. This is because the baitfish wetting operation does not occur continually. Depending on the month, and the baitfish supply and demand, processing times vary. It takes about 1.5 hours to process one truckload of baitfish, and a truckload holds 22 exactics (baitfish boxes). Since June 2006, LBS has processed approximately an average of 490,000 pounds of baitfish per month. Each truckload would average 39,600 pounds (22 exactics times 1,800 pounds per exactic). Therefore, about 12 truckloads are processed each month, and at 1.5 hours per truckload, the processing time is approximately 18 hours per month.

The average flow from Outfall 002 is 32 gallons per minute (GPM), which is predominately Piscataqua River water from a hose used for housekeeping purposes during the baitfish wetting. It is estimated 3 GPM of the total flow is applied to fish on the conveyor and the remaining 29 GPM flows from the hose and is used for the general housekeeping during baitfish wetting operations. The 3 GPM flowing through the conveyor gets mixed with fish gurry from the exactics as they are emptied, a process that happens over approximately a 3-minute period.

Therefore, the chemical makeup of Outfall 002's discharge varies widely depending on these intermittent periods of processing, and on the species of fish being processed. Herring and menhaden tend to cause higher concentration peaks in BOD and nutrients than other fish species. The maximum concentrations have been 4,770 mg/l BOD₅, and 15,000 mg/l TSS (see Attachment C).

b. Piscataqua River. Data collected in the Piscataqua River near Newington, NH and Elliot, Maine (across the river from Newington) show that dissolved oxygen (D.O.) levels in the river range from 6.8 to 10.2 mg/l (*Newington Power Facility - NPDES Permit No. NH0023361 Biological Monitoring Program* report submitted by TRC, Lowell, MA, on October 1, 2003). The results of this data collection show DO levels consistently above the New Hampshire water quality standard of 5.0 mg/l (instantaneous). These data indicate the Piscataqua River is not impaired for D.O. and it is expected the LBS discharge will cause no harmful impact to the river with respect to D.O.

The Section 305(b) and 303(d) Surface Water Quality Report (303d List) prepared by NHDES designates the Piscataqua River near Outfall 002's discharge as impaired with respect to: (a) mercury from atmospheric deposition, (b) polychlorinated biphenyls (PCB's) from unknown sources, and (c) Dioxin from unknown sources. LBS has never used mercury, PCBs, or Dioxin in its processes.

Inspection by divers in January 2007 of the end of the pipe area of Outfall 002 found no evidence of waste by-product build up from LBS's discharge. The Piscataqua River bottom near the discharge pipe appeared similar to other sections of the river bottom.

c. Dilution. The NH Surface Water Quality Standards stipulate that the flow used to calculate permit limits for tidal waters would be equivalent to the river flow conditions that result in a dilution that is exceeded 99% of the time. See Env-Ws 401.17(b)(3). It is the NHDES Policy on Dilution Factors for Marine/Estuarine Discharges dated July 27, 1995, to use the more limiting condition

(tidal velocity) that occurs 15 minutes before or after a spring or neap slack low tide. NHDES estimated dilution of LBS's discharge at Outfall 002 using the Cornell Mixing Zone Expert System (CORMIX) model. Modeling using CORMIX resulted in a bulk dilution of 107.6 to 1 within 71 feet of the outfall, with the diffuser exit velocity of 3.25 feet per second. NHDES limits allowable dilution to 100 to 1 unless a tidal pollutant buildup analysis is performed. In addition, the modeling showed the plume disperses properly and does not "hug" the bottom of the river; a desirable outcome. (See Attachment D). Assumptions made for the CORMIX model were: (1) the outfall was reconstructed with a 2-inch outlet; (2) outlet was oriented 45 degrees vertically from the river bottom, and also pointing downstream (toward Kittery, Maine) approximately 45 degrees; and (3) the outlet is located on foot off the river bottom; and (4) the ambient velocity of the river in the vicinity of the discharge was 0.3-0.5 feet per second at low tide (as measured at a nearby location).

d. Outfall 002 Effluent Limits and Monitoring Determination.

Based on the preceding evaluations, the discharge at Outfall 002 presents no reasonable potential to impair the Piscataqua River water quality for Five Day Biological Oxygen Demand (BOD₅), Total Suspended Solids (TSS), Nitrogen compounds, Phosphorous, and Oil and Grease (O&G). To ensure Outfall 002's discharge does not impair the River in the future, the EPA and NHDES have included several requirements for Outfall 002 in the draft permit. The draft permit contains one effluent limit, pH, based on NH Surface Water Quality Standards. Including a pH limit in the draft permit provides a direct and basic means to ensure an effluent continues to meet New Hampshire's water quality standards. There are seven parameters (Five Day Biological Oxygen Demand (BOD₅), Total Suspended Solids (TSS), Ammonia Nitrogen, Total Kjeldahl Nitrogen (TKN), Nitrate, Total Phosphorous (TP), Oil and Grease (O&G)) in Outfall 002's effluent that will require monitoring and DMR reporting. These parameters are considered those most likely to be found in the processing of marine fish which, in sufficient concentrations, pose a reasonable potential to harm the Piscataqua River ecosystem. Finally, several Best Management Practices are required to be instituted at LBS.

Based on Best Professional Judgment, the draft permit further requires the permittee to implement several Best Management Practices (BMP's) at their facility during operating hours.

- The draft permit requires the permittee to install a corrosion resistant screen to cover the stormwater catch basin beneath

the conveyor where baitfish wetting occurs. The screen's openings are to be sized such that baitfish or baitfish pieces could not be discharged from Outfall 002. The screen is to be constructed to fit tightly over the catch basin and will be in place at any time when it is expected that fish parts would reach the storm drain.

- The draft permit requires the permittee to ensure that Best Management Practices outlined in the facility's Stormwater Pollution Prevention Plan (from their Multi-Sector General Permit) address preventive measures to keep the area around Outfall 002 storm drain free of any kind of debris, fish parts, or pollutants that would drain to the Outfall 002 storm drain.
- The draft permit requires the permittee to ensure that water from rinsing the exactics is disposed of through the corrosion resistant screen placed over the Outfall 002 storm drain.

Finally, the draft permit contains a SPECIAL CONDITION based on NHDES policy to increase the discharge velocity of an effluent discharged to a marine environment. The SPECIAL CONDITION requires a single port diffuser (of smaller diameter than the outfall pipe) be constructed and installed on Outfall 002. The purpose of the diffuser is to increase the discharge velocity from Outfall 002 to a velocity of 3.5 feet per second (greater than the ambient river velocity). The increase in velocity will promote more rapid and thorough mixing of Outfall 002 effluent discharge in the Piscataqua River.

Outfall 003

a. Lobster Holding System. Outfall 003 effluent is comprised of water pumped from the Piscataqua River and through the facility before being discharged through Outfall 003. There is a continuous flow, about 250 GPM, of the river water through LBS facility.

