



STATE OF MAINE  
Department of Environmental Protection

JOHN ELIAS BALDACCI  
GOVERNOR

David P. Littell  
COMMISSIONER

April 8, 2009

Ms. Betsy Lowe  
Eastern Maine Mussel Corp.  
[garbo@maine.net](mailto:garbo@maine.net)

**RE: *Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0037036  
Maine Waste Discharge License (WDL) Application #W009031-5P-A-N  
FINAL MEPDES Permit/WDL***

Dear Ms. Lowe:

Enclosed, please find a copy of your **final** MEPDES permit and Maine WDL, which was approved by the Department of Environmental Protection. Please read the permit/license and its attached conditions carefully. You must follow the conditions in the order 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.*"

If you have any questions regarding the matter, please feel free to call me at 287-7659.

Sincerely,

Bill Hinkel  
Division of Water Quality Management  
Bureau of Land and Water Quality

Enc.

Electronic copies: [Jeff Jewett, EMM jeffmjewett@yahoo.com](mailto:Jeffmjewett@yahoo.com)  
Jim Sohns, DEP  
Sandy Mojica, USEPA

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 624-6550 FAX: (207) 624-6024  
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) 764-6477 FAX: (207) 764-1507



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

DEPARTMENT ORDER

**IN THE MATTER OF**

EASTERN MAINE MUSSEL CORP.	)	MAINE POLLUTANT DISCHARGE
HANCOCK, HANCOCK CO., MAINE	)	ELIMINATION SYSTEM PERMIT
MUSSEL PROCESSING	)	AND
#ME0037036	)	WASTE DISCHARGE LICENSE
#W009031-5P-A-N	)	<b>RENEWAL</b>
	<b>APPROVAL</b>	

Pursuant to the provisions of the *Federal Water Pollution Control Act*, Title 33 USC, §1251, *Conditions of licenses*, 38 M.R.S.A. § 414-A, and applicable regulations, the Maine Department of Environmental Protection (Department) has considered the application of EASTERN MAINE MUSSEL CORP. (EMM) with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

EMM has applied to the Department for a new combination Waste Discharge License (WDL) and Maine Pollutant Discharge Elimination System (MEPDES) permit for the discharge of process waste water from a mussel processing facility to Taunton Bay, Class SB, in Hancock, Maine. It is noted that EMM has revised its initial application to seek authorization to discharge facility clean-up waters containing residual chlorine after the facility's outfall pipe has been extended into the receiving waters.

**PERMIT SUMMARY**

**This permitting action is establishing:**

1. A daily maximum discharge flow limitation of 24,500 gallons per day (GPD) and a monthly average discharge flow reporting requirement;
2. Monthly average and daily maximum production reporting requirements;
3. Monthly average and daily maximum concentration and mass technology-based limitations for total suspended solids (TSS);
4. Monthly average and daily maximum concentration and mass technology-based limitations for oil and grease (O&G);
5. A technology-based daily maximum concentration limitation of 1.0 ml/L for settleable solids;
6. A technology-based (same as water quality-based in this instance) daily maximum concentration limitation of 1.0 mg/L for total residual chlorine (TRC); and
7. A technology-based pH range limitation.

## CONCLUSIONS

BASED on the findings in the attached revised Fact Sheet dated April 8, 2009, and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
  - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S.A. § 414-A(1)(D).

**ACTION**

THEREFORE, the Department APPROVES the above noted application of EASTERN MAINE MUSSEL CORP. to discharge a daily maximum flow of 24,500 GPD of treated mussel processing waste water to the Taunton Bay, Class SB, in Hancock, Maine, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations including:

1. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit expires five (5) years from the date of signature below.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: November 25, 2008

Date of application acceptance: December 2, 2008

This Order prepared by William F. Hinkel, BUREAU OF LAND & WATER QUALITY

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge treated **mussel processing waste water** to the Taunton Bay in Hancock, Maine via **OUTFALL #001A**. Such discharges shall be limited and monitored by the permittee as specified below<sup>(1)</sup>.

