



STATE OF MAINE  
Department of Environmental Protection

Paul R. LePage  
GOVERNOR

Patricia W. Aho  
COMMISSIONER

June 14, 2013

Mr. William Darling  
IM-IT Director, Manager of Special Projects  
Maine Fair Trade Lobster LLC  
175 Alley Street, P.O. Box 790  
Lynn, MA. 01903

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0000710  
Maine Waste Discharge License #W000791-5P-L-M  
**Final MEPDES Permit Modification**

Dear Mr. Darling:

Enclosed please find a copy of your **final MEPDES permit/WDL modification** which was approved by the Department of Environmental Protection. Please read the permit 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: Tanya Hovell, DEP/EMRO  
Sandy Mojica, USEPA

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17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-3901 FAX: (207) 287-3435  
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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

MAINE FAIR TRADE LOBSTER LLC	)	MAINE POLLUTANT DISCHARGE
SEAFOOD PROCESSING FACILITY	)	ELIMINATION SYSTEM PERMIT
GOULDSBORO, HANCOCK COUNTY, MAINE	)	AND
ME0000710	)	WASTE DISCHARGE LICENSE
W000791-5P-L-M	)	MODIFICATION & RENEWAL
APPROVAL		

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

**APPLICATION SUMMARY**

The permittee has submitted an application to the Department to modify and renew combination Maine Waste Discharge License (WDL) #W000791-5R-J-T / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0000710 (permit hereinafter), which was issued by the Department to Lobster Web Company LLC, on June 6, 2011, for a five-year term. The June 6, 2011, permit was subsequently transferred to co-permittees Maine Fair Trade Lobster LLC (Operator) and Prospect Holdings LLC (Owner) on January 10, 2013. The June 6, 2011, MEPDES permit authorized the monthly average discharge of up to 272,000 gallons per day (gpd) of treated process wastewaters from a lobster and bait fish processing facility to Prospect Harbor, Class SB, in Gouldsboro, Maine.

**PERMIT SUMMARY**

This permitting action is carrying forward all the terms and conditions of the previous permitting action except that this permit is:

1. Increasing the total (Outfall #001A plus Outfall#002A) monthly average flow limitation from 272,000 gallons per day (gpd) to 347,000 gpd due to a proposed increase in production from 15,000 lbs/day to 100,000 lbs/day.
2. Increasing the technology based monthly average and daily maximum mass and concentration limitations for total suspended solids (TSS) and oil & grease and monitoring frequencies (from 1/Month to 1/Week) based on the proposed production increase at the facility.
3. Requiring the permittee to report monthly average and daily maximum mass and concentration results for biochemical oxygen demand (BOD).
4. Proportionally increasing the dilution factors associated with Outfall #001A (process waste water) as a result of the decrease in the monthly average flow limitation from 272,000 gpd to 97,000 gpd.

**PERMIT SUMMARY (cont'd)**

5. Acknowledge a pre-existing outfall pipe, designated as Outfall #002A, that discharges flow through sea water that the Department has deemed to contain a *de minimus* quantity of pollutants in it.

**CONCLUSIONS**

BASED on the findings summarized in the attached Fact Sheet dated May 14, 2013, 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 M.R.S.A. §464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding 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 water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

**ACTION**

THEREFORE, the Department APPROVES the above noted application of MAINE FAIR TRADE LOBSTER LLC to discharge a monthly average flow of up to 347,000 gpd of treated process wastewaters from a seafood processing facility to Prospect Harbor, Class SB, Gouldsboro, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits," revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit and the authorization to discharge become effective upon the date of signature below and expire 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 this permit, the authorization to discharge and the terms and conditions of this permit and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [Maine Administrative Procedure Act, 5 M.R.S.A. § 10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (effective April 1, 2003)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

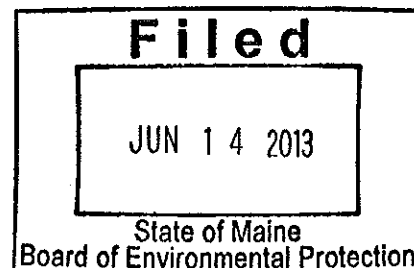
DONE AND DATED AT AUGUSTA, MAINE THIS 14<sup>th</sup> DAY OF June 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION.

BY: Michael Kulus  
For Patricia W. Aho, Commissioner

Date of initial receipt of application: April 9, 2013

Date of application acceptance: April 19, 2013



Date filed with Board of Environmental Protection \_\_\_\_\_

This Order prepared by Gregg Wood, BUREAU OF LAND & WATER QUALITY

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge treated process wastewaters from **Outfall #001A** to the tidewaters of Gouldsboro (Prospect Harbor). Such treated waste water discharges shall be limited and monitored by the permittee as specified below<sup>(1)</sup>:

