

**AUTHORIZATION TO DISCHARGE UNDER
THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Federal Clean Water Act as amended, 33 U.S.C. §§ 1251 et seq. (the “CWA”),

Little Bay Seafood LLC and Lordco Pier Associates

is authorized to discharge from a facility located at

**158 Shattuck Way
Newington, NH 03801**

to receiving water named

**Piscataqua River
Piscataqua Watershed**

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This Permit shall become effective on the first day of the calendar month immediately following 60 days after signature.¹

This Permit expires at midnight five years from the last day of the month preceding the effective date.

This Permit supersedes the Permit issued on September 22, 2008.

This Permit consists of this **cover page, Part I and Part II** (NPDES Part II Standard Conditions, April 2018).

Signed this day of

**KENNETH
MORAFF**

Digitally signed by
KENNETH MORAFF
Date: 2022.01.19
14:18:24 -05'00'

Ken Moraff, Director
Water Division
Environmental Protection Agency
Region 1
Boston, MA

¹ Pursuant to 40 Code of Federal Regulations (CFR) § 124.15(b)(3), if no comments requesting a change to the Draft Permit are received, the Permit will become effective upon the date of signature. Procedures for appealing EPA’s Final Permit decision may be found at 40 CFR § 124.19.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge baitfish wetting wastewater through **Outfall Serial Number 002A** to the Piscataqua River. The discharge shall be limited and monitored as specified below. Footnotes begin on page 6.

Effluent Characteristic	Effluent Limitations		Monitoring Requirements ^{1,2,3}	
	Average Monthly	Maximum Daily	Measurement Frequency ⁴	Sample Type ⁵
Effluent Flow ⁶	Report GPD	Report GPD	1/Day	Meter
Baitfish Processing	Report lbs/day	Report lbs/day	1/Day	Estimate
pH ⁷	6.5 – 8.0 S.U.		1/Quarter	Grab
Total Suspended Solids (TSS)	Report mg/L	Report mg/L	1/Quarter	Grab
Biochemical Oxygen Demand	Report mg/L	Report mg/L	1/Quarter	Grab
Ammonia Nitrogen	Report mg/L Report lbs/d	Report mg/L	1/Month	Grab
Total Nitrogen ⁸	Report mg/L Report lbs/d	Report mg/L	1/Month	Grab
Total Kjeldahl Nitrogen (TKN) ⁸	Report mg/L	Report mg/L	1/Month	Grab
Nitrate + Nitrite ⁸	Report mg/L	Report mg/L	1/Month	Grab
Total Phosphorus	Report mg/L	Report mg/L	1/Quarter	Grab
Oil and Grease	Report mg/L	Report mg/L	1/Quarter	Grab

2. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge baitfish storage rinse water through **Outfall Serial Number 002B** to Piscataqua River. The discharge shall be limited and monitored as specified below. Footnotes begin on page 6.

Effluent Characteristic	Effluent Limitations		Monitoring Requirements ^{1,2,3}	
	Average Monthly	Maximum Daily	Measurement Frequency ⁴	Sample Type ⁵
Effluent Flow ⁶	Report GPD	Report GPD	1/Day	Meter
pH ⁷	6.5 – 8.0 S.U.		1/Quarter	Grab
Total Suspended Solids (TSS)	Report mg/L	Report mg/L	1/Quarter	Grab
Biochemical Oxygen Demand	Report mg/L	Report mg/L	1/Quarter	Grab
Ammonia Nitrogen	Report mg/L Report lbs/d	Report mg/L	1/Month	Grab
Total Nitrogen ⁸	Report mg/L Report lbs/d	Report mg/L	1/Month	Grab
Total Kjeldahl Nitrogen (TKN) ⁸	Report mg/L	Report mg/L	1/Month	Grab
Nitrate + Nitrite ⁸	Report mg/L	Report mg/L	1/Month	Grab
Total Phosphorus	Report mg/L	Report mg/L	1/Quarter	Grab
Oil and Grease	Report mg/L	Report mg/L	1/Quarter	Grab

3. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge wastewater from lobster holding and grading operations through **Outfall Serial Number 003** to Piscataqua River. The discharge shall be limited and monitored as specified below. Footnotes begin on page 6.

Effluent Characteristic	Effluent Limitations		Monitoring Requirements ^{1,2,3}	
	Average Monthly	Maximum Daily	Measurement Frequency ⁴	Sample Type ⁵
Effluent Flow ⁶	Report GPD	Report GPD	1/Day	Estimate
pH ⁷	6.5 – 8.0 S.U.		1/Quarter ⁹	Grab
Total Suspended Solids (TSS)	Report mg/L	Report mg/L	1/Quarter ⁹	Grab
Biochemical Oxygen Demand	Report mg/L	Report mg/L	1/Quarter ⁹	Grab
Ammonia Nitrogen	Report mg/L Report lbs/d	Report mg/L	1/Month ⁹	Grab
Total Nitrogen ⁸	Report mg/L Report lbs/d	Report mg/L	1/Month ⁹	Grab
Total Kjeldahl Nitrogen (TKN) ⁸	Report mg/L	Report mg/L	1/Month ⁹	Grab
Nitrate + Nitrite ⁸	Report mg/L	Report mg/L	1/Month ⁹	Grab
Total Phosphorus	Report mg/L	Report mg/L	1/Quarter ⁹	Grab

4. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge drainage from the building foundation comingled with groundwater through **Outfall Serial Number 005** to Piscataqua River. The discharge shall be limited and monitored as specified below. Footnotes begin on page 6.

Effluent Characteristic	Effluent Limitations		Monitoring Requirements ^{1,2,3}	
	Average Monthly	Maximum Daily	Measurement Frequency ⁴	Sample Type ⁵
pH ⁷	Report S.U.		1/Quarter ¹⁰	Grab
Oil and Grease	Report mg/L	Report mg/L	1/Quarter ¹⁰	Grab
Volatile Organic Compounds (VOCs)	Report mg/L	Report mg/L	1/Quarter ¹⁰	Grab

Footnotes:

1. Effluent samples shall yield data representative of the discharge. A routine sampling program shall be developed in which samples are taken prior to co-mingling with any other wastestream. The Permittee shall collect two independent samples from the Outfall 002 sampling port: when baitfish wetting activity is occurring (002A) and when baitfish storage containers are being rinsed (002B). The Permittee shall sample lobster holding water for Outfall 003 prior to mixing with river water through-flow. Changes in sampling location must be approved in writing by the Environmental Protection Agency Region 1 (EPA). The Permittee shall report the results to EPA and the State of any additional testing above that required herein, if testing is done in accordance with 40 CFR Part 136.
2. In accordance with 40 CFR § 122.44(i)(1)(iv), the Permittee shall monitor according to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O, for the analysis of pollutants or pollutant parameters (except WET). A method is “sufficiently sensitive” when: 1) The method minimum level (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or 2) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter. The term “minimum level” refers to either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in several ways: They may be published in a method; they may be based on the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a laboratory, by a factor.
3. When a parameter is not detected above the ML, the Permittee must report the data qualifier signifying less than the ML for that parameter (e.g., < 50 µg/L, if the ML for a parameter is 50 µg/L). For calculating and reporting the average monthly concentration when one or more values are not detected, assign a value of zero to all non-detects and report the average of all the results. The number of exceedances shall be enumerated for each parameter in the field provided on every Discharge Monitoring Report (DMR).
4. Measurement frequency of 1/day is defined as the recording of one measurement for each 24-hour period. Measurement frequency of 1/month is defined as the sampling of one discharge event in each calendar month. Measurement frequency of 1/quarter is defined as the sampling of one discharge event during each calendar quarter. Calendar quarters are defined as January through March, inclusive, April through June, inclusive, July through September, inclusive and October through December, inclusive. If no sample is collected during the measurement frequencies defined above, the Permittee must report an appropriate No Data Indicator Code.

5. A “grab” sample is an individual sample collected over a period of less than 15 minutes. Grab samples shall be collected from the sampling port in the Outfall 002 pipe separately for baitfish wetting and bait storage container rinsing activities. Grab samples for the lobster holding effluent (003) shall be collected from lobster tank A and from the bottom of the stack of holding crates in Areas B, C, and D and composited for analysis. The Permittee may propose an alternative, representative sampling location for Outfall 003 (e.g., a single grab sample from Tank A or a composite of three grab samples from the recirculating reservoirs) by demonstrating, based on comparison of a minimum of six grab samples, that the alternative location sample and the composite sample from the lobster crates is substantially similar. The request must be made in writing to EPA and NHDES in accordance with Part I.D.3.a and I.D.5 of this permit. Samples shall continue to be collected from Tank A and the crates in Areas B, C, and D until written authorization for the alternative sampling location is received.
6. Effluent flow shall be reported in gallons per day (GPD). Effluent flow of lobster holding water for Outfall 003 shall be estimated based on the daily recording of intake volume used to adjust the levels of the reservoirs. The Permittee shall report the estimated maximum daily effluent flow and the monthly average effluent flow during each monthly reporting period based on the daily estimated flow.
7. The pH shall be within the specified range at all times. The minimum and maximum pH sample measurement values for the month shall be reported in standard units (S.U.). See Part I.C.1 below for a provision to modify the pH range.
8. Total nitrogen concentration shall be calculated from the sum of the total Kjeldahl nitrogen (TKN) and nitrate + nitrite analyses of concurrently collected samples. The method use for each parameter must have a minimum level (ML) less than or equal to 0.25 mg/L. If any results are below the ML, a value of zero for that parameter shall be used for calculating total nitrogen. The average monthly mass loading of total nitrogen and ammonia nitrogen shall be calculated as follows: Average monthly Load (lbs/day) = average monthly concentration (mg/L) * average monthly flow (million gallons per day) * 8.345. Note that the effluent flow reported in gallons per day must be converted to million gallons per day for this calculation.
9. After 8 quarterly samples at Outfall 003, the Permittee may request a reduction in monitoring frequency. The request must be made in writing to EPA and NHDES in accordance with Part I.D.3.a and I.D.5 of this permit. Monitoring frequency must remain 1/Quarter until written notification authorizing a reduction in monitoring is received.
10. Measurement frequency for Outfall 005 shall be 1/Quarter. Based on the results of 8 consecutive samples the Permittee may request a reduction in frequency of monitoring at Outfall 005. The request must be made in writing to EPA and NHDES in accordance with Part I.D.3.a and I.D.5 of this permit. Monitoring frequency must remain 1/Quarter until written notification

authorizing a reduction or elimination of monitoring is received. If monitoring demonstrates levels of “non-detect” for both VOCs and oil and grease and pH values within the range of 6.5 to 8.0 in all 8 consecutive samples, the Permittee may cease monitoring at Outfall 005. In this case, the Permittee would report an appropriate NODI code.

Part I.A. continued.

5. The discharge shall not cause a violation of the water quality standards of the receiving water.
6. The discharge shall be free from substances in kind or quantity that settle to form harmful benthic deposits; float as foam, debris, scum or other visible substances; produce odor, color, taste or turbidity that is not naturally occurring and would render the surface water unsuitable for its designated uses; result in the dominance of nuisance species; or interfere with recreational activities.
7. Tainting substances shall not be present in the discharge in concentrations that individually or in combination are detectable by taste and odor tests performed on the edible portions of aquatic organisms.
8. The discharge shall not result in toxic substances or chemical constituents in concentrations or combinations in the receiving water that injure or are inimical to plants, animals, humans or aquatic life; or persist in the environment or accumulate in aquatic organisms to levels that result in harmful concentrations in edible portions of fish, shellfish, other aquatic life, or wildlife that might consume aquatic life.
9. The discharge shall not result in benthic deposits that have a detrimental impact on the benthic community. The discharge shall not result in oil and grease, color, slicks, odors, or surface floating solids that would impair any existing or designated uses in the receiving water.
10. The discharge shall not result in an exceedance of the naturally occurring turbidity in the receiving water by more than 10 NTUs.
11. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify EPA as soon as they know or have reason to believe (40 CFR § 122.42):
 - 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”:
 - (1) 100 micrograms per liter ($\mu\text{g/L}$);
 - (2) 200 $\mu\text{g/L}$ for acrolein and acrylonitrile; 500 $\mu\text{g/L}$ for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (mg/L) for antimony;
 - (3) Five times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR § 122.21(g)(7); or
 - (4) Any other notification level established by EPA in accordance with 40 CFR § 122.44(f) and State regulations.

- b. That any activity has occurred or will occur which would result in the discharge, on a non-routine or infrequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
- (1) 500 µg/L;
 - (2) One mg/L for antimony;
 - (3) 10 times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR § 122.21(g)(7); or
 - (4) Any other notification level established by EPA in accordance with 40 CFR § 122.44(f) and State regulations.
- c. That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.

B. UNAUTHORIZED DISCHARGES

1. This permit authorizes discharges only from the outfall(s) listed in Part I.A.1, in accordance with the terms and conditions of this permit. Discharges of wastewater from any other point sources are not authorized by this permit and shall be reported in accordance with Part D.1.e.(1) of the Standard Conditions of this permit (24-hour reporting).
2. Outfall 004 shall be permanently sealed and no discharge from the outfall is authorized by this permit.
3. No chemicals or additives may be discharged, including, but not limited to, chemicals associated with lobster tank cleaning, prophylactic bacterial medication, and pharmaceuticals.
4. The Permittee shall not utilize nor discharge pentachlorophenol or trichlorophenol.
5. There shall be no discharge from any truck or vehicle washing or discharge of rinse water from the storage area of vehicle used to transport baitfish and lobster.

C. SPECIAL CONDITIONS

1. The pH range may be modified if the Permittee satisfies conditions set forth in Part I.E.3 below. Upon notification of an approval by the State, EPA will review and, if acceptable, will submit written notice to the Permittee of the permit change. The modified pH range will not be in effect until the Permittee receives written notice from EPA.
2. Best Management Practices (BMPs)

The Permittee shall design and maintain control measures to minimize the discharge of pollutants from the operations at the Facility to the receiving water. At a minimum, the Permittee must:

- a. Design and maintain operational and structural measures (i.e., catch basin screens) to minimize the discharge of pollutants such as total suspended solids, floating solids, foam, visible oil sheen, and settleable solids in discharges associated with lobster holding, baitfish wetting, and rinsing operations to the receiving water. Control measures must be used in accordance with good engineering practices and manufacturer's specifications.
- b. Maintain a corrosion resistant screen or other filter to prevent solids from entering the catch basin draining to Outfall 002 during baitfish wetting and fish container rinsing.
- c. Design and maintain good housekeeping measures to control potential sources of pollutants and keep the areas of the Facility exposed to effluent flow free of debris, fish scales, or fish parts;
- d. Implement preventative maintenance programs for pollution control (e.g., cleaning screens at catch basins to prevent solids from being discharged, cleaning interior floors exposed to lobster holding water flows) to ensure that equipment is maintained, and to avoid releases of pollutants to receiving waters;
- e. Implement procedures to remove and dispose of lobster mortalities in a timely manner and respond to spills and leaks if or when they occur;
- f. Perform routine inspections of the control measures, discharge points, and areas where industrial materials, potential pollutant sources, or activities are exposed to effluent flows;
- g. Develop standard procedures for handling solids and other wastes collected from cleaning catch basin screens and lobster holding equipment.

3. Best Management Practices Plan

- a. The Permittee shall develop, implement, and maintain a Best Management Practices (BMP) Plan designed to reduce or prevent the discharge of pollutants in wastewater to waters of the United States. The BMP Plan shall be a written document that is consistent with the terms of the permit and identifies and describes the BMPs employed by the Facility to control wastewater discharges. The BMP Plan must be reviewed at least once per permit term (i.e., five years) and re-evaluated if any significant changes to the operations occur or if monitoring indicates that BMPs are not effectively controlling the discharge of pollutants to the receiving water.
- b. The BMP Plan shall be complete (or updated) and certified by the Permittee within 90 days after the effective date of this permit. The Permittee shall certify that the BMP plan has been prepared, that it meets the requirements of the permit, and that it prevents or reduces pollutants discharged from the outfalls to the extent practicable. The BMP Plan and certification shall be signed in accordance with the requirements identified in 40 CFR

§ 122.22. A copy of the BMP Plan and certification shall be maintained at the Facility and made available to EPA and the State upon request.

- c. The BMP Plan shall include, at a minimum, the following elements:
- (1) A site description and summary of potential pollutant sources;
 - (2) Documentation of the selection, design, installation, implementation, and maintenance of control measures designed to prevent or reduce the discharge of pollutants in wastewater generated from lobster holding, baitfish wetting, and rinsing containers used to hold baitfish;
 - (2) A description of the pollution control equipment and preventative maintenance procedures, including frequency of inspections, used to prevent or reduce the discharge of pollutants; and
 - (3) Documentation of the procedures for handling wastes generated from the baitfish wetting, lobster holding, and fish container rinsing operations, including schedules for removal, handling and disposal of materials, and a description of where solids removed using pollution control equipment are stored and/or disposed. If solids are removed from the site, include a description of the destination and method of disposal and/or reuse.
- d. The Permittee shall amend and update the BMP Plan within 14 days for any changes at the Facility affecting the Plan. Such changes may include, but are not limited to: changes in the design, construction, operation, or maintenance of the Facility which affect the potential for the discharge of pollutants to the waters of the United States; a release of a reportable quantity of pollutants as described in 40 CFR § 302; a determination by the Permittee or EPA that the BMPs appear to be ineffective in achieving the general objective of controlling pollutants; and revisions or improvements are made to the BMPs based on new information and experiences. Any amended or new versions of the BMP Plan shall be re-certified by the Permittee. Such re-certifications shall be signed in accordance with the requirements identified in Part II.D.2 of this Permit.
- e. The Permittee shall certify annually that the Facility is in compliance with the BMPs specified in Part I.C.2 of this permit, including recording and maintaining results of any required inspections and training activities. If the facility is not in compliance with any limitations and/or BMPs, the annual certification shall state the non-compliance and the remedies that are or will be undertaken. The annual certification shall list any changes to control measures over the past year and describe the reason for the changes. The annual certification shall report the monthly and annual average nitrogen load from the baitfish wetting, container rinsing, and lobster holding effluent and compare annual loads to the previous year. Annual certification shall be signed in accordance with the requirements identified in Part II.D.2 of this Permit. The Permittee shall keep a copy of the current BMP Plan and all certifications signed during the effective period of this Permit. Annual certifications shall be submitted to EPA and the State by March 15th of the following year in accordance with the reporting requirements at Part I.D.3.a and I.D.5 of this Permit.

4. Effluent Diffuser Maintenance and Inspection

- a. Effluent diffusers shall be maintained when necessary to ensure proper operation. Proper operation means that the plumes from each port will be balanced relative to each other and that they all have unobstructed flow. Maintenance may include dredging in the vicinity of the diffuser, clean out of solids in the diffuser header pipe, removal of debris and repair/replacement of riser ports and pinch valves.
- b. Any necessary maintenance dredging must be performed only after receiving all necessary permits from the NHDES Wetlands Bureau and other appropriate agencies.
- c. To determine if maintenance will be required the Permittee shall have a licensed diver or licensed marine contractor inspect and videotape the operation of the diffuser. The inspections and videotaping shall be performed in accordance with the following schedule.
 - (1) Every year if no pinch valves have been installed on the riser ports; or
 - (2) Every 2 years if pinch valves have been installed on the riser ports.
- d. The video of the diffuser inspection and a copy of a report summarizing the results of the inspection shall be submitted to EPA and NHDES-WD on a USB drive within 60 days of each inspection. A schedule for cleaning, repairs, or other necessary maintenance shall be included in the report if the inspection indicates that it is necessary. Necessary cleaning, repairs, or other maintenance should be documented with a photo or video taken after the action is completed.

D. REPORTING REQUIREMENTS

Unless otherwise specified in this Permit, the Permittee shall submit reports, requests, and information and provide notices in the manner described in this section.

1. Submittal of DMRs Using NetDMR

The Permittee shall continue to submit monitoring data in discharge monitoring reports (DMRs) to EPA and the State electronically using NetDMR no later than the 15th day of the month following the monitoring period. When the Permittee submits DMRs using NetDMR, it is not required to submit hard copies of DMRs to EPA or the State. NetDMR is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

2. Submittal of Reports as NetDMR Attachments

Unless otherwise specified in this Permit, the Permittee shall electronically submit all reports to EPA as NetDMR attachments rather than as hard copies. Because the due dates for reports described in this Permit may not coincide with the due date for submitting DMRs (which is no later than the 15th day of the month following the monitoring period), a report submitted electronically as a NetDMR attachment shall be considered timely if it is electronically

submitted to EPA using NetDMR with the next DMR due following the particular report due date specified in this Permit.

3. Submittal of Requests and Reports to EPA Water Division (WD)
 - a. The following requests, reports, and information described in this Permit shall be submitted to the NPDES Applications Coordinator in EPA WD:
 - (1) Transfer of Permit notice;
 - (2) Request for changes in sampling location;
 - (3) BMP reports and certifications;
 - (4) Request to discharge new chemicals or additives;
 - (5) Request for pH Effluent Limitation Adjustment;
 - (6) Request for reduction in monitoring frequency at Outfall 005.
 - b. These reports, information, and requests shall be submitted to EPA WD electronically at R1NPDESReporting@epa.gov or by hard copy mail to the following address:

**U.S. Environmental Protection Agency
Water Division
NPDES Applications Coordinator
5 Post Office Square - Suite 100 (06-03)
Boston, MA 02109-3912**

4. Submittal of Reports in Hard Copy Form
 - a. The following notifications and reports shall be signed and dated originals, submitted in hard copy, with a cover letter describing the submission:
 - (1) Written notifications required under Part II, Standard Conditions. Beginning December 21, 2025, such notifications must be done electronically using EPA's NPDES Electronic Reporting Tool ("NeT"), or another approved EPA system, which will be accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.
 - b. This information shall be submitted to EPA ECAD at the following address:

**U.S. Environmental Protection Agency
Enforcement and Compliance Assurance Division
Water Compliance Section
5 Post Office Square, Suite 100 (04-SMR)
Boston, MA 02109-3912**

5. State Reporting

Unless otherwise specified in this Permit or by the State, duplicate signed copies of all reports, information, requests or notifications described in this Permit, including the reports, information, requests or notifications described in Parts I.D.3 through I.D.6 shall also be submitted to the New Hampshire Department of Environmental Services, Water Division (NHDES–WD) electronically to the Permittee’s assigned NPDES inspector at NHDES-WD or as a hardcopy to the following address:

**New Hampshire Department of Environmental Services
Water Division
Wastewater Engineering Bureau
29 Hazen Drive, P.O. Box 95
Concord, New Hampshire 03302-0095**

6. Verbal Reports and Verbal Notifications

- a. Any verbal reports or verbal notifications, if required in Parts I and/or II of this Permit, shall be made to both EPA and to the State. This includes verbal reports and notifications which require reporting within 24 hours (e.g., Part II.B.4.c. (2), Part II.B.5.c. (3), and Part II.D.1.e.).
- b. Verbal reports and verbal notifications shall be made to EPA’s Enforcement and Compliance Assurance Division at:

617-918-1510

- c. Verbal reports and verbal notifications shall also be made to the State’s Regional NPDES inspector at:

603-271-1493

E. STATE 401 CERTIFICATION CONDITIONS

1. This Permit is in the process of receiving state water quality certification issued by the State under § 401(a) of the CWA and 40 CFR § 124.53. EPA will incorporate by reference all State water quality certification requirements (if any) into the Final Permit.
2. This NPDES Discharge Permit is issued by the EPA under Federal law. Upon final issuance by the EPA, the NHDES–WD may adopt this permit, including all terms and conditions, as a State permit pursuant to RSA 485-A:13. Each Agency shall have the independent right to enforce the terms and conditions of this Permit. Any modification, suspension or revocation of this Permit shall be effective only with respect to the Agency taking such action and shall not affect the validity or status of the Permit as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation.

3. The pH range of 6.5 to 8.0 Standard Units (S.U.) must be achieved in the final effluent unless the Permittee can demonstrate to NHDES–WD: 1) that the range should be widened due to naturally occurring conditions in the receiving water; or 2) that the naturally occurring receiving water pH is not significantly altered by the Permittee’s discharge. The scope of any demonstration project must receive prior approval from NHDES–WD. In no case, shall the above procedure result in pH limits outside the range of 6.0 to 9.0 S.U., which are federal technology-based effluent limitation guidelines for pH commonly found in 40 CFR subchapter N Parts 405 through 471.

NPDES PART II STANDARD CONDITIONS
(April 26, 2018)¹

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¹Updated July 17, 2018 to fix typographical errors.

NPDES PART II STANDARD CONDITIONS
(April 26, 2018)

A. GENERAL REQUIREMENTS

1. Duty to Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA or 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 for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
- b. Penalties for Violations of Permit Conditions: The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (83 Fed. Reg. 1190-1194 (January 10, 2018) and the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note. See Pub. L. 114-74, Section 701 (Nov. 2, 2015)). These requirements help ensure that EPA penalties keep pace with inflation. Under the above-cited 2015 amendments to inflationary adjustment law, EPA must review its statutory civil penalties each year and adjust them as necessary.

(1) Criminal Penalties

- (a) *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than \$2,500 nor more than \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation or by imprisonment of not more than 2 years, or both.
- (b) *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
- (c) *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury shall upon conviction be subject to a fine of not more than \$250,000 or by imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing

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endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in Section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

- (d) *False Statement.* The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- (2) *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).
- (3) *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty as follows:
- (a) *Class I Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).
- (b) *Class II Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).

2. 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

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condition.

3. Duty to Provide Information

The Permittee shall furnish to the Director, within a reasonable time, any information which the Director 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 Director, upon request, copies of records required to be kept by this permit.

4. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from responsibilities, liabilities or penalties to which the Permittee is or may be subject under Section 311 of the CWA, or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

5. Property Rights

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

6. Confidentiality of Information

a. In accordance with 40 C.F.R. Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 C.F.R. Part 2 (Public Information).

b. Claims of confidentiality for the following information will be denied:

- (1) The name and address of any permit applicant or Permittee;
- (2) Permit applications, permits, and effluent data.

c. Information required by NPDES application forms provided by the Director under 40 C.F.R. § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

7. 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. The Permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

8. State Authorities

Nothing in Parts 122, 123, or 124 precludes more stringent State regulation of any activity

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covered by the regulations in 40 C.F.R. Parts 122, 123, and 124, whether or not under an approved State program.

9. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. 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.

2. Need to Halt or Reduce 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.

3. 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.

4. Bypass

a. Definitions

- (1) *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.
- (2) *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

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- (1) *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. As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.
- (2) *Unanticipated bypass.* The Permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e. of this part (24-hour notice). As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or required to do so by law.

d. *Prohibition of bypass.*

- (1) Bypass is prohibited, and the Director 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 preventative maintenance; and
 - (c) The Permittee submitted notices as required under paragraph 4.c of this Section.
- (2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 4.d of this Section.

5. Upset

- a. *Definition.* *Upset* means an exceptional incident in which there is an 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

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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 B.5.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:
 - (1) An upset occurred and that the Permittee can identify the cause(s) of the upset;
 - (2) The permitted facility was at the time being properly operated; and
 - (3) The Permittee submitted notice of the upset as required in paragraph D.1.e.2.b. (24-hour notice).
 - (4) The Permittee complied with any remedial measures required under B.3. above.
- d. *Burden of proof.* In any enforcement proceeding the Permittee seeking to establish the occurrence of an upset has the burden of proof.

C. MONITORING REQUIREMENTS

1. 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 5 years (or longer as required by 40 C.F.R. § 503), 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 Director at any time.
- c. Records of monitoring information shall include:
 - (1) The date, exact place, and time of sampling or measurements;
 - (2) The individual(s) who performed the sampling or measurements;
 - (3) The date(s) analyses were performed;
 - (4) The individual(s) who performed the analyses;
 - (5) The analytical techniques or methods used; and
 - (6) The results of such analyses.
- d. Monitoring must be conducted according to test procedures approved under 40 C.F.R. § 136 unless another method is required under 40 C.F.R. Subchapters N or O.
- e. The Clean Water Act provides that any person who falsifies, tampers with, or

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knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The Permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the 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.

D. REPORTING REQUIREMENTS

1. Reporting Requirements

- a. *Planned Changes*. The Permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - (1) 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 C.F.R. § 122.29(b); or
 - (2) 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 at 40 C.F.R. § 122.42(a)(1).
 - (3) 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 Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

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- c. *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate such other requirements as may be necessary under the Clean Water Act. *See* 40 C.F.R. § 122.61; in some cases, modification or revocation and reissuance is mandatory.
- d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.
 - (1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. As of December 21, 2016 all reports and forms submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by State law.
 - (2) If the Permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 C.F.R. § 136, or another method required for an industry-specific waste stream under 40 C.F.R. Subchapters N or O, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
 - (3) Calculations for all limitations which require averaging or measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.
- e. *Twenty-four hour reporting.*
 - (1) 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 report shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance 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. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combined sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020 all

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reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

- (2) 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. *See* 40 C.F.R. § 122.41(g).
 - (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 Director in the permit to be reported within 24 hours. *See* 40 C.F.R. § 122.44(g).
 - (3) The Director may waive the written report on a case-by-case basis for reports under paragraph D.1.e. of this Section if the oral report has been received within 24 hours.
- f. *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.
- g. *Other noncompliance.* The Permittee shall report all instances of noncompliance not reported under paragraphs D.1.d., D.1.e., and D.1.f. of this Section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph D.1.e. of this Section. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph D.1.e. and the applicable required data in Appendix A to 40 C.F.R. Part 127. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), §122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this Section.
- h. *Other information.* Where the Permittee becomes aware that it failed to submit any

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relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

- i. *Identification of the initial recipient for NPDES electronic reporting data.* The owner, operator, or the duly authorized representative of an NPDES-regulated entity is required to electronically submit the required NPDES information (as specified in Appendix A to 40 C.F.R. Part 127) to the appropriate initial recipient, as determined by EPA, and as defined in 40 C.F.R. § 127.2(b). EPA will identify and publish the list of initial recipients on its Web site and in the FEDERAL REGISTER, by state and by NPDES data group (see 40 C.F.R. § 127.2(c) of this Chapter). EPA will update and maintain this listing.