After the river water is used through the "waterfall" lobster holding system (described in Section I of this fact sheet), it flows to floor drains to the seawater reservoirs. During handling of lobsters for packaging and shipping, i.e. moving totes filled with lobsters and seawater, water spills over into leveling standpipes. The lost water flows to a drain connected to Outfall 003. Outfall 003 average discharge for the lobster processing tanks is 362,000 gallons per month. Since July 2006, the Outfall 003's discharge amounts have ranged from a high of 670,000 gallons in August 2007 to a low of 52,350 gallons in April 2007.

b. Outfall 003 Effluent Limits and Monitoring Determination.

Technology-based effluent limitations for seafood processing are contained in 40 C.F.R. Part 408, *Canned and Preserved Seafood Processing Point Source Category*. Part 408, however, contains no technology based limits for effluent discharged from a lobster holding tank. Further, none of the seafood processing methods regulated by Part 408 can be construed as equivalent to a lobster holding tank operation. As with the case of Outfall 002, since there are no similar seafood processes, it is not possible to apply Part 408 technology based effluent limits to Outfall 003. Any limitations contained in the draft permit, therefore, were developed based on Best Professional Judgment (BPJ).

As was required of Outfall 002, EPA's Administrative Order (AO), issued to LBS stipulated that Outfall 003's effluent be sampled for BOD₅, TSS, Nitrite, Nitrate, Total Phosphorous, Oil and Grease and pH. The intent of this directive was to characterize the components contained in Outfall 003's discharge. LBS has periodically sampled Outfalls 003's discharge from July 13, 2006 to the present date. The results of that sampling are contained in Attachment C. Additionally, LBS does not add pharmaceuticals or chemicals to the lobster tank water.

Based on the monitoring results for Outfall 003, the dilution provided by the Piscataqua River and chemical data and visible evidence that the discharge from Outfall 003 (as is the case with Outfall 002) has not impaired the D.O. levels of the River, EPA has determined that the discharge at Outfall 003 poses no reasonable potential to impair the Piscataqua River water quality for Five Day Biological Oxygen Demand (BOD₅), Total Suspended Solids (TSS), Nitrogen compounds, Phosphorous, and Oil and Grease (O&G).

The draft permit contains a limit for pH. Including a pH limit in the draft permit provides a direct means to ensure an effluent continues to meet New Hampshire's water quality standards.

In addition, the permit contains reporting requirements for Flow, Five Day Biological Oxygen Demand (BOD₅), Total Suspended Solids (TSS), Ammonia Nitrogen, Total Kjeldahl Nitrogen (TKN), Nitrate, Total Phosphorous (TP), Oil and Grease (O&G). These parameters are considered those most likely to be found in the processing of marine fish which, in sufficient concentrations, pose a reasonable potential to harm the Piscataqua River ecosystem.

The draft permit also includes specific Best Management Practices

to insure Outfall 003's effluent remains as now constituted. These Best Management Practice requirements include:

- No pharmaceuticals or chemicals are to be added to the lobster tank water.
- No chemicals associated with lobster tank cleaning shall be discharged from Outfall 003 or any storm drain.
- LBS shall report to the EPA and NHDES-WD within a minimum of 120-days before any changes are initiated to any seawater systems at LBS facility that will alter Outfall 003's effluent composition.

Outfall 004

History. LBS treated their wood lobster traps with Tri-n-butyltin (TBT), a biocide, until October 2005. TBT was applied to the traps by dipping them into a vat containing a solution of TBT. The trap dipping operation was located on LBS's property between the lobster operations building and the Piscataqua River, approximately 80 feet from the river. During the period LBS conducted trap dipping; TBT was splashed from the dipping tank on the exposed ground or dripped from the traps which were placed on pallets to dry. Over a period of time, a sufficient concentration of TBT accumulated such that storm water flowing across LBS's property carried TBT contaminated sediment into the storm sewer which discharges into the Piscataqua River from Outfall 004.

TBT is a persistent chemical which, when used on ship hulls to prevent organisms from attaching to the hull, is released very slowly from the hull into the water column. TBT is extremely toxic to aquatic life. It is especially toxic to bivalves, such as oysters and other mollusks. TBT is an endocrine-disrupting chemical and causes severe reproductive effects in aquatic organisms. In addition, exposure to TBT makes oysters very susceptible to infection and death from exposure to pathogens.

In 2006, a report titled "Soil and Water Sampling Results, Little Bay Lobster Company" (May 25, 2006) was submitted to NHDES-WD. Discharge samples collected on May 12, 2006 at Outfall 004 and analyzed for TBT showed the discharge contained 22.4 ug/L TBT, well in exceedance of NH Standards (marine acute and chronic aquatic life criteria are 0.37 ug/L and 0.01 ug/L respectively).

Later, on January 18, 2007, Lordco Pier Associates, Inc. and Little Bay Seafood, LLC (LP/LBS) submitted the "Report on TBT

Investigation, LP/LBS Newington Processing Facility, Newington, New Hampshire" to the NH Department of Environmental Services (NHDES). This report concluded that an approximate area of 6,400 square feet contained variable concentrations of Tri-n-butyltin (TBT) to an approximate soil depth of 1-2 feet below ground surface (bgs). The report also concluded that monitoring well MW-1 samples contained TBT above NH Surface Water Quality Regulations criteria (MW-1 is about 40-feet north of catch basin #3 (CB#3)). Two groundwater samples, one filtered and one unfiltered, were analyzed for TBT. The filtered sample contained a TBT concentration of 3.8 micrograms per liter (ug/L); the unfiltered sample contained a TBT concentration of 19.7 ug/L.

In a July 9, 2007 report from LBS titled "Report on Mineral Spirits Investigation LP/LBS Newington Processing Facility," the results of sampling Catch Basin #3 show the sediment in the catch basin contained 54.3 parts per million TBT, and the duplicate sample contained 66.2 parts per million TBT.

A summary of all storm water samples collected from Outfall 004 and the TBT concentrations is as follows:

<u>Date</u>	<u>TBT Concentration (ug/L)</u>
08/11/06	108
08/26/06	31
09/12/06	31
10/16/06	13
07/17/07	0.88
11/16/07	20

LBS submitted a remedial plan to NHDES dated September 27, 2007 and titled, "Work Plan for Impacted Soil Removal". It is anticipated the remedial action will be effective in eliminating the discharge containing TBT from Outfall 004.

b. Conclusion and Permit Requirements. The sampling conducted at LBS's Outfall 004 thus far has demonstrated there is reasonable potential for a discharge of TBT from Outfall 004 to exceed NH's Water Quality Standards. Accordingly, the draft permit contains a TBT limit and provisions for LBS to sample Outfall 004 during dry weather conditions and wet weather conditions.