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirement	
	Monthly <u>Average</u> as specified	Daily <u>Maximum</u> as specified	Monthly <u>Average</u> as specified	Daily <u>Maximum</u> as specified	Measurement <u>Frequency</u> as specified	Sample <u>Type</u> as specified
Flow <i>[50050]</i>	97,000 gpd <i>[07]</i>	---	---	---	When Discharging <i>[WH/DS]</i>	Metered <i>[MT]</i>
Total Suspended Solids (TSS) <i>[00530]</i>	74 lbs./day <i>[26]</i>	220 lbs./day <i>[26]</i>	182 mg/L <i>[19]</i>	544 mg/L <i>[19]</i>	1/Week <i>[01.07]</i>	Composite <sup>(2)</sup> <i>[CP]</i>
Biochemical Oxygen Demand <i>[00310]</i>	Report/day <i>[26]</i>	Report lbs./day <i>[26]</i>	Report mg/L <i>[19]</i>	Report mg/L <i>[19]</i>	1/Week <i>[01.07]</i>	Composite <sup>(2)</sup> <i>[CP]</i>
Oil & Grease (O&G) <i>[03582]</i>	20 lbs./day <i>[26]</i>	60 lbs./day <i>[26]</i>	50 mg/L <i>[19]</i>	148 mg/L <i>[19]</i>	1/Week <i>[01.07]</i>	Grab <i>[GR]</i>
pH <i>[00400]</i>	---	---	---	6.0-9.0 SU <i>[12]</i>	---	Grab <i>[GR]</i>

2. The permittee is authorized to discharge approximately 250,000 gpd of untreated flow through sea water to which no chemicals or food are added from **Outfall #002A** to the tidewaters of Gouldsboro (Prospect Harbor). Such untreated waste water discharges are not limited or monitored by the permittee due to the nature of the discharge.

The italicized numeric values bracketed in the table above are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports.

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

## **SPECIAL CONDITIONS**

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

#### **FOOTNOTES:**

1. **Sampling** – Sampling and analysis must be conducted in accordance with; a) methods approved in Title 40 *Code of Federal Regulations* (40 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 a POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of the *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000). Laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of 10-144 CMR 263.

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.

2. **Composite sampling** – Composite samples for TSS and BOD shall consist of a minimum of four flow or time-proportioned grab samples collected at equally spaced intervals over the course of a representative discharge event that are combined prior to analysis, or another sample type approved by the Department in writing prior to implementation.

### **B. NARRATIVE EFFLUENT LIMITATIONS**

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time which would impair the usages 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 usages 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.

## **SPECIAL CONDITIONS**

### **C. NOTIFICATION REQUIREMENT**

In accordance with Standard Condition D, the permittee shall notify the Department of any substantial change in the volume or character of pollutants being introduced into the waste water collection and treatment system. For the purposes of this section, notice regarding substantial change shall include information the quality and quantity of waste water introduced to the waste water collection and treatment system and any anticipated impact caused by the change in the quantity or quality of the waste water to be discharged from the treatment system.

### **D. AUTHORIZED DISCHARGES**

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on April 19, 2013; 2) the terms and conditions of this permit; and 3) only from Outfalls #001A and #002A. Discharges of wastewater from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5)(*Bypass*) of this permit.

### **E. OPERATION & MAINTENANCE (O&M) PLAN**

This facility shall maintain a current written comprehensive Operation & Maintenance (O&M) 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 transport, treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

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

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

### **F. REOPENING OF PERMIT FOR MODIFICATIONS**

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

## **SPECIAL CONDITIONS**

### **G. MONITORING AND REPORTING**

Monitoring results obtained during the previous month must 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 (13<sup>th</sup>) day of the month or hand-delivered to a Department Regional Office such that the DMRs are received by the Department on or before the fifteenth (15<sup>th</sup>) day of the month following the completed reporting period. A signed copy of the DMR and all other reports required herein must be submitted to the following address:

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

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 15<sup>th</sup> 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 (13<sup>th</sup>) 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 (15<sup>th</sup>) 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 15<sup>th</sup> day of the month following the completed reporting period.

### **H. SEVERABILITY**

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



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

**FACT SHEET**

Date: May 13, 2013

PERMIT NUMBER: ME0000710  
LICENSE NUMBER: W000791-5P-L-M

NAME AND ADDRESS OF APPLICANT:

**MAINE FAIR TRADE LOBSTER LLC  
175 Alley Street  
Lynn, MA. 01905**

COUNTY: Hancock County

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**MAINE FAIR TRADE LOBSTER LLC  
200 Maine Street  
Gouldsboro, ME. 04669**

RECEIVING WATER/CLASSIFICATION: Prospect Harbor/Class SB

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: Mr. William Darling  
IM-IT Director, Mgr. Special Projects  
(781)-593-1737  
[bdarling@myseafood.com](mailto:bdarling@myseafood.com)

**1. APPLICATION SUMMARY**

- a. Application - Maine Fair Trade Lobster LLC (permittee hereinafter) has submitted an application to the Department to modify and renew combination Maine Waste Discharge License (WDL) #W000791-5R-J-T / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0000710 (permit hereinafter), which was issued by the Department to Lobster Web Company LLC, on June 6, 2011, for a five-year term. The June 6, 2011, permit was subsequently transferred to co-permittees Maine Fair Trade Lobster LLC (Operator) and Prospect Holdings LLC (Owner) on January 10, 2013. The June 6, 2011, MEPDES permit authorized the monthly average discharge of up to 272,000 gallons per day (GPD) of treated process wastewaters from a sardine/herring processing facility to Prospect Harbor, Class SB, in Gouldsboro, Maine. See **Attachment A** of this Fact Sheet for a location map.