2. Signatory Requirement

- a. All applications, reports, or information submitted to the Director shall be signed and certified. *See* 40 C.F.R. §122.22.
- b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Availability of Reports.

Except for data determined to be confidential under paragraph A.6. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Director. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statements on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA.

E. DEFINITIONS AND ABBREVIATIONS

1. General Definitions

For more definitions related to sludge use and disposal requirements, see EPA Region 1's NPDES Permit Sludge Compliance Guidance document (4 November 1999, modified to add regulatory definitions, April 2018).

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all, State, interstate, and federal standards and limitations to which a "discharge," a "sewage sludge use or disposal practice," or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," pretreatment standards, and "standards for sewage sludge use or disposal" under Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of the CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by EPA for use in

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“approved States,” including any approved modifications or revisions.

Approved program or *approved State* means a State or interstate program which has been approved or authorized by EPA under Part 123.

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.

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 United States.” 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.

Bypass see B.4.a.1 above.

C-NOEC or “*Chronic (Long-term Exposure Test) – No Observed Effect Concentration*” means the highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organisms at a specified time of observation.

Class I sludge management facility is any publicly owned treatment works (POTW), as defined in 40 C.F.R. § 501.2, required to have an approved pretreatment program under 40 C.F.R. § 403.8 (a) (including any POTW located in a State that has elected to assume local program responsibilities pursuant to 40 C.F.R. § 403.10 (e)) and any treatment works treating domestic sewage, as defined in 40 C.F.R. § 122.2, classified as a Class I sludge management facility by the EPA Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sewage sludge use or disposal practice to affect public health and the environment adversely.

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

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 similar activities.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 *et seq.*

CWA and regulations means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. In the case of an approved State program, it includes State program requirements.

Daily Discharge means the “discharge of a pollutant” measured during a calendar day or any

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other 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 measurements, the “daily discharge” is calculated as the average measurement of the pollutant over the day.

Direct Discharge means the “discharge of a pollutant.”

Director means the Regional Administrator or an authorized representative. In the case of a permit also issued under Massachusetts’ authority, it also refers to the Director of the Division of Watershed Management, Department of Environmental Protection, Commonwealth of Massachusetts.

Discharge

- (a) When used without qualification, *discharge* means the “discharge of a pollutant.”
- (b) As used in the definitions for “interference” and “pass through,” *discharge* means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act.

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.

Discharge of a pollutant means:

- (a) Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source,” or
- (b) Any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any “indirect discharger.”

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of “pollutants” which are “discharged” from “point sources” into “waters of the United States,” the waters of the “contiguous zone,” or the ocean.

Effluent limitation guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise “effluent limitations.”

Environmental Protection Agency (“EPA”) means the United States Environmental Protection

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Agency.

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

Hazardous substance means any substance designated under 40 C.F.R. Part 116 pursuant to Section 311 of CWA.

Incineration is the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

Indirect discharger means a nondomestic discharger introducing “pollutants” to a “publicly owned treatment works.”

Interference means a discharge (see definition above) which, alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (b) 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 Resources Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SDWA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

Land application is the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment and disposal.

LC₅₀ means the concentration of a sample that causes mortality of 50% of the test population at a specific time of observation. The LC₅₀ = 100% is defined as a sample of undiluted effluent.

Maximum daily discharge limitation means the highest allowable “daily discharge.”

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 C.F.R. § 257.2. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, very small quantity generator waste and industrial solid waste. Such a landfill may be

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publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

Municipality

- (a) When used without qualification *municipality* means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of CWA.
- (b) As related to sludge use and disposal, *municipality* means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under State law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management Agency under Section 208 of the CWA, as amended. The definition includes a special district created under State law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in Section 201 (e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use or disposal of sewage sludge.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the CWA. The term includes an “approved program.”

New Discharger means any building, structure, facility, or installation:

- (a) From which there is or may be a “discharge of pollutants;”
- (b) That did not commence the “discharge of pollutants” at a particular “site” prior to August 13, 1979;
- (c) Which is not a “new source;” and
- (d) Which has never received a finally effective NPDES permit for discharges at that “site.”

This definition includes an “indirect discharger” which commences discharging into “waters of the United States” after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a “site” for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a “site” under EPA’s permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Director in the issuance of a final permit to be in an area of biological concern. In determining whether an area is an area of biological concern, the Director shall consider the factors specified in 40 C.F.R. §§ 125.122 (a) (1) through (10).

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An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a “new discharger” only for the duration of its discharge in an area of biological concern.

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.

NPDES means “National Pollutant Discharge Elimination System.”

Owner or operator means the owner or operator of any “facility or activity” subject to regulation under the NPDES programs.

Pass through means a Discharge (see definition above) which exits the POTW into waters of the United States 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).

Pathogenic organisms are disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

Permit means an authorization, license, or equivalent control document issued by EPA or an “approved State” to implement the requirements of Parts 122, 123, and 124. “Permit” includes an NPDES “general permit” (40 C.F.R § 122.28). “Permit” does not include any permit which has not yet been the subject of final agency action, such as a “draft permit” or “proposed permit.”

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Person who prepares sewage sludge is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

pH means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° Centigrade or measured at another temperature and then converted to an equivalent value at 25° Centigrade.

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, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff (see 40 C.F.R. § 122.3).

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials

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(except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

- (a) Sewage from vessels; or
- (b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes is approved by the authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976), *modified* 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of 40 C.F.R. Part 122.

Privately owned treatment works means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a “POTW.”

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 a treatment works as defined by Section 212 of the Act, which is owned by a State or municipality (as defined by Section 504(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

Secondary industry category means any industry which is not a “primary industry category.”

Septage means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

Sewage Sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 C.F.R. Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

Sewage sludge incinerator is an enclosed device in which only sewage sludge and auxiliary fuel are fired.

Sewage sludge unit is land on which only sewage sludge is placed for final disposal. This does

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not include land on which sewage sludge is either stored or treated. Land does not include waters of the United States, as defined in 40 C.F.R. § 122.2.

Sewage sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

Significant materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substance designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Significant spills includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the CWA (see 40 C.F.R. §§ 110.10 and 117.21) or Section 102 of CERCLA (see 40 C.F.R. § 302.4).

Sludge-only facility means any “treatment works treating domestic sewage” whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA, and is required to obtain a permit under 40 C.F.R. § 122.1(b)(2).

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in the regulations which meets the requirements of 40 C.F.R. § 123.31.

Store or storage of sewage sludge is the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.

Surface disposal site is an area of land that contains one or more active sewage sludge units.

Toxic pollutant means 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.

Treatment works treating domestic sewage means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

For purposes of this definition, “domestic sewage” includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under Section 405(f) of the CWA, the Director may designate any person subject to the standards for sewage sludge use and

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disposal in 40 C.F.R. Part 503 as a “treatment works treating domestic sewage,” where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 C.F.R. Part 503.

Upset see B.5.a. above.

Vector attraction is the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

Waste pile or pile means any non-containerized accumulation of solid, non-flowing waste that is used for treatment or storage.

Waters of the United States or waters of the U.S. means:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate “wetlands;”
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands”, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (1) Which are or could be used by interstate or foreign travelers for recreational or other purpose;
 - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) “Wetlands” adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 C.F.R. § 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland.

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Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Wetlands means those areas that are inundated or saturated by surface or groundwater 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 (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Zone of Initial Dilution (ZID) means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards.

2. Commonly Used Abbreviations

BOD	Five-day biochemical oxygen demand unless otherwise specified
CBOD	Carbonaceous BOD
CFS	Cubic feet per second
COD	Chemical oxygen demand
Chlorine	
Cl ₂	Total residual chlorine
TRC	Total residual chlorine which is a combination of free available chlorine (FAC, see below) and combined chlorine (chloramines, etc.)
TRO	Total residual chlorine in marine waters where halogen compounds are present
FAC	Free available chlorine (aqueous molecular chlorine, hypochlorous acid, and hypochlorite ion)
Coliform	
Coliform, Fecal	Total fecal coliform bacteria
Coliform, Total	Total coliform bacteria
Cont.	Continuous recording of the parameter being monitored, i.e. flow, temperature, pH, etc.
Cu. M/day or M ³ /day	Cubic meters per day
DO	Dissolved oxygen

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kg/day	Kilograms per day
lbs/day	Pounds per day
mg/L	Milligram(s) per liter
mL/L	Milliliters per liter
MGD	Million gallons per day
Nitrogen	
Total N	Total nitrogen
NH ₃ -N	Ammonia nitrogen as nitrogen
NO ₃ -N	Nitrate as nitrogen
NO ₂ -N	Nitrite as nitrogen
NO ₃ -NO ₂	Combined nitrate and nitrite nitrogen as nitrogen
TKN	Total Kjeldahl nitrogen as nitrogen
Oil & Grease	Freon extractable material
PCB	Polychlorinated biphenyl
Surfactant	Surface-active agent
Temp. °C	Temperature in degrees Centigrade
Temp. °F	Temperature in degrees Fahrenheit
TOC	Total organic carbon
Total P	Total phosphorus
TSS or NFR	Total suspended solids or total nonfilterable residue
Turb. or Turbidity	Turbidity measured by the Nephelometric Method (NTU)
µg/L	Microgram(s) per liter
WET	“Whole effluent toxicity”
ZID	Zone of Initial Dilution

RESPONSE TO COMMENTS**NPDES Permit # NH0020923
Little Bay Seafood LLC and Lordco Pier Associates
Newington, New Hampshire**

The U.S. Environmental Protection Agency's Region 1 (EPA) is issuing a Final National Pollutant Discharge Elimination System (NPDES) Permit to Little Bay Seafood LLC and Lordco Pier Associates ("LBS" or "the Permittee") for the Little Bay Seafood facility located in Newington, New Hampshire (the Facility). This permit is being issued under the Federal Clean Water Act (CWA), 33 U.S.C., §§ 1251 et. seq.

In accordance with the provisions of 40 CFR §124.17, this document presents EPA's responses to comments received on the draft NPDES Permit # NH0020923 (the "Draft Permit"). The Response to Comments explains and supports EPA's determinations that form the basis of the final permit (the "Final Permit"). From June 4, 2021, through July 21, 2021, EPA solicited public comments on the Draft Permit for the reissuance of a NPDES permit to discharge from Outfall Serial Numbers 002, 003, and 005 to the Piscataqua River.

EPA received comments from St. Germain on behalf of the Permittee, dated July 21, 2021. EPA received no other comments.

Although EPA's decision-making process has benefited from the comments submitted, the information and arguments presented did not raise any substantial new questions concerning the permit that warrants EPA exercising its discretion to reopen the public comment period. EPA did, however, make certain changes in response to the public comments EPA received on the Draft Permit, listed in Part I, below. The analyses underlying these changes are explained in the responses to individual comments in Part II, below, and are reflected in the Final Permit. EPA maintains that the Final Permit is a "logical outgrowth" of the Draft Permit that was available for public comment.

A copy of the Final Permit and this response to comments document will be posted on the EPA Region 1 web site: <https://www.epa.gov/npdes-permits/new-hampshire-final-individual-npdes-permits>.

A copy of the Final Permit may be also obtained by writing or calling Danielle Gaito, U.S. EPA, 5 Post Office Square, Suite 100 (Mail Code: 06-1), Boston, MA 02109-3912; Telephone: (617) 918-1297; Email gaito.danielle@epa.gov.

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I. Summary of Changes to the Final Permit

1. Part I.A.3 footnote 9 of the Final Permit was added to allow the Permittee to request a reduction in monitoring frequency for all pollutants for Outfall 003 (wastewater from lobster holding and grading operations) after 8 quarterly samples. See Response to Comment II.B.2.
2. Part I.A.4 authorizing the discharge from Outfall 003B (truck storage rinse water) was eliminated. References to Outfall 003B and/or truck rinse water were eliminated from Part I.A footnotes 1 and 5 and Part I.B.3.c. The discharge of truck storage rinse water was added as an unauthorized discharge in Part I.B.5. See Response to Comment II.D.4.
3. Part I.A. footnote 1 was revised to clarify that sampling for Outfall 003 shall occur prior to mixing with river water through-flow. Part I.A footnote 5 was revised to identify a different monitoring location for Outfall 003 and to provide an opportunity to request a change in sampling location based on specific information. See Response to Comment II.D.5.
4. Wet weather sampling at Part I.A.1 and footnote 8 was eliminated and the remaining footnotes renumbered. See Response to Comment II.D.6.
5. Part I.A. footnote 10 was revised to reduce the monitoring frequency and to allow the Permittee to automatically cease monitoring at Outfall 005 based on certain sampling results. See Response to Comment II.D.7.
6. Part I.B.2 (Best Management Practices (BMPs)) was revised to be more specific to the activities at LBS. See Response to Comment II.D.8.
7. Part I.B.4 (Optimization of Nitrogen Removal) was eliminated. A requirement was added at Part I.B.3.e to report nitrogen loads as part of the annual certification and to submit the annual certification to EPA and the State in accordance with the reporting requirements at Part I.D.3 by March 15th of the following year. See Response to Comment II.D.9.

II. Responses to Comments

Comments are reproduced below as received from St. Germain; they have not been edited.

A. Introduction

These comments are provided on behalf of Little Bay Seafood LLC and Lordco Pier Associates (LBS-Lordco) regarding the draft National Pollutant Discharge Elimination System (NPDES) permit issued by the U.S. Environmental Protection Agency (EPA) on June 3, 2021, for LBS-Lordco's facility in Newington, New Hampshire. As will be explained below, the draft NPDES Permit imposes excessive and costly monitoring requirements in relation to the amount and type of effluent discharge. Accordingly, LBS-Lordco requests that EPA issue a final permit with

reasonable and achievable requirements that are based on sound science and have a legitimate regulatory justification.

These comments begin by offering general arguments as to why the burdensome monitoring requirements in the draft NPDES Permit are arbitrary and unnecessary. LBS-Lordco then highlights specific objections to a number of the requirements in the draft NPDES Permit and proposes a reasonable alternative requirement to address each of those objections.

Response to Introduction:

EPA maintains that the proposed monitoring requirements in the Draft Permit are necessary to ensure that the effluent authorized to be discharged from the Facility's outfalls will be protective of the water quality in the Piscataqua River. At the same time, EPA has reconsidered the frequency of monitoring for the Final Permit. EPA addresses each of the specific objections to the Draft Permit conditions in detail in the responses below.

B. General Comments

EPA justifies the new long-term, excessive, and costly monitoring requirements included in the draft NPDES Permit as necessary to obtain "data which are representative of the monitored activity" to assess whether permit conditions "may be necessary in the future." Fact Sheet at 10. EPA provides no explanation of why quarterly sampling of pH, Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD), total phosphorus, and oil and grease, and monthly sampling of ammonia nitrogen, total nitrogen, total kjeldahl nitrogen, and nitrate + nitrite, is now necessary to establish sufficiently representative data, after thirteen years of regular annual monitoring. Indeed, EPA already has thirteen years of data submitted every August under the previously issued 2008 permit for many of the parameters listed above utilizing EPA-approved test methods. This data was taken in August of every year, which is the facility's period of maximum production and accordingly represents the worst case. The data submitted to EPA under the previous permit is therefore sufficient to demonstrate that no additional permit conditions are necessary.

Absent evidence that the discharge from LBS-Lordco's operation has an adverse impact on the Piscataqua River or has the reasonable potential to exceed state and federal water quality standards, there is no regulatory or factual basis for the imposition of such excessive monitoring requirements for this license term. In fact, all available evidence—including thirteen years of effluent monitoring data—establish that LBS-Lordco's operation does not have an adverse impact on the Piscataqua River and that there is no reasonable potential to exceed state and federal water quality standards.

Response to General Comments:

The data submitted to EPA under the previous permit is not sufficient to characterize the effluent or to demonstrate that effluent limitations or additional conditions are not necessary to protect water quality. As explained in the Fact Sheet (p. 15), "due to conditional monitoring requirements from the 2008 Permit, recent data is only available for Outfall 003 and limited

parameters at Outfall 002.” Since March 2014 the Permittee has monitored only flow and pH from the baitfish wetting operation at Outfall 002. There is no recent data for the constituents known to be present in the effluent discharged from Outfall 002, including biochemical oxygen demand, total suspended solids, total nitrogen, total phosphorus, or oil and grease, nor has there ever been any monitoring of the effluent associated with rinsing the baitfish storage containers. See Fact Sheet p. 20, Appendix A. The Fact Sheet (p. 20) also explains that the monitoring of the lobster holding effluent at Outfall 003 under the last permit, which was collected at the end of the outfall pipe, is not representative of the effluent. Because the sample was collected after the discharge from the lobster holding activity commingles with the through-flow from the river, and because the effluent flow was substantially diluted in the through flow from the river, the sample was essentially river water and cannot be used to characterize the effluent from the Facility’s operations. In other words, none of the monitoring data collected under the 2008 Permit is sufficient to characterize the levels of pollutants in the effluent from the authorized discharges associated with baitfish wetting, baitfish container rinsing, or lobster holding activities.

EPA has broad authority under the Clean Water Act to impose monitoring requirements on a point source. CWA Section 402(a)(2) provides that the conditions of an NPDES permit may include “conditions on data information collection, reporting, and such other requirements as the Administrator deems appropriate.” CWA Section 308(a) states:

Whenever required to carry out the objective of this chapter, including but not limited to (1) developing or siting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter; (2) determining whether any person is in violation of any such effluent limitation, or other or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter; (3) any requirement established under this section; or (4) carrying out sections 1315, 1321, 1342, 1344 (relating to State permit programs), 1345, and 1364 of this title – (A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such a manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require”

For a permittee to show that “a monitoring requirement exceeds the Agency’s authority under CWA section 308(a), [the permittee] must cite evidence sufficient to support a finding that there is *no* basis for the Agency to require information in the first place.” *City of Springfield*, 18 E.A.D. at 484 (citing *In re City of Port St. Joe & Fla. Coast Paper Co.*, 7 E.A.D. 275, 310 (EAB 1997)); see also *In re Avon Custom Mixing Servs., Inc.*, 10 E.A.D. 700, 709 (EAB 2002) (“Sections 308 and 402 of the CWA bestow upon the Administrator broad authority to require owners and operators of point sources to establish, inter alia, monitoring methods and to prescribe permit conditions for data collection and reporting.”).

As explained in the Fact Sheet (p. 9-10), NPDES permits require routine sampling requirements to provide ongoing, representative information on the levels of constituents in the discharges. Monitoring is necessary to assess the characteristics of the Facility's effluent, to demonstrate that discharges are complying with permit limits, and to determine whether different permit conditions may be necessary in the future to ensure compliance with technology-based and water quality-based standards under the CWA. *See also* NPDES Permit Writers Handbook (p. 8-2, 8-5). The monitoring type, interval, and frequency must be sufficient to yield data that are representative of the activity and the location should be appropriate to ensure compliance with the permit limitations and provide the necessary data to determine the effects of an effluent on the receiving water. EPA explains, both above and in response to the more detailed comments below, that the existing monitoring data is insufficient to characterize the discharges from this Facility because 1) the data is not representative of the current activity; 2) there has been no monitoring required for certain discharges; and 3) the monitoring location has not yielded data representative of the effluent due to high dilution from through-flow of the river. For these reasons, the Final Permit requires effluent monitoring of parameters known to be present in the effluent at a location and frequency that will yield data representative of the activities at the Facility. The effluent monitoring will also ensure that the narrative, technology-based limits in the Final Permit are implemented and effectively control the discharge of pollutants to the receiving water. *See* 40 CFR §§ 122.44(i)(1)(i)-(iii); 40 C.F.R. § 122.41(j)(1); 40 C.F.R. § 122.48(b).

B.1 The Harmless Nature of the Effluent from LBS-Lordco's Operation Does Not Justify the Proposed Monitoring Requirements.

EPA repeatedly states that sampling and analysis of the distinct discharges from LBS-Lordco's operation is necessary to characterize the effluent from each activity, but the majority of the effluent from LBS-Lordco's operation stems from its lobster holding system, which is a natural system with no chemical additives that relies on the natural Piscataqua River seawater to maintain the health of its lobsters. While LBS-Lordco previously processed significant quantities of baitfish, LBS-Lordco has significantly reduced its baitfish wetting operation (which was of most concern to the EPA at the time of last permit issuance). LBS-Lordco's effluent is accordingly innocuous and does not justify the proposed monitoring requirements imposed by EPA. LBS-Lordco's operation primarily involves packing lobsters for sale to wholesale seafood distributors. Lobsters are held in several lobster holding areas that are supplied by an independent, recirculating water system that filters the water using a series of bead/polymide and sand filters. LBS-Lordco's lobster holding system operation is optimized and monitored daily to ensure the water quality of the system will continue to sustain the health and well-being of the lobsters that are brought into the holding tanks for packing and wholesale distribution. LBS-Lordco does not utilize any additives to treat the water, relying instead on the natural Piscataqua River seawater to sustain the lobsters prior to shipment, and LBS-Lordco prides itself on the system's ability to ensure a low mortality rate for lobsters within the facility.

Internal monitoring data collected and recorded on a daily basis reflects the innocuous nature of the discharge from the LBS-Lordco facility. LBS-Lordco has historically conducted daily monitoring on certain characteristics of the water in each of the four tanks in which the lobsters are held for a limited period of time (i.e., approximately 3-5 days in the facility before shipping).

The in-house testing includes temperature, ammonia, salinity, pH, oxygen %, ORP, alkalinity, nitrite, and nitrate. The purpose of this testing is to maintain specific conditions in which to keep the lobsters alive and healthy for shipment. LBS-Lordco is making this data available to the EPA (see Attachment), and although the testing is done for internal purposes, not following approved EPA analytical test methods, the data is indicative of the characteristics of the overflow water from the tanks and crates. The data shows that negligible loadings of nitrogen compounds are present in the discharge based on the average daily discharge of 19,000 gallons per day and, that pH and dissolved oxygen are well within water quality standards for a Class B waterbody.

As EPA itself recognizes in the Fact Sheet, only a small portion of LBS-Lordco's operation involves baitfish wetting. See Fact Sheet at 13. In this process, baitfish are loaded onto a conveyer where they are sprayed with river water from the intake before being coated with salt. The baitfish are then placed in plastic barrels for transport onto lobster boats. Wastewater from the conveyor and from rinsing plastic barrels used to hold bait is discharged. As EPA notes, the current amount of baitfish wetting activity is currently only about 7% of the activity that it was at the time of the 2008 permit, and baitfish wetting activities at LBS-Lordco have continued to decrease by an average of 68% since 2016. Further, herring and menhaden, which are more oily fish, are no longer processed. These operations currently run two days per week, 10 hours per month, as compared to 10 hours per day, five to seven days per week previous to 2016. The volume of water from this activity averages 1,000 gallons per day, which is minor compared to the large municipal and industrial dischargers on the Piscataqua River. EPA states that dilution ratios of the discharge from baitfish wetting are in excess of 100:1. Fact Sheet at 18. Further, the CORMIX modeling performed by the NHDES, as stated in the Fact Sheet of the previous permit, showed that the plume disperses properly and does not "hug" the bottom of the river. Thus, considering the negligible discharge from the baitfish wetting operation, LBS-Lordco's internal data from its lobster holding operation, and prior annual licensing data are sufficient to demonstrate the inherently harmless nature of the facility's effluent.

Response to Comment B.1

The discharges at Outfall 002 have not been monitored since 2014. The comment provides no technical data to demonstrate that the effluent discharged at Outfall 002 is "innocuous." Although EPA acknowledges that the Facility processes significantly less baitfish, the comment confirms that even while significantly reduced effluent from baitfish processing is still discharged from Outfall 002. In fact, because the Facility has not monitored the effluent from Outfall 002 since it ceased processing menhaden and herring species, EPA has no data representative of effluent discharged at Outfall 002.

The 2008 Permit required two monthly composite samples at Outfall 002 (a "short" and "long" period sample) for the first year of the permit term followed by quarterly monitoring. The 2008 Permit required monitoring when LBS was processing Atlantic menhaden or herring to capture "worst-case" conditions. See 2008 Permit Part I.A footnote (2)(e). Monitoring data collected from 2008 to 2014 and data reported in the 2013 permit application confirm the presence of various pollutants, which, at times, occur at relatively high levels including: biochemical oxygen demand (> 1,000 mg/L), total suspended solids (>500 mg/L), nitrogen compounds (>200 mg/L), total phosphorus (>40 mg/L), and oil and grease (>200 mg/L). See AR-1 and Fact Sheet

Appendix C. However, LBS ceased processing these species in March 2014 (though continues to process other species); as a result, there has been no monitoring for Outfall 002 in over seven years.

That LBS discharges primarily effluent from its lobster holding operations via Outfall 003, that it has reduced (but not eliminated) effluent from baitfish processing, or that the receiving water provides significant dilution of the discharge does not change the fact that LBS continues to discharge pollutants from a point source to a water of the U.S. and thus requires a permit under the Clean Water Act. NPDES permits are required to specify monitoring sufficient to yield data which are representative of the monitored activity. 40 CFR § 122.48(b). Monitoring of this effluent is necessary not only to characterize the nature and quantity of pollutants representative of current operations, as there is no current data available, but also to ensure compliance with the non-narrative requirements of the Permit (e.g., best management practices). *See* 40 CFR §§ 122.44(i)(1)(i)-(iii).

EPA proposed changes to the monitoring requirements to reduce the burden on the Permittee while ensuring that the monitoring data is sufficient to yield data representative of the discharges. The Draft Permit reduced monitoring to one quarterly sample for most parameters at Outfall 002, as compared to the two quarterly samples required after the first year of monthly monitoring in the 2008 Permit. *See* 2008 Permit Part I.A footnote (3). The sample type was also changed to grab and the potentially burdensome “long” and “short” composite sampling scheme was eliminated. After the term of this NPDES permit, the monitoring conducted under the Final Permit will provide 20 samples representative of each type of effluent (lobster holding, baitfish processing, and fish storage container rinsing).¹ Given that pollutants are known to be present in the effluent and because there is no current monitoring data representative of the effluent from baitfish processing at the Facility, the Permit’s monitoring requirements are reasonable to provide representative information for making informed decisions during the next permit issuance.

B.2 There is No Need to Increase LBS-Lordco’s Monitoring Parameters to Protect the Quality of the Receiving Water.

Nor is there justification to increase dramatically LBS-Lordco’s monitoring requirements after having an established monitoring procedure for thirteen years in order to protect the quality of the Piscataqua River. EPA describes the lower portion of the Piscataqua River, where the discharge is located as “a well-mixed estuary” with “tidal mixing forces” that “cause the water to be vertically well-mixed. Peak tidal flows are approximately 117,000 cubic feet per second.” Fact Sheet at 16. Although the Lower Piscataqua River – North is listed in the New Hampshire 2018 Impaired Waters List (303(d) list), the pollutants contributing to this listing included dioxin, mercury, and PCBs. As EPA acknowledges, the nature of LBS-Lordco’s discharge “will not contribute dioxin, mercury, or PCBs to the river.” Fact Sheet at 17.

¹ In its comments, the Permittee has elected to eliminate truck rinsing operations. As a result, Outfall 003B was eliminated in the Final Permit. *See* Comment D.4.

To the extent EPA is imposing additional monitoring requirements on LBS-Lordco out of concern for the Great Bay Estuary, the volume of the process water discharge from LBS-Lordco's operation is so inconsequential as to render the additional monitoring requirements unnecessary. The current average volume of the process waters discharged is approximately 19,000 gallons per day, which makes any nitrogen loadings into the Piscataqua River miniscule as compared to other municipally-owned wastewater treatment facilities and industrial discharges along the Piscataqua River located both upstream and further downstream into the Great Bay Estuary. Accordingly, there is no need to impose such onerous monitoring requirements on LBS-Lordco to protect the quality of the Piscataqua River.

Response to Comment B.2

The comment asserts that the Draft Permit monitoring requirements in the Draft Permit increased "dramatically." The 2008 Permit required quarterly monitoring of the effluent from baitfish processing at Outfall 002. The Final Permit retains this monitoring frequency and, as explained in Response to Comment B.1, has decreased the number of samples for this effluent by eliminated the short- and long-term composite requirements. The monitoring of effluent from the baitfish container rinsing operations in the Final Permit is an increase over existing, 2008 Permit requirements because that wastestream has never been monitored. This monitoring is necessary because the Facility discharges effluent with pollutants from this activity and there is no current data to evaluate the potential for levels of pollutants in the discharge to impact the receiving water quality.

EPA agrees that the effluent is unlikely to contain PCBs, dioxin, or mercury and, as such, unlikely to contribute to the impairments of these pollutants in the receiving water. However, NPDES Permits establish controls for all pollutants discharged to the receiving water, not only those pollutants identified as a cause of an impairment in its 303(d) list. *See In re City of Taunton*, 17 E.A.D. 105, 142-43 (EAB 2016) (citing 40 CFR § 122.44(d)(1)(i)). Not only do NPDES regulations require a precautionary approach to avoid exceedances of WQS, but EPA has an independent obligation under CWA § 301(b)(1)(C) to include an effluent limit if the Region reasonably believes it is necessary to achieve water quality standard. *In re Town of Newmarket*, 16 EAD 182, 229 (EAB 2013); *In re Dominion Energy Brayton Point, LLC*, 12 EAD 490, 631-33 (EAB 2006). The monitoring required in the Permit will inform future analyses and permitting decisions and ensure that the receiving water quality is protected.