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	<u>Monthly Average</u> as specified	<u>Daily Maximum</u> as specified	<u>Monthly Average</u> as specified	<u>Daily Maximum</u> as specified	<u>Measurement Frequency</u> as specified	<u>Sample Type</u> as specified
Flow <i>[50050]</i>	Report gpd <i>[07]</i>	24,500 gpd <i>[07]</i>	---	---	Continuous <i>[CN]</i>	Recorder <i>[RC]</i>
Total Suspended Solids <i>[00530]</i>	188 lbs./day <i>[26]</i>	388 lbs./day <i>[26]</i>	922 mg/L <i>[19]</i>	1,657 mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Composite <sup>(2)</sup> <i>[CP]</i>
Oil & Grease <i>[03582]</i>	18 lbs./day <i>[26]</i>	28 lbs./day <i>[26]</i>	88 mg/L <i>[19]</i>	137 mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
Settleable Solids <i>[00545]</i>	---	---	---	1.0 ml/L <i>[25]</i>	1/Week <i>[01/07]</i>	Grab <i>[GR]</i>
Total Residual Chlorine (TRC) <i>[50060]</i>	---	---	---	1.0 mg/L <i>[19]</i>	1/Day <sup>(3)</sup> <i>[01/01]</i>	Grab <i>[GR]</i>
Production <i>[00145]</i>	Report lbs./day <i>[26]</i>	Report lbs./day <i>[26]</i>	---	---	1/Day <i>[01/01]</i>	Measure <i>[MS]</i>
pH (Std. Units) <i>[00400]</i>	The pH shall not be less than 6.0 or greater than 9.0 SU at any time.				---	---

The italicized numeric values bracketed in the table above are code numbers utilized by Department personnel to code the monthly Discharge Monitoring Reports (DMRs).

**FOOTNOTES:** See Page 5 of this permit for applicable footnotes.

## SPECIAL CONDITIONS

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

#### **FOOTNOTES:**

1. **Sampling** – All effluent monitoring shall be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. 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 Health and Human Services.

All analytical test results shall be reported to the Department including results which are detected below the respective reporting limits (RLs) specified by the Department. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the actual detection limit achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL is not acceptable and will be rejected by the Department. For mass, if the analytical result is reported as <Y or if a detectable result is less than a RL, report a <X lbs/day, where X is the parameter specific limitation established in the permit. Compliance with this permit will be evaluated based on whether or not a compound is detected at or above the Department's RL.

2. **Composite Samples** – Composite samples collected for TSS shall consist of four (4) flow-proportioned grab samples collected over a single production cycle, or a flow-proportioned sample collected by an automatic compositor.
3. **TRC** – The permittee is not authorized to discharge waste waters containing residual chlorine via Outfall #001A until 1) the facility's outfall pipe has been extended into the receiving water to a minimum depth of at least eight (8) feet below the surface of the water at mean low water level; and 2) upon receiving written Department approval to commence the discharge of waste waters containing residual chlorine. Monitoring for TRC is required once per day each day that chlorine or chlorine-based compounds are discharged via Outfall #001A.

## SPECIAL CONDITIONS

### B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time 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. MONITORING AND REPORTING

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

Department of Environmental Protection  
Eastern Maine Regional Office  
Bureau of Land & Water Quality  
Division of Water Quality Management  
106 Hogan Road  
Bangor, Maine 04401

### D. NOTIFICATION REQUIREMENT

In accordance with Standard Condition D, the permittee shall notify the Department of any substantial change in the volume or character of pollutants being introduced into the waste water collection and treatment system. For the purpose of this section, notice regarding substantial change shall include information on:

- a. The quality or quantity of wastewater 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. AUTHORIZED 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 December 2, 2008 (and amendments thereto); 2) the terms and conditions of this permit; and 3) only from Outfall #001A. Discharges of wastewater 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. **Discharges of facility clean-up waters containing residual chlorine are authorized only after 1) the facility's outfall pipe has been extended into the receiving water to a minimum depth of at least eight (8) feet below the surface of the water at mean low water level; and 2) the permittee receives written Department approval to commence the discharge of waste waters containing residual chlorine.**

### F. OPERATIONS AND MAINTENANCE (O&M) PLAN

**On or before July 1, 2009**, the permittee shall submit to the Department, for review and comment, a written comprehensive Operation & Maintenance (O&M) Plan [*PCS Code 09699*]. 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 including site plan(s) and schematic(s) for the waste water 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 USEPA personnel upon request.

