



STATE OF MAINE
Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patricia W. Aho
COMMISSIONER

December 3, 2012

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

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

Dear Mr. Bayley:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL **renewal** which was approved by the Department of Environmental Protection. Please read this permit/license renewal 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 287-7693.

Sincerely,

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

Enc.

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

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

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

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

APPLICATION SUMMARY

The permittee has submitted a complete application to the Department for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0110221/Maine Waste Discharge License #W000990-5P-B-R (permit hereinafter) that was issued by the Department on March 6, 2007, for a five-year term. The 3/6/07 permit was subsequently modified on April 18, 2008. The 8/13/02 permit and subsequent modification authorized BQS to discharge up to 63,252 gallons per day (gpd) of treated seafood processing waste waters to tidewaters of Scarborough (Jones Creek), Class SB in Scarborough, Maine.

Shrimp are processed by removing unmarketable portions (decapitated, peeled, and washed) and packaged on ice for distribution. Clams are processed by, heat shocking to remove byssal threads, shucking shells and washing before being packaged on ice for distribution. Sanitary waste waters are disposed of in an on-site subsurface waste water disposal system. The permittee is also seeking continued authorization to discharge the clam processing waste waters to their on-site subsurface waste water disposal system as an alternative to discharging to Jones Creek.

PERMIT SUMMARY

This permitting action is carrying forward all the terms and conditions of the previous permitting actions except that this permitting action is reducing the monitoring frequencies for biochemical oxygen demand (BOD) total suspended solids(TSS), settleable solids, and oil & grease from 1/Week to 1/Month.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated October 23, 2012, 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, 38 MRSA Section 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 natural 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 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.

ACTION

THEREFORE, the Department APPROVES the above noted application of BAYLEY's QUALITY SEAFOOD, to discharge a daily maximum of 63,525 gallons per day of treated seafood processing waste waters and facility clean up water to the tidewaters of (Jones Creek), Class SB or the ground water, Class GW-A in Scarborough, 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 becomes effective upon the date of signature below and expires at midnight five (5) years after that date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of the this permit, the terms and conditions of the this permit and all subsequent 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)]

DONE AND DATED AT AUGUSTA, MAINE, THIS 4th DAY OF DECEMBER, 2012.

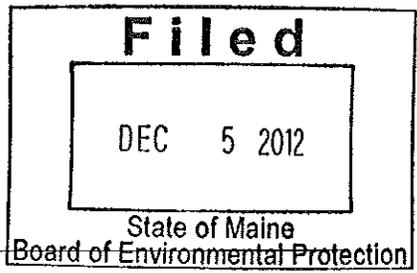
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
for Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application _____ October 16, 2012 _____

Date of application acceptance _____ October 17, 2012 _____



Date filed with Board of Environmental Protection _____

This Order prepared by Gregg Wood, Bureau of Land and Water Quality

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

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

December through April

Effluent Characteristic	Discharge Limitations				Monitoring Requirement	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
	(Quantity or as specified)		(Concentration)			
Flow [50050]	42,350 GPD ⁽¹⁾ [07]	63,525 GPD [07]	---	---	Continuous [99/99]	Meter [MT]
Settleable Solids [00545]	---	---	Report (ml/L) [25]	0.3 ml/L [25]	1/Month [01/30]	Grab [GR]
TSS [00530]	648 lbs/ day [26]	1,920 lbs/day [26]	1,835 mg/L [19]	3,624 mg/L [19]	1/Month [01/30]	Composite ⁽²⁾ [CP]
BOD [00310]	341 lbs/day [26]	604/day [26]	966 mg/L [19]	1,710 mg/L [19]	1/Month [01/30]	Composite ⁽²⁾ [CP]
Oil & Grease [03582]	504 lbs/ day [26]	1,512 lbs/day [26]	1,426 mg/L [19]	2,854 mg/L [19]	1/Month [01/30]	Composite ⁽²⁾ [CP]
Total Residual Chlorine (TRC) ⁽³⁾ [50060]	---	---	0.19 mg/L [19]	0.26 mg/L [19]	2/Month ⁽⁵⁾ [02/30]	Grab [GR]
Production ⁽⁴⁾ lbs/day [00145]	Report lbs/day [26]	Report lbs/day [26]	---	---	1/Day [01/01]	Measure [MS]
pH (Std. Units) [00400]	The pH shall not be less than 6.0 or greater than 9.0 at any time.				1/Month [01/30]	Grab [GR]

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

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- Beginning the effective date of the permit, the permittee is authorized to discharge treated **CLAM** processing and facility clean-up waste water to the tidewaters of (Jones Creek) via **OUTFALL #002A** or to the ground water. **Discharges to surface waters** shall be limited and monitored by the permittee as specified below.