## 1. APPLICATION SUMMARY (cont'd)

- b. Sources Description: The permittee intend to process lobster consisting of either butchering lobsters or boiling lobsters, cleaning the meat, vacuum sealing the meat, and then freezing the sealed product. The processing room will be cleaned and sanitized as needed during and/or after each shift.

The permittee estimates that at full production, the facility will be able to process approximately 100,000 pounds of lobster per day, up from 15,000 lbs/day when the facility was operated by the former permittee. The facility is scheduled to begin processing on June 16, 2013 with initial production being limited to 60,000 lbs/day.

Existing ground water wells will be used as the source water for clean-up, lobster cooking ice machines and the facility boilers. Sea water will be used to fill the lobster storage tank in which live lobsters will be stored prior to processing. This is a flow-through system to which no chemicals, feed or other pollutants are added by the operator and is being recognized as Outfall #002A in this permit. See **Attachment B** of this Fact Sheet for a processing schematic.

The facility will continue to receive herring to be sold whole as bait. Sea water will be used to flume the herring from boats to the facility or directly into containers on trucks. Sea water used for fluming processes will be conveyed to wastewater treatment prior to discharge.

- b. Wastewater Treatment: Lobster processing area wastewaters receive treatment by means of primary solids screening and management prior to being conveyed to twin rotary hydro-sieve screens which provides treatment equivalent to a 40-mesh screen. Treated process wastewaters are discharged to the tidewaters of Gouldsboro via an 18-inch diameter outfall pipe (Outfall #001A) situated approximately 20 feet below the water surface at mean low tide.

Sanitary wastewaters generated by the facility are treated by and discharged via overboard discharge systems regulated by the Department in WDL #W7935 and #W7934.

## 2. PERMIT SUMMARY

- a. Terms and conditions: This permitting action is carrying forward all the terms and conditions of the previous permitting action except that this permit is:
1. Increasing the total (Outfall #001A plus Outfall#002A) monthly average flow limitation from 272,000 gallons per day (gpd) to 347,000 gpd due to a proposed increase in production from 15,000 lbs/day to 100,000 lbs/day.
  2. Increasing the technology based monthly average and daily maximum mass and concentration limitations for total suspended solids (TSS) and oil & grease and monitoring frequencies (from 1/Month to 1/Week) based on the proposed production increase at the facility.

## 2. PERMIT SUMMARY (cont'd)

3. Requiring the permittee to report monthly average and daily maximum mass and concentration results for biochemical oxygen demand (BOD).
4. Proportionally increasing the dilution factors associated with Outfall #001A (process waste water) as a result of the decrease in the monthly average flow limitation from 272,000 gpd to 97,000 gpd.
5. Acknowledge a pre-existing outfall pipe, designated as Outfall #002A, that discharges flow through sea water that the Department has deemed to contain a *de minimus* quantity of pollutants in it.

b. History – A summary of the relevant regulatory actions include the following:

*May 1, 1980* – The U.S. Environmental Protection Agency (USEPA) issued a National Pollutant Discharge Elimination System (NPDES) permit to Stinson Canning Company for this facility to discharge seafood processing waste water to the tidewaters of Prospect Harbor, Gouldsboro, Maine. The permit expired on March 31, 1981.

*January 12, 2001* – The Department received authorization from the USEPA to administer the NPDES permit program in Maine, excluding areas of special interest to Maine Indian Tribes. From this point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) program, and MEPDES permit #ME0000710 has been utilized for this facility.

*June 24, 2004* – All permits and licenses issued by the Department to Stinson Seafood (2001), Inc. were transferred to Bumble Bee Seafoods LLC.

*March 9, 2007* – The Department issued WDL #W000791-5P-J-R to Bumble Bee Seafoods LLC for a five-year term.

*March 1, 2011* – Prospect Harbor Properties, LLC purchased the facility subject of this permitting action from Bumble Bee Seafood LLC.

*June 6, 2011* – The Department issued combination MEPDES permit#ME0000710/WDL #W000791-5R-J-T to Lobster Web Company LLC (Operator) and Prospect Harbor Properties LLC (Owner) for a five-year term.

*January 10, 2013* – The Department issued a transfer of the June 6, 2011, MEPDES permit/WDL, transferring the permit from Lobster Web Company LLC/Prospect Harbor Properties LLC to Maine Fair Trade Lobster LLC (Operator)/Prospect Holdings LLC (Owner).

*April 19, 2013* – The Department accepted an application from Maine Fair Trade Lobster LLC /Prospect Holdings LLC to modify and renew the June 6, 2011 MEPDES permit/WDL based on a significant increase in production (from 15,000 lbs/day to 100,000 lbs/day).