**Within 90 days of completion of new and or substantial upgrades of the waste water treatment facility**, the permittee shall submit the updated O&M Plan to their Department inspector for review and comment.

## **SPECIAL CONDITIONS**

### **G. REOPENING OF PERMIT FOR MODIFICATION**

Upon evaluation of the tests results in the Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at any time and with notice to the permittee, modify this permit 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.

### **H. SEVERABILITY**

In the event that any provision, or part thereof, of this permit is declared to be unlawful by a reviewing court, the remainder of the permit shall remain in full force and effect, and shall be construed and enforced in all aspects 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: APRIL 8, 2009**

**PERMIT NUMBER: #ME0037036**

**LICENSE NUMBER: #W009031-5P-A-N**

**NAME AND ADDRESS OF APPLICANT:**

**EASTERN MAINE MUSSEL CORP.  
P.O. BOX 334 128 POUND ROAD  
HANCOCK, MAINE 04640**

**NAME AND ADDRESS WHERE DISCHARGE OCCURS:**

**EASTERN MAINE MUSSEL CORP.  
P.O. BOX 24 1663 U.S. HIGHWAY 1  
HANCOCK, MAINE 04640**

**RECEIVING WATER/CLASSIFICATION: TAUNTON BAY, CLASS SB**

**COUNTY: HANCOCK COUNTY**

**COGNIZANT OFFICIAL AND TELEPHONE NUMBER:**

**MR. DUANE (PETE) DALEY  
PRESIDENT  
P.O. BOX 334 128 POUND ROAD  
HANCOCK, MAINE 04649  
(207) 422-3837  
[garbomaine@earthlink.net](mailto:garbomaine@earthlink.net)**

**1. APPLICATION SUMMARY**

- a. Application: Eastern Maine Mussel Corp. (EMM) has applied to the Maine Department of Environmental Protection (Department) for a new combination Waste Discharge License (WDL) and Maine Pollutant Discharge Elimination System (MEPDES) permit for the discharge of process waste water from a mussel processing facility to Taunton Bay, Class SB, in Hancock, Maine. It is noted that EMM has revised its initial application to seek authorization to discharge facility clean-up waters containing residual chlorine after the facility's outfall pipe has been extended into the receiving waters.

## 2. PERMIT SUMMARY

a. Terms and Conditions **This permitting action is establishing:**

1. A daily maximum discharge flow limitation of 24,500 gallons per day (GPD) and a monthly average discharge flow reporting requirement;
2. Monthly average and daily maximum production reporting requirements;
3. Monthly average and daily maximum concentration and mass technology-based limitations for total suspended solids (TSS);
4. Monthly average and daily maximum concentration and mass technology-based limitations for oil and grease (O&G);
5. A technology-based daily maximum concentration limitation of for settleable solids;
6. A technology-based (same as water quality-based in this instance) daily maximum concentration limitation of 1.0 mg/L for total residual chlorine (TRC); and
7. A technology-based pH range limitation.

b. History: This section provides a summary of significant permitting actions and milestones that have been completed for EMM.

February 5, 2004 – The Maine Board of Environmental Protection approved an Administrative Consent Agreement and Enforcement Order with EMM. Violations listed in that document include discharging pollutants in mussel processing wastewater without a license in violation of Title 38 M.R.S.A. § 413.1.

November 4, 2008 – The Department issued a Notice of Violation to EMM for discharging mussel processing wastewaters on November 30, 2007 without a WDL/MEPDES permit.

November 25, 2008 – EMM submitted a General Application to the Department for a new WDL/MEPDES permit. The application was accepted as complete for processing on December 2, 2008, and was assigned WDL #W009031-5P-A-N / MEPDES #ME0037036.

c. Source Description: Eastern Maine Mussel Corp. operates a mussel processing facility on U.S. Highway One in Hancock, Maine. A map prepared by the Department showing the location of the facility and receiving waters is included as Attachment A of this fact sheet. The process includes purging, washing, declumping, debyssing, inspection, size grading, and packaging of blue shell mussels. All water used in the processing of mussels, including purging, is salt water obtained from a 4-inch diameter intake pipe installed in the Taunton Bay. EMM utilizes fresh water from a drilled ground water well during cleaning activities. It is noted that EMM stated an ultraviolet disinfection unit is installed on the raw ground water line. EMM does not treat facility intake waters with any chemicals.