The Draft Permit proposed to increase monitoring frequency for the lobster holding effluent from annually to quarterly. Again, as explained in Response to General Comments and in Response to Comment B.1, the existing data for Outfall 003 is not representative of the effluent from the activity at LBS because the monitoring location at the end of pipe and the operation of the intake, which pumps much more river water through the outfall than is used in the system, results in a highly diluted sample that is essentially river water. At the same time, EPA recognizes that the nature of the effluent, which must be of high enough quality to support keeping the lobsters alive and healthy, and the treatment system, which is designed to reduce levels of certain pollutants, both have the potential to minimize pollutants in the effluent. Attachment A to the Permittee's comments included the results of monitoring required by LBS outside of the NPDES permit. While this data does not satisfy the sufficiently sensitive method requirements of 40 CFR §§

122.21(e)(3), 122.44(i)(1)(v), and 136.1(c), the data suggests that effluent typically meets water quality standards for pH, dissolved oxygen, and percent oxygen saturation. *See also* Fact Sheet pp. 9-10. Levels of ammonia, nitrate, and nitrite are generally low but the minimum levels of the test methods are not identified. Given this information and considering the nature of the effluent, EPA revised the Final Permit to require quarterly monitoring for the first two years of the permit term followed by annual monitoring.

Finally, the comment reiterates its assertion that the dilution of the receiving water is such that monitoring of the effluent from LBS is “inconsequential.” As EPA explains in responses to comments above, monitoring of the effluent is necessary both to characterize the nature and quantity of pollutants representative of current operations and to ensure compliance with the non-narrative permit limitations. *See* 40 CFR §§ 122.44(i)(1) and 122.48. Part I.A.6-10 of the Final Permit requires that the effluent meet certain narrative water quality standards and Part I.C.2 requires implementation of certain best management practices (BMPs) to minimize the discharge of pollutants to the receiving water, including, but not limited to good housekeeping measures and use of pollution control equipment (e.g., corrosion resistant screen). Monitoring of the effluent, including TSS, nutrients, and oil and grease, will assist EPA to ensure that the BMPs are effective to reduce pollutants in the effluent. Without representative monitoring, there will be no way to determine if the Permittee has implemented these required practices.

C. Clean Water Act (CWA) Regulations Demonstrate That It Is Not Necessary to Impose New Monitoring Requirements for LBS-Lordco’s Baitfish Wetting and Lobster Holding Operations.

Baitfish wetting and lobster storage/holding are not regulated industrial activities under either the EPA’s Effluent Limitations Guidelines (ELGs) or Stormwater Multi-Sector General Permit (MSGP). EPA promulgated technology-based effluent ELGs for the Seafood Processing for the Canned and Preserved Seafood point source category at 40 CFR Part 408, and in 2004 for the Concentrated Aquatic Animal Production point source category at 40 CFR Part 451. Neither of these point source categories include ELGs specific to the activities at the LBS-Lordco facility—specifically baitfish wetting or live lobster holding. The EPA’s technical development documents for these subcategories of industrial activities focused on specific discharges of concern and excluded discharges such as river water through-put systems for lobster holding.

As noted above, ELGs are technology-based standards and are developed based on extensive research of the operations involved in these specific industrial sectors, including the raw materials introduced into specific processes, and the collection and evaluation of data from existing facilities utilizing current technology; the results of which are documented in a technical development document for each industry subcategory and were reviewed in detail for preparation of these comments. The fact that this research has already been conducted and that EPA concluded that processes like LBS-Lordco’s were found to be insignificant compared to other facilities for which technology-based standards were developed, proves that there is no basis to impose the new monitoring requirements set forth by the EPA in this draft NPDES Permit.

Response to Comment C.

The comment asserts that EPA has no basis to impose “new” monitoring requirements in the Draft Permit because “processes like LBS-Lordco’s were found to be insignificant compared to other facilities for which technology-based standards were developed.” First, EPA notes that the majority of the monitoring requirements in the Final Permit are not new as the current NPDES permit for LBS also requires monitoring of the various discharges. Second, EPA has explained the basis for the proposed monitoring requirements in the Fact Sheet and in Responses to Comments A and B, above.

This comment asserts that monitoring requirements are not supported because the activities at LBS are not subject to technology-based requirements in effluent limitations guidelines (ELGs).² The comment states that “EPA’s technical development documents for these subcategories of industrial activities...excluded discharges such as river water through-put systems for lobster holding.” First, NPDES permits are not required only for specific activities regulated by ELGs. It is unlawful for any person to discharge any pollutant into waters of the United States from any point source, except as authorized by specific section of the CWA, one of which is § 402 (NPDES). *See* CWA §§ 301(a), 402(a). *See also* Fact Sheet p. 4. The Fact Sheet (p. 5) explains that EPA establishes technology-based effluent limitations in Effluent Limitations Guidelines. *See* CWA § 402(a)(1). In the absence of ELGs, permit writers establish technology-based effluent limitations on a case-by-case basis using best professional judgment. *See* CWA § 402(a)(1)(B) and 40 CFR § 122.44(a)(1). The fact that there are no ELGs for the specific wastewater discharges from LBS does not preclude EPA from establishing requirements on a case-by-case basis.³ In addition, the comment does not include any specific reference to support its statement that “river water through-put systems for lobster holding” was *excluded* from consideration in the ELGs referenced in the comment or that, even if this were true, how that justification would extend to entirely separate wastestreams (i.e., the baitfish wetting and container rinsing activities). EPA was unable to find any explanation in the ELGs that would support the comment’s assertion that “EPA concluded that processes like LBS-Lordco’s were found to be insignificant compared to other facilities for which technology-based standards were developed.” There is no basis for commenter’s inference that the omission of its industrial practice from any applicable ELG indicates EPA concluded its activity is somehow outside the scope of the Clean Water Act’s permit requirement. EPA maintains that the monitoring requirements proposed in the Draft Permit are reasonable and warranted given the lack of existing, representative effluent data for this Facility and the presence of certain pollutants in the discharges. *See* Response to Comment D.1, D.2, and D.3.

Regarding the effluent from the lobster holding operation, pollutant levels in the effluent may be relatively low given that the lobsters are held for a short period of time and are not fed. However, the current monitoring data was collected at the point of discharge after the effluent combined with a far larger volume of river water within the outfall. As such, there is no data representative of the lobster holding effluent to determine the levels of pollutants in the effluent or to make an

² The Fact Sheet (p. 15) explains that LBS is not subject to EPA’s Multi-Sector General Permit and the Final Permit does not impose any conditions or requirements on stormwater discharges from the site. *See also* Response to Comment D.6.

³ Nor does it relieve EPA from gathering information to fulfill its obligation to establish more stringent requirements as necessary to meet state or federal water quality standards. *See* CWA § 301(b)(1)(C) and 40 CFR §§ 122.44(d)(1), 122.44(d)(5), 125.84(e), and 125.94(i). *See also* Fact Sheet p. 5.

informed regulatory decision. The proposed monitoring will provide a sufficient amount of data to evaluate this issue and make an informed decision for the next permit. EPA may decide that this wastestream does not need authorization in the next permit term if the data supports such a decision. EPA cannot, however, make an informed regulatory decision without adequate data.

D. SPECIFIC OBJECTIONS AND PROPOSED ALTERNATIVE REQUIREMENTS

D.1 Monitoring of BOD and TSS

Given the characteristics and quantity of the effluent from LBS-Lordco's facility, there is no rational basis for requiring monitoring of BOD and TSS. Baitfish wetting operations, the only part of LBS-Lordco's operation that could potentially form the basis for the need to monitor BOD and TSS, have been reduced to just 7% of the activity levels that were being conducted in 2008. While the previously issued permit included BOD and TSS monitoring requirements, the CWA's anti-backsliding requirement would not prohibit a decision to exclude monitoring now. Anti-backsliding requires that EPA impose effluent limitations at least as stringent as the previously issued effluent limitations. 40 C.F.R. § 122.44(l). "Effluent limitation" refers to limitations on quantities, discharge rates, and concentrations of pollutants. 40 C.F.R. § 122.2. The 2008 permit only imposed monitoring requirements for BOD and TSS, not numerical limitations. Even if the BOD and TSS monitoring requirements were considered to be an "effluent limitation," exclusion of BOD and TSS monitoring falls within an exception to the anti-backsliding requirement due to the recent significant reduction in LBS-Lordco's baitfish wetting operation and the availability of six years of information relating to BOD and TSS loads since the 2008 NPDES Permit. See 40 C.F.R. § 122.44(l)(2)(i).

Because there is no rational basis for requiring LBS-Lordco to monitor BOD and TSS, LBS-Lordco requests that EPA eliminate the requirement to monitor BOD and TSS.

Response to Comment D.1

Available monitoring data for baitfish processing effluent at Outfall 002 between 2008 and 2014 demonstrates that effluent contains TSS and BOD at levels ranging from 16 to 670 mg/L and 13 to 1,700 mg/L, respectively. Monitoring data prior to 2014 demonstrates that baitfish wetting effluent contains both pollutants, at times, in relatively high concentrations. *See* Fact Sheet pp. 19, 21. The relatively low volume of effluent and available dilution suggest that water quality standards in the Piscataqua River are likely to be met and that numeric water quality-based effluent limits would not be necessary based on the current information. For this reason, EPA proposed narrative, technology-based conditions in the form of best management practices (BMPs) to control the discharge of pollutants, including continuing the 2008 Permit's requirement to use a corrosion-resistant screen at the catch basin to Outfall 002. *See* Fact Sheet p. 20. *See also* Response to Comment D.8.

Continued monitoring will confirm that TSS and BOD in the effluent remain at levels that meet water quality standards. In addition, the Final Permit requires implementation of good housekeeping measures to ensure that the areas exposed to the discharges (e.g., the impervious surface near the Outfall 002 catch basin and the floors in the lobster holding areas) are maintained to minimize the potential for the effluent to pick up pollutants, including TSS, from

these surfaces. Monitoring of BOD and TSS, among other pollutants, will also demonstrate that the BMPs are effectively implemented.

These technical rationales form the basis for maintaining the monitoring requirements, not anti-backsliding as the comment suggests. Accordingly, the arguments regarding anti-backsliding are irrelevant to these permit provisions.

D.2 Outfall Serial No. 002 (Baitfish Wetting Wastewater and Baitfish Storage Rinse Water)

As discussed above, LBS-Lordco's baitfish wetting activities have decreased by an average of 93% since 2008 (and 68% since 2016). Herring and menhaden are no longer processed. These operations currently run two days per week, 10 hours per month, as compared to 10 hours per day, five to seven days per week previous to 2016. The volume of water from this activity averages 1,000 gallons per day. Further, based on current operations, approximately 50,000 gallons per year is discharged from the rinsing of baitfish barrels. The baitfish storage rinse operation is conducted seven days/week year-around. A total of up to 137 gallons of water per day are discharged from the baitfish storage rinse water operation. These amounts are insignificant and cannot be used as a basis for establishing reasonable potential to exceed water quality standards. The quantity of effluent from baitfish operations would not have an influence on any water quality model.

Due to the insignificant nature of the baitfish wetting operations, LBS-Lordco requests that EPA reduce the monitoring of discharges from Outfalls 002A and 002B to once per year, for a period of two years, after which LBS-Lordco would only report quarterly pH and monthly flows.

Response to Comment D.2

LBS continues to process between about 6,500 and 39,000 pounds of baitfish per month and discharges effluent associated with baitfish processing. As explained in the Fact Sheet (p. 19) and in this Response to Comments, LBS has not conducted any monitoring of the baitfish effluent since early 2014 when the Facility ceased processing herring and menhaden. A condition of the 2008 Permit was that effluent monitoring at Outfall 002 would occur when LBS was processing one of these two species. This condition was based on limited data available at the time of issuance that suggested peaks in certain pollutants tended to occur with these species. To be clear, the Facility was in compliance with its current NPDES permit during this period. EPA did not anticipate that LBS would cease processing these species and, as a result, would not collect any monitoring data from Outfall 002 for many years.

The comment can be summarized as stating that the discharge from Outfall 002 is de minimis and therefore should not be subject to CWA permit requirements. It is well established, however, that there is no de minimis discharge exception to the CWA. *See Sierra Club v. City & Cty. of Honolulu*, 2008 WL 3850495, at *10 (D. Haw. Aug. 18, 2008); *International Union v. Amerace Corp., Inc.*, 740 F. Supp. 1072, 1083, 32 ERC 1790 (D.N.J.1990); *Connecticut Fund for the Environment v. Upjohn Co.*, 660 F. Supp. 1397, 1416, (D. Conn. 1987).

The monitoring in the Final Permit is necessary to quantify the levels of pollutants in effluent to determine whether a limitation is necessary to control pollutants where there is reasonable potential to cause or contribute to an exceedance of water quality standards pursuant to 40 CFR § 122.44(d)(1)(i). If the data collected in compliance with the Final Permit demonstrates that there is no reasonable potential for pollutants to cause or contribute to an exceedance of water quality standards, EPA may choose to reduce or eliminate monitoring of certain parameters in the future.

During the March 2021 site visit, EPA observed that LBS rinses baitfish storage containers and discharges the rinse water via Outfall 002. This discharge was previously included in its NPDES permit. This discharge is also likely to contain pollutants, including TSS. The Final Permit's quarterly monitoring requirements represent the first attempt to characterize the levels of pollutants in this discharge.

D.3 Outfall Serial No. 003A – Wastewater from Lobster Holding and Grading Operations

LBS-Lordco historically conducted daily monitoring on certain characteristics of the water in each of the four tanks in which the lobsters are held for a limited period of time (estimated 3 – 5 days in the facility before shipping). The in-house testing includes temperature, ammonia, salinity, pH, oxygen %, ORP, alkalinity, nitrite and nitrate. The purpose of this testing is to maintain specific conditions with which to keep the lobsters alive and healthy for shipment. LBS-Lordco is making this data available to the EPA (see Attachment). The data is indicative of the characteristics of the overflow water from the tanks and crates.

Based on the current average volume of the process waters discharged (approximately 19,000 gallons per day), the loadings into the Piscataqua River are inconsequential, and pose no risk of adverse impact, especially when compared to municipally-owned wastewater treatment facilities and industrial discharges along the Piscataqua River located both upstream and further downstream into the Great Bay Estuary.

As such, LBS-Lordco requests that EPA require quarterly sampling for the parameters for a period of one year, after which all but monthly pH and daily flow reporting requirements will be eliminated.

Response to Comment D.3

Attachment A to the Permittee's comments included the results of monitoring conducted by LBS but not required by the NPDES permit. While this data does not satisfy the sufficiently sensitive method requirements of 40 CFR §§ 122.21(e)(3), 122.44(i)(1)(v), and 136.1(c), the data suggests that effluent typically meets water quality standards for pH, dissolved oxygen, and percent oxygen saturation. *See also* Fact Sheet pp. 9-10. Levels of ammonia, nitrate, and nitrite are also generally low, although the minimum levels of the test methods are not identified. At the same time, the samples are collected from the crate pool for System A and from the pumps for systems B, C, and D. The sampling location appears to be after treatment and may not represent levels of pollutants directly from the crates. In addition, the effluent from the lobster holding crates that flows across the floor and into the outfall drain may be exposed to additional pollutants that would not be captured by the data presented.

The data provided in Appendix A to the comments suggests that the effluent quality is likely to be high and relatively consistent, given that the water must be of high enough quality to keep the lobsters alive and healthy. However, neither the data collected in accordance with the 2008 Permit at the end of the outfall pipe (which is so dilute as to be essentially river water) nor the data collected by the Facility for other purposes is clearly representative of the effluent from the lobster holding operation for the purposes of determining whether the Facility's BMPs are effective or whether additional conditions are necessary. At the same time, considering the nature of the effluent, EPA revised the Final Permit to allow the Permittee to request a reduction in monitoring frequency after the eight quarterly samples. EPA expects that eight quarterly samples will be sufficient to determine if continued quarterly monitoring is necessary or if less frequent monitoring (e.g., annually) is warranted.

The commenter's references to municipal and industrial dischargers to the receiving water are not relevant to the question of what is the appropriate monitoring EPA requires in order to understand the nature and impact of the Permittee's discharge. Although other discharges to a receiving water may be relevant in other CWA contexts, for example in setting waste load allocations under a Total Maximum Daily Load, that is not the case when setting monitoring requirements. Additionally, it obviously is not and cannot be the case that permit-issuers are constrained from imposing any permit requirements on a discharger if they so happen to discharge less than some other discharger to the receiving water.

D.4 Outfall Serial No. 003B – Wastewater from Truck Storage Rinse Water

The truck rinsing activity will be discontinued. LBS-Lordco requests the removal of Outfall 003B from this draft NPDES Permit.

Response to Comment D.4

The Permittee confirms that truck rinsing activity at the Facility will be discontinued. Therefore, there will be no effluent from truck washing operations and the conditions and requirements for Outfall 003B have been eliminated in the Final Permit. To ensure that effluent from this activity is not discharged, EPA revised Part I.B.4 of the Final Permit to extend the prohibition on truck washing to include truck rinsing activity.

D.5 Routine sampling program (Footnote 1 of draft NPDES Permit)

EPA is requiring the collection of samples from Outfall 003 prior to co-mingling with any other waste stream. It is not operationally possible for LBS-Lordco to comply with this requirement with respect to the lobster holding tank discharges, however, because the holding tanks discharge via a hard-piped system to Outfall 003.

To satisfy EPA's request that samples be taken prior to co-mingling with other waste streams, LBS-Lordco requests that EPA allow LBS-Lordco to collect individual grab samples from each of the four lobster holding tanks and composite them for analysis.

Response to Comment D.5

During the site visit and in subsequent discussions with the Permittee, EPA understood that the primary discharge from the lobster operation is from the lobster crates to Outfall 003 via floor drains in each of the holding areas. When a crate is moved for packaging, the water in the crate spills out and into the drain. A secondary source of effluent from the lobster operation to Outfall 003 is via the standpipe in each of the four reservoir collection tanks for the lobster recirculating system. *See* Fact Sheet p. 12, Figure 4. Based on this understanding, the water discharged from the lobster crates as they are transported to the packaging room is most representative of the effluent discharged to Outfall 003. The Draft Permit (footnotes 1 and 5) proposed a sampling location from the drain to Outfall 003 in order to ensure that effluent is representative of the lobster holding operation prior to mixing with the river water through-flow⁴ (i.e., prior to comingling with any other wastestream).

The comment indicates that sampling of effluent from the lobster holding system at Outfall 003 prior to comingling with any other wastestream is impossible because the discharge is “hard-piped” to the outfall. The comment requests that a representative sample be collected as a composite from individual grab samples of the four lobster holding tanks (i.e., the reservoirs that collect the water after exposure to the lobsters for treatment and recirculation. The 2008 Fact Sheet describes the tanks as “a reservoir, holding 140,000 gallons of saltwater.” *See* AR-3, p. 4. The Permittee estimates elsewhere in this Response to Comment document that about 19,000 gallons of water is discharged to Outfall 003 for the lobster activity on a daily basis, which is a fraction of the water held in the reservoirs. EPA is concerned that a sample from the reservoirs may not be representative of the levels of pollutants in the discharge directly from the lobster crates because the sample is diluted by the larger volume of recirculating water in the reservoir and there may be some level of settling that occurs in the reservoirs. At the same time, EPA acknowledges the unique layout of this system and the challenges it presents in obtaining a representative sample prior to comingling with any other wastestream.

Based on EPA’s understanding of the system, the optimal sampling location would be from the effluent that drains directly from the lobster crates. EPA believes that a composite effluent sample could be created from three grab samples collected beneath the stack of lobster crates in Areas B, C, D and a grab sample from the tank in Area A. EPA revised the Final Permit consistent with this preferred monitoring location. In addition, EPA added additional flexibility which allows the Permittee to demonstrate, based on a minimum of 6 quarterly samples, that a grab sample of the lobster holding tank in Area A is substantially similar to grab samples from the other lobster holding areas. For example, the Permittee could perform a comparison of 6 quarterly samples from all four lobster areas to demonstrate that the types, range, and average values of pollutant in the lobster tank effluent are equivalent to the pollutants in the effluent from the other lobster holding areas and that, as a result, the lobster tank effluent is substantially identical to the other areas. The Final Permit authorizes a change in sampling location to a single grab sample from Tank A after such a demonstration and upon written authorization from EPA.

⁴ The Draft Permit also intended that the effluent for the lobster holding activity be collected prior to mixing with any truck rinse water (Outfall 003B). Comment D.4 confirms that the Permittee has eliminated Outfall 003B (truck rinse water) at the Facility and the Final Permit was revised to reflect this change.

D.6 Outfall 002A Wet Weather Sampling

Based on their SIC code, 5146, the LBS-Lordco facility is not subject to EPA's stormwater requirements. As EPA notes, "EPA has determined that stormwater discharges at LBS-Lordco do not present a significant source of pollutants that would violate water quality standards and do not warrant additional stormwater-specific controls." Fact Sheet at 15. The characteristics of the stormwater at LBS-Lordco's facility will not be dissimilar to those in the baitfish wetting activities, which EPA is requiring LBS-Lordco to monitor separately in the draft NPDES Permit.

LBS-Lordco therefore requests elimination of this requirement from this draft NPDES Permit.

Response to Comment D.6

Stormwater discharges at this Facility have been regulated under the NPDES program in the past, including under the 2001 Multi Sector General Permit (NHR05A495) and in the 2008 Permit. At the time, the stormwater was classified under the Miscellaneous Food Preparations and Kindred Products sector. For this permitting action, the Fact Sheet (p. 15) explains that stormwater at LBS is covered by the NPDES permit because SIC code that best characterizes the current activity at LBS, 5146 ("fish and seafoods"), is not included in any of the categories described as stormwater associated with industrial activity in 40 CFR § 122.26(b)(14)(i) – (ix).⁵ See also CWA § 402(p)(2)(B). The proposed wet weather monitoring in the Draft Permit was intended to demonstrate that the narrative provisions of the Draft Permit (i.e., BMPs) were effectively minimizing pollutants even when processing is not occurring. However, in response to the comment EPA determined that the monitoring requirements during baitfish wetting and container rinsing will demonstrate compliance with the narrative provisions of the permit. EPA revised the Final Permit to eliminate the twice-yearly wet weather monitoring requirements.

D.7 Outfall 005 Measurement Frequency

The draft NPDES Permit proposes three years of quarterly testing for Volatile Organic Compounds, with a condition that allows LBS-Lordco to request a reduction in frequency or elimination of the monitoring requirement after 12 quarters. This requirement is unnecessary because it stems from legacy remediation that was completed at the time of the last permit renewal in 2008.

LBS-Lordco requests elimination of this requirement for monitoring Outfall 005 from this draft NPDES Permit.

Response to Comment D.7

The 2008 Permit required three grab samples for VOCs at Outfall 005 (in the fourth quarter of 2008, and the second and third quarters of 2009). See 2008 Permit Part I.A footnote (9). DMR

⁵ Nor were stormwater discharges at LBS regulated by an individual permit prior to 1987. CWA § 402(p)(2)(A).

data submitted for the last permit demonstrates that VOCs were detected at a concentration of 14.6 µg/L in a single grab sample collected during the third quarter of 2009, which is higher than the human health criteria. *See* Fact Sheet p. 24-25. No data was reported during the quarter ending in December 2008 and an NODI code (“9” for “conditional sampling, not required”) was reported for the quarter ending in June 2009. A sample for pH was collected during the quarter ending in June 2009. The Permittee did not comply with the requirement to obtain three quarterly samples of VOCs at Outfall 005.

At the March 2021 site visit, LBS indicated that, because the outfall is not sealed, there may be an occasional discharge and that it would explore the possibility of permanently sealing the outfall. There is no data to characterize the current discharge from Outfall 005, but the limited available data demonstrates the presence of VOCs in the past. There is insufficient evidence to conclude that VOCs are no longer discharged from Outfall 005 or that the remediation referenced in the comment adequately addressed the issue. Therefore, the Draft Permit proposed monitoring and, based on the results, authorized the Permittee to request a reduction in frequency or elimination during the permit term. In response to this comment, EPA revised the Final Permit to reduce the burden on the Permittee in the event that no VOCs or oil and grease are detected. Part I.A footnote 9 in the Final Permit automatically eliminates monitoring of the discharge from Outfall 005 if no VOCs are detected after 8 consecutive sampling events. The eight consecutive sampling events shall coincide with a discharge from Outfall 005 and may not necessarily occur over eight consecutive quarters. In accordance with Part I.A. footnote 2 of the Permit and 40 CFR § 122.44(i)(1)(iv), monitoring must be conducted using sufficiently sensitive test procedures approved under 40 CFR Part 136.

At the same time, the Permittee may still eliminate all sampling requirements by terminating the discharge. Permanently removing all discharges from this outfall remains EPA’s preferred option if feasible. Terminating the outfall can be achieved through a minor modification under 40 CFR § 122.63(e)(2).

D.8 Best Management Practices (BMPs)

The BMPs listed in the draft NPDES Permit are typically imposed on facilities that are subject to federal stormwater pollution prevention permitting under the MSGP (which this facility is not) or are imposed to address specific potential pollutant sources outside their facilities that could be exposed and potentially contaminate point source stormwater discharged into waters of the U.S. The requirements in the draft NPDES Permit are imposed on operations internal to the facility, which is unreasonable and burdensome to LBS-Lordco.

LBS-Lordco requests elimination of the requirement to develop and document BMPs from the draft NPDES Permit.

However, to the extent that the EPA is agreeable to reducing the monitoring requirements as proposed in the above sections, LBS-Lordco proposes the following BMPs as acceptable and reasonable:

- a. In order to minimize solids from baitfish wetting and container rinsing operations, the permittee will implement procedures for routine preventive maintenance of the catch basin screens.*
- b. In order to minimize the discharge of accumulated solids from holding tanks, the permittee shall implement procedures for routine cleaning of holding tanks which shall minimize the discharge of any accumulated solids during the inventorying, grading, and packaging of lobster for shipment.*
- c. The permittee shall remove and dispose of lobster mortalities properly on a regular basis to prevent discharge to waters of the U.S.*
- d. The permittee shall inspect the holding tanks and wastewater treatment system on a routine basis in order to identify and promptly repair any damage.*
- e. The permittee shall conduct regular maintenance of the holding tanks and river water intake and outfalls to ensure their proper function.*

Response to Comment D.8

The Draft Permit did not propose any numeric effluent limitations at LBS. Instead, the Draft Permit proposed narrative, technology-based limitations in the form of BMPs. CWA Section 402(a)(2) provides that “[t]he Administrator shall prescribe conditions for such permits...including conditions on data and information collection, reporting, and such other conditions as he deems appropriate.” The Fact Sheet (pp. 25-6) explains that best management practices (BMPs) are incorporated into a permit on a case-by-case basis in specific circumstances where it is determined that they are necessary to achieve effluent limitations and standards or to carry out the purpose and intent of the CWA under § 402(a)(1). EPA regulations enumerate the circumstances where BMPs are authorized to control or abate the discharge of pollutants: 1) authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities; 2) authorized under CWA § 402(p) for the control of stormwater discharges; 3) numeric effluent limitations are infeasible; or 4) the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA. 40 CFR §§ 122.44(k)(1)-(4). The primary basis for inclusion of non-numeric limitations in this permit are that BMPs are necessary to carry out the purposes of the Act

Implementation of BMPs proposed in the Draft Permit is a reasonable approach for this Facility to prevent or minimize pollutants from being picked up as the effluent travels across paved areas and floors. The baitfish wetting and fish storage container rinsing operations are conducted outside and the wastewater drains from the site of the activity directly into a catch basin. While the end of the baitfish wetting conveyer is situated over the catch basin, there may be additional rinse water that flows over a paved area and into the catch basin. In addition, rinse water from the fish storage containers flows over the paved area and into the catch basin. BMPs to ensure that the paved areas are kept clean and using a screen over the catch basin will reduce the potential for additional pollutants from these exposures. Some of the BMPs may be similar to

those typically required for controlling stormwater discharges because, as EPA explained above, the effluent at LBS flows over paved areas and is exposed to sources of pollutants in a manner similar to stormwater runoff. As EPA understands, most of the effluent from the lobster packaging operation does not come from the reservoirs serving the recirculating system but is discharged from the lobster crates, over the floor, and into drainage basins to Outfall 003 when the crates are moved from the holding areas to the packaging areas. BMPs that ensure the floors are kept clean will reduce the potential for additional pollutants to be discharged as the lobster holding water flows into the drains to Outfall 003. *See also* Response to Comment D.5. The Fact Sheet (p. 26) explains that the BMPs are also intended to ensure that the controls already in place at the Facility (i.e., the screen over the catch basin and recirculating system) are maintained in proper working order.

While EPA maintains that BMPs are a reasonable approach to address pollutants at LBS, EPA reviewed the proposed BMPs in the Draft Permit in response to the comment. First, EPA revised the Final Permit to eliminate the proposed BMPs to implement spill prevention and response procedures (Part I.C.2.e) and to minimize dust generation (Part I.C.2.g). These BMPs are standard in stormwater permits but are not relevant for the discharges regulated under this Final Permit. LBS receives shipments of baitfish and prepares lobsters for shipping, neither of which are likely to result in spills or dust generation.

Next, EPA reviewed the alternative BMPs proposed in the comment. The alternative BMPs proposed by the Permittee in the comment are generally consistent with, though somewhat more specific than, certain BMPs in the Draft Permit. For example, alternative “a” in the comment proposes to implement procedures for routine preventative maintenance of the catch basin screens. Part I.C.2.d in the Draft Permit proposed that the Permittee implement procedures for routine preventative maintenance of pollution control equipment more generally. Alternative “b” in the comment proposes a BMP for routine cleaning of the holding tanks. Part I.C.2.a in the Draft Permit proposed that the Permittee maintain control measures to minimize the discharge of solids, among other pollutants. EPA acknowledges that the BMPs in the comment are generally more site-specific than those proposed in Part I.C.2 of the Draft Permit. The Final Permit could be revised to use language specific to the practices and operations at the Facility. However, the BMPs in the comment eliminate the more general housekeeping efforts designed to maintain areas exposed to the effluent, including the area around the catch basin and the floors of the lobster holding areas to minimize any addition of pollutants such as TSS or nutrients. A similar requirement was included in Part I.A.10 of the 2008 Permit (“The permittee shall keep the area around Outfall 002 storm drain free from any kind of debris, fish parts, or pollutants that would flow through the storm drain leading to Outfall 002”). A similar BMP to keep areas exposed to effluent clean is necessary to ensure that the Final Permit is as stringent as the 2008 Permit.