The draft permit stipulates that Outfall 004 be sampled monthly for TBT. The effluent limitation is the acute aquatic life water quality standard of 0.4 micrograms per liter (ug/L). The samples must be submitted for analysis as unfiltered samples for total TBT

concentrations. In addition, this draft permit contains a pH limit for Outfall 004 and a reporting requirement for TSS.

Anticipating the situation where a reasonable potential evaluation by the EPA and NHDES demonstrates TBT is no longer discharged at a level that would impair the Piscataqua River; a special condition has been incorporated in the draft permit. This draft permit special condition allows LBS to formally request a permit modification to modify or remove the TBT limit and TBT sampling of Outfall 004. If the EPA and NHDES evaluation determines there is no reasonable potential for TBT to impair the Piscataqua River and the conditions of §122.44(1)(2)(i)(B) are satisfied, the permit TBT limit and associated sampling may be modified in accordance with §122.62(a)(2). However, the permittee is required to continue testing for TBT at the frequency specified in the permit until the permit is either formally modified or revised without this requirement.

Outfall 005

Outfall 005 discharges from a pipe connected to a French drain located near the southeast corner of LBS building's foundation. Sampling conducted on June 26 and July 5, 2007 detected 7 micrograms per liter (ug/L) tetrachloroethene (PCE) and other related volatile organic compounds (VOCs) in trace amounts being discharged from Outfall 005. In a report submitted to NHDES dated July 25, 2007 "Report on Outfall 005, LP/LBS Newington Processing Facility, Newington, New Hampshire, NHDES Site #200106040", (MAI Environmental), the following information about Outfall 005 was provided:

"The updated understanding of piping and outfalls at the LBS facility explains the earlier and ongoing observations of low flow discharge from Outfall 005. Instead of draining the Compressor Room as originally believed, it was found that Outfall 005 in fact is connected to a French drain system on the SE corner of the LBS building foundation. The ongoing flow from Outfall 005 is in fact ground water effluent from the French drain system adjacent the foundation. Sampling and analysis indicates a low level of Tetrachloroethene and breakdown products (7ppb) but no Tributyl Tin. The source of the Tetrachloroethene is not known."

<u>Date</u>	<u>VOC Concentration (ug/L)</u>
06/26/07	7 (PCE)
07/05/07	7 (PCE)
11/16/07	29 (Methyl isobutyl ketone)

3 (PCE)

NHDES' Site Remediation program has required LBS to sample the ground water discharged from Outfall 005 three times: Fall 2007, Spring 2008 and Summer 2008. Based on the results of this sampling, NHDES Site Remediation will determine the future course of action with regard to groundwater contamination.

EPA, however, considers it is prudent to obtain more samples from the groundwater draining from Outfall 005 to better determine the effects of this VOC contamination on the water quality of the Piscataqua River. In order to better characterize the VOC contamination of the groundwater discharged from Outfall 005, monthly monitoring of VOCs is required by the draft permit.

The monitoring data will aid EPA and NHDES to determine if there is a reasonable potential that VOC contamination causes or contributes to a violation of the surface water quality standards, and whether specific VOCs require effluent limits. If VOC toxicity is found, the permit will either be modified, or alternatively, revoked and reissued to incorporate additional chemical specific limits and possible additional testing requirements.

C. Essential Fish Habitat and Endangered Species.

a. Essential Fish Habitat

Under the 1996 Amendments (PL 104-297) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq. (1998)), EPA is required to consult with the National Marine Fisheries Service (NOAA Fisheries) if EPA's actions, or proposed actions that EPA funds, permits, or undertakes, "may adversely impact any essential fish habitat." 16 U.S.C. § 1855(b). The Amendments broadly define essential fish habitat (EFH) as, "... those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." 16 U.S.C. § 1802(10). Adverse effect means any impact which reduces the quality and/or quantity of EFH. 50 C.F.R. § 600.910(a). Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat wide impacts, including individual, cumulative, or synergistic consequences of actions. Id.

EFH is only designated for species for which federal Fishery Management Plans exist (16 U.S.C. § 1855(b)(1)(A)). EFH

designations were approved for New England by the U.S. Department of Commerce on March 3, 1999.

The Piscataqua River is high value habitat for a variety of marine and estuarine species, and serves as the only conduit between the Gulf of Maine and Great Bay Estuary. While some fish species permanently reside in the river, most use it to either access spawning or nursery habitats in the Great Bay Estuary and associated rivers, or to migrate from these areas to marine habitats in the Gulf of Maine and beyond. Still others are seasonally present, preying on the concentrated but temporal influx of migrating forage species. A list of expected EFH species and associated life stages is listed in Table EFH-1.

As the federal agency charged with authorizing the discharge from this facility, EPA will provide a copy of the Draft Permit and this Fact Sheet to NOAA Fisheries Habitat Division to satisfy EPA's consultation responsibilities regarding EFH.

Table EFH-1: EFH Species Located in the Vicinity of Little Bay Seafood

Species	Eggs	Larvae	Juveniles	Adults
Atlantic salmon (<i>Salmo salar</i>)			X*	X
Atlantic cod (<i>Gadus morhua</i>)	X	X	X	X
haddock (<i>Melanogrammus aeglefinus</i>)	X	X		
Pollock (<i>Pollachius virens</i>)	X	X	X	X
whiting (<i>Merluccius bilinearis</i>)			X	X
red hake (<i>Urophycis chuss</i>)	X	X	X	X
white hake (<i>Urophycis tenuis</i>)	X	X	X	X
redfish (<i>Sebastes fasciatus</i>)	n/a ⁺			
winter flounder (<i>Pleuronectes americanus</i>)	X	X	X	X
yellowtail flounder (<i>Pleuronectes ferruginea</i>)		X		X
windowpane flounder (<i>Scopthalmus aquosus</i>)	X	X	X	X
Atlantic halibut (<i>Hippoglossus hippoglossus</i>)	X	X	X	X
Atlantic sea scallop (<i>Placopecten</i>)	X	X	X	X

<i>magellanicus</i>)				
Atlantic sea herring (<i>Clupea harengus</i>)		X	X	X
bluefish (<i>Pomatomus saltatrix</i>)			X	X
long finned squid (<i>Loligo pealei</i>)	n/a	n/a		
short finned squid (<i>Illex illecebrosus</i>)	n/a	n/a		
Atlantic mackerel (<i>Scomber scombrus</i>)	X	X	X	
scup (<i>Stenotomus chrysops</i>)	n/a	n/a		
black sea bass (<i>Centropristus striata</i>)	n/a			
surf clams (<i>Spisula solidissima</i>)	n/a	n/a		
ocean quahog (<i>Artica islandica</i>)	n/a	n/a		
spiny dogfish (<i>Squalus acanthias</i>)	n/a	n/a		
bluefin tuna (<i>Thunnus thynnus</i>)				X

*The notation "n/a" in the tables indicates some of the species either have no data available on the designated life cycle, or those life stages are not present in the species' reproductive cycle.