## 2. PERMIT SUMMARY (cont'd)

The permittee indicated average and maximum blue shell mussel processing rates of 12,500 pounds per day and 20,000 pounds per day, respectively. Processing occurs year-round.

EMM performs a pressure wash cleaning of all equipment using fresh water each processing day. No chemicals are applied during this cleaning process. EMM had initially applied for authorization to utilize two cleaning and disinfection compounds (Zep® FS Amine Z and Zep® FS Strike Three), however, the Department expressed concerns to EMM regarding the Material Safety Data Sheet toxicological information statement for Zep® FS Amine Z that the product is toxic to aquatic organisms and should be prevented from entering water ways and drains. EMM has agreed to cease use of both of the aforementioned products and instead use bleach (sodium hypochlorite) for periodic (approximately once per week) facility cleaning/disinfection. EMM has agreed to collect facility clean-up waters containing residual chlorine and convey this waste stream to the existing subsurface wastewater disposal system until such time that EMM 1) extends the outfall into the receiving waters to a minimum depth of at least 8 feet below the surface of the water at mean low water level; 2) contacts the Department to request authorization to commence the discharge of waste waters containing residual chlorine; and 3) received written authorization by the Department for said discharge.

- d. Wastewater Treatment: Wastewater is generated by mussel processing and facility cleaning activities. Taunton Bay water is pumped to the facility at a rate of approximately 15 gallon per minute. Water is metered on the intake pipe and may be directed to either the constant flow-through purge tank or to the processing equipment. Purge tank waters drain from a sump located in a corner of the tank at the same rate that the intake waters enter the tank. The Department has previously made a determination to not require a waste discharge license for the discharge of purge tank waters. However, EMM also generates process wastewaters and cleaning wastewaters that do require a waste discharge license. Whereas EMM is required obtain a license for these discharges, EMM has requested to include the purge tank wastewaters in this permitting action.

Bulk solids are collected in the processing room and disposed of in accordance with application rules and regulations. Wastewater generated during washing, declumping, debussing, and facility cleaning activities drains to a 14-inch wide, grated trough (floor drain) that runs parallel to the purge tank. The trough slopes to a drain fitted with a cylindrical screen made of 1/16-inch mesh to screen out particulate matter. Wastewater drains by gravity to a 6-inch diameter pipe to the outfall location.

Final effluent is conveyed to the Taunton Bay for discharge via a 6-inch diameter outfall pipe designated Outfall #001A in this permitting action. Currently, the outfall pipe terminates at the shore of the tidal river (bank outfall). However, EMM has agreed to extend the outfall pipe further into the receiving water to ensure the pipe is submerged to a depth of at least 8 feet at mean low water.

A process schematic prepared by EMM is included as Attachment B of this fact sheet.

### 3. CONDITIONS OF PERMITS

*Conditions of licenses*, 38 M.R.S.A. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the 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., § 420 and 06-096 CMR 530 require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective October 9, 2005), 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

*Classifications of estuarine and marine waters*, 38 M.R.S.A. § 469 classifies all estuarine and marine waters lying within the boundaries of the State and which are not otherwise classified, which includes the Taunton Bay at the point of discharge, as Class SB waters. *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B(2) describes the classification standards for Class SB waters.

### 5. RECEIVING WATER QUALITY CONDITIONS

*The State of Maine 2008 Integrated Water Quality Monitoring and Assessment Report*, prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists a 0.047 square mile area of Taunton Bay at the Route 1 bridge (Waterbody ID 714-13), which includes the waters at the point of EMM's discharge, as "*Category 5-B-1: Estuarine and Marine Waters Impaired only by Bacteria (TMDL Required)*." The source of the impairment is listed as elevated fecal coliform bacteria counts and non-point source pollution. The Department has not scheduled a TMDL study for this segment.

In addition, all estuarine and marine waters of the State are listed as, "*Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants*." The Report states, "*All estuarine and marine waters are listed in Category 5-D, partially supporting fishing ("shellfish" consumption) due to elevated levels of PCBs and other persistent, bioaccumulating substances in lobster tomalley.*"

The Department has determined that the discharge, as permitted, will not cause or contribute to non-attainment of the receiving waters to attain its ascribed classification.