Considering the comment and upon review of the draft BMPs, EPA revised the Final Permit to be more specific about how and where the BMPs apply. Part I.C.2 includes the following revised BMPs:

- a. Design and maintain operational and structural measures (i.e., catch basin screens) to minimize the discharge of pollutants such as total suspended solids, floating solids, foam, visible oil sheen, and settleable solids in discharges associated with lobster holding,

- baitfish wetting, and rinsing operations to the receiving water. Control measures must be used in accordance with good engineering practices and manufacturer's specifications.
- b. Maintain a corrosion resistant screen or other filter to prevent solids from entering the catch basin draining to Outfall 002 during baitfish wetting and fish container rinsing.
 - c. Design and maintain good housekeeping measures to control potential sources of pollutants and keep the area's of the Facility exposed to effluent flow free of debris, fish scales, or fish parts;
 - d. Implement preventative maintenance programs for pollution control (e.g., cleaning screens at catch basins to prevent solids from being discharged, cleaning interior floors exposed to lobster holding water flows) to ensure that equipment is maintained, and to avoid releases of pollutants to receiving waters;
 - e. Implement procedures to remove and dispose of lobster mortalities in a timely manner and respond to spills and leaks if or when they occur;
 - f. Perform routine inspections of the control measures, discharge points, and areas where materials (e.g. fish and lobster, cleaning agents) or activities are exposed to effluent flows;
 - g. Develop standard procedures for handling solids and other wastes collected from cleaning catch basin screens and lobster holding equipment.

D.9 Optimization of Nitrogen Removal

LBS-Lordco understands the EPA's present concerns with nitrogen loadings to the Piscataqua River and adverse impacts on the Great Bay Estuary. However, the rapid throughput of lobster at this facility and low volume of flow from both baitfish wetting, container rinsing, and lobster holding operations are insignificant in comparison to the large municipal wastewater treatment systems and other industrial facilities that discharge into this river system. Accordingly, there is little environmental benefit to requiring LBS- Lordco to complete an optimization plan.

LBS-Lordco requests the removal of the requirement to conduct an Optimization of Nitrogen Removal study from this draft NPDES Permit.

Response to Comment D.9

The Fact Sheet (p. 21-23) explains that the aquatic life integrity impairment in the lower Piscataqua River is related to excessive nitrogen loading. Addressing point source nitrogen loads in the Great Bay Estuary is necessary to protect this waterbody. The load and volume may be smaller than a "large" wastewater treatment plant, however, Section 402 of the CWA regulates the discharge of pollutants from *any* point source, not just those of a certain size.

As EPA explains in the Fact Sheet and in these Responses to Comments, the monitoring data for the discharges from LBS are either outdated (Outfall 002) or not representative of the effluent (Outfall 003), and there has not been any sampling of container rinsing effluent. *See, e.g.*, Responses to Comments II.A, II.B.1, II.D.1, and II.D.2. The comment asserts that the low volume of flow results in insignificant discharges to the river, but there is no recent nitrogen data to support the assertion. Moreover, the limited data available for the baitfish wetting activity indicates that nitrogen concentrations in the effluent can be substantial (e.g., 17 of 32 reported TKN results for Outfall 002 were greater than or equal to 50 mg/L). *See* Fact Sheet Appendix A. Depending on the flow and TKN concentrations, nitrogen loads can range from relatively low (less than one pound per day) to as high as 100 pounds per day (at maximum flow and TKN). For comparison, the Great Bay General Permit (NHG58A000) establishes total nitrogen load limits ranging from 15 pounds per day for smaller wastewater treatment plants to 248 pounds per day for the largest (as a rolling, seasonal average).

The Draft Permit (at Part I.C.4) proposed that LBS complete an assessment of new BMPs or alternative BMPs to optimize removal of nitrogen and to submit to EPA and the State a report presenting a description of recommended operational changes to minimize the annual average mass discharge of nitrogen. The limited monitoring available suggests that, at times, the baitfish wetting operation could potentially add to the nitrogen load in the Piscataqua River. For this reason, EPA disagrees that an optimization plan would have “little environmental benefit.”

However, the proposed conditions of the Draft Permit may be premature given the major changes to the baitfish wetting operation since the nitrogen data was collected and because the Final Permit requires the Permittee to implement certain BMPs that are intended to minimize pollutants in the discharge, including nitrogen. The Permittee should be provided time to implement and optimize the BMPs in the Final Permit, and to collect data and assess the effectiveness of the BMPs, prior to completing any optimization plan. Implementation of the BMPs at Part I.C.2 and documentation in the BMP Plan required in Part I.C.3 of the Final Permit will ensure that the activities at LBS, including baitfish wetting, minimize all pollutants associated with the activities, including nitrogen. For this reason, EPA has revised the Final Permit to eliminate the nitrogen optimization study requirement. However, given the extent of nitrogen-related water quality issues in Great Bay, EPA maintains that tracking nitrogen loads from the effluent to the Piscataqua River is warranted. EPA revised the Final Permit to include a requirement to report the monthly and annual average nitrogen load and compare to the load from the previous year in the annual certification of the BMP Plan. Annual certification shall be submitted to EPA and the State by March 15th of the following year in accordance with the reporting requirements at Part I.D.3. EPA will evaluate this nitrogen loading data prior to the next permit reissuance to determine whether requirements related to the optimization of nitrogen removal are appropriate.

E. CONCLUSION

In sum, EPA has failed to demonstrate a regulatory, factual, or legal justification for the imposition of the proposed monitoring requirements in the draft NPDES Permit. There is no need for additional data to understand the nature of LBS-Lordco’s operation. EPA has thirteen

years of data for many pollutants at a time of year when the facility is at maximum capacity. In addition, EPA also has process data for the last two years. As explained above, the draft NPDES Permit imposes excessive and costly monitoring requirements in relation to the amount and type of effluent discharge from LBS-Lordco's lobster holding and baitfish wetting operation.

Therefore, in consideration of the arguments raised above, LBS-Lordco respectfully requests the following revisions to the draft NPDES Permit:

1. Eliminate BOD and TSS monitoring requirements.
2. Reduce the monitoring of discharges from Outfalls 002A and 002B to once per year, for two years, after which only quarterly pH and monthly flows are required to be reported.
3. Reduce monitoring requirements to quarterly sampling from Outfall 003A for a period of one year, after which all but monthly pH and daily flow reporting requirements will be required.
4. Remove Outfall 003B and all associated requirements.
5. Revise sampling requirement to allow for collection and compositing of individual grab samples from each of the four lobster holdings tanks in lieu of sampling holding tank water at a single location prior to discharging through Outfall 003.
6. Eliminate Outfall 002A Wet Weather Sampling sampling requirements.
7. Eliminate the Outfall 005 monitoring requirement.
8. Remove BMP requirements, or alternatively, revise the proposed BMPs in accordance with the BMPs suggested by LBS-Lordco.
9. Remove the Nitrogen Optimization requirement.

LBS-Lordco requests a meeting with EPA to discuss the permit comments and EPA's reaction to our comments prior to issuance of the renewal permit. We appreciate your attention to these comments and look forward to working with EPA to discuss a reasonable path forward.

Response to Conclusion:

EPA presented the basis for the proposed monitoring requirements in the Fact Sheet accompanying the public notice of the Draft Permit, including references to applicable statutory and regulatory provisions and appropriate supporting references in accordance with 40 CFR § 124.8. See Fact Sheet Sections 2.0 (Statutory and Regulatory Authority), 3.0 (Description of Facility and Discharge), 5.1 (Effluent Limitations and Monitoring Requirements), and 5.2 (Special Conditions). EPA has responded to the comments on the Draft Permit and has reiterated the need for monitoring at LBS. See Responses to Comments B.1, B.2, and D.1 through 9. EPA has made certain revisions to monitoring frequencies and best management practices in response

to comments raised by the Permittee. In addition, EPA revised the Final Permit to remove the wet weather sampling requirements, Outfall 003B requirements, and Nitrogen Optimization requirements. The conditions and requirements of the Final Permit are reasonable and necessary to ensure that the discharges from the point sources operated by LBS will be protective of the water quality in the Piscataqua River.

**AUTHORIZATION TO DISCHARGE UNDER
THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Federal Clean Water Act as amended, 33 U.S.C. §§ 1251 et seq. (the “CWA”),

Little Bay Seafood LLC and Lordco Pier Associates

is authorized to discharge from a facility located at

**158 Shattuck Way
Newington, NH 03801**

to receiving water named

**Piscataqua River
Piscataqua Watershed**

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This Permit shall become effective on [*the first day of the calendar month immediately following 60 days after signature*].¹

This Permit expires at midnight on [*five years from the last day of the month preceding the effective date*].

This Permit supersedes the Permit issued on September 22, 2008.

This Permit consists of this **cover page, Part I and Part II** (NPDES Part II Standard Conditions, April 2018).

Signed this day of

Ken Moraff, Director
Water Division
Environmental Protection Agency
Region 1
Boston, MA

¹ Pursuant to 40 Code of Federal Regulations (CFR) § 124.15(b)(3), if no comments requesting a change to the Draft Permit are received, the Permit will become effective upon the date of signature. Procedures for appealing EPA’s Final Permit decision may be found at 40 CFR § 124.19.

PART I**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge baitfish wetting wastewater through Outfall Serial Number 002A to the Piscataqua River. The discharge shall be limited and monitored as specified below.

Effluent Characteristic	Effluent Limitations		Monitoring Requirements ^{1,2,3}	
	Average Monthly	Maximum Daily	Measurement Frequency ⁴	Sample Type ⁵
Effluent Flow ⁶	Report GPD	Report GPD	1/Day	Meter
Baitfish Processing	Report lbs/day	Report lbs/day	1/Day	Estimate
pH ⁷	6.5 – 8.0 S.U.		1/Quarter ⁸	Grab
Total Suspended Solids (TSS)	Report mg/L	Report mg/L	1/Quarter ⁸	Grab
Biochemical Oxygen Demand	Report mg/L	Report mg/L	1/Quarter ⁸	Grab
Ammonia Nitrogen	Report mg/L Report lbs/d	Report mg/L	1/Month ⁸	Grab
Total Nitrogen ⁹	Report mg/L Report lbs/d	Report mg/L	1/Month ⁸	Grab
Total Kjeldahl Nitrogen (TKN) ⁹	Report mg/L	Report mg/L	1/Month ⁸	Grab
Nitrate + Nitrite ⁹	Report mg/L	Report mg/L	1/Month ⁸	Grab
Total Phosphorus	Report mg/L	Report mg/L	1/Quarter ⁸	Grab
Oil and Grease	Report mg/L	Report mg/L	1/Quarter ⁸	Grab

2. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge baitfish storage rinse water through Outfall Serial Number 002B to Piscataqua River. The discharge shall be limited and monitored as specified below.

Effluent Characteristic	Effluent Limitations		Monitoring Requirements ^{1,2,3}	
	Average Monthly	Maximum Daily	Measurement Frequency ⁴	Sample Type ⁵
Effluent Flow ⁶	Report GPD	Report GPD	1/Day	Meter
pH ⁷	6.5 – 8.0 S.U.		1/Quarter	Grab
Total Suspended Solids (TSS)	Report mg/L	Report mg/L	1/Quarter	Grab
Biochemical Oxygen Demand	Report mg/L	Report mg/L	1/Quarter	Grab
Ammonia Nitrogen	Report mg/L Report lbs/d	Report mg/L	1/Month	Grab
Total Nitrogen ⁹	Report mg/L Report lbs/d	Report mg/L	1/Month	Grab
Total Kjeldahl Nitrogen (TKN) ⁹	Report mg/L	Report mg/L	1/Month	Grab
Nitrate + Nitrite ⁹	Report mg/L	Report mg/L	1/Month	Grab
Total Phosphorus	Report mg/L	Report mg/L	1/Quarter	Grab
Oil and Grease	Report mg/L	Report mg/L	1/Quarter	Grab

3. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge wastewater from lobster holding and grading operations through Outfall Serial Number 003A to Piscataqua River. The discharge shall be limited and monitored as specified below.

Effluent Characteristic	Effluent Limitations		Monitoring Requirements ^{1,2,3}	
	Average Monthly	Maximum Daily	Measurement Frequency ⁴	Sample Type ⁵
Effluent Flow ⁶	Report GPD	Report GPD	1/Day	Estimate
pH ⁷	6.5 – 8.0 S.U.		1/Quarter	Grab
Total Suspended Solids (TSS)	Report mg/L	Report mg/L	1/Quarter	Grab
Biochemical Oxygen Demand	Report mg/L	Report mg/L	1/Quarter	Grab
Ammonia Nitrogen	Report mg/L Report lbs/d	Report mg/L	1/Month	Grab
Total Nitrogen ⁹	Report mg/L Report lbs/d	Report mg/L	1/Month	Grab
Total Kjeldahl Nitrogen (TKN) ⁹	Report mg/L	Report mg/L	1/Month	Grab
Nitrate + Nitrite ⁹	Report mg/L	Report mg/L	1/Month	Grab
Total Phosphorus	Report mg/L	Report mg/L	1/Quarter	Grab

4. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge wastewater from truck storage rinse water through Outfall Serial Number 003B to Piscataqua River. The discharge shall be monitored as specified below.

Effluent Characteristic	Effluent Limitations		Monitoring Requirements ^{1,2,3}	
	Average Monthly	Maximum Daily	Measurement Frequency ⁴	Sample Type ⁵
Effluent Flow ⁶	Report GPD	Report GPD	1/Day	Estimate
pH ⁷	Report S.U.		1/Quarter	Grab
Total Suspended Solids (TSS)	Report mg/L	Report mg/L	1/Quarter	Grab
Biochemical Oxygen Demand	Report mg/L	Report mg/L	1/Quarter	Grab
Ammonia Nitrogen	Report mg/L Report lbs/d	Report mg/L	1/Month	Grab
Total Nitrogen ⁹	Report mg/L Report lbs/d	Report mg/L	1/Month	Grab
Total Kjeldahl Nitrogen (TKN) ⁹	Report mg/L	Report mg/L	1/Month	Grab
Nitrate + Nitrite ⁹	Report mg/L	Report mg/L	1/Month	Grab
Total Phosphorus	Report mg/L	Report mg/L	1/Quarter	Grab
Oil and Grease	Report mg/L	Report mg/L	1/Quarter	Grab

5. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge drainage from the building foundation comingled with groundwater through Outfall Serial Number 005 to Piscataqua River. The discharge shall be limited and monitored as specified below.

Effluent Characteristic	Effluent Limitations		Monitoring Requirements ^{1,2,3,10}	
	Average Monthly	Maximum Daily	Measurement Frequency ⁴	Sample Type ⁵
pH ⁷	Report S.U.		1/Quarter	Grab
Oil and Grease	Report mg/L	Report mg/L	1/Quarter	Grab
Volatile Organic Compounds (VOCs)	Report mg/L	Report mg/L	1/Quarter	Grab

Footnotes:

1. Effluent samples shall yield data representative of the discharge. A routine sampling program shall be developed in which samples are taken prior to co-mingling with any other wastestream. The Permittee shall collect two independent samples from the Outfall 002 sampling port: when baitfish wetting activity is occurring (002A) and when baitfish storage containers are being rinsed (002B). The Permittee shall sample lobster holding water from the drain to Outfall 003 prior to mixing with any other wastestream (003A). The Permittee shall sample truck storage rinse water as it drains from the vehicles and before mixing with any other wastestream (003B). Changes in sampling location must be approved in writing by the Environmental Protection Agency Region 1 (EPA). The Permittee shall report the results to EPA and the State of any additional testing above that required herein, if testing is done in accordance with 40 CFR Part 136.
2. In accordance with 40 CFR § 122.44(i)(1)(iv), the Permittee shall monitor according to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O, for the analysis of pollutants or pollutant parameters (except WET). A method is “sufficiently sensitive” when: 1) The method minimum level (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or 2) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter. The term “minimum level” refers to either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in several ways: They may be published in a method; they may be based on the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a laboratory, by a factor.
3. When a parameter is not detected above the ML, the Permittee must report the data qualifier signifying less than the ML for that parameter (e.g., < 50 µg/L, if the ML for a parameter is 50 µg/L). For calculating and reporting the average monthly concentration when one or more values are not detected, assign a value of zero to all non-detects and report the average of all the results. The number of exceedances shall be enumerated for each parameter in the field provided on every Discharge Monitoring Report (DMR).
4. Measurement frequency of 1/day is defined as the recording of one measurement for each 24-hour period. Measurement frequency of 1/month is defined as the sampling of one discharge event in each calendar month. Measurement frequency of 1/quarter is defined as the sampling of one discharge event during each calendar quarter. Calendar quarters are defined as January through March, inclusive, April through June, inclusive, July through September, inclusive and October through December, inclusive. If no

sample is collected during the measurement frequencies defined above, the Permittee must report an appropriate No Data Indicator Code.

5. A “grab” sample is an individual sample collected over a period of less than 15 minutes. Grab samples shall be collected from the sampling port in the Outfall 002 pipe separately for baitfish wetting and bait storage container rinsing activities. Grab samples for the lobster holding effluent (003A) shall be collected from the drain to Outfall 003 prior to comingling with river water and truck rinse water. Grab samples for truck rinse water (003B) shall be collected from the runoff of the truck rinse water prior to comingling with river water and lobster holding water.
6. Effluent flow shall be reported in gallons per day (GPD). Effluent flow of lobster holding water for Outfall 003A shall be estimated based on the daily recording of intake volume used to adjust the levels of the reservoirs. The daily effluent flow of truck rinse water for Outfall 003B shall be estimated based on the volume of rinse water used per truck and the number of trucks rinsed per day. The Permittee shall report the estimated maximum daily effluent flow and the monthly average effluent flow during each monthly reporting period based on the daily estimated flow.
7. The pH shall be within the specified range at all times. The minimum and maximum pH sample measurement values for the month shall be reported in standard units (S.U.). See Part I.C.1 below for a provision to modify the pH range.
8. The Permittee shall sample twice per year when there is a discharge from Outfall 002A but when no baitfish wetting or container rinsing is occurring (e.g., runoff from wet weather) in addition to the monthly or quarterly effluent sampling. The Permittee shall sample for pH, TSS, BOD, Ammonia Nitrogen, Total Nitrogen, TKN, Nitrate + Nitrite, Total Phosphorus, and Oil and Grease. To the extent practicable, samples of runoff shall be collected within 60 minutes of the beginning of the discharge. One sample shall be collected during the months of January to June and a second sample collected during the months of July to December.
9. Total nitrogen concentration shall be calculated from the sum of the total Kjeldahl nitrogen (TKN) and nitrate + nitrite analyses of concurrently collected samples. The method use for each parameter must have a minimum level (ML) less than or equal to 0.25 mg/L. If any results are below the ML, a value of zero for that parameter shall be used for calculating total nitrogen. The average monthly mass loading of total nitrogen and ammonia nitrogen shall be calculated as follows: Average monthly Load (lbs/day) = average monthly concentration (mg/L) * average monthly flow (million gallons per day) * 8.345. Note that the effluent flow reported in gallons per day must be converted to million gallons per day for this calculation.
10. Measurement frequency for Outfall 005 shall be 1/Quarter. Based on the results of three years of monitoring (or 12 quarterly samples) the Permittee may request a reduction in frequency or elimination of monitoring at Outfall 005. The request must be

made in writing to EPA and NHDES in accordance with Part I.D.3.a and I.D.5 of this permit. Monitoring frequency must remain 1/Quarter until written notification authorizing a reduction or elimination of monitoring is received.

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Part I.A. continued.

6. The discharge shall not cause a violation of the water quality standards of the receiving water.
7. The discharge shall be free from substances in kind or quantity that settle to form harmful benthic deposits; float as foam, debris, scum or other visible substances; produce odor, color, taste or turbidity that is not naturally occurring and would render the surface water unsuitable for its designated uses; result in the dominance of nuisance species; or interfere with recreational activities.
8. Tainting substances shall not be present in the discharge in concentrations that individually or in combination are detectable by taste and odor tests performed on the edible portions of aquatic organisms.
9. The discharge shall not result in toxic substances or chemical constituents in concentrations or combinations in the receiving water that injure or are inimical to plants, animals, humans or aquatic life; or persist in the environment or accumulate in aquatic organisms to levels that result in harmful concentrations in edible portions of fish, shellfish, other aquatic life, or wildlife that might consume aquatic life.
10. The discharge shall not result in benthic deposits that have a detrimental impact on the benthic community. The discharge shall not result in oil and grease, color, slicks, odors, or surface floating solids that would impair any existing or designated uses in the receiving water.
11. The discharge shall not result in an exceedance of the naturally occurring turbidity in the receiving water by more than 10 NTUs.
12. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify EPA as soon as they know or have reason to believe (40 CFR § 122.42):
 - 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”:
 - (1) 100 micrograms per liter ($\mu\text{g/L}$);
 - (2) 200 $\mu\text{g/L}$ for acrolein and acrylonitrile; 500 $\mu\text{g/L}$ for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (mg/L) for antimony;
 - (3) Five times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR § 122.21(g)(7); or
 - (4) Any other notification level established by EPA in accordance with 40 CFR § 122.44(f) and State regulations.

- b. That any activity has occurred or will occur which would result in the discharge, on a non-routine or infrequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
- (1) 500 µg/L;
 - (2) One mg/L for antimony;
 - (3) 10 times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR § 122.21(g)(7); or
 - (4) Any other notification level established by EPA in accordance with 40 CFR § 122.44(f) and State regulations.
- c. That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.

B. UNAUTHORIZED DISCHARGES

1. This permit authorizes discharges only from the outfall(s) listed in Part I.A.1, in accordance with the terms and conditions of this permit. Discharges of wastewater from any other point sources are not authorized by this permit and shall be reported in accordance with Part D.1.e.(1) of the Standard Conditions of this permit (24-hour reporting).
2. Outfall 004 shall be permanently sealed and no discharge from the outfall is authorized by this permit.
3. No chemicals or additives may be discharged, including, but not limited to, chemicals associated with lobster tank cleaning, prophylactic bacterial medication, and pharmaceuticals.
4. The Permittee shall not utilize nor discharge pentachlorophenol or trichlorophenol.
5. There shall be no discharge from any truck or vehicle washing other than the discharge of rinse water from the storage area of vehicle used to transport baitfish and lobster. No chemicals, detergents, or additives may be discharged from the truck storage rinsing activity.

C. SPECIAL CONDITIONS

1. The pH range may be modified if the Permittee satisfies conditions set forth in Part I.E.3 below. Upon notification of an approval by the State, EPA will review and, if acceptable, will submit written notice to the Permittee of the permit change. The modified pH range will not be in effect until the Permittee receives written notice from EPA.
2. Best Management Practices (BMPs)

The Permittee shall design, install, and implement control measures to minimize the discharge of pollutants from the operations at the Facility to the receiving water. At a minimum, the Permittee

must implement control measures, both structural controls (e.g., OWS, containment areas, holding tanks) and non-structural (e.g., operational procedures and operator training).

- a. Select, design, implement, and maintain control measures designed to minimize the discharge of total suspended solids, floating solids, foam, visible oil sheen, and settleable solids in discharges associated with lobster holding, baitfish wetting, and cleaning operations to the receiving water. Control measures must be used in accordance with good engineering practices and manufacturer's specifications.
- b. Maintain a corrosion resistant screen or other filter to prevent solids from entering the catch basin draining to Outfall 002 during baitfish wetting and fish container rinsing.
- c. Design good housekeeping measures to maintain areas that are potential sources of pollutants including, but not limiting to, maintaining the area around the outfall drainage and catch basins free of debris, fish scales, or fish parts;
- d. Implement preventative maintenance programs for pollution control equipment (e.g., screens at catch basins to prevent solids from being discharged) to ensure that equipment is maintained, and to avoid leaks, spills, and other releases of pollutants to receiving waters;
- e. Implement spill prevention and response procedures to ensure effective response to spills and leaks if or when they occur;
- f. Perform routine inspections of the control measures, discharge points, and areas where industrial materials, potential pollutant sources, or activities are exposed to runoff or wastewater;
- g. Minimize dust generation and vehicle tracking of industrial materials;
- h. Develop standard procedures for handling solids and other wastes collected at pollution control equipment.

3. Best Management Practices Plan

- a. The Permittee shall develop, implement, and maintain a Best Management Practices (BMP) Plan designed to reduce or prevent the discharge of pollutants in wastewater to waters of the United States. The BMP Plan shall be a written document that is consistent with the terms of the permit and identifies and describes the BMPs employed by the Facility to control wastewater discharges. The BMP Plan must be reviewed at least once per permit term (i.e., five years) and re-evaluated if any significant changes to the operations occur or if monitoring indicates that BMPs are not effectively controlling the discharge of pollutants to the receiving water.
- b. The BMP Plan shall be complete (or updated) and certified by the Permittee within 90 days after the effective date of this permit. The Permittee shall certify that the BMP plan

has been prepared, that it meets the requirements of the permit, and that it prevents or reduces pollutants discharged from the outfalls to the extent practicable. The BMP Plan and certification shall be signed in accordance with the requirements identified in 40 CFR § 122.22. A copy of the BMP Plan and certification shall be maintained at the Facility and made available to EPA and the State upon request.

- c. The BMP Plan shall include, at a minimum, the following elements:
- (1) A site description and summary of potential pollutant sources;
 - (2) Documentation of the selection, design, installation, implementation, and maintenance of control measures designed to prevent or reduce the discharge of pollutants in wastewater generated from lobster holding, baitfish wetting, truck bed rinsing, and rinsing containers used to hold baitfish;
 - (2) A description of the pollution control equipment and preventative maintenance procedures, including frequency of inspections, used to prevent or reduce the discharge of pollutants; and
 - (3) Documentation of the procedures for handling wastes generated from the baitfish wetting, truck rinsing, lobster holding, and fish container rising operations, including schedules for removal, handling and disposal of materials, and a description of where solids removed using pollution control equipment are stored and/or disposed. If solids are removed from the site, include a description of the destination and method of disposal and/or reuse.
- d. The Permittee shall amend and update the BMP Plan within 14 days for any changes at the Facility affecting the Plan. Such changes may include, but are not limited to: changes in the design, construction, operation, or maintenance of the Facility which affect the potential for the discharge of pollutants to the waters of the United States; a release of a reportable quantity of pollutants as described in 40 CFR § 302; a determination by the Permittee or EPA that the BMPs appear to be ineffective in achieving the general objective of controlling pollutants; and revisions or improvements are made to the BMPs based on new information and experiences. Any amended or new versions of the BMP Plan shall be re-certified by the Permittee. Such re-certifications shall be signed in accordance with the requirements identified in Part II.D.2 of this Permit.
- e. The Permittee shall certify annually that the Facility is in compliance with the BMPs specified in Part I.C.2 of this permit, including recording and maintaining results of any required inspections and training activities. If the facility is not in compliance with any limitations and/or BMPs, the annual certification shall state the non-compliance and the remedies that are or will be undertaken. The annual certification shall list any changes to control measures over the past year and describe the reason for the changes. Annual certification shall be signed in accordance with the requirements identified in Part II.D.2 of this Permit. The Permittee shall keep a copy of the current BMP Plan and all certifications signed during the effective period of this Permit at the Facility and shall make them available to EPA and the State upon request.

4. Optimization of Nitrogen Removal

- a. Within one year of the effective date of the Permit, the Permittee shall complete an assessment of new BMPs or alternatives to current BMPs to optimize the removal of nitrogen in order to minimize the annual average mass discharge of total nitrogen. The Permittee shall submit a report to EPA and the State documenting the results of this evaluation and presenting a description of recommended operational changes (including an implementation timeline) within 15 months of the effective date of the Permit. Following the assessment, the Permittee shall implement the recommended operational changes.
 - b. Following the initial report outlined in Part 4.b, the Permittee shall submit annual reports to EPA and the State by February 1st of each subsequent year that summarizes activities related to optimizing nitrogen discharge load and tracks trends in nitrogen load relative to the previous year. The annual report shall include a detailed description of any operational changes and include all supporting data.
5. Effluent Diffuser Maintenance and Inspection
- a. Effluent diffusers shall be maintained when necessary to ensure proper operation. Proper operation means that the plumes from each port will be balanced relative to each other and that they all have unobstructed flow. Maintenance may include dredging in the vicinity of the diffuser, clean out of solids in the diffuser header pipe, removal of debris and repair/replacement of riser ports and pinch valves.
 - b. Any necessary maintenance dredging must be performed only after receiving all necessary permits from the NHDES Wetlands Bureau and other appropriate agencies.
 - c. To determine if maintenance will be required the Permittee shall have a licensed diver or licensed marine contractor inspect and videotape the operation of the diffuser. The inspections and videotaping shall be performed in accordance with the following schedule.
 - (1) Every year if no pinch valves have been installed on the riser ports; or
 - (2) Every 2 years if pinch valves have been installed on the riser ports.
 - d. The video of the diffuser inspection and a copy of a report summarizing the results of the inspection shall be submitted to EPA and NHDES-WD on a USB drive within 60 days of each inspection. A schedule for cleaning, repairs, or other necessary maintenance shall be included in the report if the inspection indicates that it is necessary. Necessary cleaning, repairs, or other maintenance should be documented with a photo or video taken after the action is completed.

D. REPORTING REQUIREMENTS

Unless otherwise specified in this Permit, the Permittee shall submit reports, requests, and information and provide notices in the manner described in this section.