†The notation "X" in a table indicates that EFH has been designated within the square for a given species and life stage.

Facility Intake Description

LBS pumps seawater from the Piscataqua River via three intake pipes, each with an inside diameter of six inches. The three intakes are grouped together below the maximum low tide level of the river, under the facility's pier. The withdrawal and outfall locations are in an area of the river characterized by strong incoming and outgoing tidal velocity. Each intake pipe is capped with a half inch mesh screen. One of the three pipes is connected to a pump with a rated capacity of 600 gallons per minute (GPM). Each of the other two intake pipes is connected to a pump with a rated capacity of 200 GPM. The intake pipe with the 600 GPM pump has an approximate maximum through-screen velocity of 6.8 feet per second (ft/s). The intake pipes with the 200 GPM pumps each have an approximate maximum through-screen velocity of 2.3 ft/s.

Water from all three pumps joins into a single saltwater pipe main. The average withdrawal of the facility is approximately 250 GPM (360,000 gallons per day, 10,800,000 per month). Based on the period from July 2006 to October 2007, LBS on average used 31,274 gallons of seawater per month to process baitfish (the Outfall 002 discharge) and 327,942 gallons per month for maintaining lobster tank water levels (the Outfall 003 discharge). A full description of the facility operation and water use is found in Section I of this document. Section IV., Part B provides a detailed description of the four outfalls and the limits and monitoring proposed in the draft permit.

The Little Bay Facility, like all facilities that withdraw water from a natural waterbody, can impact aquatic resources in three major ways: (A) by the entrainment of small organisms into and through the intake system; (B) by the impingement of larger organisms on the intake screens; and (C) by creating adverse conditions in the receiving waters from the discharge of the effluent. The following discusses these three potential impacts.

Entrainment

The potential to impact aquatic organisms by entrainment largely depends on the presence and abundance of organisms that are vulnerable to entrainment, and the flow required for the facility. Other important considerations include the location and design of the intake structures. The EFH resources (including forage species) most vulnerable to entrainment in the vicinity of this facility are species that have positively buoyant eggs, and/or pelagic larvae.

Egg and larva community of EFH and forage species found in the Piscataqua River is diverse. A small volume of water is withdrawn from three low profile, six inch intake pipes located away from the river bank in an area subject to strong tidal velocity. These site-specific factors support the judgment that entrainment rates are expected to be very low.

Impingement

Organisms that have grown to a size too large to pass through intake screens are still vulnerable to being impinged on these screens. Juvenile lifestages are particularly vulnerable to impingement, but adults of certain species are also at risk. Additionally, the intake location and design, and flow requirements of the facility are major factors in assessing impingement potential.

Fish species that are especially vulnerable to impingement tend to have one or more of the following characteristics:

- pass intake structure in large, dense schools as juveniles or adults;
- are actively pursued as major forage species;
- are attracted to the intake structure as a source of forage or refuge;
- are slow moving or are otherwise unable to escape intake current;
- are structurally delicate, and likely to die if impinged.

The LBS intakes are covered with half inch mesh screen, which prevents adult and juvenile life stages of fish from being pulled into the six inch pipes. However, the calculated maximum through-screen velocity of approximately 6.8 ft/s at the 600 GPM intake and 2.3 ft/s at the two 200 GPM intakes are well above the 0.5 ft/s through-screen velocity identified by EPA to minimize impingement of adult and juvenile fish. In this site-specific case, the area that is influenced by the intake velocity surrounding the three relatively small, six inch pipes is minimal. Also, the intake pipes are located away from any specific habitats of high value such as eelgrass beds or mudflats. The location under the pier takes advantage of the river's strong tidal currents, which will likely further minimize the number of fish that have the potential to encounter the three small intake pipes. These site-specific factors support the judgment that impingement of adult and juvenile fish is not a concern.

Effluent Discharge

As discussed previously in this document, the discharges from Outfalls 002, 004 and 005 are intermittent and constitutes a very low volume. The discharge location of Outfall 002 takes advantage of the near-constant tidal current within the Piscataqua River in order to achieve rapid dilution. As described previously, on average, LBS uses 0.29% of the water drawn from the Piscataqua River for baitfish processing (Outfall 002's discharge), and 2.9% of that drawn water for maintaining lobster tank levels (Outfall 003's discharge). The significance of these low percentages is that a very small amount of river water pumped into the LBS facility is actually used for any sort of fish or lobster processing. This means when this small amount of process water is discharged to the Piscataqua River it will

be quickly dispersed and diluted by the river's tidal current and much larger volume. Outfall 004 discharges only during a rain event and Outfall 005 effluent is an intermittent discharge of ground water.

EPA analysis and determination that the effluent components contained in the discharges from Outfalls 002, 003, 004 and 005 do not pose a reasonable potential to adversely effect the Piscataqua River ecosystem are presented in Section IV., Part B

EPA's Opinion of all Potential Impacts to EFH species

EPA believes that the impacts associated with this facility to EFH species, their habitats and forage, have been minimized to the extent that no significant impacts are expected. Therefore, additional mitigation is not warranted. Monitoring proposed in the Draft Permit will provide contemporary, site-specific water quality data to further support this position. If adverse impacts to EFH do occur as a result of this permit action, or if new information becomes available that changes the basis for this determination, then NMFS will be notified and consultation will be promptly initiated.

b. Endangered Species

Section 7(a) of the Endangered Species Act of 1973, as amended (ESA) grants authority to and imposes requirements upon Federal agencies regarding endangered or threatened species of fish, wildlife, or plants ("listed species") and habitat of such species that has been designated as critical (a "critical habitat"). The ESA requires every Federal agency, in consultation with and with the assistance of the Secretary of Interior, to insure that any action it authorizes, funds, or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The United States Fish and Wildlife Service (USFWS) administers Section 7 consultations for freshwater species. The National Marine Fisheries Service (NMFS) administers Section 7 consultations for marine species and anadromous fish.

EPA has reviewed the federal endangered or threatened species of fish, wildlife, or plants to determine if any listed species might potentially be impacted by the issuance of this NPDES permit. The only listed species that may be present in the vicinity of Little Bay Seafood is the shortnose sturgeon (*Acipenser brevirostrum*).

The shortnose sturgeon was placed on the original endangered species list in 1967 [32 Fed. Reg. 4001 (1967)] by the USFWS. Currently, the National Marine Fisheries Service (NMFS) has authority over this species under Section 4(a) (2) of the ESA, 16 U.S.C. Section 1533 (a) (2). At present, there are 19 recognized distinct population segments (Shortnose Sturgeon Recovery Plan, NMFS, 1998), which all remain listed as endangered.