Year -round

Effluent Characteristic	Discharge Limitations				Monitoring Requirement	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
	(Quantity or as specified)		(Concentration)			
Flow [50050]	7,140 GPD ⁽¹⁾ [07]	10,710 GPD [07]	---	---	Continuous [99/99]	Meter [MT]
Settleable Solids [00545]	---	---	---	0.3 ml/L [25]	1/Month [01/30]	Grab [GR]
TSS [00530]	9.0 lbs/day [26]	30 lbs/day [26]	151 mg/L [19]	336 mg/L [19]	1/Month [01/30]	Composite ⁽²⁾ [CP]
BOD [00310]	Report, lbs/day [26]	Report, lbs/day [26]	Report mg/L [19]	Report mg/L [19]	1/Month [01/30]	Composite ⁽²⁾ [CP]
Oil & Grease [03582]	0.12 lbs/day [26]	0.30 lbs/day [26]	2.0 mg/L [19]	3.3 mg/L [19]	1/Month [01/30]	Composite ⁽²⁾ [CP]
Total Residual Chlorine (TRC) [50060]	---	---	---	1.0 mg/L [19]	2/Month ⁽⁵⁾ [02/30]	Grab [GR]
Production ⁽⁴⁾ lbs/day [00145]	Report [26]	Report [26]	---	---	1/Day [01/01]	Measure [MS]
pH (Std. Units) [00400]	The pH shall not be less than 6.0 or greater than 9.0 at any time.				1/Month [01/30]	Grab [GR]

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

3. Beginning the effective date of the permit, the permittee is authorized to discharge treated **CLAM** processing and facility clean-up to the ground water via a sub-surface waste water disposal system via **OUTFALL #002B**. **Discharges to the sub-surface waste water disposal system** shall be limited and monitored by the permittee as specified below.

Year-round

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

SPECIAL CONDITIONS

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

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

Sampling - Sampling and analysis must be conducted in accordance with; a) methods approved in 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Human Services. Samples that are sent to another POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 or laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000).

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 or as specified by other approved test methods. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the RL achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL or reporting an estimated value ("J" flagged) is not acceptable and will be rejected by the Department. Reporting analytical data and its use in calculations must follow established Department guidelines specified in this permit or in available Department guidance documents.

- (1) **Flow** – Monthly average flow shall be calculated as follows: The total gallons discharged during the calendar month divided by the number of days in the month that the facility was operating.
- (2) **Grab samples** - Shall consist of a composite sample of four flow proportioned grab samples collected over the operating day or a sample collected by an automatic flow proportioning compositor over the day.
- (3) **Total residual chlorine (TRC)** Limitations and monitoring requirements are applicable whenever elemental chlorine or chlorine based compounds are being used and discharged. For instances when a facility has not disinfected with chlorine based compounds for an entire reporting period, the facility shall report "NODI-9" for this parameter on the monthly DMR. The permittee shall utilize approved test methods that are capable of bracketing the limitations in this permit.
- (4) **Production** – Gross weight of pounds of raw material in the form in which it is received at the processing plant to be processed on any given day.
- (5) **2/Month sampling** – There shall be at least 10 days between sampling events.

SPECIAL CONDITIONS

B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time or which would impair the usage designated for 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 for 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 for the classification of the receiving waters.
4. Notwithstanding specific conditions of this permit the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

C. UNAUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on October 17, 2012; 2) the terms and conditions of this permit; and 3) only from Outfall #001A to Jones Creek or the on-site sub-surface waste water disposal system. Discharges of waste water from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

D. NOTIFICATION REQUIREMENT

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

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

SPECIAL CONDITIONS

E. OPERATIONS AND MAINTENANCE (O&M) PLAN

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

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

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

F. MONITORING AND REPORTING REQUIREMENT

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

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

Alternatively, if you are submitting an electronic DMR (eDMR), the completed eDMR must be electronically submitted to the Department by a facility authorized DMR Signatory not later than close of business on the 15th day of the month following the completed reporting period. Hard Copy documentation submitted in support of the eDMR must be postmarked on or before the thirteenth (13th) day of the month or hand-delivered to the Department's Regional Office such that it is received by the Department on or before the fifteenth (15th) day of the month following the completed reporting period. Electronic documentation in support of the eDMR must be submitted not later than close of business on the 15th day of the month following the completed reporting period.