### 3. CONDITIONS OF PERMITS

*Conditions of licenses*, 38 M.R.S.A. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S.A., § 420 and 06-096 CMR 530 require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective October 9, 2005), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

### 4. RECEIVING WATER QUALITY STANDARDS

*Classification of estuarine and marine waters*, 38 M.R.S.A. § 469 classifies the tidewaters of Gouldsboro at the point of discharge as Class SB waters. *Standards for classification of estuarine and marine waters*, 38 M.R.S.A., § 465-B describes standards for classification of Class SB waters 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.*

## 5. RECEIVING WATER QUALITY CONDITIONS

*The State of Maine 2010 Integrated Water Quality Monitoring and Assessment Report*, (Report) (see: <http://www.maine.gov/dep/blwq/docmonitoring/305b/index.htm>) prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists the segment of the Atlantic Ocean at Prospect Harbor as "Category 2: Estuarine and Marine Waters Attaining Some Designated Uses – Insufficient Information for Other Uses." Additionally, the 2008 Report lists all estuarine and marine waters in "Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants." The 2010 Report states, "All estuarine and marine waters are listed in Category 5-D, partially supporting fishing ("shellfish" consumption) due to elevated levels of PCBs and other persistent, bioaccumulating substances in lobster tomalley." The Department has no information that the discharge from this facility, as permitted, causes or contributes to non-attainment of Class SB water quality standards.

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Applicability of Effluent Guideline Limitations (EGLs): The US Environmental Protection Agency (USEPA) has promulgated technology-based limitations for numerous seafood processes at the Code of Federal Regulations, Title 40, Part 408. The USEPA has not promulgated effluent limitation guidelines for lobster processing. The Department is making a best professional judgment determination to apply the effluent guideline limitations promulgated at *40 CFR Part 408 Subpart B- Conventional Blue Crab Processing* as it did in the June 6, 2011 permit as a "best fit" for the type of seafood processing conducted at this facility. 40 CFR Part 408.22 establishes effluent limitation guidelines for total suspended solids (TSS), oil and grease (O&G), and pH representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- b. Production: The permittee estimates it will process an average of 100,000 lbs./day of lobster at the facility. Production rate reporting is not being established in this permitting action. The permittee shall report to the Department any significant changes in actual production in accordance with Special Condition C of the permit.
- c. Flow: The permittee estimates it will generate an average of 97,000 gallons per day of process and clean-up wastewater per day which is being established in this permitting action as a monthly average limitation. This permitting action is not establishing daily maximum discharge flow limits as effluent limitations are based on average facility design and production values. This permitting action is carrying forward the metered monitoring requirement for discharge flow.
- d. Dilution Factors: 06-096 CMR 530(4)(A)(2)(a) states, "For discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

*chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model."* With an average permitted flow of 0.097 million gallons per day, dilution factors associated with the discharge are as follows:

Acute = 50:1

Chronic = 175:1

Harmonic mean<sup>1</sup> = 526:1

- e. Total Suspended Solids (TSS) and Oil & Grease (O&G): The mass limitations for TSS and O&G established in this and the June 6, 2011 permit were calculated using the BPT-based guidelines at 40 CFR Part 408, Subpart B as follows:

Allowable Loading Formula – 40 CFR Part 408 Subpart B:  
(Average Production Rate)(BPT-based Effluent Guideline)

The average and maximum BPT-based effluent guidelines for TSS are 0.74 lbs./1,000 lbs. of production and 2.2 lbs./1,000 lbs. of production, respectfully. The average and maximum BPT-based effluent guidelines for O&G are 0.20 lbs./1,000 lbs. of production and 0.60 lbs./1,000 lbs. of production, respectfully.

### TSS

Monthly Average Mass: (100,000 lbs./day)(0.74 lbs./1,000 lbs.) = **74 lbs./day**

Daily Maximum Mass: (100,000 lbs./day)(2.2 lbs./1,000 lbs.) = **220 lbs./day**

### TSS Concentration Thresholds

To encourage water conservation and so as not to penalize the permittee for operating at discharge flows less than the estimated average rate of 97,000 gpd, the Department is applying a factor of 2.0 to the TSS and O&G concentration thresholds calculated below in establishing end-of-pipe limitations.

Monthly Average:  $\frac{74 \text{ lbs./day}}{(8.34 \text{ lbs./gallon})(0.097 \text{ MGD})} = 91 \text{ mg/L} \times 2.0 = \mathbf{182 \text{ mg/L}}$

Daily Maximum:  $\frac{220 \text{ lbs./day}}{(8.34 \text{ lbs./gallon})(0.097 \text{ MGD})} = 272 \text{ mg/L} \times 2.0 = \mathbf{544 \text{ mg/L}}$

### O&G

Monthly Average Mass: (100,000 lbs./day)(0.20 lbs./1,000 lbs.) = **20 lbs./day**

Daily Maximum Mass: (100,000 lbs./day)(0.60 lbs./1,000 lbs.) = **60 lbs./day**

<sup>1</sup> The harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by three (3).

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

### O&G Concentration Thresholds

$$\text{Monthly Average: } \frac{20 \text{ lbs/day}}{(8.34 \text{ lbs./gallon})(0.097 \text{ MGD})} = 25 \text{ mg/L} \times 2.0 = \mathbf{50 \text{ mg/L}}$$

$$\text{Daily Maximum: } \frac{60 \text{ lbs/day}}{(8.34 \text{ lbs./gallon})(0.097 \text{ MGD})} = 74 \text{ mg/L} \times 2.0 = \mathbf{148 \text{ mg/L}}$$

This permitting action is establishing a minimum monitoring frequency requirement of once per week for TSS and O&G in accordance with a written Department policy for seafood processing facility monitoring frequencies.