The Shortnose Sturgeon Recovery Plan states that "There are no known shortnose sturgeon populations in the rivers between the Androscoggin and Merrimack rivers." However, information contained in the NMFS Protected Resources website at <http://www.nmfs.noaa.gov/pr/species/fish/shortnosesturgeon.htm> lists the shortnose sturgeon as occurring in the Piscataqua River. In addition, the Atlantic States Marine Fisheries Commission, *Atlantic Sturgeon Stock Assessment, Peer Review Report*, March 1998, reported that "An occasional Atlantic sturgeon (Hoff 1980) has been captured in the Piscataqua River and two captures of shortnose sturgeon have been documented (New Hampshire Fish & Game 1989)."

Since a reproducing population of shortnose sturgeon is not likely to inhabit the Piscataqua River, only the juvenile and adult life stages would likely be found in the vicinity of LBS.

Refer to Section IV.a, Facility Intake Description.

Refer to Section IV.a, Impingement

Refer to Section IV.a, Effluent Discharge

EPA Finding

Based on the analysis detailed in this Fact Sheet, EPA has determined that Little Bay Seafood's operating conditions, as regulated by the limits and conditions in the Draft Permit, are not likely to adversely affect the shortnose sturgeon or its critical habitat. A copy of the Draft Permit and Fact Sheet have been provided to NMFS for review and comment as part of the notification required under ESA.

D. Additional Requirements and Conditions.

The effluent monitoring requirements have been established to yield data representative of the discharge under the authority of Section 308(a) of the CWA in accordance with 40 C.F.R. §122.41(j), 122.44(i) and 122.48.

Administrative Order, Docket No. 06-26, issued to LBS stipulated weekly sampling of the effluent discharged from Outfalls 002 and 003 be sampled for BOD₅, TSS, Nitrite, Nitrate, Total Phosphorous, Oil and Grease and pH. See Attachment C (Note: The weekly sampling was changed to quarterly starting in 2007). Based on these sampling results and the dilution and rapid mixing provided by the receiving waters, EPA determined the Piscataqua River ecosystem would not be adversely affected by the discharges from Outfalls 002 and 003.

Although EPA has determined the industrial discharge from Outfall 002 of fish processing waste does not pose a threat to the Piscataqua River, the Agency considers it prudent to continue to monitor and detail the effluent from Outfall 002. Two sampling regimes have been established for Outfall 002 in order to continue detailing the components of the effluent during baitfish wetting. The first sampling regime is for a 20-minute period which requires an effluent sample be taken every 3-minutes. This 20-minute of sampling has been designed to capture the maximum effluent concentrations that occur when a container of baitfish is emptied for processing. The other sampling regime spans the entire baitfish processing operation. Samples are collected at the start of baitfish processing for every 30-minutes until the completion of the processing. This sampling of the entire baitfish processing operation is designed to categorize the average effluent concentrations that occur when multiple baitfish containers are processed. Samples collected are to be analyzed for seven parameters; BOD₅, TSS, Ammonia Nitrogen, Total Kjeldahl Nitrogen (TKN), Nitrate, Total Phosphorous (TP), and Oil and Grease (O&G).

The remaining conditions of the permit are based on the NPDES regulations 40 C.F.R. Parts 122 through 125 and consist primarily of management requirements common to all permits.

V. Antidegradation.

This draft permit regulates processes that are considerably different from those regulated in the present permit. The existing permit regulates the waste products from fish processing, and effluent discharge from LBS's lobster ponds.

Fish processing is no longer conducted at LBS's facility. In 2005 LBS completed installation of a significant modification of the facility's lobster holding and processing system. This modification significantly altered the character of lobster processing system's effluent discharge. The existing permit did not address the bait wetting operation at LBS.

The EPA considers that the draft permit properly monitors and regulates all the industrial processes that use Outfall 002 and 003. Additionally, the EPA considers the recently discovered contaminants being discharged from either Outfall 004 or 005 are now properly regulated and monitored.

EPA and the NHDES-WD have worked closely in the development of LBS draft permit. EPA expects the State of New Hampshire, during the review of this draft permit as part of the State Certification process, to determine that there will be no lowering of water quality and no loss of existing water uses and that no additional antidegradation review is warranted.

VI. State Certification Requirements.

EPA may not issue a permit unless the State Water Pollution Control Agency with jurisdiction over the receiving water(s) either certifies that the effluent limitations and/or conditions contained in the permit are stringent enough to assure, among other things, that the discharge will not cause the receiving water to violate NH Standards or waives its right to certify as set forth in 40 C.F.R. § 124.53.

Upon public noticing of the draft permit, EPA is formally requesting that the State's certifying authority make a written determination concerning certification. The State will be deemed to have waived its right to certify unless certification is received within 60 days of receipt of this request.

The NHDES-WD is the certifying authority. EPA has discussed this draft permit with the Staff of the Wastewater Engineering Bureau and expects that the draft permit will be certified. Regulations governing state certification are set forth in 40 C.F.R. §§ 124.53 and 124.55.

The State's certification should include the specific conditions necessary to assure compliance with applicable provisions of the Clean Water Act Sections 208(e), 301, 302, 303, 306 and 307 and with appropriate requirements of State law. In addition, the State should provide a statement of the extent to which each

condition of the draft permit can be made less stringent without violating the requirements of State law. Since the State's certification is provided prior to permit issuance, any failure by the State to provide this statement waives the State's right to certify or object to any less stringent condition. These less stringent conditions may be established by EPA during the permit issuance process based on information received following the public noticing. If the State believes that any conditions more stringent than those contained in the draft permit are necessary to meet the requirements of either the CWA or State law, the State should include such conditions and, in each case, cite the CWA or State law reference upon which that condition is based. Failure to provide such a citation waives the right to certify as to that condition. The only exception to this is the sludge conditions/requirements implementing Section 405(d) of the CWA are not subject to the Section 401 State Certification requirements. Reviews and appeals of limitations and conditions attributable to State certification shall be made through the applicable procedures of the State and may not be made through the applicable procedures of 40 C.F.R. Part 124.

It should be noted that under CWA § 401, EPA's duty to defer to considerations of state law is intended to prevent EPA from relaxing any requirements, limitations or conditions imposed by state law. Therefore, "[a] State may not condition or deny a certification on the grounds that State law allows a less stringent permit condition." 40 C.F.R. §124.55(c). In such an instance, the regulation provides that, "The Regional Administrator shall disregard any such certification conditions or denials as waivers of certification." Id. EPA regulations pertaining to permit limits based upon water quality standards and state requirements are contained in 40 C.F.R. § 122.4 (d) and 40 C.F.R. § 122.44(d).