1. Submittal of DMRs Using NetDMR

The Permittee shall continue to submit monitoring data in discharge monitoring reports (DMRs) to EPA and the State electronically using NetDMR no later than the 15th day of the month following the monitoring period. When the Permittee submits DMRs using NetDMR, it is not required to submit hard copies of DMRs to EPA or the State. NetDMR is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

2. Submittal of Reports as NetDMR Attachments

Unless otherwise specified in this Permit, the Permittee shall electronically submit all reports to EPA as NetDMR attachments rather than as hard copies. Because the due dates for reports described in this Permit may not coincide with the due date for submitting DMRs (which is no later than the 15th day of the month following the monitoring period), a report submitted electronically as a NetDMR attachment shall be considered timely if it is electronically submitted to EPA using NetDMR with the next DMR due following the particular report due date specified in this Permit.

3. Submittal of Requests and Reports to EPA Water Division (WD)

a. The following requests, reports, and information described in this Permit shall be submitted to the NPDES Applications Coordinator in EPA WD:

- (1) Transfer of Permit notice;
- (2) Request for changes in sampling location;
- (3) BMP and Nitrogen Optimization reports and certifications;
- (4) Request to discharge new chemicals or additives; and
- (5) Request for pH Effluent Limitation Adjustment; and
- (6) Request for reduction in monitoring frequency at Outfall 005.

b. These reports, information, and requests shall be submitted to EPA WD electronically at R1NPDESReporting@epa.gov or by hard copy mail to the following address:

**U.S. Environmental Protection Agency
Water Division
NPDES Applications Coordinator
5 Post Office Square - Suite 100 (06-03)
Boston, MA 02109-3912**

4. Submittal of Reports in Hard Copy Form

- a. The following notifications and reports shall be signed and dated originals, submitted in hard copy, with a cover letter describing the submission:

- (1) Written notifications required under Part II, Standard Conditions. Beginning December 21, 2025, such notifications must be done electronically using EPA's NPDES Electronic Reporting Tool ("NeT"), or another approved EPA system, which will be accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>.

- b. This information shall be submitted to EPA ECAD at the following address:

**U.S. Environmental Protection Agency
Enforcement and Compliance Assurance Division
Water Compliance Section
5 Post Office Square, Suite 100 (04-SMR)
Boston, MA 02109-3912**

5. State Reporting

Unless otherwise specified in this Permit or by the State, duplicate signed copies of all reports, information, requests or notifications described in this Permit, including the reports, information, requests or notifications described in Parts I.D.3 through I.D.6 shall also be submitted to the New Hampshire Department of Environmental Services, Water Division (NHDES-WD) electronically to the Permittee's assigned NPDES inspector at NHDES-WD or as a hardcopy to the following address:

**New Hampshire Department of Environmental Services
Water Division
Wastewater Engineering Bureau
29 Hazen Drive, P.O. Box 95
Concord, New Hampshire 03302-0095**

6. Verbal Reports and Verbal Notifications

- a. Any verbal reports or verbal notifications, if required in Parts I and/or II of this Permit, shall be made to both EPA and to the State. This includes verbal reports and notifications which require reporting within 24 hours (e.g., Part II.B.4.c. (2), Part II.B.5.c. (3), and Part II.D.1.e.).
- b. Verbal reports and verbal notifications shall be made to EPA's Enforcement and Compliance Assurance Division at:

617-918-1510

- c. Verbal reports and verbal notifications shall also be made to the State's Regional NPDES inspector at:

603-271-1493

E. STATE 401 CERTIFICATION CONDITIONS

1. This Permit is in the process of receiving state water quality certification issued by the State under § 401(a) of the CWA and 40 CFR § 124.53. EPA will incorporate by reference all State water quality certification requirements (if any) into the Final Permit.
2. This NPDES Discharge Permit is issued by the EPA under Federal law. Upon final issuance by the EPA, the NHDES-WD may adopt this permit, including all terms and conditions, as a State permit pursuant to RSA 485-A:13. Each Agency shall have the independent right to enforce the terms and conditions of this Permit. Any modification, suspension or revocation of this Permit shall be effective only with respect to the Agency taking such action and shall not affect the validity or status of the Permit as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation.
3. The pH range of 6.5 to 8.0 Standard Units (S.U.) must be achieved in the final effluent unless the Permittee can demonstrate to NHDES-WD: 1) that the range should be widened due to naturally occurring conditions in the receiving water; or 2) that the naturally occurring receiving water pH is not significantly altered by the Permittee's discharge. The scope of any demonstration project must receive prior approval from NHDES-WD. In no case, shall the above procedure result in pH limits outside the range of 6.0 to 9.0 S.U., which are federal technology-based effluent limitation guidelines for pH commonly found in 40 CFR subchapter N Parts 405 through 471.

NPDES PART II STANDARD CONDITIONS
(April 26, 2018)¹

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¹Updated July 17, 2018 to fix typographical errors.

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A. GENERAL REQUIREMENTS

1. Duty to Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA or 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 for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
- b. Penalties for Violations of Permit Conditions: The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (83 Fed. Reg. 1190-1194 (January 10, 2018) and the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note. See Pub. L. 114-74, Section 701 (Nov. 2, 2015)). These requirements help ensure that EPA penalties keep pace with inflation. Under the above-cited 2015 amendments to inflationary adjustment law, EPA must review its statutory civil penalties each year and adjust them as necessary.

(1) Criminal Penalties

- (a) *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than \$2,500 nor more than \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation or by imprisonment of not more than 2 years, or both.
- (b) *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
- (c) *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury shall upon conviction be subject to a fine of not more than \$250,000 or by imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing

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endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in Section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

- (d) *False Statement.* The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- (2) *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).
- (3) *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty as follows:
- (a) *Class I Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).
- (b) *Class II Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).

2. 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

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condition.

3. Duty to Provide Information

The Permittee shall furnish to the Director, within a reasonable time, any information which the Director 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 Director, upon request, copies of records required to be kept by this permit.

4. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from responsibilities, liabilities or penalties to which the Permittee is or may be subject under Section 311 of the CWA, or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

5. Property Rights

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

6. Confidentiality of Information

a. In accordance with 40 C.F.R. Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 C.F.R. Part 2 (Public Information).

b. Claims of confidentiality for the following information will be denied:

- (1) The name and address of any permit applicant or Permittee;
- (2) Permit applications, permits, and effluent data.

c. Information required by NPDES application forms provided by the Director under 40 C.F.R. § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

7. 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. The Permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

8. State Authorities

Nothing in Parts 122, 123, or 124 precludes more stringent State regulation of any activity

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covered by the regulations in 40 C.F.R. Parts 122, 123, and 124, whether or not under an approved State program.

9. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. 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.

2. Need to Halt or Reduce 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.

3. 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.

4. Bypass

a. Definitions

- (1) *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.
- (2) *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

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- (1) *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. As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.
- (2) *Unanticipated bypass.* The Permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e. of this part (24-hour notice). As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or required to do so by law.

d. *Prohibition of bypass.*

- (1) Bypass is prohibited, and the Director 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 preventative maintenance; and
 - (c) The Permittee submitted notices as required under paragraph 4.c of this Section.
- (2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 4.d of this Section.

5. Upset

- a. *Definition.* *Upset* means an exceptional incident in which there is an 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

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- 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 B.5.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:
 - (1) An upset occurred and that the Permittee can identify the cause(s) of the upset;
 - (2) The permitted facility was at the time being properly operated; and
 - (3) The Permittee submitted notice of the upset as required in paragraph D.1.e.2.b. (24-hour notice).
 - (4) The Permittee complied with any remedial measures required under B.3. above.
 - d. *Burden of proof.* In any enforcement proceeding the Permittee seeking to establish the occurrence of an upset has the burden of proof.

C. MONITORING REQUIREMENTS

1. 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 5 years (or longer as required by 40 C.F.R. § 503), 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 Director at any time.
- c. Records of monitoring information shall include:
 - (1) The date, exact place, and time of sampling or measurements;
 - (2) The individual(s) who performed the sampling or measurements;
 - (3) The date(s) analyses were performed;
 - (4) The individual(s) who performed the analyses;
 - (5) The analytical techniques or methods used; and
 - (6) The results of such analyses.
- d. Monitoring must be conducted according to test procedures approved under 40 C.F.R. § 136 unless another method is required under 40 C.F.R. Subchapters N or O.
- e. The Clean Water Act provides that any person who falsifies, tampers with, or

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knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The Permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the 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.

D. REPORTING REQUIREMENTS

1. Reporting Requirements

- a. *Planned Changes*. The Permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - (1) 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 C.F.R. § 122.29(b); or
 - (2) 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 at 40 C.F.R. § 122.42(a)(1).
 - (3) 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 Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

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- c. *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate such other requirements as may be necessary under the Clean Water Act. *See* 40 C.F.R. § 122.61; in some cases, modification or revocation and reissuance is mandatory.
- d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.
 - (1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. As of December 21, 2016 all reports and forms submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by State law.
 - (2) If the Permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 C.F.R. § 136, or another method required for an industry-specific waste stream under 40 C.F.R. Subchapters N or O, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
 - (3) Calculations for all limitations which require averaging or measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.
- e. *Twenty-four hour reporting.*
 - (1) 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 report shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance 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. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combined sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020 all

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reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

- (2) 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. *See* 40 C.F.R. § 122.41(g).
 - (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 Director in the permit to be reported within 24 hours. *See* 40 C.F.R. § 122.44(g).
 - (3) The Director may waive the written report on a case-by-case basis for reports under paragraph D.1.e. of this Section if the oral report has been received within 24 hours.
- f. *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.
- g. *Other noncompliance.* The Permittee shall report all instances of noncompliance not reported under paragraphs D.1.d., D.1.e., and D.1.f. of this Section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph D.1.e. of this Section. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph D.1.e. and the applicable required data in Appendix A to 40 C.F.R. Part 127. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), §122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this Section.
- h. *Other information.* Where the Permittee becomes aware that it failed to submit any

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relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

- i. *Identification of the initial recipient for NPDES electronic reporting data.* The owner, operator, or the duly authorized representative of an NPDES-regulated entity is required to electronically submit the required NPDES information (as specified in Appendix A to 40 C.F.R. Part 127) to the appropriate initial recipient, as determined by EPA, and as defined in 40 C.F.R. § 127.2(b). EPA will identify and publish the list of initial recipients on its Web site and in the FEDERAL REGISTER, by state and by NPDES data group (see 40 C.F.R. § 127.2(c) of this Chapter). EPA will update and maintain this listing.

2. Signatory Requirement

- a. All applications, reports, or information submitted to the Director shall be signed and certified. *See* 40 C.F.R. §122.22.
- b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Availability of Reports.

Except for data determined to be confidential under paragraph A.6. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Director. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statements on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA.

E. DEFINITIONS AND ABBREVIATIONS

1. General Definitions

For more definitions related to sludge use and disposal requirements, see EPA Region 1's NPDES Permit Sludge Compliance Guidance document (4 November 1999, modified to add regulatory definitions, April 2018).

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all, State, interstate, and federal standards and limitations to which a "discharge," a "sewage sludge use or disposal practice," or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," pretreatment standards, and "standards for sewage sludge use or disposal" under Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of the CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by EPA for use in

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“approved States,” including any approved modifications or revisions.

Approved program or *approved State* means a State or interstate program which has been approved or authorized by EPA under Part 123.

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.

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 United States.” 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.

Bypass see B.4.a.1 above.

C-NOEC or “*Chronic (Long-term Exposure Test) – No Observed Effect Concentration*” means the highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organisms at a specified time of observation.

Class I sludge management facility is any publicly owned treatment works (POTW), as defined in 40 C.F.R. § 501.2, required to have an approved pretreatment program under 40 C.F.R. § 403.8 (a) (including any POTW located in a State that has elected to assume local program responsibilities pursuant to 40 C.F.R. § 403.10 (e)) and any treatment works treating domestic sewage, as defined in 40 C.F.R. § 122.2, classified as a Class I sludge management facility by the EPA Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sewage sludge use or disposal practice to affect public health and the environment adversely.

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

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 similar activities.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 *et seq.*

CWA and regulations means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. In the case of an approved State program, it includes State program requirements.

Daily Discharge means the “discharge of a pollutant” measured during a calendar day or any

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other 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 measurements, the “daily discharge” is calculated as the average measurement of the pollutant over the day.

Direct Discharge means the “discharge of a pollutant.”

Director means the Regional Administrator or an authorized representative. In the case of a permit also issued under Massachusetts’ authority, it also refers to the Director of the Division of Watershed Management, Department of Environmental Protection, Commonwealth of Massachusetts.

Discharge

- (a) When used without qualification, *discharge* means the “discharge of a pollutant.”
- (b) As used in the definitions for “interference” and “pass through,” *discharge* means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act.

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.

Discharge of a pollutant means:

- (a) Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source,” or
- (b) Any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any “indirect discharger.”

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of “pollutants” which are “discharged” from “point sources” into “waters of the United States,” the waters of the “contiguous zone,” or the ocean.

Effluent limitation guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise “effluent limitations.”

Environmental Protection Agency (“EPA”) means the United States Environmental Protection

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Agency.

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

Hazardous substance means any substance designated under 40 C.F.R. Part 116 pursuant to Section 311 of CWA.

Incineration is the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

Indirect discharger means a nondomestic discharger introducing “pollutants” to a “publicly owned treatment works.”

Interference means a discharge (see definition above) which, alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (b) 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 Resources Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SDWA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

Land application is the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment and disposal.

LC₅₀ means the concentration of a sample that causes mortality of 50% of the test population at a specific time of observation. The *LC₅₀* = 100% is defined as a sample of undiluted effluent.

Maximum daily discharge limitation means the highest allowable “daily discharge.”

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 C.F.R. § 257.2. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, very small quantity generator waste and industrial solid waste. Such a landfill may be

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publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

Municipality

- (a) When used without qualification *municipality* means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of CWA.
- (b) As related to sludge use and disposal, *municipality* means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under State law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management Agency under Section 208 of the CWA, as amended. The definition includes a special district created under State law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in Section 201 (e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use or disposal of sewage sludge.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the CWA. The term includes an “approved program.”

New Discharger means any building, structure, facility, or installation:

- (a) From which there is or may be a “discharge of pollutants;”
- (b) That did not commence the “discharge of pollutants” at a particular “site” prior to August 13, 1979;
- (c) Which is not a “new source;” and
- (d) Which has never received a finally effective NPDES permit for discharges at that “site.”

This definition includes an “indirect discharger” which commences discharging into “waters of the United States” after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a “site” for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a “site” under EPA’s permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Director in the issuance of a final permit to be in an area of biological concern. In determining whether an area is an area of biological concern, the Director shall consider the factors specified in 40 C.F.R. §§ 125.122 (a) (1) through (10).

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An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a “new discharger” only for the duration of its discharge in an area of biological concern.

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.

NPDES means “National Pollutant Discharge Elimination System.”

Owner or operator means the owner or operator of any “facility or activity” subject to regulation under the NPDES programs.

Pass through means a Discharge (see definition above) which exits the POTW into waters of the United States 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).

Pathogenic organisms are disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

Permit means an authorization, license, or equivalent control document issued by EPA or an “approved State” to implement the requirements of Parts 122, 123, and 124. “Permit” includes an NPDES “general permit” (40 C.F.R § 122.28). “Permit” does not include any permit which has not yet been the subject of final agency action, such as a “draft permit” or “proposed permit.”

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Person who prepares sewage sludge is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

pH means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° Centigrade or measured at another temperature and then converted to an equivalent value at 25° Centigrade.

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, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff (see 40 C.F.R. § 122.3).

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials

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(except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

- (a) Sewage from vessels; or
- (b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes is approved by the authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976), *modified* 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of 40 C.F.R. Part 122.

Privately owned treatment works means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a “POTW.”

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 a treatment works as defined by Section 212 of the Act, which is owned by a State or municipality (as defined by Section 504(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

Secondary industry category means any industry which is not a “primary industry category.”

Septage means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

Sewage Sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 C.F.R. Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

Sewage sludge incinerator is an enclosed device in which only sewage sludge and auxiliary fuel are fired.

Sewage sludge unit is land on which only sewage sludge is placed for final disposal. This does

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not include land on which sewage sludge is either stored or treated. Land does not include waters of the United States, as defined in 40 C.F.R. § 122.2.

Sewage sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

Significant materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substance designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Significant spills includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the CWA (see 40 C.F.R. §§ 110.10 and 117.21) or Section 102 of CERCLA (see 40 C.F.R. § 302.4).

Sludge-only facility means any “treatment works treating domestic sewage” whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA, and is required to obtain a permit under 40 C.F.R. § 122.1(b)(2).

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in the regulations which meets the requirements of 40 C.F.R. § 123.31.

Store or storage of sewage sludge is the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.

Surface disposal site is an area of land that contains one or more active sewage sludge units.

Toxic pollutant means 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.

Treatment works treating domestic sewage means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

For purposes of this definition, “domestic sewage” includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under Section 405(f) of the CWA, the Director may designate any person subject to the standards for sewage sludge use and

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disposal in 40 C.F.R. Part 503 as a “treatment works treating domestic sewage,” where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 C.F.R. Part 503.

Upset see B.5.a. above.

Vector attraction is the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

Waste pile or *pile* means any non-containerized accumulation of solid, non-flowing waste that is used for treatment or storage.

Waters of the United States or *waters of the U.S.* means:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate “wetlands;”
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands”, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (1) Which are or could be used by interstate or foreign travelers for recreational or other purpose;
 - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) “Wetlands” adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 C.F.R. § 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland.

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Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Wetlands means those areas that are inundated or saturated by surface or groundwater 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 (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Zone of Initial Dilution (ZID) means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards.

2. Commonly Used Abbreviations

BOD	Five-day biochemical oxygen demand unless otherwise specified
CBOD	Carbonaceous BOD
CFS	Cubic feet per second
COD	Chemical oxygen demand
Chlorine	
Cl ₂	Total residual chlorine
TRC	Total residual chlorine which is a combination of free available chlorine (FAC, see below) and combined chlorine (chloramines, etc.)
TRO	Total residual chlorine in marine waters where halogen compounds are present
FAC	Free available chlorine (aqueous molecular chlorine, hypochlorous acid, and hypochlorite ion)
Coliform	
Coliform, Fecal	Total fecal coliform bacteria
Coliform, Total	Total coliform bacteria
Cont.	Continuous recording of the parameter being monitored, i.e. flow, temperature, pH, etc.
Cu. M/day or M ³ /day	Cubic meters per day
DO	Dissolved oxygen

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kg/day	Kilograms per day
lbs/day	Pounds per day
mg/L	Milligram(s) per liter
mL/L	Milliliters per liter
MGD	Million gallons per day
Nitrogen	
Total N	Total nitrogen
NH ₃ -N	Ammonia nitrogen as nitrogen
NO ₃ -N	Nitrate as nitrogen
NO ₂ -N	Nitrite as nitrogen
NO ₃ -NO ₂	Combined nitrate and nitrite nitrogen as nitrogen
TKN	Total Kjeldahl nitrogen as nitrogen
Oil & Grease	Freon extractable material
PCB	Polychlorinated biphenyl
Surfactant	Surface-active agent
Temp. °C	Temperature in degrees Centigrade
Temp. °F	Temperature in degrees Fahrenheit
TOC	Total organic carbon
Total P	Total phosphorus
TSS or NFR	Total suspended solids or total nonfilterable residue
Turb. or Turbidity	Turbidity measured by the Nephelometric Method (NTU)
µg/L	Microgram(s) per liter
WET	“Whole effluent toxicity”
ZID	Zone of Initial Dilution

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND - REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912**

FACT SHEET

**DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES PURSUANT TO
THE CLEAN WATER ACT (CWA)**

NPDES PERMIT NUMBER: NH0020923

PUBLIC NOTICE START AND END DATES:

NAME AND MAILING ADDRESS OF APPLICANT:

Little Bay Seafood LLC and Lordco Pier Associates
158 Shattuck Way
Newington, NH 03801

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

Little Bay Seafood
158 Shattuck Way
Newington, NH 03801

RECEIVING WATER AND CLASSIFICATION:

Lower Piscataqua River (USGS Basin No. 01060003)
Piscataqua River Watershed
Class B

SIC CODE: 5146 (Fish and Seafoods)

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1.0 Proposed Action

Little Bay Seafood and Lordco Pier Associates (LBS or the Permittee) has applied to the U.S. Environmental Protection Agency (EPA) for reissuance of a National Pollutant Discharge Elimination System (NPDES) permit to discharge from Little Bay Seafood (the Facility) into the Lower Piscataqua River.

The permit currently in effect was issued on September 22, 2008 with an effective date of December 1, 2008 and expired on December 1, 2013 (the 2008 Permit). The Permittee filed an application for permit reissuance with EPA dated June 27, 2013 as required by 40 Code of Federal Regulations (CFR) § 122.6. Since the permit application was deemed timely and complete by EPA on November 6, 2013, the Facility's 2008 Permit has been administratively continued pursuant to 40 CFR § 122.6 and § 122.21(d). EPA and the State conducted a site visit on March 23, 2021.

This NPDES Permit is issued by EPA under federal law. New Hampshire construes Title L, Water Management and Protection, Chapters 485-A, Water Pollution and Waste Disposal, to authorize the New Hampshire Department of Environmental Services (NHDES) to "consider" a federal NPDES permit to be a State surface water discharge permit. As such, all the terms and conditions of the permit may, therefore, be incorporated into and constitute a discharge permit issued by NHDES.

2.0 Statutory and Regulatory Authority

Congress enacted the Federal Water Pollution Control Act, codified at 33 U.S.C. § 1251 – 1387 and commonly known as the Clean Water Act (CWA), "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA § 101(a). To achieve this objective, the CWA makes it unlawful for any person to discharge any pollutant into the waters of the United States from any point source, except as authorized by specific permitting sections of the CWA, one of which is § 402. *See* CWA §§ 301(a), 402(a). Section 402(a) established one of the CWA's principal permitting programs, the NPDES Permit Program. Under this section, EPA may "issue a permit for the discharge of any pollutant or combination of pollutants" in accordance with certain conditions. CWA § 402(a). NPDES permits generally contain discharge limitations and establish related monitoring and reporting requirements. *See* CWA § 402(a)(1) and (2). The regulations governing EPA's NPDES permit program are generally found in 40 CFR §§ 122, 124, 125, and 136.

"Congress has vested in the Administrator [of EPA] broad discretion to establish conditions for NPDES permits" in order to achieve the statutory mandates of Section 301 and 402. *Arkansas v. Oklahoma*, 503 U.S. 91, 105 (1992). *See also* 40 CFR §§ 122.4(d), 122.44(d)(1), and 122.44(d)(5). CWA §§ 301 and 306 provide for two types of effluent limitations to be included in NPDES permits: "technology-based" effluent limitations (TBELs) and "water quality-based" effluent limitations (WQBELs). *See* CWA §§ 301 and 304(b); 40 CFR §§ 122, 125, and 131.

2.1 Technology-Based Requirements

Technology-based treatment requirements represent the minimum level of control that must be imposed under CWA §§ 301(b) and 402 to meet best practicable control technology currently available (BPT) for conventional pollutants and some metals, best conventional control technology (BCT) for conventional pollutants, and best available technology economically achievable (BAT) for toxic and non-conventional pollutants. *See* 40 CFR § 125 Subpart A.

Subpart A of 40 CFR Part 125 establishes criteria and standards for the imposition of technology-based treatment requirements in permits under § 301(b) of the CWA, including the application of EPA promulgated Effluent Limitation Guidelines (ELGs) and case-by-case determinations of effluent limitations under CWA § 402(a)(1). EPA promulgates New Source Performance Standards (NSPS) under CWA § 306 and 40 CFR § 401.12. *See also* 40 CFR §§ 122.2 (definition of “new source”) and 122.29.

In general, ELGs for non-POTW facilities must be complied with as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989. *See* 40 CFR § 125.3(a)(2). Compliance schedules and deadlines not in accordance with the statutory provisions of the CWA cannot be authorized by a NPDES permit. In the absence of published technology-based effluent guidelines, the permit writer is authorized under CWA § 402(a)(1)(B) to establish effluent limitations on a case-by-case basis using best professional judgment (BPJ).

2.2 Water Quality-Based Requirements

The CWA and federal regulations require that effluent limitations based on water quality considerations be established for point source discharges when such limitations are necessary to meet state or federal water quality standards that are applicable to the designated receiving water. This is necessary when less stringent TBELs would interfere with the attainment or maintenance of water quality criteria in the receiving water. *See* CWA § 301(b)(1)(C) and 40 CFR §§ 122.44(d)(1), 122.44(d)(5), 125.84(e) and 125.94(i).

2.2.1 Water Quality Standards

The CWA requires that each state develop water quality standards (WQSs) for all water bodies within the State. *See* CWA § 303 and 40 CFR §§ 131.10-12. Generally, WQSs consist of three parts: 1) beneficial designated use or uses for a water body or a segment of a water body; 2) numeric or narrative water quality criteria sufficient to protect the assigned designated use(s); and 3) antidegradation requirements to ensure that once a use is attained it will not be degraded and to protect high quality and National resource waters. *See* CWA § 303(c)(2)(A) and 40 CFR § 131.12. The applicable State WQSs can be found in the New Hampshire Code of Administrative Rules, Surface Water Quality Regulations, Chapter Env-Wq 1700 *et seq.* *See also generally,* N.H. Rev. Stat. Title L, Water Management and Protection, Chapter 485-A, Water Pollution and Waste Disposal.

As a matter of state law, state WQSs specify different water body classifications, each of which is associated with certain designated uses and numeric and narrative water quality criteria. When using chemical-specific numeric criteria to develop permit limitations, acute and chronic aquatic life criteria and human health criteria are used and expressed in terms of maximum allowable in-stream pollutant concentrations. In general, aquatic-life acute criteria are considered applicable to daily time periods (maximum daily limit) and aquatic-life chronic criteria are considered applicable to monthly time periods (average monthly limit). Chemical-specific human health criteria are typically based on lifetime chronic exposure and, therefore, are typically applicable to monthly average limits.

When permit effluent limitation(s) are necessary to ensure that the receiving water meets narrative water quality criteria, the permitting authority must establish effluent limits in one of the following three ways: 1) based on a “calculated numeric criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and fully protect the designated use,” 2) based on a “case-by-case basis” using CWA § 304(a) recommended water quality criteria, supplemented as necessary by other relevant information; or, 3) in certain circumstances, based on use of an indicator parameter. *See* 40 CFR § 122.44(d)(1)(vi)(A-C).

2.2.2 Antidegradation

Federal regulations found at 40 CFR § 131.12 require states to develop and adopt a statewide antidegradation policy that maintains and protects existing in-stream water uses and the level of water quality necessary to protect these existing uses. In addition, the antidegradation policy ensures maintenance of high quality waters which exceed levels necessary to support propagation of fish, shellfish, and wildlife and to support recreation in and on the water, unless the State finds that allowing degradation is necessary to accommodate important economic or social development in the area in which the waters are located.

The New Hampshire Antidegradation Policy, found at Env-Wq 1708, applies to any new or increased activity that would lower water quality or affect existing or designated uses, including increased loadings to a water body from an existing activity. The antidegradation regulations focus on protecting high quality waters and maintaining water quality necessary to protect existing uses. Discharges that cause “significant degradation” are defined in NH WQS (Env-Wq 1708.09(a)) as those that use 20% or more of the remaining assimilative capacity for a water quality parameter in terms of either concentration or mass of pollutants or flow rate for water quantity. When NHDES determines that a proposed increase would cause a significant impact to existing water quality, the applicant must provide documentation to demonstrate that the lowering of water quality is necessary, that it will provide net economic or social benefit in the area in which the water body is located, and that the benefits of the activity outweigh the environmental impact caused by the reduction in water quality. *See* Env-Wq 1708.10(b).

This permit is being reissued with effluent limitations sufficiently stringent to satisfy the State’s antidegradation requirements, including the protection of the existing uses of the receiving water.

2.2.3 Assessment and Listing of Waters and Total Maximum Daily Loads

The objective of the CWA is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. To meet this goal, the CWA requires states to develop information on the quality of their water resources and report this information to EPA, the U.S. Congress, and the public. To this end, EPA released guidance on November 19, 2001, for the preparation of an integrated "List of Waters" that could combine reporting elements of both § 305(b) and § 303(d) of the CWA. The integrated list format allows states to provide the status of all their assessed waters in one list. States choosing this option must list each water body or segment in one of the following five categories: 1) unimpaired and not threatened for all designated uses; 2) unimpaired waters for some uses and not assessed for others; 3) insufficient information to make assessments for any uses; 4) impaired or threatened for one or more uses but not requiring the calculation of a Total Maximum Daily Load (TMDL); and 5) impaired or threatened for one or more uses and requiring a TMDL.

A TMDL is a planning tool and potential starting point for restoration activities with the ultimate goal of attaining water quality standards. A TMDL essentially provides a pollution budget designed to restore the health of an impaired water body. A TMDL typically identifies the source(s) of the pollutant from point sources and non-point sources, determines the maximum load of the pollutant that the water body can tolerate while still attaining WQSs for the designated uses, and allocates that load among the various sources, including point source discharges, subject to NPDES permits. *See* 40 CFR § 130.7.

For impaired waters where a TMDL has been developed for a particular pollutant and the TMDL includes a waste load allocation (WLA) for a NPDES permitted discharge, the effluent limitation in the permit must be "consistent with the assumptions and requirements of any available WLA". 40 CFR § 122.44(d)(1)(vii)(B).

2.2.4 Reasonable Potential

Pursuant to CWA § 301(b)(1)(C) and 40 CFR § 122.44(d)(1), NPDES permits must contain any requirements in addition to TBELs that are necessary to achieve water quality standards established under § 303 of the CWA. *See also* 33 U.S.C. § 1311(b)(1)(C). In addition, limitations "must control any pollutant or pollutant parameter (conventional, non-conventional, or toxic) which the permitting authority determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including State narrative criteria for water quality." 40 CFR § 122.44(d)(1)(i). To determine if the discharge causes, or has the reasonable potential to cause, or contribute to an excursion above any WQS, EPA considers: 1) existing controls on point and non-point sources of pollution; 2) the variability of the pollutant or pollutant parameter in the effluent; 3) the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity); and 4) where appropriate, the dilution of the effluent by the receiving water. *See* 40 CFR § 122.44(d)(1)(ii).