- f. pH: This permitting action is carrying forward a pH limit of 6.0 – 9.0 standard units (SU) based on the effluent guideline limitations established for the various subcategories under 40 CFR Part 408.
- g. Biochemical oxygen demand (BOD) – Federal regulation, 40 CFR Part 408, Subpart B, does not establish technology based limitations for BOD. However, given the nature of the process waste water, limited treatment and low dilution factors associated with the discharge, the Department deems it necessary to report mass and concentration values to evaluate potential impacts to ambient dissolved oxygen levels in Prospect Harbor in the vicinity of Outfall #001A.

## 7. ANTI-BACKSLIDING

Federal regulation 40 CFR, §122(l) contains the criteria for what is often referred to as the anti-backsliding provisions of the Federal Water Pollution Control Act (Clean Water Act). In general, the regulation states that except for provisions specified in the regulation, effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards or conditions in the previous permit. Applicable exceptions include (1) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation and (2) information is available which was not available at the time of the permit issuance (other than revised regulations, guidance or test methods) and which would justify the application of less stringent effluent limitations at the time of permit issuance.

This permitting action is revising previously established mass and concentration limitations for flow, TSS and oil & grease based on new information that was not available at the time of the previous licensing action, more specifically a significant increase in production. The Department has made the determination that authorizing these less stringent limitations are necessary and that the discharges at these levels will not cause or contribute to failure of the receiving water to meet its classification standards.

## 8. ANTI-DEGRADATION - IMPACT ON RECEIVING WATER QUALITY

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

This permitting action revises previously established effluent limitations for flow, TSS and oil & grease. The rationale for these actions is contained in Section 6 of this Fact Sheet. Based on the information provided in the referenced section, the Department has made the determination that the discharge approved by this permit will not result in a significant lowering of water quality. As permitted, the Department has determined the existing and designated water uses will be maintained and protected and the discharge will not cause or contribute to the failure of Prospect Harbor to meet standards for Class SB classification.

## 9. PUBLIC COMMENTS

Public notice of this application was made in the *Bangor Daily News* newspaper on or about April 19, 2013. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

## 10. DEPARTMENT CONTACTS

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

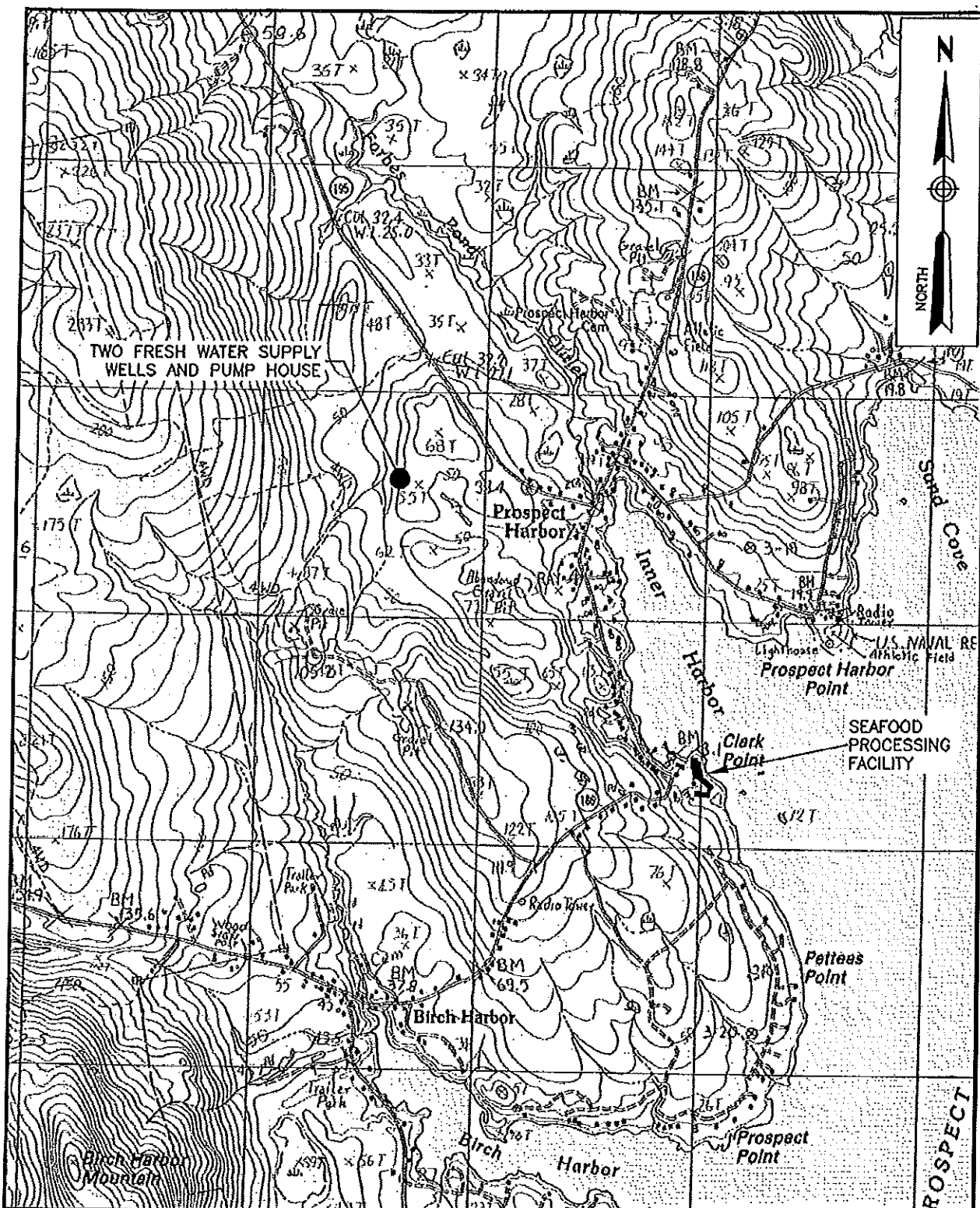
Gregg Wood  
Division of Water Quality Management  
Bureau of Land & Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017  
e-mail: [gregg.wood@maine.gov](mailto:gregg.wood@maine.gov)  
Telephone: (207) 287-7693