VII. Comment Period, Hearing Requests, and Procedures for Final Decisions.

All persons, including applicants, who believe any condition of the draft permit is inappropriate must raise all issues and submit all available arguments and all supporting material for their arguments in full by the close of the public comment period to:

Mr. John Paul King, Environmental Scientist
U.S. Environmental Protection Agency
1 Congress Street
Suite 1100 (Mailcode CPE)
Boston, Massachusetts 02114-2023

Telephone: (617) 918-1295
FAX No.: (617) 918-1505

Any person, prior to such date, may submit a request in writing or public hearing to consider the draft permit to EPA-New England and the State Agency. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing maybe held after at least thirty (30) days public notice whenever the Regional Administrator finds that response to this notice indicates significant public interest. In reaching a final decision on the draft permit, the Regional Administrator will respond to all significant comments and make these responses available to the public at EPA New England's Boston office.

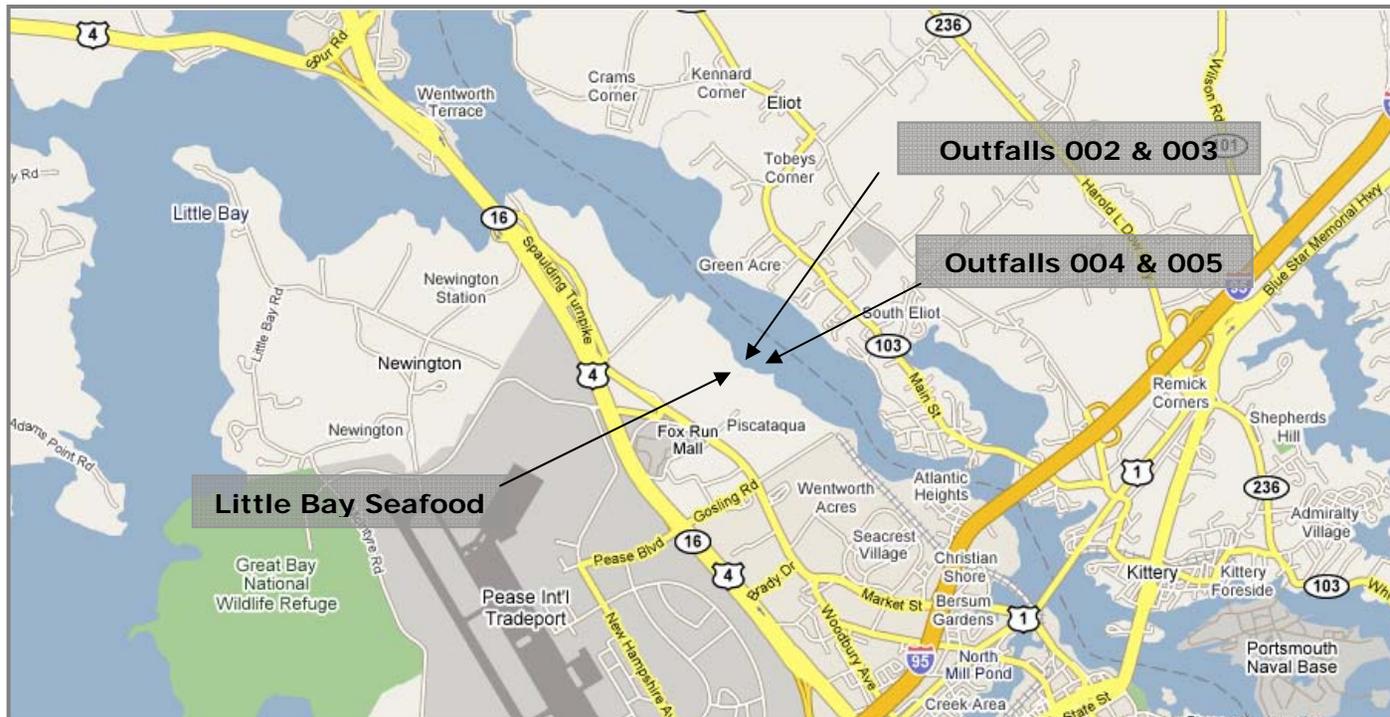
Following the close of the comment period, and after a public hearing, if such hearing is held, the Regional Administrator will issue a final permit decision and forward a copy of the final decision to the applicant and each person who has submitted written comments or requested notice.

Date

Stephen S. Perkins, Director
Office of Ecosystem Protection
U.S. Environmental Protection Agency