If the permitting authority determines that the discharge of a pollutant will cause, has the reasonable potential to cause, or contribute to an excursion above WQSs, the permit must contain WQBELs for that pollutant. *See* 40 CFR § 122.44(d)(1)(i).

2.2.5 State Certification

EPA may not issue a permit unless the State Water Pollution Control Agency with jurisdiction over the receiving water(s) either certifies that the effluent limitations contained in the permit are stringent enough to assure that the discharge will not cause the receiving water to violate the State WQSs, the State waives, or is deemed to have waived, its right to certify. *See* 33 U.S.C. § 1341(a)(1). Regulations governing state certification are set forth in 40 CFR § 124.53 and § 124.55. EPA has requested permit certification by the State pursuant to 40 CFR § 124.53 and expects that the Draft Permit will be certified.

If the State believes that conditions more stringent than those contained in the Draft Permit are necessary to meet the requirements of either CWA §§ 208(e), 301, 302, 303, 306 and 307, or applicable requirements of State law, the State should include such conditions in its certification and, in each case, cite the CWA or State law provisions upon which that condition is based. Failure to provide such a citation waives the right to certify as to that condition. EPA includes properly supported State certification conditions in the NPDES permit. The only exception to this is that the permit conditions/requirements regulating sewage sludge management and implementing CWA § 405(d) are not subject to the State certification requirements. Reviews and appeals of limitations and conditions attributable to State certification shall be made through the applicable procedures of the State and may not be made through EPA's permit appeal procedures of 40 CFR Part 124.

In addition, the State should provide a statement of the extent to which any condition of the Draft Permit can be made less stringent without violating the requirements of State law. Since the State's certification is provided prior to final permit issuance, any failure by the State to provide this statement waives the State's right to certify or object to any less stringent condition.

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

2.3 Effluent Flow Requirements

Generally, EPA uses effluent flow both to determine whether an NPDES permit needs certain effluent limitations and to calculate the effluent limitations themselves. EPA practice is to use effluent flow as a reasonable and important worst-case condition in EPA's reasonable potential and WQBEL calculations to ensure compliance with WQSs under CWA § 301(b)(1)(C). Should

the effluent flow exceed the flow assumed in these calculations, the in-stream dilution would be reduced and the calculated effluent limitations might not be sufficiently protective (i.e., might not meet WQSs). Further, pollutants that do not have the reasonable potential to exceed WQSs at a lower discharge flow may have reasonable potential at a higher flow due to the decreased dilution. In order to ensure that the assumptions underlying EPA's reasonable potential analyses and permit effluent limitation derivations remain sound for the duration of the permit, EPA may ensure the validity of its "worst-case" effluent flow assumptions through imposition of permit conditions for effluent flow.¹ In this regard, the effluent flow limitation is a component of WQBELs because the WQBELs are premised on a maximum level flow. The effluent flow limit is also necessary to ensure that other pollutants remain at levels that do not have a reasonable potential to exceed WQSs.

The limitation on effluent flow is within EPA's authority to condition a permit to carry out the objectives and satisfy the requirements of the CWA. *See* CWA §§ 402(a)(2) and 301(b)(1)(C); 40 CFR §§ 122.4(a) and (d), 122.43 and 122.44(d). A condition on the discharge designed to ensure the validity of EPA's WQBELs and reasonable potential calculations that account for "worst case" conditions is encompassed by the references to "condition" and "limitations" in CWA §§402 and 301 and the implementing regulations, as WQBELs are designed to assure compliance with applicable water quality regulations, including antidegradation requirements. Regulating the quantity of pollutants in the discharge through a restriction on the quantity of effluent is also consistent with the CWA.

In addition, as provided in Part II.B.1 of this permit and 40 CFR § 122.41(e), the Permittee is required to properly operate and maintain all facilities and systems of treatment and control. Improper operation and maintenance may result in non-compliance with permit effluent limitations. Consequently, the effluent flow limit is a permit condition that relates to the Permittee's duty to mitigate (*i.e.*, minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment) and to properly operate and maintain the treatment works. *See* 40 CFR §§ 122.41(d), (e).

2.4 Monitoring and Reporting Requirements

2.4.1 Monitoring Requirements

Sections 308(a) and 402(a)(2) of the CWA and the implementing regulations at 40 CFR Parts 122, 124, 125, and 136 authorize EPA to include monitoring and reporting requirements in NPDES permits.

The monitoring requirements included in this permit have been established to yield data representative of the Facility's discharges in accordance with CWA §§ 308(a) and 402(a)(2), and consistent with 40 CFR §§ 122.41(j), 122.43(a), 122.44(i) and 122.48. The Draft Permit specifies

¹ EPA's regulations regarding "reasonable potential" require EPA to consider "where appropriate, the dilution of the effluent in the receiving water," *id.* 40 CFR §122.44(d)(1)(ii). Both the effluent flow and receiving water flow may be considered when assessing reasonable potential. *In re Upper Blackstone Water Pollution Abatement Dist.*, 14 E.A.D. 577, 599 (EAB 2010). EPA guidance directs that this "reasonable potential" analysis be based on "worst-case" conditions. *See In re Washington Aqueduct Water Supply Sys.*, 11 E.A.D. 565, 584 (EAB 2004).

routine sampling and analysis requirements to provide ongoing, representative information on the levels of regulated constituents in the discharges. The monitoring program is needed to enable EPA and the State to assess the characteristics of the Facility's effluent, whether Facility discharges are complying with permit limits, and whether different permit conditions may be necessary in the future to ensure compliance with technology-based and water quality-based standards under the CWA. EPA and/or the State may use the results of the chemical analyses conducted pursuant to this permit, as well as national water quality criteria developed pursuant to CWA § 304(a)(1), State water quality criteria, and any other appropriate information or data, to develop numerical effluent limitations for any pollutants, including, but not limited to, those pollutants listed in Appendix D of 40 CFR Part 122.

NPDES permits require that the approved analytical procedures found in 40 CFR Part 136 be used for sampling and analysis unless other procedures are explicitly specified. Permits also include requirements necessary to comply with the *National Pollutant Discharge Elimination System (NPDES): Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting Rule*.² This Rule requires that where EPA-approved methods exist, NPDES applicants must use sufficiently sensitive EPA-approved analytical methods when quantifying the presence of pollutants in a discharge. Further, the permitting authority must prescribe that only sufficiently sensitive EPA-approved methods be used for analyses of pollutants or pollutant parameters under the permit. The NPDES regulations at 40 CFR § 122.21(e)(3) (completeness), 40 CFR § 122.44(i)(1)(iv) (monitoring requirements) and/or as cross referenced at 40 CFR § 136.1(c) (applicability) indicate that an EPA-approved method is sufficiently sensitive where:

- The method minimum level³ (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or
- In the case of permit applications, the ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or parameter in the discharge; or
- The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter.

2.4.2 Reporting Requirements

The Draft Permit requires the Permittee to report monitoring results obtained during each calendar month to EPA and the State electronically using NetDMR. The Permittee must submit a

² Fed. Reg. 49,001 (Aug. 19, 2014).

³ The term "minimum level" refers to either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in several ways: They may be published in a method; they may be based on the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a laboratory, by a factor. EPA is considering the following terms related to analytical method sensitivity to be synonymous: "quantitation limit," "reporting limit," "level of quantitation," and "minimum level." See Fed. Reg. 49,001 (Aug. 19, 2014).

Discharge Monitoring Report (DMR) for each calendar month no later than the 15th day of the month following the completed reporting period.

NetDMR is a national web-based tool enabling regulated CWA permittees to submit DMRs electronically via a secure internet application to EPA through the Environmental Information Exchange Network. NetDMR has eliminated the need for participants to mail in paper forms to EPA under 40 CFR §§ 122.41 and 403.12. NetDMR is accessible through EPA's Central Data Exchange at <https://cdx.epa.gov/>. Further information about NetDMR can be found on EPA's NetDMR support portal webpage.⁴

With the use of NetDMR, the Permittee is no longer required to submit hard copies of DMRs and reports to EPA and the State unless otherwise specified in the Draft Permit. In most cases, reports required under the permit shall be submitted to EPA as an electronic attachment through NetDMR. Certain exceptions are provided in the permit such as for providing written notifications required under the Part II Standard Conditions.

2.5 Standard Conditions

The standard conditions, included as Part II of the Draft Permit, are based on applicable regulations found in the Code of Federal Regulations. *See generally* 40 CFR Part 122.

2.6 Anti-backsliding

The CWA's anti-backsliding requirements prohibit a permit from being renewed, reissued or modified to include less stringent limitations or conditions than those contained in a previous permit except in compliance with one of the specified exceptions to those requirements. *See* CWA §§ 402(o) and 303(d)(4) and 40 CFR § 122.44(I). Anti-backsliding provisions apply to effluent limits based on technology, water quality, and/or State certification requirements.

All proposed limitations in the Draft Permit are at least as stringent as limitations included in the 2008 Permit unless specific conditions exist to justify relaxation in accordance with CWA § 402(o) or § 303(d)(4). Discussion of any less stringent limitations and corresponding exceptions to anti-backsliding provisions is provided in the sections that follow.

3.0 Description of Facility and Discharge

3.1 Location and Type of Facility

Little Bay Seafood in Newington, NH primarily packs lobsters for sale to wholesale seafood distributors. Additionally, the facility handles baitfish for its lobster fishing operation and for sale. The Facility is located on approximately three acres along the western shore of the Piscataqua River. The site includes (1) a 32,700 square foot building containing offices and lobster operations, (2) the baitfish wetting area, and (3) docking facilities. The office/lobster operation building houses the lobster grading, holding, and packaging areas, the cold storage

⁴ <https://netdmr.zendesk.com/hc/en-us>

areas, mechanical equipment associated with pumping, filtering and cooling water for the lobster holding area; and emergency power diesel generators. Operations associated with baitfish wetting and packing are located at the loading dock. The Facility location is shown in Figure 1 and a site plan is shown in Figure 2.

LBS continuously pumps seawater from the Piscataqua River into the Facility's saltwater pipe main. Three pumps, each with its own intake pipe, are employed to pump seawater: one pump has a rated capacity of 600 gallons per minute (GPM), and each of the other two pumps is rated at a capacity of 200 GPM. According to the Permittee, the Facility typically runs the 600 GPM intake pump (864,000 gallons per day (GPD)) with a minimum through-flow from a single 200 GPM (288,000 GPD) intake pump. Only a small portion of the intake flow is used for the lobster and baitfish wetting operations and depends on the activity occurring. The majority of the intake water is simply routed straight through to Outfall 003.

Lobster Holding & Grading Operations

LBS sorts, holds, and packages lobsters from its own fishing fleet or from independent lobstermen. Lobsters are graded according to size in the grading room and transferred to a plastic tote or crate. Lobsters in crates are held in an open tank (Tank A) and lobsters in totes are stacked in holding areas B, C, and D, which are positioned under an overhead system that delivers a constant flow of filtered water. A flow schematic is shown in Figure 3.

Each of the four lobster holding areas (A, B, C, and D) is supplied by an independent, recirculating system. A schematic of the treatment system is shown in Figure 4. In Tank A, water drains via a standpipe to a reservoir area located under the holding area. In Areas B, C, and D, water from the overhead pipes fills the stacked containers and flows across the floor and through evenly spaced drains to a reservoir located beneath each holding area. From the reservoirs, the water is filtered (using bead/polymide and sand filters) and chilled (the water temperature is approximately 60°F). A foam fractionator discharges to the floor of the lobster holding areas and drains back into each of the reservoirs. Water levels in each of the four reservoirs drains via a standpipe to Outfall 003. In addition, lobster holding water is discharged to Outfall 003 when crates and totes are moved from the holding area to the packaging area. The water in the crate or tote drains through a floor drain. A sump in the floor of the mechanical room for the recirculating system also drains to Outfall 003. Discharges from the lobster holding area combines with the through flow in the pipe before being discharged to Outfall 003. Outfall 003 discharges above the water line to the river. A portion of river water from the intake pipe is diverted to adjust the level of each reservoir to make up for water lost when lobsters are transported from holding to shipping. The remaining intake water is either used for truck rinse water or discharged directly back into the river without being used for industrial activity. The interior storage area of the trucks used to transport baitfish and lobsters are rinsed with seawater that drains to Outfall 003. The Draft Permit authorizes the discharge of the truck storage rinse water but prohibits the discharge of truck washing water and use of cleaning agents.

Baitfish Wetting

Baitfish used by the LBS fishing fleet or sold to other lobstermen has been handled in Newington since 1986. Generally, a variety of fish get delivered by truck or boat. The fish are salted, refrigerated or frozen and finally either loaded onto fishing boats or shipped to external customers. LBS has decreased their production volume of baitfish significantly over the last permit term reducing their processing from between 20 and 30 million pounds of baitfish per year to 4.5 to 9 million pounds of baitfish per year; however, production volume varies depending on availability and demand.

Baitfish are loaded onto a conveyer where they are sprayed with river water from the intake. After the fish enter the facility, they pass through a machine that automatically coats each fish with salt. Fish are placed in plastic barrels for transport onto the lobster boats. Water from the conveyer transporting the baitfish discharges into a catch basin and through to Outfall 002. See Figure 3. In addition to the baitfish wetting, the facility rinses the plastic barrels used to hold bait on the lobster boats using freshwater. The rinse water also discharges to the catch basin and through Outfall 002. See Figure 3. Outfall 002 is an 8-inch pipe that extends out under LBS's pier, and its terminus is 10 feet under water at mean low tide. The baitfish wetting and rinsing operations do not always occur at the same time. Since the last permit was issued a screen was installed on the catch basin to prevent the discharge of large solids.

The baitfish wetting operation changed substantially in 2010. From 2006 through 2010, the Facility's wetting operation was far more active and predominantly handled herring and mackerel. Based on DMR data between 2008 and 2010, the Facility handled, on average, about 283,000 pounds of fish per month with a maximum of 917,000 pounds. Currently most of the baitfish used for the lobster boats comes to the Facility frozen and is loaded onto the boats directly from cold storage in the original cardboard boxes. The Facility also sold its baitfish boats and no longer handles herring or menhaden. Based on data from 2011 to 2021, the Facility now handles, on average, about 20,600 pounds of fish per month with a maximum of 51,500 pounds. The current baitfish wetting activity is about 7% of the activity at the time of the 2008 Permit. Moreover, because the 2008 Permit required monitoring when the baitfish activity was handling herring or menhaden and the Facility has not handled either species since 2012, there has been no effluent sampling that is representative of the current activity at the Facility.

3.1.1 Effluent Limitation Guidelines

EPA has promulgated technology-based effluent limitation guidelines (ELGs) for Seafood Processing for the Canned and Preserved Seafood point source category at 40 CFR Part 408 covering wastewater discharges from facilities that preserve and can seafood. However, the 33 subcategories covered by the ELGs do not include the baitfish processing or wholesale lobster activities at LBS. Therefore, in accordance with CWA § 402(a)(1)(B) and 40 CFR § 125.3(c)(2), EPA may establish effluent limitations on a case-by-case basis using BPJ. The NPDES regulations in 40 CFR §125.3(c)(2) state that permits developed on a case-by-case basis under Section 402 (a)(1) of the CWA shall apply the appropriate factors listed in 40 CFR § 125.3(d) and must consider 1) the appropriate technology for the category class of point sources of which

the applicant is a member, based on available information, and 2) any unique factors relating to the applicant.

3.2 Location and Type of Discharge

Outfall 002 is located at Latitude 43° 06' 21.3" Longitude 70° 47' 50.5" and discharges wastewater from baitfish wetting and fish container rinsing through a single port diffuser. Outfall 003 is located at Latitude 43° 06' 21.1" Longitude 70° 47' 50.7", and discharges water from the lobster holding containers, rinse water from transport trucks, and flow-through water from the intake pumps that is not used in any of the facility's operations. Outfall 005 is located at Latitude 43° 06' 18.5" Longitude 70° 47' 48.8" and discharges comingled stormwater and groundwater from a French drain along the warehouse foundation. All outfalls are located on the western bank of Piscataqua River. *See Figure 2.*

The discharge from Outfall 002 consists of baitfish wetting water and baitfish container rinse water. Outfall 002 discharges from a submerged, single port diffuser located under the pier on the northwestern side of the Facility. The discharges from Outfall 002 are identified as follows:

- Outfall 002A: Baitfish wetting wastewater. Outfall 002A shall be monitored at the Outfall 002 sampling port when the discharge is only associated with baitfish wetting activity.
- Outfall 002B: Baitfish container rinse water. Outfall 002B shall be monitored at the Outfall 002 sampling port when the discharge is only associated with the rinsing of baitfish storage containers.

The discharge to Outfall 003 is comprised of water from the lobster holding tanks and rinse water from the interior of the trucks transport baitfish and lobsters. These discharges mix with a constant through-flow of river water from the intake before being discharged above the water line next to the pier on the northwestern side of the Facility. The discharges from Outfall 003 are identified as follows:

- Outfall 003A: Lobster holding water. Discharges to Outfall 003A shall be collected from the drain to Outfall 003.
- Outfall 003B: Truck rinse water. Discharges to Outfall 003B shall be collected from the rinse water from as the effluent drains from the interior of the trucks.

The discharge from Outfall 005 consists of stormwater from a French drain of the warehouse comingled with groundwater. The pipe ends next to the Outfall 004 pipe above the water line across from the pier on the southeastern side of the Facility. The 2008 Permit required sampling of this discharge during the first three quarters of the permit term. Under the 2008 Permit, the Permittee also discharged stormwater and contaminated groundwater from Outfall 004. Since the 2008 Permit was issued the Permittee has completed remediation and moved the catch basin to Outfall 004 under cover. The discharge from Outfall 004 has been eliminated and the Draft Permit prohibits discharges from Outfall 004.

A quantitative description of the discharge in terms of effluent parameters, based on monitoring data submitted by the Permittee, including Discharge Monitoring Reports (DMRs), from January 1, 2016 to January 31, 2021 is provided in Appendix A of this Fact Sheet. EPA notes that, due to conditional monitoring requirements from the 2008 Permit, recent data is only available for Outfall 003 and limited parameters at Outfall 002. EPA evaluated older data where data from the past five years was unavailable.

Stormwater

Stormwater associated with an industrial activity, as defined in 40 CFR § 122.26(b)(14), means “the discharge from any conveyance that is used for collecting and conveying storm water that is directly related to manufacturing, processing or raw materials storage at an industrial site” including material handling activities such as loading and unloading. The Fact Sheet for the 2008 Permit indicates that at various times the Facility has had its stormwater discharge authorized under an individual permit and a multi-sector general permit. In its 2013 permit application, the Permittee entered the Standard Industrial Classification (SIC) code 2092 for “prepared fresh or frozen fish and seafoods.” Facilities classified within SIC code 2092 are considered to be engaging in “industrial activity” for the purposes of 40 CFR § 122.26(b)(14). *See* 40 CFR § 122.26(b)(14)(ii). According to the NAICS Association, this code is for establishments primarily engaged in preparing fresh and raw or cooked frozen seafoods and seafood preparations. Prepared fresh fish are eviscerated or processed by removal of heads, fins, or scales. LBS handles baitfish and lobsters for wholesale distribution; it does not process any fresh fish or prepare seafood. SIC code 5146 for “fish and seafoods” is for establishments primarily engaged in the wholesale distribution of fresh, cured, or frozen fish and seafoods, except canned or packaged frozen. SIC code 5146 better classifies the industrial activity at LBS. Activities at the Facility, as classified within SIC code 5146, do not fit any of the categories described in 40 CFR § 122.26(b)(14)(i)-(xi). At this time, EPA has determined that stormwater discharges at LBS do not present a significant source of pollutants that would violate water quality standards and do not warrant additional, stormwater-specific controls beyond the narrative, technology-based requirements described in Part 5 of the Fact Sheet (*e.g.*, by making a site-specific designation as “Sector AD” under EPA’s Multi-Sector General Permit). At the same time, some of the industrial activity at LBS, including baitfish wetting, storage container rinsing, and truck rinsing, occurs outside. Residuals from these activities may be exposed to the elements. For this reason, the Draft Permit proposes to include Best Management Practices (BMPs) to control the discharge of pollutants associated with these exposed activities during wet weather and requires bi-annual monitoring to ensure that the BMPs are effectively implemented and maintained.

4.0 Description of Receiving Water and Dilution

4.1 Receiving Water

The Facility discharges to the Lower Piscataqua River-North (Assessment Unit ID: NHEST600031001-02-01), which encompasses 0.613 square miles in the vicinity of the town of Newington, New Hampshire.

The Piscataqua River begins at the confluence of the Salmon Falls and Cocheco Rivers between Dover, New Hampshire and Eliot, Maine. The combined drainage area contains approximately 1,495 square miles in Maine and New Hampshire, including Great Bay and six of its tributaries. The Piscataqua itself is a tidal river, approximately 13 miles long, which empties into Portsmouth Harbor and ultimately the Atlantic Ocean. The tide in this river is semi-diurnal with an average period of 12.4 hours. The lower portion of the Piscataqua River, where the discharge is located, has been characterized as a well-mixed estuary. Tidal flushing requires six to 12 tidal cycles (3 to 6 days) and tidal mixing forces cause the water column to be vertically well mixed. In the vicinity of the Facility's discharge, center river channel depths range from 42 ft to 75 ft below Mean Low Water (MLW) with a median depth (as defined by area) of 18 ft. Also, within the lower Piscataqua River, the river has maximum sweeping flow velocities of approximately 4.9 feet per second (fps) during ebb tide and 4.4 fps during flood tide. The peak tidal flows are approximately 117,000 cubic feet per second (cfs).

The Piscataqua River is classified as a Class B water body pursuant to the State of New Hampshire's Surface Water Quality Regulations (N.H. Code of Administrative Rules, Env-Wq 1703.01) and N.H. RSA 485-A:8. Pursuant to New Hampshire Law at Revised Statutes Annotated (RSA) 485-A:8, II;

Class B waters shall be of the second highest quality and shall have no objectionable physical characteristics, shall contain a dissolved oxygen content of at least 75 percent of saturation.... The pH range for said waters shall be 6.5 to 8.0 except when due to natural causes. Any stream temperature increase associated with the discharge of treated sewage, waste or cooling water, water diversions, or releases shall not be such as to appreciably interfere with the uses assigned to this class. The waters of this classification shall be considered as being acceptable for fishing, swimming and other recreational purposes and, after adequate treatment, for use as water supplies....

Furthermore, the New Hampshire Code of Administrative Rules, Chapter Env-Wq 1700 - Surface Water Quality Regulations (hereinafter "NH Standards") provides expanded and refined interpretations of the State Statute (RSA 485-A:8). Env-Wq 1703.03(c) states that: [t]he following physical, chemical and biological criteria shall apply to all surface waters:

1. All surface waters shall be free from substances in kind or quantity which:
 - a. settle to form harmful deposits;
 - b. float as foam, debris, scum or other visible substances;
 - c. produce odor, color, taste or turbidity which is not naturally occurring and would render it unsuitable for its designated uses;
 - d. result in the dominance of nuisance species; or
 - e. interfere with recreational activities.

Section 303(d) of the CWA requires states to identify those waterbodies that are not expected to meet surface water quality standards after the implementation of technology-based controls and, as such, require the development of total maximum daily loads (TMDL).

The Lower Piscataqua River – North is listed in the final New Hampshire Year 2018 Integrated List of Waters (“303(d) List”) as a Category 5-P “Waters Requiring a TMDL⁵ for polychlorinated biphenyls (PCBs) and mercury under the fish consumption designated use category, dioxin, mercury and PCBs under the shellfishing designated use category and estuarine bioassessments under the aquatic life designated use category. This discharge (lobster holding and baitfish wetting) will not contribute dioxin, mercury, or PCBs to the river.

To date, no TMDL has been developed for this segment for any of the listed impairments. The status of each designated use is presented in Table 1.

Table 1: Summary of Designated Uses and Listing Status

Designated Use	Status
Aquatic Life	Not Supporting / Severe
Drinking Water After Treatment	Fully Supporting / Good
Primary Contact Recreation	Potentially Fully Supporting / Insufficient Information
Secondary Contact Recreation	Insufficient Information / No Data
Fish Consumption	Not Supporting / Marginal
Shellfishing	Not Supporting / Marginal

According to the New Hampshire *Watershed 305(b) Assessment Summary Report*,⁶ this water body segment is fully supporting designated uses for drinking water, after treatment, potentially fully supporting designated uses for primary contact recreation, and not supporting designated uses for aquatic life, fish consumption and shellfishing. There is insufficient information to assign a status to the secondary contact recreation designated use category.

4.2 Available Dilution

To ensure that discharges do not cause or contribute to violations of WQSs under all expected conditions, WQBELs are derived assuming critical conditions for the receiving water.⁷ The critical flow is some measure of the low flow of the receiving water and may stipulate the magnitude, duration, and frequency of allowable excursions from the magnitude component of criteria in order to prevent adverse impacts of discharges on existing and designated uses. The NH Surface Water Quality Standards specify that for tidal rivers like the Piscataqua River, the critical low flow shall be equivalent to the conditions that result in a dilution that is exceeded 99% of the time. *See Env-Wq 1705.02(b)*. NHDES’s marine dilution policy interprets this low flow scenario as the seventh lowest spring and neap tides for the year which corresponds to the 1% low tide.

⁵ New Hampshire Year 2018 Section 303(d) Surface Water Quality List. NHDES, R-WD-19-10; August 2018.

⁶ NHDES 2018 Surface Water Quality Assessment Viewer available at: <https://nhdes-surface-water-quality-assessment-site-nhdes.hub.arcgis.com/app/aa5a11f8b8c341058fc031701a2fb3c9> and NHDES 2016 Watershed Report Card available at:

https://www2.des.state.nh.us/onestoppub/SWQA/010600031001_2016.pdf

⁷ EPA Permit Writer’s Manual, Section 6.2.4

For this Permit issuance, NHDES estimated dilution of LBS's discharge at Outfall 002 as 105.3 within 119 ft of the outfall using the Cornell Mixing Zone Expert System (CORMIX) model. This dilution (greater than 100:1) is generally consistent with the estimates for the 2008 Permit. NHDES limits allowable dilution to 100 to 1 unless a tidal pollutant buildup analysis is performed. The dilution allowance considered in this Fact Sheet is contingent on the proper operation and maintenance of the Facility's diffuser. Accordingly, the Draft Permit requires periodic inspections and regular maintenance of the diffuser pursuant to 40 CFR § 122.41(e), "Proper operation and maintenance." Outfalls 003 and 005 discharge above the high water line and, as a result, there is no dilution for these outfalls.

5.0 Proposed Effluent Limitations and Conditions

The proposed effluent limitations and conditions derived under the CWA and State WQSs are described below. These proposed effluent limitations and conditions, the basis of which is discussed throughout this Fact Sheet, may be found in Part I of the Draft Permit.

5.1 Effluent Limitations and Monitoring Requirements

The State and Federal regulations, data regarding discharge characteristics, and data regarding ambient characteristics described above, were used during the effluent limitation's development process. Discharge data is included in Appendix A.

5.1.1 Effluent Flow

The 2008 Permit includes a total monthly reporting requirement for both Outfalls 002 and 003. The effluent flow of permitted discharges to Outfalls 002 and 003 varies depending on the activity at the facility. For Outfall 002, the Permittee reported estimated flow only for the baitfish wetting activity. To EPA's knowledge, the flow from rinsing the bait storage containers has not been estimated. From January 1, 2016 to January 31, 2021 (Appendix A) effluent flow at Outfall 002 ranged from 1,160 gallons per day (GPD) to 5,600 GPD. On two occasions (February 2017 and December 2017) the Permittee reported unusually high flows at Outfall 002 (above 24,000 GPD); the source of the high flows is unknown. The effluent flow at Outfall 002 over the past five years reflects the reduction in the baitfish wetting operation. From 2008 to 2010 when the baitfish operation was more active, the average flow was 20,634 GPD with a reported maximum flow of 51,150 GPD. The Draft Permit requires the Permittee to estimate and report average monthly and maximum daily flows (in GPD) for the baitfish wetting and the bait storage rinse water separately.

For Outfall 003, the Permittee reported estimated flow withdrawn to adjust the levels of the lobster holding tanks. The reported flow at Outfall 003 does not reflect the amount of river water that is withdrawn, transported through the outfall pipe, and discharged (i.e., the "through-flow"). Based on the minimum intake flow (200 GPM), the flow through Outfall 003 is about 288,000 GPD. The effluent discharged From January 1, 2016 to January 31, 2021 (Appendix A) effluent flow at Outfall 003 ranged from 5,300 GPD to 19,000 GPD. The through-flow from the intake is 15 times greater based on the minimum intake and maximum discharge. The Draft Permit requires the Permittee to report flows for the lobster holding facility based on the volume of

make-up water is used to maintain the levels in the reservoirs. To EPA's knowledge, the reported flow for Outfall 003 does not include the discharge of water used to rinse the interior storage areas from the trucks used to transport bait and lobsters, although this water is discharged to Outfall 003. The Draft Permit requires the Permittee to estimate the average monthly and maximum daily flows (in GPD) for the truck rinse water.

5.1.2 pH

The hydrogen-ion concentration in an aqueous solution is represented by the pH using a logarithmic scale of 0 to 14 standard units (S.U.). Solutions with pH 7.0 S.U. are neutral, while those with pH less than 7.0 S.U. are acidic and those with pH greater than 7.0 S.U. are basic. Discharges with pH values markedly different from the receiving water pH can have a detrimental effect on the environment. Sudden pH changes can kill aquatic life. pH can also have an indirect effect on the toxicity of other pollutants in the water.