SPECIAL CONDITIONS

G. RE-OPENER CLAUSE

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

H. SEVERABILITY

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND
MAINE WASTE DISCHARGE LICENSE

FACT SHEET

Date: October 23, 2012

PERMIT NUMBER: ME0110221
LICENSE NUMBER: W000990-5P-D-R

NAME AND ADDRESS OF APPLICANT:

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

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

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

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

COUNTY: Cumberland County

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: Mr. Stanley Bayley, Owner
Tel:(207) 883-4587
e-mail: bayleysseafood@aol.com

1. APPLICATION SUMMARY

- a. Application – Bayley's Quality Seafood (Bayley's/permittee hereinafter) has submitted an application to the Department for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0110221/Maine Waste Discharge License #W000990-5P-B-R (permit hereinafter) that was issued by the Department on March 6, 2007, for a five-year term.. The 3/6/07 permit was subsequently modified on April 18, 2008. The 8/13/02 permit and subsequent modification authorized BQS to discharge up to 63,252 gallons per day (gpd) of treated seafood processing waste waters to tidewaters of Scarborough (Jones Creek), Class SB in Scarborough, Maine. **See Attachment A** of this Fact Sheet for a location map.

1. APPLICATION SUMMARY (cont'd)

- b. Source Description: The facility processes shrimp and clams from bulk suppliers and packages the processed shrimp in 4 pound packages for distribution and live clams in 5 pound packages for consumption at the retail level. Waste water is generated from the cleaning, deheading, caripace and leg removal, and washing the shrimp carcass. The permittee has indicated that cooking of shrimp does take place occasionally but is not a normal business practice. Clams are processed by, heat shocking to remove byssal threads, shucking shells and washing before packaged on ice for distribution. All water utilized to process the seafood and used for clean-up is purchased from the Biddeford & Saco Water Company.
- c. Waste Water Treatment: Waste water receives treatment by means of a 30-micron screen located in a pit adjacent to the processing area. The waste water is directed to the screen and solids that have a diameter greater than the screen mesh holes will fall out of the waste water stream. Solids are augered to a holding bin for disposal at a landfill operation. Waste water that passes through the screen and is conveyed to Jones Creek via a 6-inch outfall pipe extending out into the middle of Jones Creek (just below the outfall of a large culvert under Pine Point Road) whereby there is approximately six (6) feet of water over the crown of the outfall pipe at mean low water, approximately nine (9) feet of water over the crown of the pipe at mean tide and approximately 14 feet of water over the crown of the pipe at mean high tide. The pipe contains a single outfall orifice that is strategically located to maximize mixing of the discharge with the receiving waters.

2. PERMIT SUMMARY

- a. Terms and conditions - This permitting action is carrying forward all the terms and conditions of the previous permitting actions except that this permitting action is reducing the monitoring frequencies for biochemical oxygen demand (BOD) total suspended solids(TSS), settleable solids, and oil & grease from 1/Week to 1/Month.
- b. History: The most recent relevant licensing/permitting actions include:

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

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

January 11, 1991—The Department issued a draft denial Order (#W000990-WA-A-R) for the seafood processing waste water. In the draft denial order, the Department found that the seafood processing waste water from the BQS contained high concentrations of BOD, suspended and floating solids, turbidity and, oil and grease. The Department also found that the discharge in combination with the limited dilution available would cause the receiving waters to be unsuitable for the designated uses assigned to the receiving waters. Further, the Department Order found that the Scarborough Sanitary District

2. PERMIT SUMMARY (cont'd)

(SSD) provided sewerage collection and treatment services for the local area and that consignment of the waste water to the SSD is the best practicable treatment for the waste water. The draft denial order was never issued as a final document.

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

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

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

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

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

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

March 6, 2007 – The Department issued combination MEPDES permit #ME0110221/WDL #W000990-5P-B-R for a five-year term.

April 18, 2008 – The Department issued minor revision #ME0110221/WDL #W000990-5P-C-M correcting a aforementioned typographical error by deleting the June – September restriction for the disposal of clam processing waters to surface waters or to a sub-surface waste water disposal system.

October 16, 2012 – The permittee submitted a complete application to the Department to renew the March 6, 2007, MEPDES permit.

3. CONDITIONS OF PERMITS

Maine law, 38 M.R.S.A. Section 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S.A., Section 420 and Department rule 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, require the regulation of toxic substances not to exceed levels set forth in Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

4. RECEIVING WATER QUALITY STANDARDS

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

Class SB waters must be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat must be characterized as unimpaired.

The dissolved oxygen content of Class SB waters must be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration.

Discharges to Class SB waters may not cause adverse impact to estuarine and marine life in that the receiving waters must be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There may be no new discharge to Class SB waters that would cause closure of open shellfish areas by the Department of Marine Resources. For the purpose of allowing the discharge of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety, the department may find that the discharged effluent will not cause adverse impact to estuarine and marine life as long as the materials and methods used provide protection for nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this paragraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.