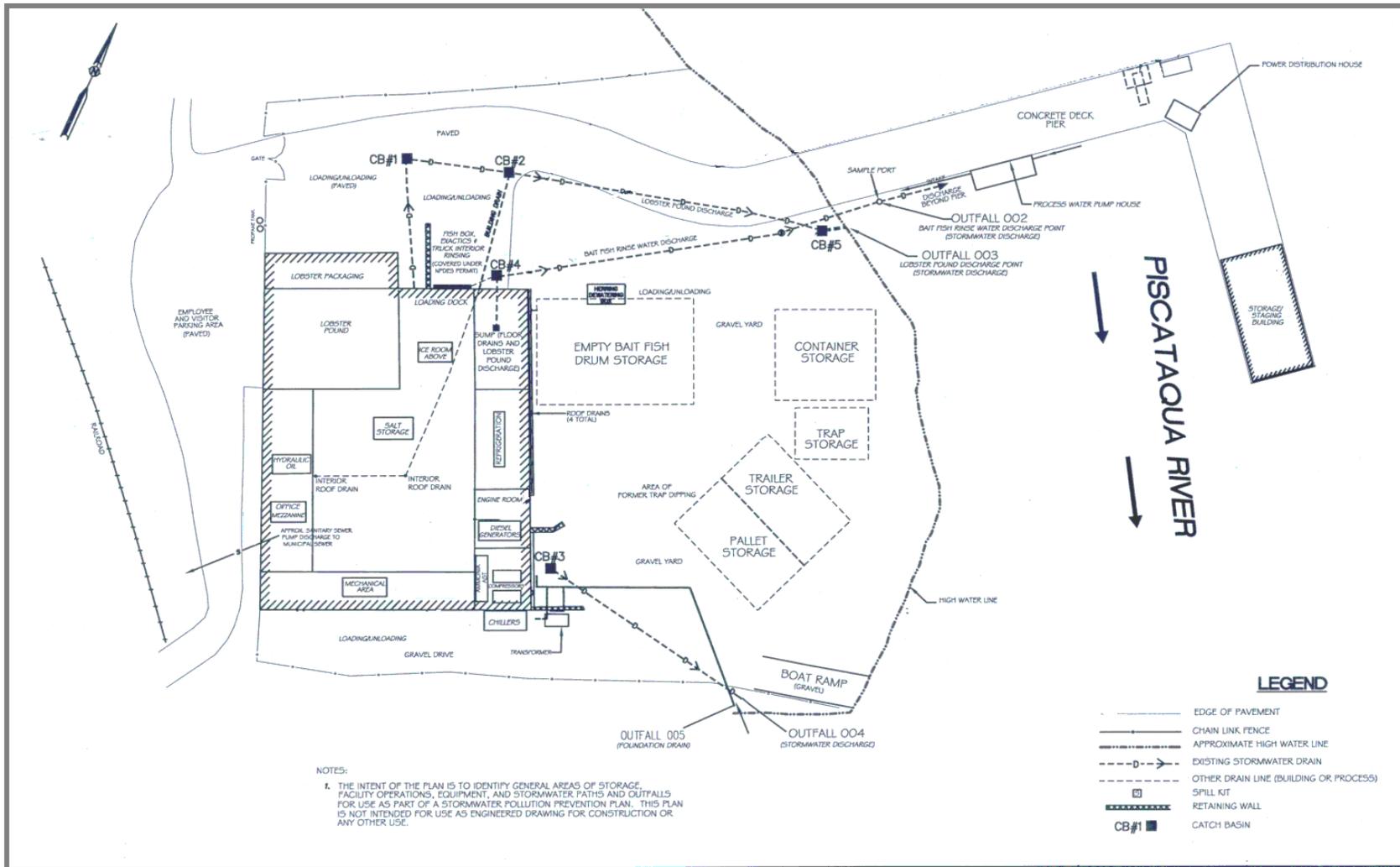
ATTACHMENT A

**Map Location of Little Bay Seafood and
Outfalls 002, 003, 004 and 005**



ATTACHMENT A (continued)

Little Bay Seafood Site Plan

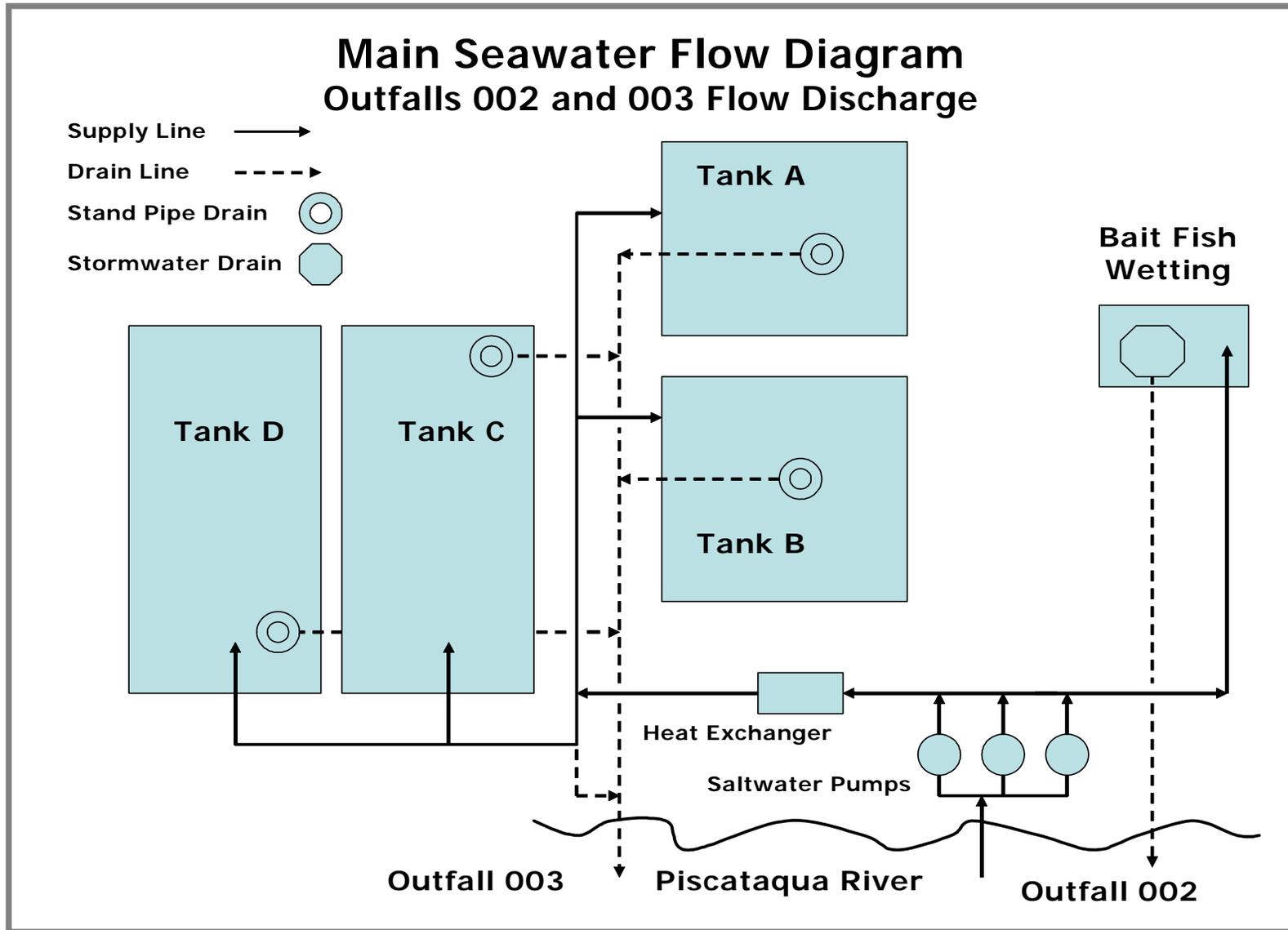


NOTES:
 1. THE INTENT OF THE PLAN IS TO IDENTIFY GENERAL AREAS OF STORAGE, FACILITY OPERATIONS, EQUIPMENT, AND STORMWATER PATHS AND OUTFALLS FOR USE AS PART OF A STORMWATER POLLUTION PREVENTION PLAN. THIS PLAN IS NOT INTENDED FOR USE AS ENGINEERED DRAWING FOR CONSTRUCTION OR ANY OTHER USE.