## 6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- a. Applicability of Effluent Guideline Limitations (EGLs): The USEPA has promulgated technology-based limitations for numerous seafood processes at the Code of Federal Regulations, Title 40, Part 408 for canned and preserved seafood processing, but not for mussel processing. Part 408 Subpart AG - *Abalone Processing Subcategory* defines abalone and other shellfish as having similar waste loads. The Department has made a best professional judgment determination to apply the EGLs promulgated at 40 CFR Part 408 Subpart AG to discharges from mussel processing facilities to calculate appropriate technology-based effluent limitations. 40 CFR Part 408.322 establishes effluent limitation guidelines for TSS, oil and grease (O&G), and pH representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- b. Flow: EMM has applied for a daily maximum discharge flow limitation of 24,500 gallons per day (GPD) based on the intake water pump rates and discharge rates from the purge tank and cleaning activities. This permitting action is establishing a daily maximum discharge flow limit of 24,500 GPD and a monthly average discharge flow reporting requirement for Outfall #001A.
- c. Dilution Factors: Based on the configuration of Outfall #001A and a daily maximum discharge flow criterion of 0.0245 MGD (same as 24,500 GPD), acute, chronic and harmonic mean dilution factors associated with the bank outfall are assumed to be 1:1. EMM intends to extend the outfall pipe during the early term of this permit. Applicable dilution factors associated with the discharge following extension of the outfall pipe to a depth of 8 feet may be calculated in accordance with 06-096 CMR 530(4)(A)(2)(a), which states, “*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.*” Dilution factors associated with the discharge are as follows:

Acute = 80:1

Chronic = 939:1

Harmonic mean<sup>1</sup> = 2,817:1

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<sup>1</sup> The harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by three (3). This multiplying factor is based on guidelines for estimation of human health dilution presented in the U.S. EPA publication, “*Technical Support Document for Water Quality-Based Toxics Control*” (Office of Water; EPA/505/2-90-001, page 88), and represents an estimation of harmonic mean flow on which human health dilutions are based in a riverine 7Q10 flow situation.

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

- d. Production, pounds/day: This permitting action is establishing monthly average and daily maximum production reporting requirements to assist in compliance determinations and efficiency of the treatment system.

In their December 2, 2008 application, EMM applied for an average production rate of 12,500 lbs./day and a maximum rate of 20,000 lbs./day for blue shell mussels. These production rates are representative of past and projected facility activity.

- e. Total Suspended Solids (TSS): This permitting action is establishing monthly average and daily maximum technology-based concentration and mass limits for TSS. The BPT-based EGLs at 40 CFR Part 408.322 for TSS are expressed as a monthly average of 15 pounds per 1,000 pounds of production and a daily maximum of 27 pounds per 1,000 pounds production.

Utilizing the average production value of 12,500 lbs./day, monthly average and daily maximum technology-based mass limits for TSS are calculated as follows:

$$\text{Monthly Average: } \frac{(12,500 \text{ lbs/day})(15 \text{ lbs})}{1,000 \text{ lbs}} = 188 \text{ lbs./day}$$

$$\text{Daily Maximum: } \frac{(12,500 \text{ lbs/day})(27 \text{ lbs})}{1,000 \text{ lbs}} = 338 \text{ lbs./day}$$

Concentration limits for TSS may be back-calculated utilizing the applicable mass limitation calculated above, a flow of 0.0245 million gallons per day (MGD) (same as 24,500 GPD) and a conversion factor of 8.34 lbs/gallon of water. Concentration limits are calculated as follows:

$$\text{Monthly Average: } \frac{(188 \text{ lbs/day})}{(0.0245 \text{ MGD})(8.34 \text{ lbs/gal})} = 922 \text{ mg/L}$$

$$\text{Daily Maximum: } \frac{(338 \text{ lbs/day})}{(0.0245 \text{ MGD})(8.34 \text{ lbs/gal})} = 1,657 \text{ mg/L}$$

This permitting action is establishing a minimum monitoring frequency requirement of once per month for TSS based on best professional judgment.