4. RECEIVING WATER QUALITY STANDARDS

“Class GW-A shall be the highest classification and shall be of such quality that it can be used for public drinking water supplies. These waters shall be free of radioactive matter or any matter that imparts color, turbidity, taste or odor which would impair usages of these waters, other than that occurring from natural phenomena.”

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2010 Integrated Water Quality Assessment Report, prepared by the Department pursuant to Section 305(b) of the Federal Water Pollution Control Act lists the Scarborough River (Jones Creek being a tributary to) is listed in a table entitled, *Category 4-A: Estuarine and Marine Waters with Impaired Use, TMDL Completed*. The Scarborough River and Jones Creek are not attaining their Class SB classification due to elevated fecal coliform bacteria levels. As a result, Department of Marine Resources (DMR), Area #11, more specifically Jones Creek, is listed as prohibited to harvesting of shellfish. See **Attachment A** of this Fact Sheet for the delineation of the prohibited area. According to the DMR, Jones Creek was last posted as prohibited to the harvesting of shellfish on October 17, 2012. The DMR traditionally closes shellfish harvesting areas if there are known sources of discharges with unacceptable bacteria levels (instream thresholds established in the National Shellfish Sanitation Program) or keep areas closed or restricts areas due to lack of updated information. The Department has made the determination that the discharge from the BQS facility is not causing or contributing to the shellfish closure as the discharge is solely seafood processing and all sanitary waste waters generated at the facility are disposed of in a sub-surface waste water disposal system.

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

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

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

- a. Production – The previous permitting action established technology based mass and concentration limits based on raw production material. The facility processes shrimp for a 20-week period time from December – April inclusively. Raw shrimp production is up to 12,000 lbs/day as a monthly average with a daily maximum of 20,000 lbs/day for a total production of 1,260,000 lbs/season. Therefore, for the purposes of this and the previous permitting action, a monthly average shrimp production figure of 12,000 lbs/day is being utilized to calculate technology based permit limits.

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

A review of the monthly average flow data as reported on the monthly Discharge Monitoring Reports (DMRs) submitted to the Department for the period January 2007 – February 2012 indicates values have been reported as follows:

Production – Shrimp (DMRs = 9)

Value	Limit (lbs/day)	Range (lbs/day)	Mean (lbs/day)
Monthly Average	Report	3,941 – 14,225	8,971
Daily maximum	Report	7,320 – 16,523	19,784

Production – Clam (DMRs = 2)

Value	Limit (lbs/day)	Range (lbs/day)	Mean (lbs/day)
Monthly Average	Report	1,000 – 4,200	2,600
Daily maximum	Report	1,000 – 4,200	2,600

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

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

This permitting action is carrying forward the respective monthly average and daily maximum flow limitations for both the shrimp and clam processes.

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

A review of the monthly average flow data as reported on the monthly DMRs submitted to the Department for the period January 2007 – February 2012 indicates values have been reported as follows:

Flow – Shrimp (DMRs = 9)

Value	Limit (gpd)	Range (gpd)	Mean (gpd)
Monthly Average	42,359	1,006 – 13,377	3,425
Daily maximum	63,525	1,006 – 14,946	3,914

Flow – Clam (DMRs = 2)

Value	Limit (gpd)	Range (gpd)	Mean (gpd)
Monthly Average	7,140	213- 392	302
Daily maximum	10,710t	213 - 392	303

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

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

Shrimp Processing

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

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

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

Clam Processing

Given the monthly average flow cited in section 6(b) above are approximately 1/6th of the flows for shrimp processing for which the dilution factors in this Fact Sheet were derived, the Department is making a BPJ determination to establish the dilution factors for the clam processing as six times higher than the dilution factors for the shrimp processing discharge. As a result, the dilution factors for the discharge of clam processing waste waters to Jones Creek are as follows:

Acute = 120:1 Chronic = 150:1 Harmonic mean = 450:1⁽¹⁾

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

- d. Settleable solids – The previous permitting action established a daily maximum technology based concentration limit for settleable solids of 0.3 ml/L for both shrimp and clams that is being carried forward in this permitting action. The limit is based on BPJ of best practicable treatment (BPT) determination by the Department.

