



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

JAMES P. BROOKS  
ACTING COMMISSIONER

June 14, 2011

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

*Sent via electronic mail  
Delivery confirmation requested*

**RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0037036  
Maine Waste Discharge License (WDL) Application #W009031-5P-B-M  
FINALIZED Permit / WDL Minor Revision**

Dear Ms. Lowe:

Enclosed, please find a copy of your **final** MEPDES permit and Maine WDL **Minor Revision**, 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.*"

Sincerely,

Bill Hinkel  
Division of Water Quality Management  
Bureau of Land and Water Quality  
[bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov)  
ph: 207.485.2281

Enc.

cc: Tonya Hovell, Lori Mitchell, MeDEP    Sandy Mojica, USEPA    File #W9031

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

BANGOR  
106 HOGAN ROAD, SUITE 6  
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 04679-2094  
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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

EASTERN MAINE MUSSEL CORP.	)	MAINE POLLUTANT DISCHARGE
HANCOCK, HANCOCK CO., MAINE	)	ELIMINATION SYSTEM PERMIT
MUSSEL PROCESSING	)	AND
#ME0037036	)	WASTE DISCHARGE LICENSE
#W009031-5P-B-M	)	MINOR REVISION
	APPROVAL	

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, *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (effective April 1, 2003), and applicable regulations, the Department of Environmental Protection (Department) has considered a June 6, 2011 request submitted by Eastern Maine Mussel Corporation (EMM or permittee) to the Department for a minor permit revision to Waste Discharge License (WDL) #W009031-5P-A-N / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0037036, which was issued by the Department on April 8, 2009. With its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**MINOR PERMIT REVISION SUMMARY**

EMM has requested that Special Condition A, Footnote #2 for “Composite Sampling” be revised from:

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.

to:

2. Composite Samples – Composite samples collected for TSS shall consist of a minimum of four grab samples, spaced at least 15 minutes and no more than 1 hour apart, collected during a single processing day.

This revision is intended to coordinate sampling methodology employed at the facility with the permit requirements. This change has been reviewed and approved by Department compliance and engineering staff.

The permittee also requested that this minor revision specify that purge waters are not required to be monitored for flow or any pollutants regulated in the April 8, 2009 permit. The Department has previously considered purge wastewaters and has determined that through proper best management of the facility, this waste stream will not contribute significant pollutants of concern to the receiving waters. Therefore, the permittee may exclude purge waters from effluent calculations of discharge flow, total suspended solids, oil and grease, settleable solids and total residual chlorine.

## CONCLUSIONS

BASED on the findings summarized in the attached Fact Sheet dated June 14, 2011, 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 discharges 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).

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## ACTION

THEREFORE, the Department hereby APPROVES the above noted request of EASTERN MAINE MUSSEL CORPORATION for the MINOR REVISION (change in monitoring footnote #2 and eliminating requirement to include purge waters in effluent calculations) to Waste Discharge License #W009031-5P-A-N / Maine Pollutant Discharge Elimination System permit #ME0037036, which was issued to EMM on April 8, 2009, SUBJECT TO THE ATTACHED 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 to April 8, 2009 permit.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions in combination WDL #W009031-5P-A-N / MEPDES permit #ME0037036 dated April 8, 2009 not modified by this permitting action remain in effect and enforceable.
4. This minor revision expires on April 8, 2014, concurrent with the April 8, 2009 WDL / MEPDES permit. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of the April 8, 2009 permit, the terms and conditions of the April 8, 2009 permit and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (effective April 1, 2003)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of minor revision request: June 9, 2011  
This Order prepared by Bill Hinkel, BUREAU OF LAND & WATER QUALITY

**MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT**

**AND**

**MAINE WASTE DISCHARGE LICENSE**

**FACT SHEET**

**DATE: JUNE 14, 2011**

**PERMIT NUMBER: #ME0037036**

**LICENSE NUMBER: #W009031-5P-B-M**

**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:**

**MS. BETSY LOWE  
P.O. BOX 24 U.S. HIGHWAY 1  
HANCOCK, MAINE 04649  
(207) 422-3217  
[garbomaine@earthlink.net](mailto:garbomaine@earthlink.net)**

**1. MINOR PERMIT REVISION**

On June 6, 2011, Eastern Maine Mussel Corporation (EMM or permittee) submitted a written request to the Department of Environmental Protection (Department) for a minor permit revision to Waste Discharge License (WDL) #W009031-5P-A-N / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0037036, which was issued by the Department on April 8, 2009.

EMM has requested a revision to Special Condition A, Footnote #2 for composite sampling methodology and a revision to specify that purge waters are not required to be monitored for flow or any pollutants regulated in the April 8, 2009 permit.

The Department is granting the minor revisions as requested by the permittee. No other terms or conditions of the April 8, 2009 permit are hereby modified.

## **2. 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.

## **3. 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.

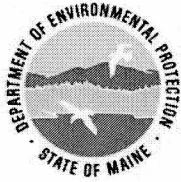
## **4. DISCHARGE IMPACT ON RECEIVING WATER QUALITY**

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.

## **5. DEPARTMENT CONTACTS**

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

Bill Hinkel  
Division of Water Quality Management  
Bureau of Land & Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017  
e-mail: [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov) Telephone: (207) 485-2281



# 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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