## **11. RESPONSE TO COMMENTS**

During the period of May 14, 2013, through the issuance date of the permit/license, the Department solicited comments on the proposed draft permit/license to be issued for the discharge(s) from 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**



**FIGURE 1**  
**SITE LOCATION MAP**  
 PROSPECT HARBOR (GOULDSBORO), MAINE  
 PREPARED FOR  
**MAINE FAIR TRADE LOBSTER LLC**

DATE: MARCH 2013	DRAWN BY: SBM	CHECKED BY: MAD
JOB: 12-3320	1" = 2,000 FEET	FILE: 12-3320-FIG1



640 MAIN ST. Tel.: (207) 795-6009  
 LEWISTON, MAINE 04240 Fax: (207) 795-6128

# **ATTACHMENT B**

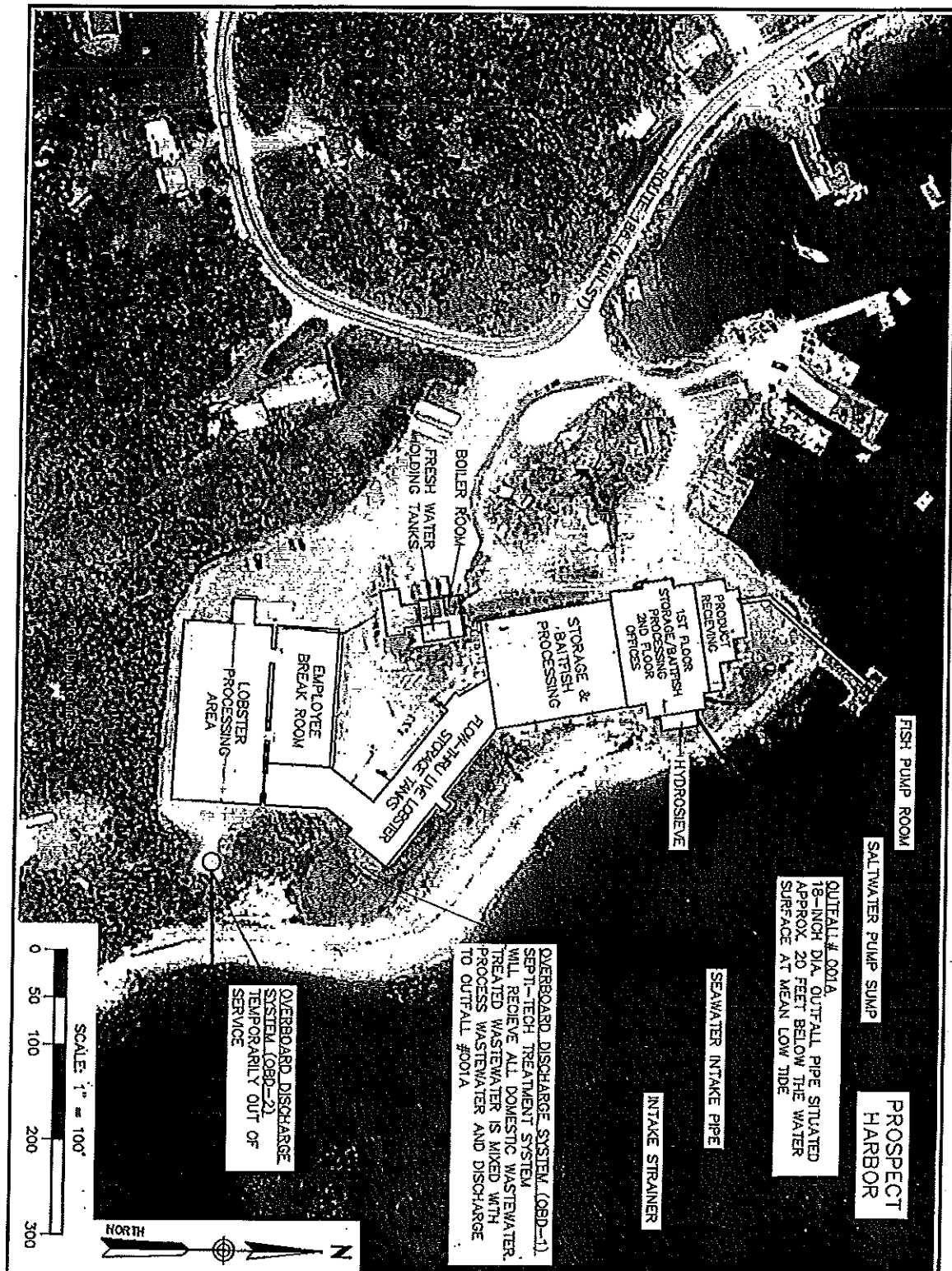


FIGURE 2

# SITE PLAN & FACILITY LAYOUT SEAFOOD PROCESSING FACILITY

200 MAIN ST. - PROSPECT HARBOR, MAINE

PREPARED FOR

MAINE FAIR TRADE LOBSTER LLC

640 MAIN ST.  
LEWISTON, ME 04240

Tel.: (207) 795-6009  
Fax: (207) 795-6128  
www.summitenv.com



DATE: MARCH 2012

JOB NUMBER: 12-3320

DRAWN BY: SSM

CHECKED BY: MAD

SCALE: 1" = 100'