The 2008 permit required monthly pH sampling at Outfall 002 and 003. From January 1, 2016 through January 31, 2021 (Appendix A), pH ranged from 7.02 S.U. to 7.97 S.U. at Outfall 002 and from 7.57 to 7.89 S.U. at Outfall 003. The Draft Permit requires a pH range of 6.5 to 8.0 S.U. when the Facility is discharging, monitored by monthly grab samples at Outfall 002 and quarterly grab samples at Outfall 003. The pH limitations are based on the State WQSs, CWA § 301(b)(1)(C), and 40 CFR § 122.44(d).

5.1.3 Total Suspended Solids

Solids could include inorganic (e.g., silt, sand, clay, and insoluble hydrated metal oxides) and organic matter (e.g., flocculated colloids and compounds that contribute to color). Solids can clog fish gills, resulting in an increase in susceptibility to infection or asphyxiation. Suspended solids can increase turbidity in receiving waters and reduce light penetration through the water column or settle to form bottom deposits in the receiving water. Suspended solids also provide a medium for the transport of other adsorbed pollutants, such as metals, which may accumulate in settled deposits that can have a long-term impact on the water column through cycles of re-suspension.

The 2008 Permit required short- and long-term composite sampling for TSS at Outfall 002 on a monthly basis during the first year followed by quarterly monitoring. The 2008 Fact Sheet indicated that processing of menhaden and herring species tend to cause higher peaks in TSS, BOD, and nutrient concentrations than other fish species; the 2008 Permit required that effluent samples be taken from effluent produced by herring or menhaden processing. However, LBS ceased processing menhaden and herring. Because LBS has not processed either species since March 2014, TSS has not been monitored at Outfall 002 since March 2014. The Permittee reported the No Data Indicator (NODI) Code "9" for conditional, not monitored. From December 1, 2008 to March 31, 2014, TSS concentrations ranged from 16 mg/L to 920 mg/L in the short composite samples and 13 mg/L to 1,600 mg/L in the long composite samples. There was no consistent pattern between the short and long-term composite samples.

No recent samples of baitfish wetting discharge have been collected at this outfall that would be representative of current baitfish wetting activity which, as explained above, has changed substantially since the 2008 Permit was issued. There has never been characterization of the effluent from rinsing the bait storage containers. Due to the lack of recent data from Outfall 002, and considering the relatively low discharge volume and high dilution, the Draft Permit imposes narrative, technology-based effluent limitations in the form of best management practices to control the discharge of pollutants to the receiving water. The Draft Permit includes narrative, technology-based requirements and a Best Management Practices (BMP) Plan to ensure that good housekeeping practices and other control measures are implemented and maintained. In addition, the Draft Permit requires reporting TSS concentrations from quarterly grab samples for the baitfish wetting effluent separate from the bait storage rinse water in order to characterize the effluent from each activity. The Draft Permit eliminates the requirement to sample during processing of only certain species to ensure that sampling is conducted when discharging baitfish wetting effluent. The Draft Permit carries forward the requirement to maintain a screen or other filtering device at the Outfall 002 catch basin to control the discharge of solids.

The 2008 Permit required annual sampling from the discharge at Outfall 003 to the receiving water during the month of August. From August 31, 2016 to August 31, 2020 (Appendix A), daily maximum total suspended solids (TSS) concentrations at Outfall 003 ranged from below 7.2 to 77 mg/L. Annual monitoring over the last permit term indicates that TSS concentrations at Outfall 003 range widely and can be substantial. However, because the 2008 Permit required monitoring at the end of the Outfall 003 pipe, which is after the effluent from the lobster holding activity comingles with the through-flow of river water from the intake, there sampling is not representative of the effluent itself. Required monitoring must yield data which are representative of the monitored activity. *See* 40 CFR § 122.48(b). Due to the lack of representative data, the Draft Permit requires reporting the maximum daily TSS in the lobster holding effluent discharged to Outfall 003 on a quarterly basis. During each quarterly sampling event, the Permittee must collect a single composite sample from a grab samples from a limited number of lobster crates or totes being packaged during the monitoring period. Samples of the lobster holding water from totes and crates that are transported for packaging and, as such, are draining to Outfall 003, will be most representative of the effluent prior to comingling with any other wastestream. The Permittee must also collect a single, grab sample of truck rinse water after it is used in the trucks and before comingling with any other flow in Outfall 003.

5.1.4 Biochemical Oxygen Demand

Biochemical oxygen demand (BOD), measures the amount of oxygen consumed by microorganisms in decomposing organic matter in water. BOD also measures the chemical oxidation of inorganic matter (i.e., the extraction of oxygen from water via chemical reaction). The rate of oxygen consumption in a waterbody is affected by several variables: temperature, pH, the presence of microorganisms, and the type of organic and inorganic material. BOD directly affects the amount of dissolved oxygen in rivers and streams. The greater the BOD, the more rapidly oxygen is depleted in the stream. Depletion of the in-stream oxygen levels cause aquatic organisms to become stressed, suffocate, and die.

The 2008 Permit required short- and long-term composite sampling for BOD at Outfall 002 on a monthly basis during the first year followed by quarterly monitoring when herring and/or menhaden were being processed. As with TSS, LBS reported the No Data Indicator (NODI) Code “9” for conditional, not monitored since April 2014 at Outfall 002 since neither species has been processed at the Facility since March 2014. From December 1, 2008 to March 31, 2014, BOD concentrations ranged from 13 mg/L to 1700 mg/L in the short composite samples and 1.7 mg/L to 4900 mg/L in the long composite samples. There was no consistent pattern between the short and long-term composite samples. Due to the lack of recent data from Outfall 002, and considering the relatively low discharge volume and high dilution, the Draft Permit requires reporting TSS concentrations from quarterly grab samples for the baitfish wetting effluent separate from the bait storage rinse water in order to characterize the effluent from each activity. In addition, the Draft Permit requires narrative, technology-based limitations to control the discharge of BOD to Outfall 002.

The 2008 Permit required annual sampling from the discharge at Outfall 003 to the receiving water during the month of August. From August 31, 2016 to August 31, 2020 (Appendix A), daily maximum BOD concentrations at Outfall 003 has ranged from 0.0 to 16 mg/L. Annual monitoring over the last permit term indicates that BOD concentrations at Outfall 003 range widely and can be substantial. However, as with TSS, the previous sampling has not been representative of the effluent associated with the lobster holding activity. Due to the lack of representative data, the Draft Permit requires reporting the maximum daily BOD in the lobster holding effluent separate from the truck rinse water on a quarterly basis.

5.1.5 Nitrogen

Nitrogen is an essential nutrient for plant growth. However, elevated concentrations of nitrogen can result in eutrophication, where nutrient concentrations lead to excessive plant and algal growth. Respiration and decomposition of plants and algae under eutrophic conditions reduce dissolved oxygen in the water and can create poor habitat for aquatic organisms. Total Nitrogen is the sum of Total Kjeldahl Nitrogen (TKN) (ammonium, organic and reduced nitrogen) and nitrate-nitrite. It is derived by individually monitoring for organic nitrogen compounds, ammonia, nitrate, and nitrite and adding the components together. New Hampshire water quality standards (Env-Wq 1703.14(a)) state “Class B waters shall contain no phosphorus or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring.” The Great Bay estuary, which includes the lower Piscataqua River, is currently experiencing water quality issues related to excessive levels of nitrogen including areas of low dissolved oxygen and loss of eelgrass habitat and shellfish beds. Based on a weight of evidence approach, EPA has determined that the total nitrogen load to the estuary exceeds the assimilative capacity of the estuary and is causing or contributing, or has the reasonable potential to cause or contribute, to pervasive nutrient-related impairments and violations of water quality standards. See Great Bay Total Nitrogen General Permit (NHG58A000) Fact Sheet pp. 14-26. See also Great Bay Total Nitrogen General Permit Response to Comment p. 5. The lower Piscataqua River (north) is listed as potentially not supporting for the aquatic life designated use as a result of total nitrogen and is listed as impaired for estuarine bioassessment, which is related to excessive nutrient loading.

The 2008 Permit required short- and long-term composite sampling for ammonia, TKN and nitrates at Outfall 002 on a monthly basis during the first year followed by quarterly monitoring. As with TSS, LBS reported the No Data Indicator (NODI) Code “9” for conditional, not monitored since April 2014 at Outfall 002 since neither species has been processed at the Facility since March 2014. This data, which was taken prior to the substantial reduction in and change in species handled during baitfish wetting activity, does not necessarily reflect the current operations or levels of nitrogen discharged to Outfall 002. From December 1, 2008 to March 31, 2014, ammonia concentrations ranged from 0.6 mg/L to 120 mg/L in the short composite samples and 0.08 mg/L to 100 mg/L in the long composite samples, TKN concentrations ranged from 0.9 mg/L to 260 mg/L in the short composite samples and 3 mg/L to 1300 mg/L in the long composite samples, nitrate concentrations were below the detection limit in both short and long composite samples. There was no consistent pattern between the short and long-term composite samples. Due to the lack of recent data and inability to characterize the effluent from Outfall 002, and considering the relatively low discharge volume, the Draft Permit requires reporting total nitrogen (TN), TKN, nitrate and nitrite, and ammonia nitrogen from monthly grab samples for the baitfish wetting effluent separate from the bait storage rinse water in order to characterize the effluent from each activity. A higher monitoring frequency is warranted for nitrogen given that the water quality issues in Great Bay and in the lower Piscataqua River. The Draft Permit requires narrative, technology-based limitations to control the discharge of nitrogen. The monitoring data will provide a baseline of the existing load to the receiving water while the narrative limitations, include optimizing control measures to target nitrogen reductions, coupled with the requirements to track nitrogen loads, will ensure that there is no increase in nitrogen loading to the receiving water under the Draft Permit in accordance with antidegradation requirements. See Env-Wq 1708. Indeed, while there is no recent data representative of current loads, EPA expects that the changes in the baitfish wetting operations since 2012, including reducing the pounds of baitfish and eliminating handling of menhaden and herring (two species that were associated with higher pollutant concentrations) achieves lower nitrogen loads. These narrative limitations are consistent with EPA’s adaptive management permitting approach for point sources in Great Bay, which also considers efforts to control point and non-point sources of nitrogen throughout the watershed. See NHG58A000. If monitoring data indicates that the narrative limitations are not sufficient to control nitrogen discharges to maintain water quality standards, EPA and the State may evaluate the BMPs and make changes as needed, including potentially establishing a numeric, water-quality based limit.

The 2008 Permit required annual sampling for ammonia, TKN and nitrates at Outfall 003 during the month of August. From August 31, 2016 to August 31, 2020 (Appendix A), daily maximum ammonia concentrations ranged from 0.0 to 0.9 mg/L, daily maximum TKN concentrations ranged from 0.6 to 4.8 mg/L, and daily maximum nitrate concentrations ranged from 0.0 to 64 mg/L. Annual monitoring over the last permit term indicates that ammonia, TKN and nitrate concentrations at Outfall 003 range widely; however, as explained above, the discharge from Outfall 003 is primarily river water through-flow. As with TSS, the previous sampling has not been representative of the effluent associated with the lobster holding activity. Due to the lack of representative data, the Draft Permit requires reporting the maximum daily total nitrogen (TN), TKN, nitrate and nitrite, and ammonia nitrogen in the lobster holding effluent separate from the truck rinse water on a monthly basis. As explained above, the narrative limits and optimization requirements, in the Draft Permit are expected to maintain water quality standards to ensure that

there is no increased nitrogen load to Great Bay. EPA and the State may evaluate the BMPs and make changes as needed, including potentially establishing a numeric, water-quality based limit, if monitoring data indicates that the narrative limitations are not sufficient to control nitrogen discharges.

5.1.6 Total Phosphorus

While phosphorus is an essential nutrient for the growth of aquatic plants, it can stimulate rapid plant growth in freshwater ecosystems when it is present in high quantities. The excessive growth of aquatic plants and algae within freshwater systems negatively impacts water quality and can interfere with the attainment of designated uses by: 1) increasing oxygen demand within the water body to support an increase in both plant respiration and the biological breakdown of dead organic (plant) matter; 2) causing an unpleasant appearance and odor; 3) interfering with navigation and recreation; 4) reducing water clarity; 5) reducing the quality and availability of suitable habitat for aquatic life; 6) producing toxic cyanobacteria during certain algal blooms.

The 2008 Permit required short- and long-term composite sampling for total phosphorus at Outfall 002 on a monthly basis during the first year followed by quarterly monitoring and composite sampling for total phosphorus at Outfall 003 on an annual basis. As with TSS, LBS reported the No Data Indicator (NODI) Code “9” for conditional, not monitored since April 2014 at Outfall 002 since neither species has been processed at the Facility since March 2014. From December 1, 2008 to March 31, 2014, total phosphorus concentrations ranged from 0.03 mg/L to 250 mg/L in the short composite samples and 0.25 mg/L to 240 mg/L in the long composite samples. There was no consistent pattern between the short and long-term composite samples. Due to the lack of recent data from Outfall 002, and considering the relatively low discharge volume and high dilution, the Draft Permit requires reporting total phosphorus from quarterly grab samples for the baitfish wetting effluent separate from the bait storage rinse water in order to characterize the effluent from each activity. In addition, the Draft Permit requires narrative, technology-based limitations to control the discharge of total phosphorus to Outfall 002.

The 2008 Permit required annual sampling for total phosphorus at Outfall 003 during the month of August. From August 31, 2016 to August 31, 2020 (Appendix A), daily maximum total phosphorus concentrations at Outfall 003 ranged from 0.07 to 11 mg/L. Annual monitoring over the last permit term indicates that phosphorus concentrations at Outfall 003 range widely and can be substantial. However, as with TSS, the previous sampling has not been representative of the effluent associated with the lobster holding activity. Due to the lack of representative data, the Draft Permit requires reporting the maximum daily total phosphorus (TP) in the lobster holding effluent separate from the truck rinse water on a quarterly basis.

5.1.7 Oil and Grease

Oil and Grease is not a single chemical constituent, but includes a large range of organic compounds, which can be both petroleum-related (e.g., hydrocarbons) and non-petroleum (e.g., vegetable and animal oils and greases, fats, and waxes). These compounds have varying physical, chemical, and toxicological properties. Generally, oils and greases in surface waters either float on the surface, are solubilized or emulsified in the water column, adsorb onto floating

or suspended solids and debris, or settle on the bottom or banks. Oil and grease, or certain compounds within an oil and grease mixture, can be lethal to fish, benthic organisms and water-dwelling wildlife.

The 2008 Permit required short- and long-term composite sampling for oil and grease at Outfall 002 on a monthly basis during the first year followed by quarterly monitoring. As with TSS, LBS reported the No Data Indicator (NODI) Code “9” for conditional, not monitored since April 2014 at Outfall 002 since neither species has been processed at the Facility since March 2014. From December 1, 2008 to March 31, 2014, oil and grease concentrations ranged from 0 mg/L to 300 mg/L in the short composite samples and 2.6 mg/L to 9900 mg/L in the long composite samples. There was no consistent pattern between the short and long-term composite samples. Due to the lack of recent data from Outfall 002, and considering the relatively low discharge volume and high dilution, the Draft Permit requires reporting oil and grease from quarterly grab samples for the baitfish wetting effluent separate from the bait storage rinse water in order to characterize the effluent from each activity. In addition, the Draft Permit requires narrative, technology-based limitations to control the discharge of oil and grease to Outfall 002.

The 2008 Permit required annual sampling for oil and grease at Outfall 003 during the month of August. From August 31, 2016 to August 31, 2020 (Appendix A), daily maximum oil and grease concentrations at Outfall 003 remained under the detection limit during the monitoring period. While previous sampling has not been representative of the effluent associated with the lobster holding activity, there is no reason to believe that the filtered water which drains from the crates and totes holding lobsters or in the reservoirs would contain oil and grease. The Draft Permit eliminates the requirement to monitor oil and grease in the lobster holding effluent discharged to Outfall 003 but requires monitoring and reporting oil and grease in the truck rinse water effluent discharged to Outfall 003.

5.1.8 Outfall 005

In the 2013 application for renewal of its NPDES permit, LBS indicated that Outfall 005 discharges from the compressor room and water condensate. However, the Permittee confirmed in 2006 that the condensate and compressor water was disconnected from Outfall 005. See July-August 2006 Monitoring Report (submitted September 15, 2006). The Permittee also indicated in 2006 that the end of the outfall pipe was capped and sealed. However, during the site visit EPA and NHDES observed that the end of Outfall 005 was open and the Permittee indicated that a small amount of weeping still occurs.

According to the 2008 Fact Sheet, Outfall 005 discharges from a pipe connected to a French drain located near the southeast corner of the building’s foundation. Sampling of the discharge from Outfall 005 in 2007 and 2008 indicated that it may be contaminated with volatile organic compounds (VOCs) at levels above water quality standards. The 2008 Permit required the Permittee to collect samples from Outfall 005 during the first three quarters of the permit term and to monitor and report pH and volatile organic compounds. The Permittee reported two values for pH (in Apr-Jun 2009 and Jul-Sep 2009, both of which were within the range of 6.5 to 8.0 S.U) and one value of 14.6 µg/L for VOCs from the quarterly sample from July to September 2009.

The existing record for the discharge from Outfall 005 is currently inadequate. The existing data suggests that the concentrations of VOCs (primarily tetrachloroethylene) in the discharge is below the water quality standards for the protection of aquatic life at Env-Wq 1703.21(b) but may exceed the recommended human health criteria for consumption of aquatic organisms. The criteria for the protection of human health from the potential carcinogenic effects due to exposure of tetrachloroethylene (PCE) through consumption is 10 µg/L (water + organisms) and 29 µg/L (organism only). *See* Env-Wq 1703.21(b).⁸ At least one of the limited number of samples exceeded the (water + organism) value, though the sample was collected at the end of pipe prior to any dilution in the receiving water. Although the discharge from Outfall 005 is above the water line, the criterion is based on human health consumption and EPA does not expect the discharge to exceed this value in the Piscataqua River.

The preferred option is for the Permittee to permanently seal Outfall 005 and eliminate any point source discharge of foundation water and groundwater. It is unclear, however, whether doing so would result in issues with drainage at the site. The Draft Permit proposes quarterly monitoring and reporting for pH, VOCs, and oil and grease at Outfall 005. Based on the results of the first three years of monitoring (or 12 samples), the Permittee may request a reduction in the frequency or elimination of monitoring at Outfall 005. Alternatively, the Permittee may permanently eliminate discharges from Outfall 005. If the Permittee documents the elimination of discharges from Outfall 005 prior to Final Permit issuance, EPA will remove the monitoring requirements from the permit. If the Permittee documents the elimination of discharges from Outfall 005 after issuance of the Final Permit, EPA may modify the permit to eliminate the monitoring requirements. Deleting a point source outfall when the discharge from the outfall is terminated in a minor modification under 40 CFR § 122.63(e)(2) and may be processed without following the procedures in 40 CFR Part 124.

5.2 Special Conditions

5.2.1 Best Management Practices

Best management practices (BMPs) may be expressly incorporated into a permit on a case-by-case basis where it is determined that they are necessary to achieve effluent limitations and standards or to carry out the purpose and intent of the CWA under § 402(a)(1). BMPs may be necessary to control or abate the discharge of pollutants when: 1) authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities; 2) authorized under CWA § 402(p) for the control of storm water discharges; 3) numeric effluent limitations are infeasible; or 4) the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA. *See* 40 CFR § 122.44(k). Pollutants may be present because they are generated during Facility operations associated with baitfish wetting, transport, and lobster holding, which could result in these pollutants reaching waters of the United States.

⁸ Also see EPA Final Updated Ambient Water Quality Criteria for the Protection of Human Health. 80 FR 36986 (June 29, 2015).

In this case, the Draft Permit requires the selection, design, installation, and implementation of control measures to comply with the non-numeric technology-based effluent limits in the Draft Permit. The Draft Permit requires the Permittee to implement and continually evaluate the Facility's structural controls (e.g., treatment systems, containment areas, holding tanks), and non-structural controls (operational procedures, site inspections, and operator training). Proper implementation of BMPs will minimize pollutants in discharges from baitfish wetting and lobster holding operations and prevent or minimize pollutants entering via runoff. Compliance with requirements to identify pollutant sources and select, design, install and maintain the pollution control technology necessary to meet the effluent limitations ensure that dilution is not used as a form of treatment. Non-numeric limitations include:

- Select, design, implement, and maintain control measures designed to minimize the discharge of total suspended solids, floating solids, foam, visible oil sheen, and settleable solids in discharges associated with lobster holding, baitfish wetting, and cleaning operations to the receiving water. Control measures must be used in accordance with good engineering practices and manufacturer's specifications.
- Maintain a corrosion resistant screen or other filter to prevent solids from entering the catch basin draining to Outfall 002 during baitfish wetting and fish container rinsing.
- Design good housekeeping measures to maintain areas that are potential sources of pollutants including, but not limiting to, maintaining the area around the outfall drainage and catch basins free of debris, fish scales, or fish parts;
- Implement preventative maintenance programs for pollution control equipment (e.g., screens at catch basins to prevent solids from being discharged) to ensure that equipment is maintained, and to avoid leaks, spills, and other releases of pollutants to receiving waters;
- Implement spill prevention and response procedures to ensure effective response to spills and leaks if or when they occur;
- Perform routine inspections of the control measures, discharge points, and areas where industrial materials, potential pollutant sources, or activities are exposed to runoff or wastewater;
- Minimize dust generation and vehicle tracking of industrial materials; and
- Develop standard procedures for handling solids and other wastes collected at pollution control equipment.

These non-numeric effluent limitations support, and are equally enforceable as, the numeric effluent limitations included in the Draft Permit. The purpose of these requirements is to reduce or eliminate the discharge of pollutants to waters of the United States. They have been selected on a case-by-case basis based on those appropriate for this specific facility. *See* CWA §§ 304(e) and 402(a)(1) and 40 CFR § 122.44(k). These requirements will also ensure that discharges from the Facility will meet State WQs pursuant to CWA § 301(b)(1)(C) and 40 CFR § 122.44(d)(1). Unless otherwise stated, the Permittee may select, design, install, implement and maintain BMPs as the Permittee deems appropriate to meet the permit requirements. The selection, design, installation, implementation and maintenance of control measures must be in accordance with good engineering practices and manufacturer's specifications. To ensure that the BMPs are implemented and maintain, and the control measures effectively minimize the discharge of pollutants associated with baitfish wetting, container rinsing, and truck rinsing, the Draft Permit

proposes twice annual monitoring of runoff from Outfall 002A when the Facility is not engaged in baitfish wetting, baitfish storage container rinsing, or truck rinsing.

5.2.2 Best Management Practices Plan

As explained above, the Draft Permit requires the selection, design, installation, and implementation of control measures to comply with the non-numeric, technology-based effluent limits, or best management practices (BMPs) in the Draft Permit. This Draft Permit contains BMPs for wastewater associated with the lobster holding and grading operations. In addition to BMPs, the Draft Permit contains requirements for the Permittee to develop, implement, and maintain a BMP Plan for controlling the discharge of pollutants associated with baitfish wetting and lobster holding activities.

The Draft Permit specifies that the BMP Plan must include the following, at a minimum:

- Documentation of the selection, design, installation, implementation, and maintenance of control measures designed to prevent or reduce the discharge of pollutants in wastewater generated from lobster holding, baitfish wetting, truck bed rinsing, and rinsing containers used to hold baitfish;
- A description of the pollution control equipment and preventative maintenance procedures, including frequency of inspections, used to prevent or reduce the discharge of pollutants; and
- Documentation of the procedures for handling wastes generated from the baitfish wetting, truck rinsing, lobster holding, and fish container rising operations, including schedules for removal, handling and disposal of materials, and a description of where solids removed using pollution control equipment are stored and/or disposed. If solids are removed from the site, include a description of the destination and method of disposal and/or reuse.

The development and implementation of the BMP Plan is an enforceable element of the permit. The Draft Permit directs the Permittee to incorporate BMPs, as described above, directly into the BMP Plan, which serves to document the selection, design and installation of control measures selected to meet the permit effluent limitations. The goal of the BMP Plan is to reduce or prevent the discharge of pollutants to waters of the United States from discharges associated with baitfish wetting and lobster holding/packaging.

The Draft Permit requires the Permittee within ninety (90) days of the effective date of the permit to certify that the BMP Plan has been prepared, meets the requirements of the permit, and documents the control measures, including BMPs, that have been implemented to reduce or eliminate the discharge of pollutants associated with baitfish wetting, storage, and lobster holding and grading operations. The Permittee must also certify at least annually that the Facility has complied with the BMPs described in the BMP Plan, including inspections, maintenance, and training activities. The Permittee is required to amend and update the BMP Plan if any change occurs at the Facility affecting the Plan, such as changes in the design, construction, operation, or maintenance of the Facility. The BMP Plan must be maintained on site at the

Facility and provided to EPA and/or the State upon request. All BMP records must be maintained on-site for at least three years.

6.0 Federal Permitting Requirements

6.1 Endangered Species Act

Section 7(a) of the Endangered Species Act of 1973, as amended (ESA), grants authority and imposes requirements on Federal agencies regarding endangered or threatened species of fish, wildlife, or plants (listed species) and habitat of such species that has been designated as critical (a “critical habitat”).

Section 7(a)(2) of the ESA requires every Federal agency, in consultation with and with the assistance of the Secretary of Interior, to ensure that any action it authorizes, funds or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The United States Fish and Wildlife Service (USFWS) administers Section 7 consultations for freshwater species. The National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) administers Section 7 consultations for marine and anadromous species.

The Federal action being considered in this case is EPA’s proposed NPDES permit for Little Bay Seafood. The Draft Permit is intended to replace the 2008 Permit in governing the Facility. As the federal agency charged with authorizing the discharge from this Facility, EPA determines potential impacts to federally listed species, and initiates consultation, when required under Section 7(a)(2) of the ESA.

The discharges are located at approximately Latitude 43° 06’ 18” Longitude -70° 47’ 48” along the southern bank of the Piscataqua River. The discharge to Outfall 002 is comprised of wastewater associated with baitfish wetting and rinsing bait storage containers. Outfall 002 discharges from a submerged, single port diffuser located under the pier. The discharge to Outfall 003 is comprised of water from the lobster holding tanks and rinse water from the interior of the trucks transport baitfish and lobsters. These discharges mix with a constant through-flow of river water before being discharged above the water line next to the pier. The Lower Piscataqua River - North (Assessment Unit ID NHEST600031001-02) in Newington, New Hampshire is a tidal river that empties to Portsmouth Harbor about 3.5 miles downstream from the outfalls before joining the Gulf of Maine.

EPA has reviewed the federal endangered or threatened species of fish, wildlife, and plants in the expected action area of the outfalls. Atlantic sturgeon adults and subadults, shortnose sturgeon adults, and critical habitat for Atlantic sturgeon, all of which fall under the jurisdiction of NOAA Fisheries, occur in the vicinity of the Facility’s discharges.⁹ NOAA fisheries expects that Atlantic sturgeon adults and subadults use the Piscataqua River for foraging year-round and for resting during spring and fall migrations, although tracking data indicates limited use of this area. Similarly, NOAA Fisheries expects that shortnose sturgeon could be present from early spring to

⁹ See <https://www.greateratlantic.fisheries.noaa.gov/protected/section7/index.html>

late fall. The protected species and habitat may be influenced by the discharge from the Facility. NOAA Fisheries designated critical habitat for the Gulf of Maine, New York Bight, Chesapeake Bay, and South Atlantic Distinct Population Segments of Atlantic Sturgeon, which became effective on September 18, 2017. *See* 82 Fed. Reg. 39160 (August 17, 2017). The designated critical habitat includes the Piscataqua River from its confluence with the Salmon Falls and Cochecho rivers downstream to where the mainstem river discharges at its mouth into the Atlantic Ocean¹⁰, which includes the action area. *See* 50 CFR § 226.225(d)(4).

Because federally-listed protected species may be affected by the discharges authorized by the Draft Permit, EPA has evaluated the potential impacts of the permit action on shortnose and Atlantic sturgeon as well as Atlantic sturgeon critical habitat. Briefly, the primary pollutants of concern are total suspended solids and nutrients and the discharges are likely to experience significant dilution in the receiving water such that the narrative water quality standards applicable to these pollutants will be met. As an example, the estimated dilution at the diffuser for Outfall 002 under the last permit was more than 100:1. The discharge from the lobster holding facility mixes with the through-flow of river water in Outfall 003 prior to discharge. In addition, the Draft Permit prohibits the discharge of any chemical, additives, or cleaning agents to the receiving water. Finally, the Draft Permit establishes narrative, technology-based effluent limitations in the form of best management practices (BMPs) to control the discharge of pollutants to the receiving water and imposes monitoring requirements that will ensure the BMPs are effective. On the basis of its evaluation, EPA made a preliminary finding that the discharges from LBS may affect, but are not likely to adversely affect, life stages of shortnose and Atlantic sturgeon in the action area or Atlantic sturgeon critical habitat. Therefore, EPA has judged that a formal consultation pursuant to Section 7 of the ESA is not required. EPA is seeking concurrence from NOAA Fisheries regarding its evaluation and preliminary finding in a letter sent to NOAA Fisheries Protected Resources Division under separate cover.

For protected species under the jurisdiction of the USFWS, one listed threatened species, the northern long-eared bat (*Myotis septentrionalis*), was identified as potentially occurring in the action area of the Facility's discharge(s).¹¹ According to the USFWS, the threatened northern long-eared bat is found in "winter – mines and caves, summer – wide variety of forested habitats." This species is not aquatic, so the Facility's discharge(s) will have no direct effect on this mammal. Further, the permit action is also expected to have no indirect effect on the species because it is not expected to impact insects, the primary prey of the northern long-eared bat. EPA completed an "effects determination" using the northern long-eared bat key within the Information for Planning and Consultation (IPaC) system and determined that the action is consistent with the activities analyzed in the Service's January 5, 2016 Programmatic Biological Opinion. Therefore, EPA has satisfied its responsibilities for this action under ESA Section 7(a)(2) with respect to the northern long-eared bat.