A review of the DMR data for the period January 2007 – February 2012 indicates values have been reported as follows:

Settleable solids – Shrimp (DMRs = 9)

Value	Limit (ml/L)	Range (ml/L)	Mean (ml/L)
Daily maximum	0.3	0.01 - <0.1	0.05

Settleable – Clam (DMRs = 2)

Value	Limit (ml/L)	Range (ml/L)	Mean (ml/L)
Daily maximum	0.3	No data	n/a

On April 19, 1996, the USEPA issued a guidance document entitled, "Interim Guidance for Performance Based Reductions of NPDES Permit Monitoring Frequencies" (USEPA 1996) as the basis for determining reduced monitoring frequencies. The guidance document was issued to reduce unnecessary reporting while at the same time maintaining a high level of environmental protection for facilities that have a good compliance record and pollutant discharges at levels below permit requirements. Monitoring requirements are not considered effluent limitations under section 402(o) of the Clean Water Act and therefore, anti-backsliding prohibitions would not be triggered by reductions in monitoring frequencies

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

The EPA Guidance indicates “...the basic premise underlying a performance-based reduction approach is that maintaining a low average discharge relative to the permit limits results in a low probability of the occurrence of a violation for a wide range of sampling frequencies.” The monitoring frequency reductions in EPA’s guidance were designed to maintain approximately the same level of reported violations as that experienced with the existing baseline sampling frequency in the permit. To establish baseline performance the long term average (LTA) discharge rate for each parameter is calculated using the most recent two-year data set of monthly average effluent data representative of current operating conditions. The LTA/permit limit ratio is calculated and then compared to the matrix in Table I of EPA’s guidance to determine the potential monitoring frequency reduction. It is noted Table I of EPA’s guidance was derived from a probability table that used an 80% effluent variability or coefficient of variation (cv). The permitting authority can take into consideration further reductions in the monitoring frequencies if the actual cv for the facility is significantly lower than the default 80% utilized by the EPA in Table I.

In addition to the parameter-by-parameter performance history via the statistical evaluation cited above, the EPA recommends the permitting authority take into consideration the facility enforcement history and the parameter-by-parameter compliance history and factors specific to the State or facility. If the facility has already been given monitoring reductions due to superior performance, the baseline may be a previous permit.

Though EPA’s 1996 Guidance recommends evaluation of the most current two-years of effluent data for a parameter, however, the Department is considering 61 months of data (January 2007 – February 2012). A review of the monitoring data for settleable solids indicates the ratios (expressed in percent) of the long term effluent average to the monthly average limits can be calculated as follows:

SS

Long term average = 0.05 ml/L

Monthly average limit = 0.3 ml/L

Current monitoring frequency = 1/Week

$$\text{Ratio} = \frac{0.05 \text{ ml/L}}{0.3 \text{ ml/L}} = 17\%$$

According to Table I of the EPA Guidance, a 1/Week monitoring requirement can be reduced to 1/2 months. The Department is making a best professional judgment that a monitoring frequency of 1/2 months is not sufficient to determine on-going compliance at the facility. However, the Department is willing to reduce the monitoring frequency for settleable solids to 1/Month for both shrimp and clam processing in this permitting action.

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

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

Shrimp Processing				Clam Processing			
Monthly Avg		Daily Max		Monthly Avg		Daily Max	
lbs/day	mg/L	lbs/day	mg/L	lbs/day	mg/L	lbs/day	mg/L
648	1,835	1,920	3,624	9.0	151	30.0	336

Shrimp Processing

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

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

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

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

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

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

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

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

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

A review of the DMR data for the period January 2007 – February 2012 indicates the following:

TSS Mass (DMRs = 9)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	648	1 - 684	107
Daily Maximum	1,920	1.76 - 684	112

TSS Concentration (DMRs = 9)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	1,835	22 - 310	151
Daily Maximum	3,624	29 - 310	175

Though EPA's 1996 Guidance recommends evaluation of the most current two-years of effluent data for a parameter, the Department is considering 61 months of data (January 2007 – February 2012). A review of the monitoring data for total suspended solids indicates the ratios (expressed in percent) of the long term effluent average to the monthly average limits can be calculated as follows:

TSS (Shrimp Processing)

Long term average = 107 lbs/day
 Monthly average limit = 648 lbs/day
 Current monitoring frequency = 1/Week

$$\text{Ratio} = \frac{107 \text{ lbs/day}}{648 \text{ lbs/day}} = 16\%$$

According to Table I of the EPA Guidance, a 1/Week monitoring requirement can be reduced to 1/2 months. The Department is making a best professional judgment that a monitoring frequency of 1/2 months is not sufficient to determine on-going compliance at the facility. However, the Department is willing to reduce the monitoring frequency for TSS to 1/Month for shrimp processing in this permitting action.