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

- f. Oil & Grease (O&G): This permitting action is establishing monthly average and daily maximum technology-based concentration and mass limits for O&G. 40 CFR Part 408.322 regulates O&G in terms of a monthly average of 1.4 pounds per 1,000 pounds of production and a daily maximum of 2.2 pounds per 1,000 pounds production.

Utilizing the average production value of 12,500 lbs./day, monthly average and daily maximum technology-based mass limits for O&G are calculated as follows.

$$\text{Monthly Average: } \frac{(12,500 \text{ lbs/day})(1.4 \text{ lbs})}{1,000 \text{ lbs}} = 18 \text{ lbs./day}$$

$$\text{Daily Maximum: } \frac{(12,500 \text{ lbs/day})(2.2 \text{ lbs})}{1,000 \text{ lbs}} = 28 \text{ lbs./day}$$

Concentration limits for O&G may be back-calculated utilizing the applicable mass limitation, a flow of 0.0245 MGD and a conversion factor of 8.34 lbs/gallon of water. Concentration limits are calculated as follows:

$$\text{Monthly Average: } \frac{(18 \text{ lbs/day})}{(0.0245 \text{ MGD})(8.34 \text{ lbs/gal})} = 88 \text{ mg/L}$$

$$\text{Daily Maximum: } \frac{(28 \text{ lbs/day})}{(0.0245 \text{ MGD})(8.34 \text{ lbs/gal})} = 137 \text{ mg/L}$$

This permitting action is establishing a minimum monitoring frequency requirement once per month for O&G based on best professional judgment.

- g. Settleable Solids: This permitting action is establishing a daily maximum concentration limitation of 1.0 ml/L for settleable solids based on best professional judgment of best practicable treatment for this facility. This limitation is consistent with the settleable solids limit established for another seafood processing facility in Maine. It is noted that the USEPA has not promulgated settleable solids effluent guidelines for this industry.

This permitting action is establishing a minimum monitoring frequency requirement of once per week for settleable solids based on best professional judgment.

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

h. Total Residual Chlorine (TRC): During the processing of EMM’s application, the Department expressed concern with the toxicity of two compounds proposed for use at the facility during clean-up activities. EMM has agreed to cease the use of these compounds and switch to a chlorine-based (bleach) cleaner/disinfectant for clean-up activities. The outfall pipe associated with the discharge currently terminates on the shore of the receiving water. EMM intends to extend the outfall pipe into deeper waters in the early term of this permit to achieve complete and rapid mixing of the effluent with the receiving waters. EMM is not authorized to discharge waste waters containing chlorine until such time that the outfall is extended and the Department provides written authorization to discharge chlorine-containing waste waters to the receiving waters. EMM has indicated that facility clean-up waters containing chlorine will be conveyed to the on-site subsurface wastewater disposal system until the outfall has been extended.

With dilution factors as determined in section 6(c) of this fact sheet (based on an extended outfall), end-of-pipe (EOP) water quality-based concentration thresholds for TRC may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A & C Dilution Factors	Calculated	
			Acute Threshold	Chronic Threshold
0.013 mg/L	0.0075 mg/L	80.0:1 (A) 939.0:1 (C)	1.0 mg/L	7.0 mg/L

Example calculation: Acute – 0.013 mg/L (80) = 1.0 mg/L

The Department has established a daily maximum technology-based standard of 1.0 mg/L for facilities that utilize chlorine or chlorine-based compounds for disinfection purposes. Whereas the technology-based standard and water quality-based threshold are equivalent, this permitting action is establishing a daily maximum concentration limitation of 1.0 mg/L for TRC that is applicable when the facility commences discharge of waste waters containing residual chlorine. This permitting action is establishing a minimum monitoring frequency requirement of once per day based when discharging waste waters containing residual chlorine on best professional judgment.

i. pH: This permitting action is establishing a daily maximum pH range limitation of 6.0 – 9.0 SU based on the technology-based guidelines at 40 CFR Part 408.322. This pH range limitation is consistent with the range considered by the Department to be BPT for other categories of discharges in Maine.

## 7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the water body to meet the standards for Class SB classification.