LEGEND

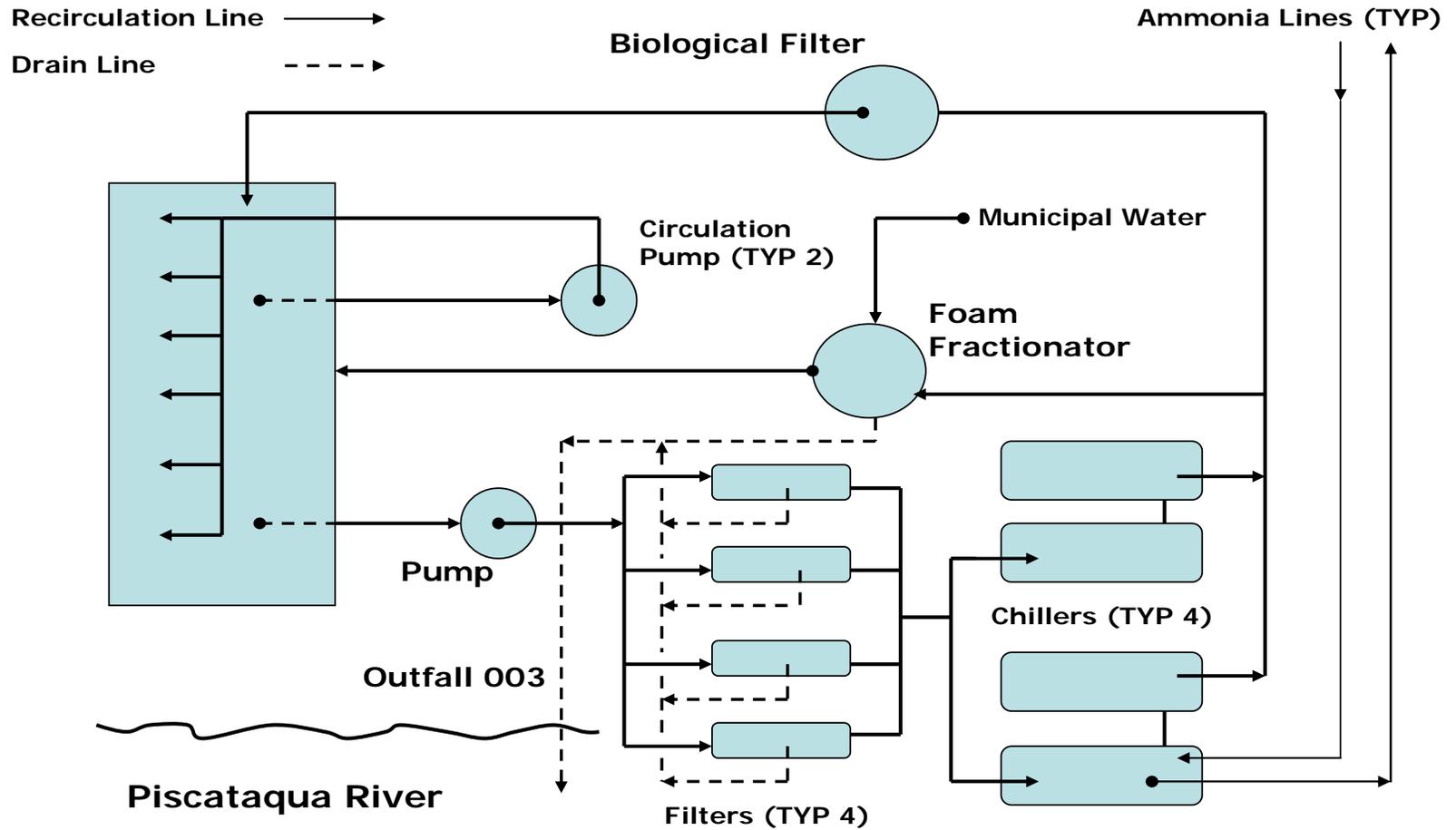
	EDGE OF PAVEMENT
	CHAIN LINK FENCE
	APPROXIMATE HIGH WATER LINE
	EXISTING STORMWATER DRAIN
	OTHER DRAIN LINE (BUILDING OR PROCESS)
	SPILL KIT
	RETAINING WALL
	CATCH BASIN

ATTACHMENT B



ATTACHMENT B (Continued)

Typical Tank Recirculation Diagram Outfall 003 Flow Discharge



ATTACHMENT C

Outfall 002 Sampling Results¹

Date	BOD ₅	TSS	pH	NH ₃ -N	Nitrate-N	TP	Oil & Grease
07.13.06	170	66	6.51	3.5	5	3.5	24
07.19.06	2300	770	6.56	48	20	65	91
07.25.06	2400	370	7.28	11	BDL	28	30
08.02.06	4700	2500	6.69	78	BDL	99	240
08.15.06	7	5	7.68	1.2	<5	0.38	<6
08.22.06	990	1000	6.54	37	7.7	34	28
08.26.06	7	8	7.06	<0.5	<5	0.23	<5
08.31.06	4770	15000	6.32	150	<10	320	91
09.11.06	4200	4300	6.44	150	<5	120	63
09.26.06	7	8	6.00	<0.5	<5	0.23	<5
10.04.06	180	130	6.49	7.8	<5	4.5	14
10.16.06	470	190	6.66	16	<5	11	10
11.08.06	140	61	7.40	13	<5	2.2	<7
11.17.06	150	120	7.43	6.2	<5	5.7	10
11.20.06	10	21	7.38	1.8	54	2.2	<6
12.01.06	10	32	7.64	2	<5	1.8	7
12.01.06	1800	1000	6.61	56	<5	95	82
12.13.06	780	150	7.47	21	7.6	15	28
12.19.06	N/A	16	7.57	1.4	<5	16	<6
12.19.06	N/A	200	7.54	120	<5	200	6
05.30.07 ²	>4000	4600	6.65	120	<5	110	1800
08.21.07	18	52		2.6	<5	1.7	<6

1. All results in mg/l except pH
2. Test Sampling Period Changed to Quarterly
3. Storm water sample

ATTACHMENT C (Continued)
Outfall 003 Sampling Results¹

Date	BOD ₅	TSS	pH	NH ₃ -N	Nitrate-N	TP	Oil & Grease
07.13.06	5	17	7.51	1.2	5	0.25	5
07.19.06	8	21	7.62	0.9	5	0.66	5
07.25.06	8	25	7.68	1	BDL	0.68	BDL
08.02.06	550	110	7.05	12	BDL	12	
08.15.06	380	490	7.4	24	5.1	43	16
08.22.06	7	11	7.55	0.5	<5	0.8	<5
08.26.06	23	23	7.58	2	<5	1.4	<6
08.31.06	5	28	7.64	0.8	<5	0.29	<5
09.11.06	16	34	7.42	1.1	24	21	<6
09.26.06	23	23	7.72	2	<5	0.23	<5
10.04.06	<5	8	7.76	<0.5	<5	0.13	<5
10.16.06	8	18	7.71	<0.5	7.6	0.7	<5
11.06.06	<5	30	7.66	0.6	5.1	0.38	<5
01.25.07 ²	66	260		2.8	38	3.3	<5
03.27.07	<5	60		0.6	20	1.7	<5
05.11.07 ³	41	370	7.31				46
05.30.07	28	150	7.52	4	10	2.2	<5
08.21.07	56	58		5	6.5	3.5	8

1. All results in mg/l except pH, BDL: Below Detectable Limits
2. Test Sampling Period Changed to Quarterly
3. Storm water sample

ATTACHMENT D

Outfall 002 CORMIX Model