Clam Processing

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

Monthly average – 18 lbs/1,000 lbs of production
 Daily maximum – 59 lbs/1,000 lbs of production

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

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

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

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

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

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

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

A review of the DMR data for the period January 2007 – February 2012 indicates the following:

TSS Mass (DMRs = 1)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	9.0	0.04 – 0.04	0.04
Daily Maximum	30.0	0.04 – 0.04	0.04

TSS Concentration (DMRs = 1)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	151	24 – 24	24
Daily Maximum	336	24 - 24	24

TSS (Clam Processing)

Long term average = 0.04 lbs/day

Monthly average limit = 9 lbs/day

Current monitoring frequency = 1/Week

$$\text{Ratio} = \frac{0.04 \text{ lbs/day}}{9.0 \text{ lbs/day}} = 0.4\%$$

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

According to Table I of the EPA Guidance, a 1/Week monitoring requirement can be reduced to 1/2 months. The Department is making a best professional judgment that a monitoring frequency of 1/2 months is not sufficient to determine on-going compliance at the facility. However, the Department is willing to reduce the monitoring frequency for TSS to 1/Month for clam processing in this permitting action.

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

Shrimp Processing				Clam Processing			
Monthly Avg		Daily Max		Monthly Avg		Daily Max	
lbs/day	mg/L	lbs/day	mg/L	lbs/day	mg/L	lbs/day	mg/L
504	1,426	1,512	2,854	0.12	2.0	0.30	3.3

Shrimp processing

The NEG's for O&G for shrimp processing are specified in federal regulation 40 CFR 408.112.

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

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

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

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

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

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

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

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

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

A review of the DMR data for the period January 2007 – February 2012 indicates the following:

Oil & Grease Mass (DMRs = 7)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	504	0.11 – 32	4.6
Daily Maximum	1,512	0.11 - 54	7.2

Oil & Grease Concentration (DMRs = 9)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	1,426	3.9 - 73	27
Daily Maximum	2,854	5.0 – 84	39

Oil & Grease (Shrimp Processing)

Long term average = 4.6 lbs/day
 Monthly average limit = 504 lbs/day
 Current monitoring frequency = 1/Week

$$\text{Ratio} = \frac{4.6 \text{ lbs/day}}{504 \text{ lbs/day}} = 0.9\%$$

According to Table I of the EPA Guidance, a 1/Week monitoring requirement can be reduced to 1/2 months. The Department is making a best professional judgment that a monitoring frequency of 1/2 months is not sufficient to determine on-going compliance at the facility. However, the Department is willing to reduce the monitoring frequency for oil & grease to 1/Month for shrimp processing in this permitting action.

Clam Processing

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

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

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

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

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

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

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

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

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

A review of the DMR data for the period January 2007 – February 2012 indicates the following:

Oil & Grease Mass (DMRs = 1)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	0.12	<0.0088 - <0.0088	<0.0088
Daily Maximum	0.3	<0.0088 - <0.0088	<0.0088

Oil & Grease Concentration (DMRs = 1)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	2.0	<5 - <5	<5
Daily Maximum	3.3	<5 - <5	<5

Oil & Grease (Clam Processing)

Long term average = 0.0044 lbs/day
 Monthly average limit = 0.12 lbs/day
 Current monitoring frequency = 1/Week

Ratio = $\frac{0.0044 \text{ lbs/day}}{0.12 \text{ lbs/day}} = 4\%$

According to Table I of the EPA Guidance, a 1/Week monitoring requirement can be reduced to 1/2 months. The Department is making a best professional judgment that a monitoring frequency of 1/2 months is not sufficient to determine on-going compliance at the facility. However, the Department is willing to reduce the monitoring frequency for oil & grease to 1/Month for shrimp processing in this permitting action.

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

- f. Total Residual Chlorine (TRC): The previous permitting action established monthly average and daily maximum concentration limitations as follows:

Shrimp Processing		Clam Processing	
Monthly Avg	Daily Max	Monthly Avg	Daily Max
n/a	1.0 mg/L	0.19 mg/L	0.26 mg/L

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

Shrimp processing

Water quality based thresholds for TRC may be calculated from the acute and chronic AWQC of 0.013 mg/L and 0.0075 mg/L, respectively.

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

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

A review of the DMR data for the period January 2007 – February 2012 indicates the following:

Total residual chlorine concentration (DMRs = 7)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	0.19	0.0 - <1.0	0.07
Daily Maximum	0.26	0.0 – 0.50	0.09

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

Total residual chlorine (Shrimp Processing)

Long term average = 0.07 mg/L
 Monthly average limit = 0.19 mg/L
 Current monitoring frequency = 2/Week

$$\text{Ratio} = \frac{0.07 \text{ mg/L}}{0.19 \text{ mg/L}} = 37\%$$

According to Table I of the EPA Guidance, a 2/Week monitoring requirement can be reduced to 2/Month. Therefore, this permitting action is reducing the monitoring frequency for total residual chlorine to 2/Month for shrimp processing.