## 8. PUBLIC COMMENTS

Public notice of this application was made in the *Bangor Daily News* newspaper on or about November 12, 2008. The Department receives public comments on an application until the date a final agency action is taken on the 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 *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

## 9. DEPARTMENT CONTACTS

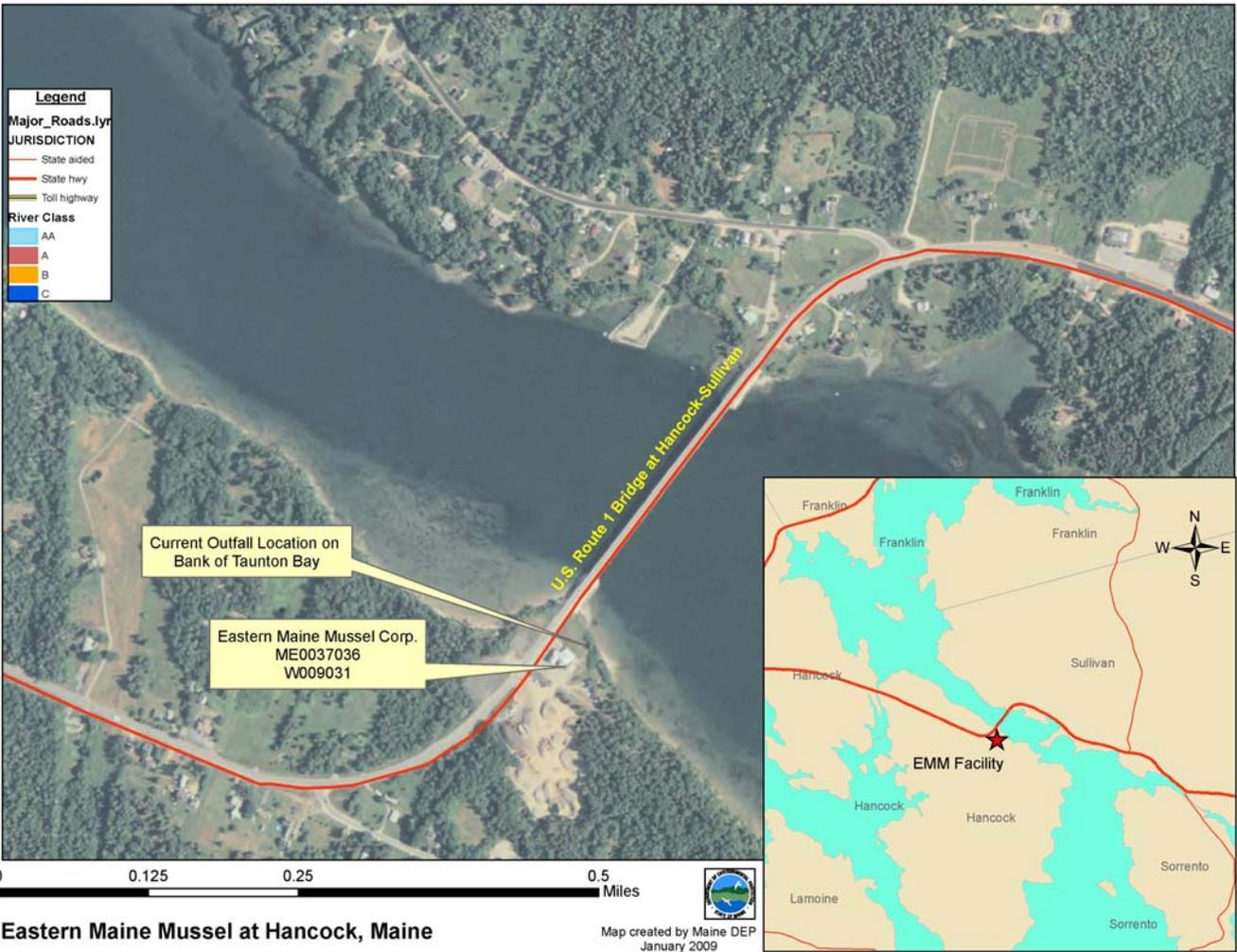
Additional information concerning this permitting action may be obtained from, and written comments sent to:

William F. Hinkel  
Division of Water Quality Management  
Bureau of Land & Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 287-7659 Fax: (207) 287-3435  
e-mail: [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov)

## 10. RESPONSE TO COMMENTS

During the period of January 21, 2009 through February 20, 2009, the Department solicited comments on the proposed draft MEPDES permit / WDL to be issued to EMM for the proposed discharge. During the period of March 31, 2009 through March 20, 2009, the Department solicited comments on a revised proposed draft MEPDES permit / WDL, specifically for the establishment of the effluent limitation and conditions associated with total residual chlorine that were not contained in the 1/21/09 draft permit. The Department did not receive significant comments on the 1/21/09 draft license or 3/31/09 revised draft permit, therefore, a response to comments was not prepared.