CADD: 12-3320-FIG2.DWG

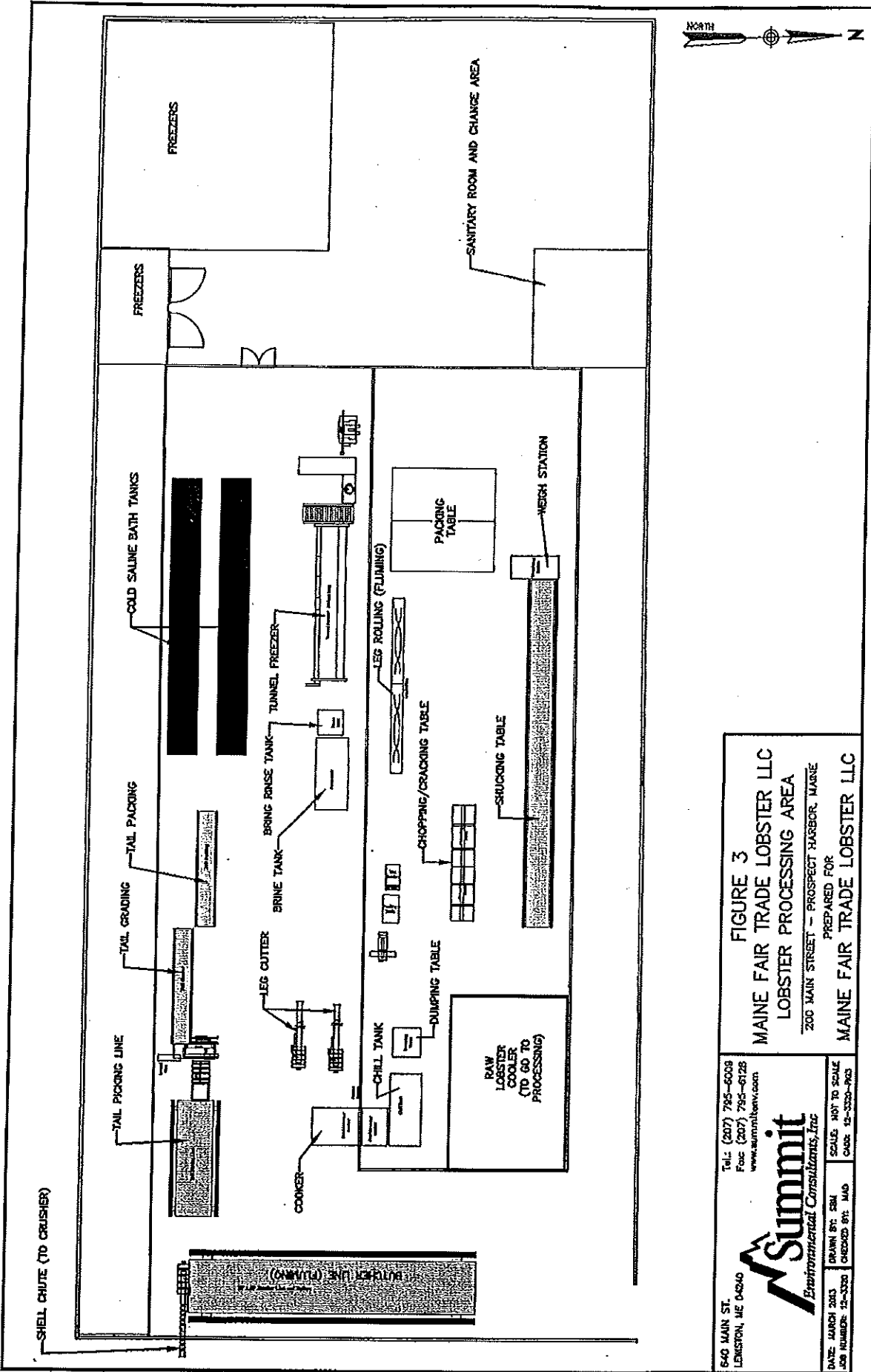


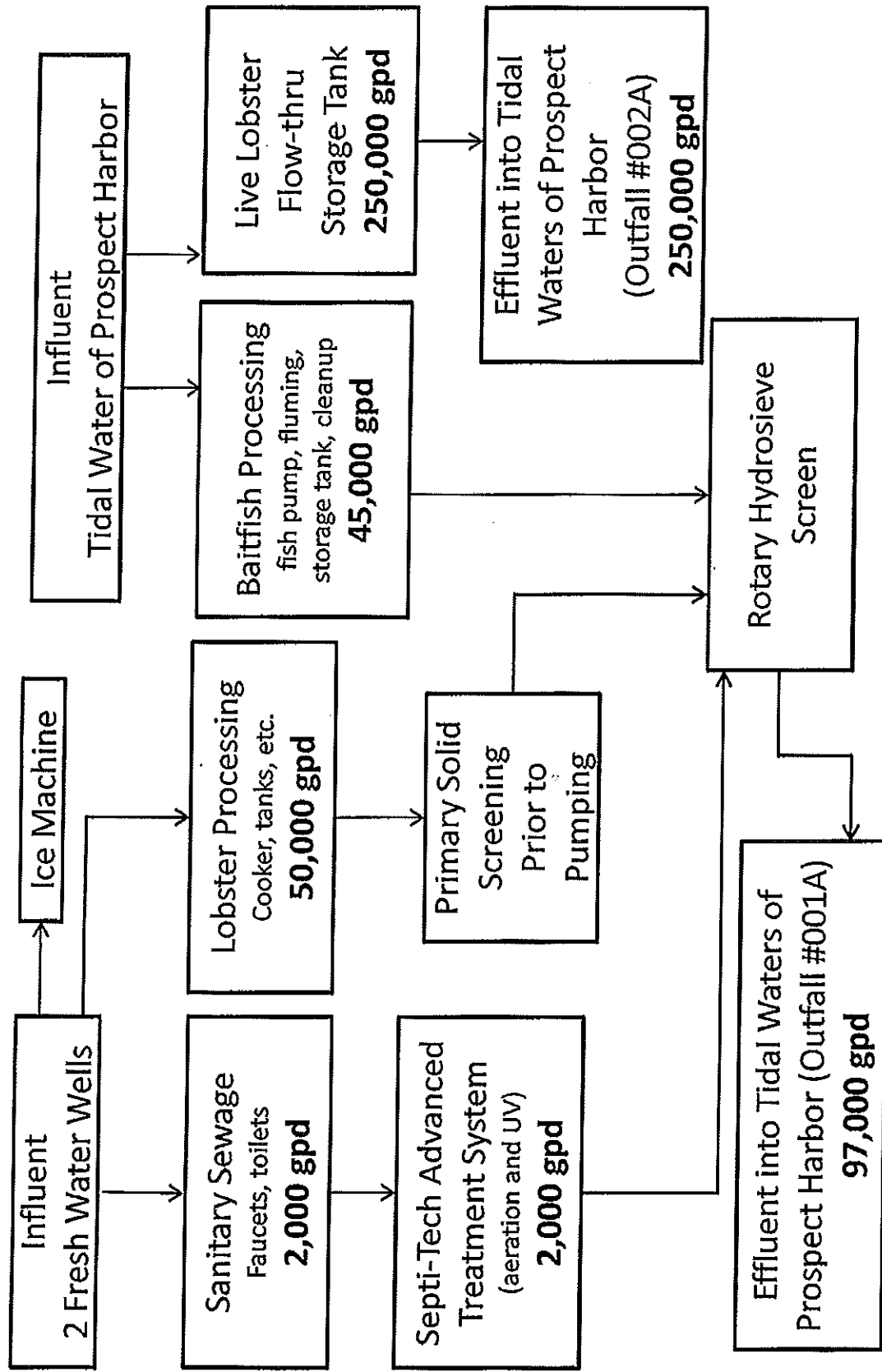
FIGURE 3  
 MAINE FAIR TRADE LOBSTER LLC  
 LOBSTER PROCESSING AREA  
 200 MAIN STREET - PROSPECT HARBOR, MAINE  
 PREPARED FOR  
 MAINE FAIR TRADE LOBSTER LLC

640 MAIN ST.  
 LEBANON, ME 04240  
 Tel: (207) 795-6009  
 Fax: (207) 795-6128  
[www.summitenv.com](http://www.summitenv.com)

**Summit**  
*Environmental Consultants, Inc.*

DATE: MARCH 2013	DRAWN BY: SRJ	SCALE: NOT TO SCALE	CHECKED BY: JAD
JOB NUMBER: 12-3320		CAD: 12-3320-103	

**Figure 4: Water System Flowchart (Rev 5-13-2013)**  
**Maine Fair Trade Lobster LLC Seafood Processing Facility**



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).

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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

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

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

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

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

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

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

## B. OPERATION AND MAINTENANCE OF FACILITIES

### 1. General facility requirements.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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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

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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.



# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

**Best management practices ("BMPs")** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

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

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

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

**Maximum daily discharge limitation** means the highest allowable daily discharge.

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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**Point source** means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

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

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

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

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

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

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

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

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



# DEP INFORMATION SHEET

## Appealing a 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.

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

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