Clam Processing

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

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

A review of the DMR data for the period January 2007 – February 2012 indicates the following:

Total residual chlorine concentration (DMRs = 1)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Daily Maximum	1.0	0.0 – 0.0	0

Total residual chlorine (Clam Processing)

Long term average = 0.0 mg/L
 Monthly average limit = 1.0 mg/L
 Current monitoring frequency = 1/Week

$$\text{Ratio} = \frac{0.0 \text{ mg/L}}{1.0 \text{ mg/L}} = 0\%$$

According to Table I of the EPA Guidance, a 1/Week monitoring requirement can be reduced to 1/2 months. The Department is making a best professional judgment that a monitoring frequency of 1/2 months is not sufficient to determine on-going compliance at the facility. However, the Department is willing to reduce the monitoring frequency for total residual chlorine to 1/Month for clam processing in this permitting action.

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

- h. pH – The previous permitting action established a pH range limitation of 6.0 – 9.0 standard units based on the BPT pH limitation in 40 CFR, §408.112 and is being carried forward in this permitting action for both the shrimp and clam processing.

A review of the monthly DMR data for the period January 2007 – February 2012 indicates the range limitation has never been violated.

Shrimp processing

Total residual chlorine concentration (DMRs = 7)

Value	Limit (su)	Range (su)	Average (su)
Minimum	6.0	6.9 -8.2	n/a
Maximum	9.0	6.9 – 8.5	n/a

Clam processing

Total residual chlorine concentration (DMRs = 1)

Value	Limit (su)	Range (su)	Average (su)
Minimum	6.0	8.2	n/a
Maximum	9.0	8.2	n/a

Given there has never been any excursions of the minimum or maximum limitations, the Department is making a best professional judgment to reduce the monitoring frequencies from 1/Week to 1/Month to be consistent with the monitoring frequency reductions for the other parameters limited in this permit.

- g. Biochemical oxygen demand (BOD) – The NEG's have not established BPT limitations for BOD in the shrimp processing subpart. The previous permitting action established monthly average and daily maximum mass and concentration limits based on a statistical evaluation of the historic effluent data for the period January 2005 – March 2007. Being that concentration values are representative of the treatment of the waste water being discharged, the Department calculated a monthly average concentration of 966 mg/L as representing the 95th percentile (two standard deviations) of the data and the daily maximum concentration of 1,710 mg/L as being representative of the 99th percentile of the data. These respective values were established as technology based concentration limits in this permit. Holding the respective concentrations limits, technology based mass limits can be calculated as follows:

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

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

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

A review of the DMR data for the period January 2007 – February 2012 indicates the following:

BOD Mass (DMRs = 9)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	341	6.4 – 132	42
Daily Maximum	604	6.5 - 132	46

BOD Concentration (DMRs = 9)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	966	300 – 830	661
Daily Maximum	1,710	300 – 1,400	753

BOD (Shrimp Processing)

Long term average = 42 lbs/day
 Monthly average limit = 341 lbs/day
 Current monitoring frequency = 1/Week

$$\text{Ratio} = \frac{42 \text{ lbs/day}}{341 \text{ lbs/day}} = 12\%$$

According to Table I of the EPA Guidance, a 1/Week monitoring requirement can be reduced to 1/2 months. The Department is making a best professional judgment that a monitoring frequency of 1/2 months is not sufficient to determine on-going compliance at the facility. However, the Department is willing to reduce the monitoring frequency for BOD to 1/Month for clam processing in this permitting action.

As for clam processing, the previous permitting action did not establish any numeric limitations for BOD. The permit did require the permittee to report both monthly average and daily maximum mass and concentration results for BOD. Federal regulation 40 CFR §408.230 does not establish NEGs for BOD. Therefore, the Department is carrying forward the “report” only requirements of the previous permitting action.

A review of the DMR data for the period January 2007 – February 2012 indicates the following:

BOD Mass (DMRs = 1)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	Report	<0.0621	<0.0621
Daily Maximum	Report	<0.0621	<0.0621

BOD Concentration (DMRs = 1)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	Report	<35	<35
Daily Maximum	Report	<35	<35

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

The Department is making a best professional judgment to reduce the monitoring frequencies from 1/Week to 1/Month to be consistent with the monitoring frequency reductions for the other parameters limited in this permit.

7. IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has determined the existing and designated water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the waterbodies (Jones Creek or ground water) to meet standards for Class SB or GW-A classifications.