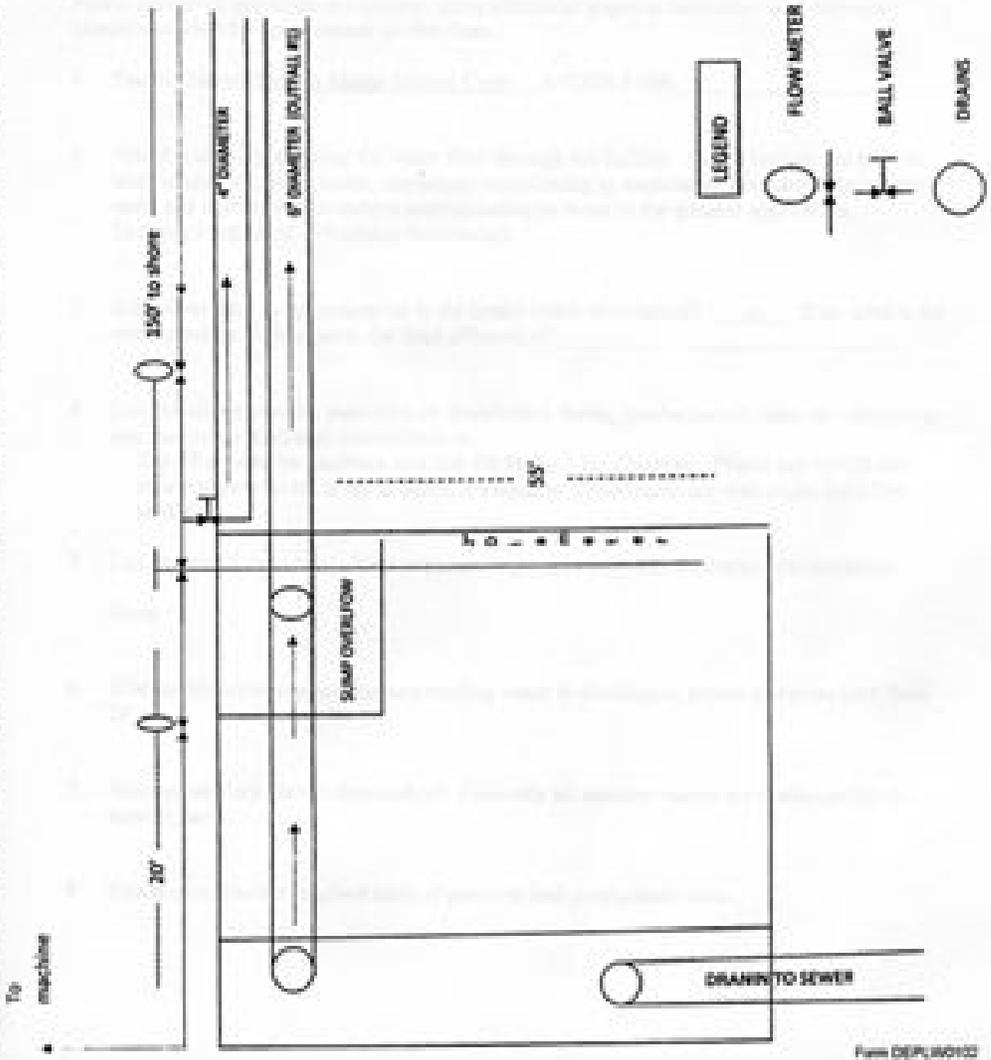
# **ATTACHMENT A**



Eastern Maine Mussel at Hancock, Maine

# **ATTACHMENT B**

RIVER



Form DEPLUM0102  
Eastern Main Model Corp.  
Pumping Schematic

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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

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- 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.

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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.

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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.

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**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

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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).

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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.

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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.

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## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**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

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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.

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**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.**

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