8. PUBLIC COMMENTS

Public notice of this application was made in the Portland Press Herald newspaper on or about October 12, 2012. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

9. DEPARTMENT CONTACTS

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

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

Telephone (207) 287-7693

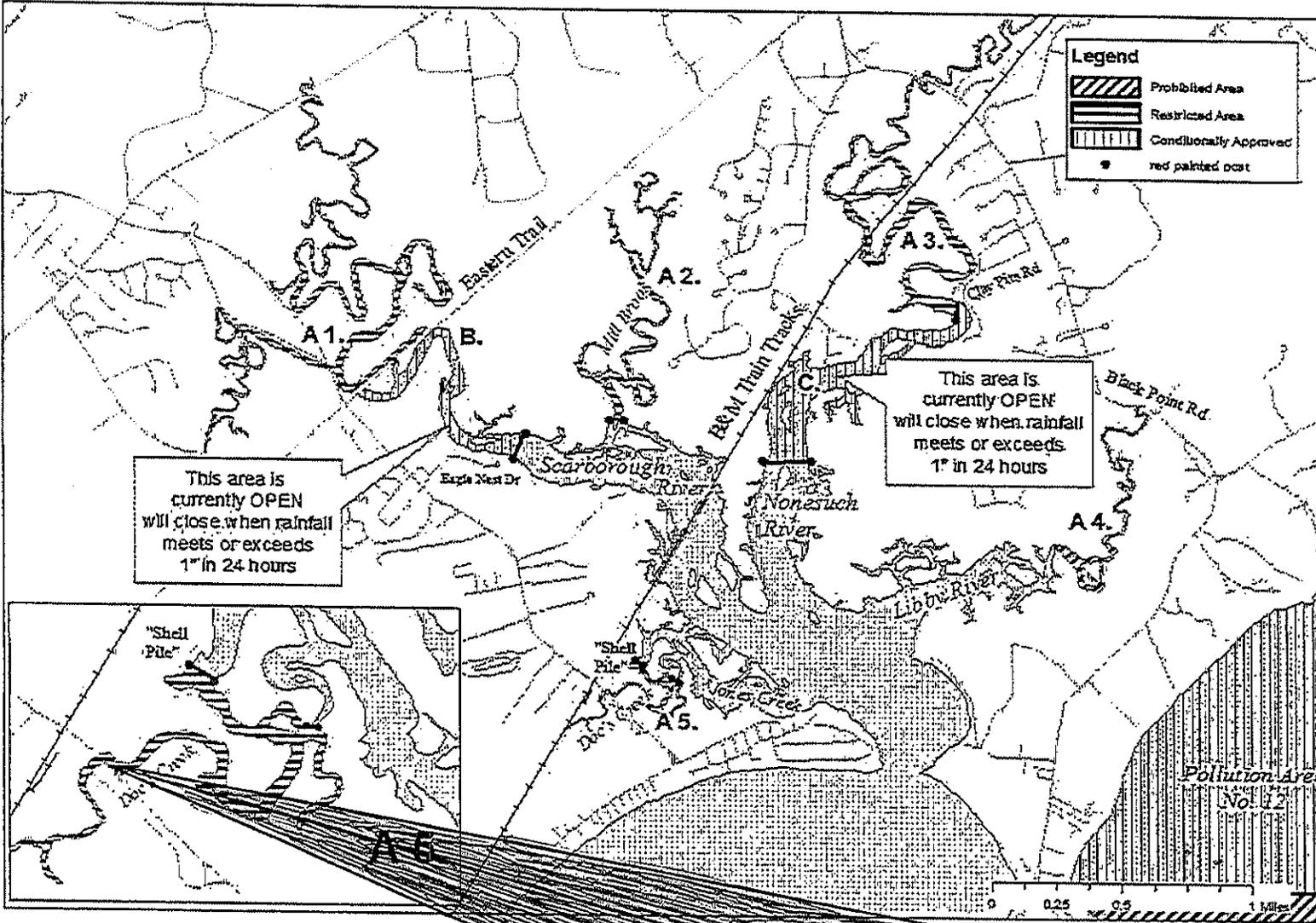
10. RESPONSE TO COMMENT

During the period October 24, 2012 through the issuance date of the permit, the Department solicited comments on the proposed draft permit for the permittee's facility. The Department did not receive comments from the permittee, state or federal agencies or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

ATTACHMENT A



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



BAYLEY'S QUALITY
 SEAFOOD

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

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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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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.

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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 Department Licensing Decision

Dated: March 2012

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. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board 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 the Board's 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 a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of 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

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of 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 on the appeal 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, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that 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 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.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, 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.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder 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 receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the 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 or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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.