¹⁰ Critical habitat boundaries also include the waters of the Cochecho River from its confluence with the Piscataqua River and upstream to the Cochecho Falls Dam and waters of the Salmon Falls River from its confluence with the Piscataqua River and upstream to the Route 4 Dam. These waters are outside of the action area.

¹¹ See <https://ecos.fws.gov/ipac/>

At the beginning of the public comment period, EPA notified USFWS and NOAA Fisheries Protected Resources Division that the Draft Permit and Fact Sheet were available for review and provided a link to the EPA NPDES Permit website to allow direct access to the documents.

Initiation of formal consultation is not required, but can be requested by EPA or by the Services where discretionary Federal involvement or control over the action has been retained or is authorized by law and if: 1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered in the analysis; 2) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this analysis; 3) a new species is listed or critical habitat designated that may be affected by the identified action; or 4) there is any incidental taking of a listed species.

6.2 Essential Fish Habitat

Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (*see* 16 U.S.C. § 1801 *et seq.*, 1998), EPA is required to consult with the NOAA Fisheries if EPA's action or proposed actions that it funds, permits, or undertakes, "may adversely impact any essential fish habitat". *See* 16 U.S.C. § 1855(b).

The Amendments broadly define "essential fish habitat" (EFH) as: "waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity". *See* 16 U.S.C. § 1802(10). "Adverse impact" means any impact that reduces the quality and/or quantity of EFH. 50 CFR § 600.910(a). Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

EFH is only designated for fish species for which federal Fisheries Management Plans exist. *See* 16 U.S.C. § 1855(b)(1)(A). EFH designations for New England were approved by the U.S. Department of Commerce on March 3, 1999.

The Federal action being considered in this case is EPA's proposed NPDES permit for the Little Bay Seafood, which discharges through Outfall 002 and 003 to the Lower Piscataqua River (Assessment Unit ID: NHEST600031001-02-01) in Newington, NH. The Lower Piscataqua River is not covered by EFH designation for riverine systems at Latitude 43° 06' 18" and Longitude 70° 47' 48" as determined by the NOAA EFH Mapper.¹² EPA's review of available EFH information indicated that this water body is designated EFH for 16 federally managed species. The full listing of EFH species is included in Table 2, below.

¹² NOAA EFH Mapper available at <http://www.habitat.noaa.gov/protection/efh/efhmapper/>

Table 2. EFH Species in the vicinity of Little Bay Seafood Outfalls at Latitude 43° 06' 18", Longitude 70° 47' 48"

Species	Lifestage(s) Found at Location
Atlantic Sea Scallop	All
Atlantic Wolffish	All
Winter Flounder	Eggs, Juvenile, Larvae/Adult
Little Skate	Juvenile, Adult
Atlantic Herring	Juvenile, Adult, Larvae
Atlantic Cod	Larvae, Adult, Eggs
Pollock	Juvenile, Eggs, Larvae
Red Hake	Adult, Eggs/Larvae/Juvenile
Windowpane Flounder	Adult, Larvae, Eggs, Juvenile
Winter Skate	Juvenile
Smooth Skate	Juvenile
White Hake	Adult, Eggs, Juvenile
Thorny Skate	Juvenile
Atlantic Mackerel	Eggs, Larvae, Juvenile
Bluefish	Adult, Juvenile
Atlantic Butterfish	Adult

6.2.1 EPA's Finding of all Potential Impacts to EFH Species

EPA has concluded that the limits and conditions contained in the Draft Permit minimize adverse effects to EFH species listed in Table 2, above, for the following reasons:

- This Draft Permit action does not constitute a new source of pollutants. It is the reissuance of an existing NPDES permit;
- The Draft Permit establishes narrative, best management practices and monitoring to control the discharge of pH, total suspended solids, biochemical oxygen demand, oil and grease, total nitrogen and total phosphorus;
- The Draft Permit prohibits the discharge of chemicals, additives, detergents, prophylactic bacterial medication, pharmaceuticals, pentachlorophenol, trichlorophenol, and vehicle wash water;
- The Draft Permit prohibits the discharge of pollutants or combination of pollutants in toxic amounts;
- The effluent limitations and conditions in the Draft Permit were developed to be protective of all aquatic life; and
- The Draft Permit prohibits violations of the state water quality standards.

EPA believes that the conditions and limitations contained in the Draft Permit adequately protect all aquatic life, including designated EFH species in the receiving water. Further mitigation is not warranted. Should adverse impacts to EFH be detected as a result of this permit action, or if new information is received that changes the basis for EPA's conclusions, NOAA Fisheries Habitat Division will be contacted and an EFH consultation will be re-initiated.

At the beginning of the public comment period, EPA notified NOAA Fisheries Habitat and Ecosystem Services Division that the Draft Permit and Fact Sheet were available for review and provided a link to the EPA NPDES Permit website to allow direct access to the documents. In addition to this Fact Sheet and the Draft Permit, information to support EPA's finding was included in a letter under separate cover that will be sent to the NOAA Fisheries Habitat and Ecosystem Services Division during the public comment period.

6.3 Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 et seq., and its implementing regulations (15 CFR Part 930) require a determination that any federally licensed or permitted activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) is consistent with the enforceable policies of the CZMP. EPA is prohibited from issuing a NPDES permit for any activity affecting any land or water use or natural resource of the coastal zone until the applicant certifies that the proposed activity complies with the State Coastal Zone Management program, and the State or its designated agency concurs with the certification or the Secretary of Commerce overrides the State's nonconcurrence.

In New Hampshire, the New Hampshire Coastal Program (NHCP) – 222 International Drive, Suite 175, Portsmouth, NH 03801 – is responsible for issuing federal consistency decisions. The Permittee submitted the required federal consistency certification and necessary data and information to the NHCP in a letter dated May 1, 2020. EPA expects the NHCP will find the discharge consistent with the CZMA and its enforceable policies.

7.0 Public Comments, Hearing Requests, and Permit Appeals

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

Danielle Gaito
EPA Region 1
5 Post Office Square, Suite 100 (06-1)
Boston, MA 02109-3912
Telephone: (617) 918-1297
Email: gaito.danielle@epa.gov

Prior to the close of the public comment period, any person may submit a written request to EPA for a public hearing to consider the Draft Permit. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held if the criteria stated in 40 CFR § 124.12 are satisfied. In reaching a final decision on the Draft Permit, EPA will respond to all significant comments in a Response to Comments document attached to the Final Permit and make these responses available to the public at EPA's Boston office and on EPA's website.

Following the close of the comment period, and after any public hearings, if such hearings are held, EPA will issue a Final Permit decision, forward a copy of the final decision to the

applicant, and provide a copy or notice of availability of the final decision to each person who submitted written comments or requested notice. Within 30 days after EPA serves notice of the issuance of the Final Permit decision, an appeal of the federal NPDES permit may be commenced by filing a petition for review of the permit with the Clerk of EPA's Environmental Appeals Board in accordance with the procedures at 40 CFR § 124.19.

8.0 Administrative Record

The administrative record on which this Draft Permit is based may be accessed on EPA's website or at EPA's Boston office by appointment, Monday through Friday, excluding holidays from Danielle Gaito, EPA Region 1, 5 Post Office Square, Suite-100 (06-1), Boston, MA 02109-3912, or via email to gaito.danielle@epa.gov.

Date

Ken Moraff, Director
Water Division
U.S. Environmental Protection Agency

Figure 1: Location Map

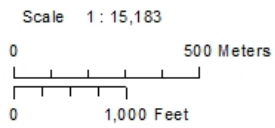
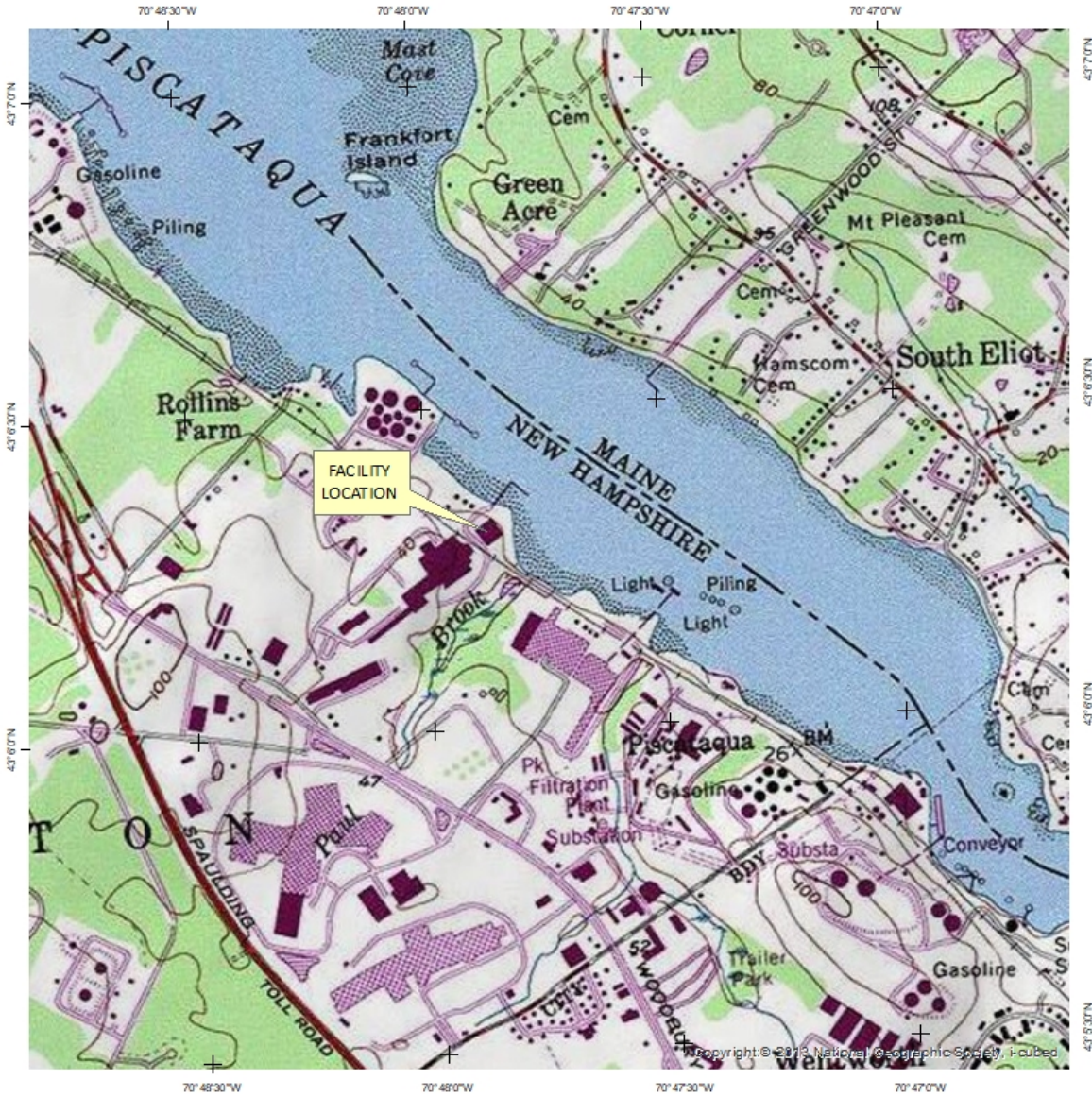
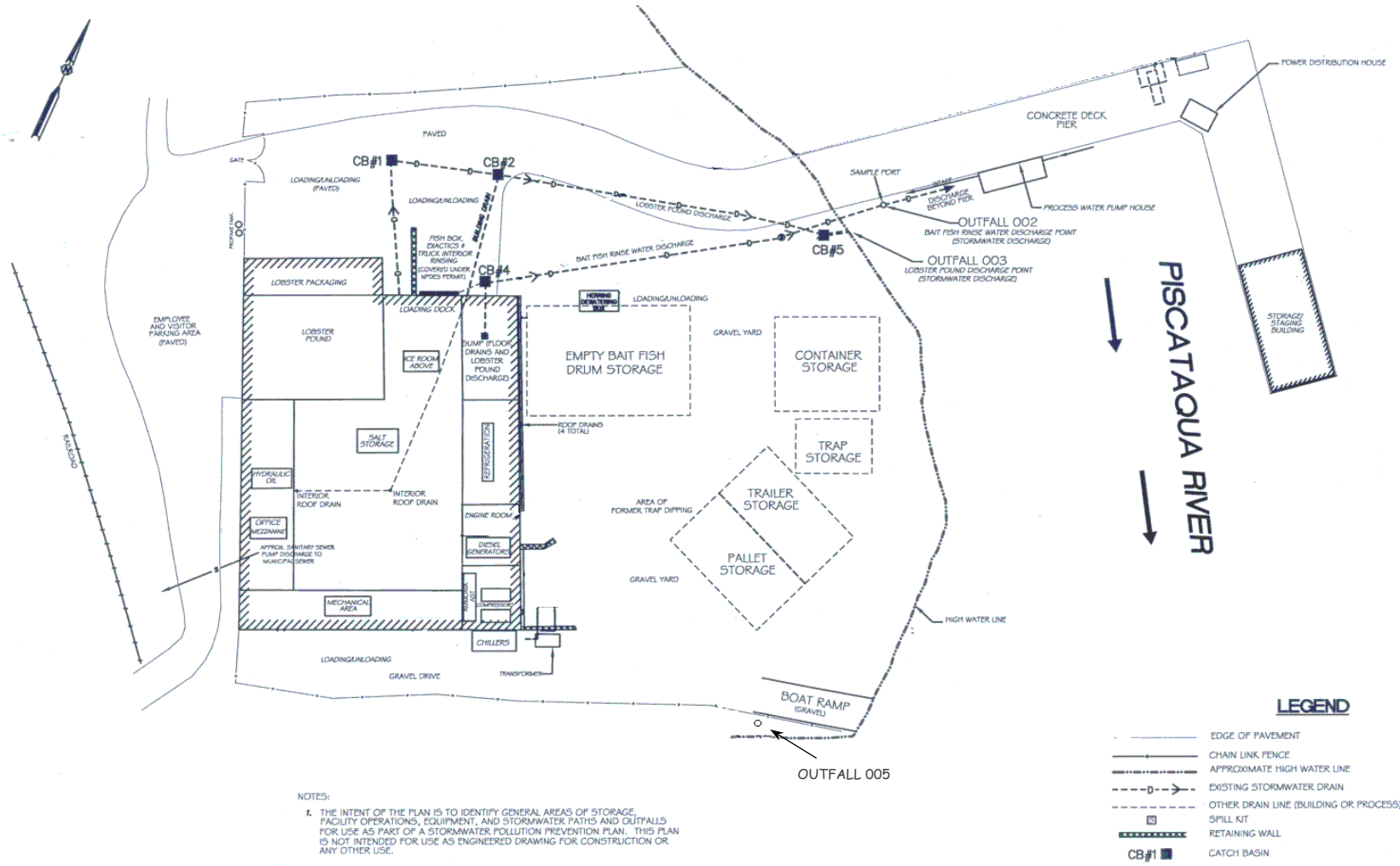


FIGURE 1
Little Bay Seafood
Location Map

Newington, NH

Figure 2: Site Plan



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

Figure 3: Schematic of Water Flow

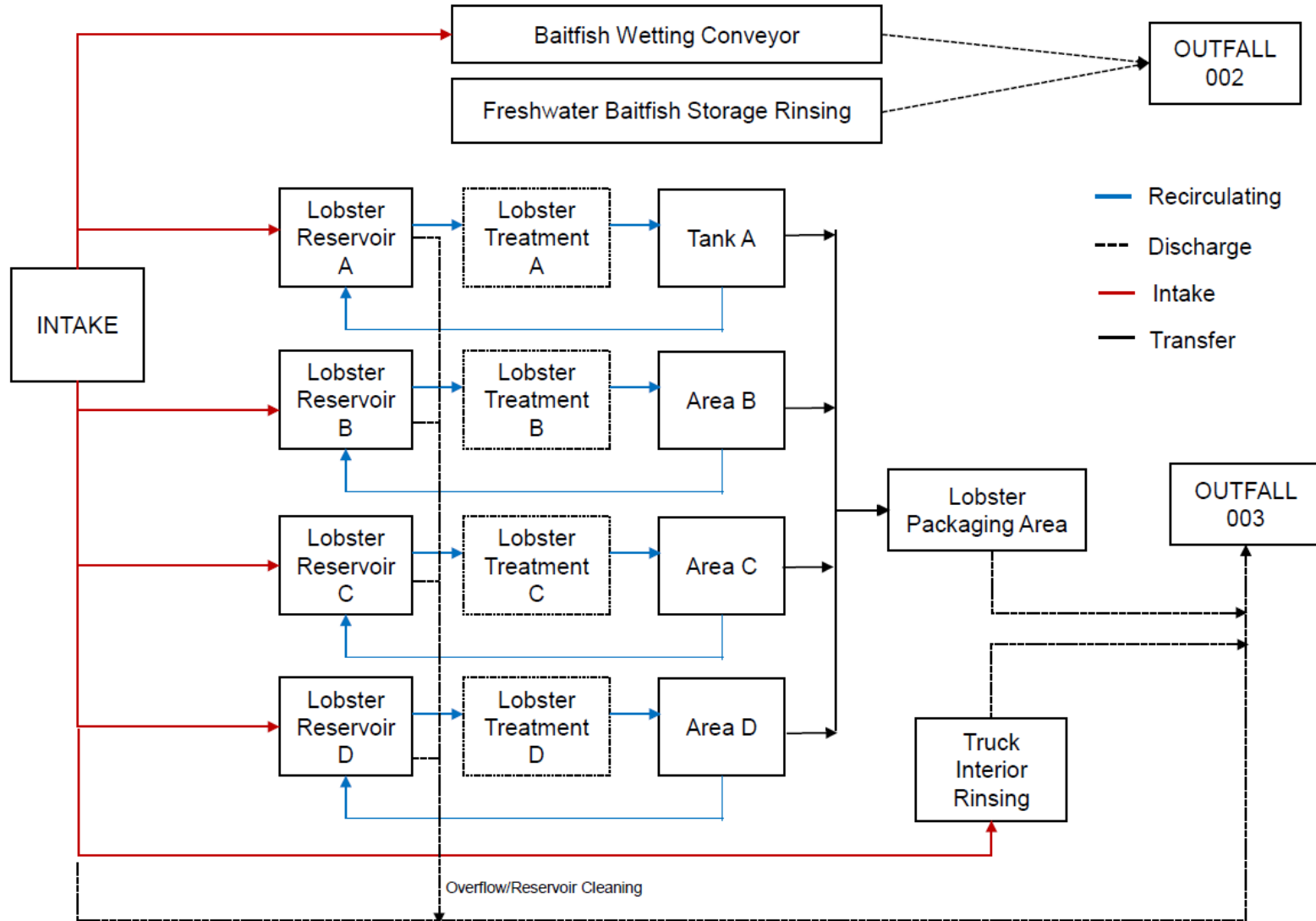
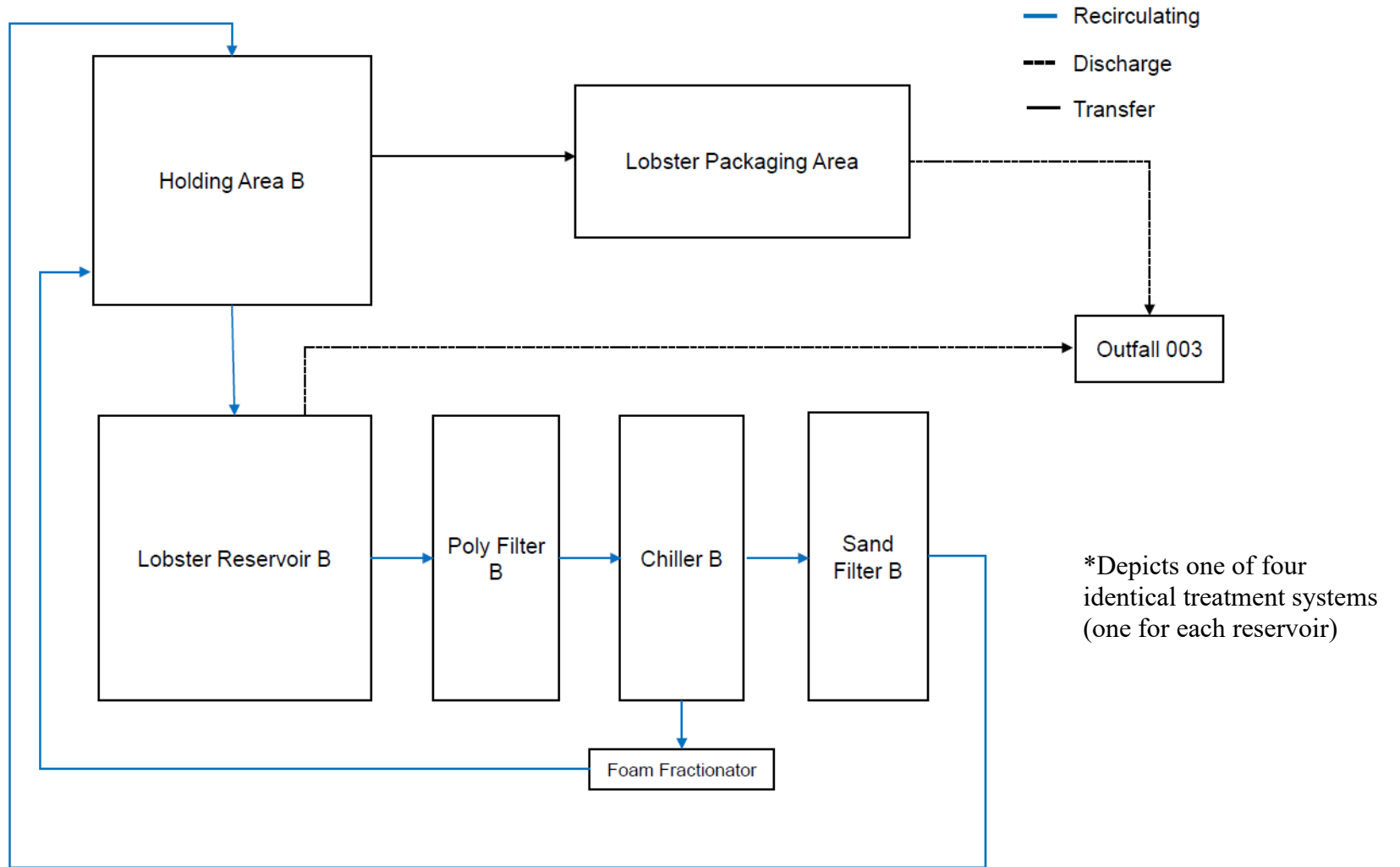


Figure 4: Schematic of Lobster Tank Recirculation System



Appendix A: Discharge Monitoring Data

Little Bay Seafood: Outfall 002 Monthly Effluent Monitoring				
Parameter	Flow	Baitfish	pH	pH
	MO TOTAL	MO TOTAL	Minimum	Maximum
Units	MGD	lbs	SU	SU
Effluent Limit	Report	Report	6.5	8
Minimum	0.00116	6375	7.02	7.02
Maximum	0.0279	38584	7.97	7.97
Median	0.0024	15736.5	7.835	7.835
No. of Violations	N/A	N/A	0	0
Monitoring Period End Date				
1/31/2016	0.00186	10479	7.96	7.96
2/29/2016	0.00159	15171	7.77	7.77
3/31/2016	0.00219	11700	7.89	7.89
4/30/2016	0.00174	9619	7.66	7.66
5/31/2016	0.0025	16200	7.94	7.94
6/30/2016	0.002945	15835	7.49	7.49
7/31/2016	0.0023	16594	7.74	7.74
8/31/2016	0.00167	10170	7.74	7.74
9/30/2016	0.00146	13114	7.27	7.27
10/31/2016	0.00116	10425	7.73	7.73
11/30/2016	0.00124	6375	7.91	7.91
12/31/2016	0.00314	15244	7.73	7.73
1/31/2017	0.00279	17000	7.65	7.65
2/28/2017	0.0279	14231	7.94	7.94
3/31/2017	0.00313	17363	7.67	7.67
4/30/2017	0.0022	12263	7.76	7.76
5/31/2017	0.00203	15447	7.66	7.66
6/30/2017	0.003	28679	7.02	7.02
7/31/2017	0.003255	23094	7.36	7.36
8/31/2017	0.0016	10919	7.93	7.93
9/30/2017	0.0027	13914	7.91	7.91
10/31/2017	0.0023	11531	7.85	7.85
11/30/2017	0.0016	10181	7.89	7.89
12/31/2017	0.0248	14310	7.15	7.15

1/31/2018	0.0033	7693	7.85	7.85
2/28/2018	0.0033	24750	7.92	7.92
3/31/2018	0.003	18825	7.84	7.84
4/30/2018	0.0033	25264	7.94	7.94
5/31/2018	0.002	13238	7.89	7.89
6/30/2018	0.0035	17213	7.49	7.49
7/31/2018	0.00372	22050	7.67	7.67
8/31/2018	0.001395	8269	7.97	7.97
9/30/2018	0.00264	16380	7.85	7.85
10/31/2018	0.0021	15638	7.4	7.4
11/30/2018	0.0017	12960	7.81	7.81
12/31/2018	0.0017	12150	7.76	7.76
1/31/2019	0.0015	15043	7.83	7.83
2/28/2019	0.0016	14300	7.96	7.96
3/31/2019	0.0017	15107	7.85	7.85
4/30/2019	0.001674	12971	7.78	7.78
5/31/2019	0.0021	17990	7.79	7.79
6/30/2019	0.0024	21950	7.95	7.95
7/31/2019	0.001953	18485	7.97	7.97
8/31/2019	0.0037	29555	7.94	7.94
9/30/2019	0.0033	32150	7.94	7.94
10/31/2019	0.0016	10631	7.83	7.83
11/30/2019	0.0023	19425	7.84	7.84
12/31/2019	0.00167	13590	7.82	7.82
1/31/2020	0.0024	16013	7.9	7.9
2/29/2020	0.00425	24332	7.96	7.96
3/31/2020	0.0034	17010	7.88	7.88
4/30/2020	0.0037	28575	7.86	7.86
5/31/2020	0.0025	21536	7.82	7.82
6/30/2020	0.004	23327	7.54	7.54
7/31/2020	0.00372	28388	7.95	7.95
8/31/2020	0.00372	32288	7.94	7.94
9/30/2020	0.0051	38584	7.6	7.6
10/31/2020	0.0051	37050	7.82	7.82
11/30/2020	0.0036	26349	7.91	7.91
12/31/2020	0.0022	13860	7.69	7.69
1/31/2021	0.0056	31387	7.79	7.79

Notes:

0 = parameter not detected

N/A = not applicable

Little Bay Seafood: Outfall 002							
Quarterly Effluent Monitoring: Short Composite							
Parameter	BOD5	TSS	Ammonia	TKN	Nitrate	TP	Oil & grease
	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max
Units	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
Effluent Limit	Report	Report	Report	Report	Report	Report	Report
Minimum	13	16	0.9	2.7	0	0.03	0
Maximum	1700	670	120	260	0	44	300
Median	320	130	12	47	0	14	14.835
Monitoring Period End Date							
3/31/2010	600	130	29	240	< 5	41	12.67
6/30/2010	35	27	2.2	6	< 2	0.03	5
9/30/2010	100	64	3.6	14	< 5	2.2	4
12/31/2010	20	16	1.4	6.4	0	0.43	0
3/31/2011	NODI: 9	NODI: 9	NODI: 9	NODI: 9	NODI: 9	NODI: 9	NODI: 9
6/30/2011	240	130	11	36	0	4.4	17
9/30/2011	1400	640	68	140	0	44	44.5
12/31/2011	1700	670	120	260	0	36	48
3/31/2012	13	38	0.9	2.7	0	0.48	7
6/30/2012	1300	600	4.4	27	0	44	175
9/30/2012	300	52	16	75	0	21	4.5
12/31/2012	870	160	35	220	0	29	19
3/31/2013	340	140	15	74	0	19	11.5
6/30/2013	360	110	13	58	0	17	300
9/30/2013	160	190	6	30	0	4.3	260
12/31/2013	650	190	23	150	0	11	84
3/31/2014	74	25	2.8	13	13	1.4	11

Notes:

0 = parameter not detected

Little Bay Seafood: Outfall 002 Quarterly Effluent Monitoring: Long Composite							
Parameter	BOD5	TSS	Ammonia	TKN	Nitrate	TP	Oil & grease
	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max
Units	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
Effluent Limit	Report	Report	Report	Report	Report	Report	Report
Minimum	18	20	0.9	3	0	0.43	9
Maximum	4900	1600	86	430	0	100	9900
Median	335	100	16.5	69.5	0	9.2	67.5
Monitoring Period End Date							
3/31/2010	730	190	32	250	< 5	46	35
6/30/2010	4900	1600	86	430	< 2	100	9900
9/30/2010	730	180	22	100	< 5	16	97
12/31/2010	490	58	15	100	0	12	13
3/31/2011	NODI: 9	NODI: 9	NODI: 9	NODI: 9	NODI: 9	NODI: 9	NODI: 9
6/30/2011	1300	440	47	170	0	34	200
9/30/2011	940	490	74	140	0	47	240
12/31/2011	210	160	11	29	0	2.8	160
3/31/2012	18	43	0.9	3	0	0.56	14
6/30/2012	56	60	12	21	0	2	350
9/30/2012	45	58	8	13	0	0.91	9
12/31/2012	310	100	18	60	0	6.4	38
3/31/2013	360	100	19	79	0	23	23
6/30/2013	34	31	4.1	9.8	0	1.2	600
9/30/2013	1100	500	31	190	0	15	139
12/31/2013	27	20	2.8	4.8	0	0.43	30
3/31/2014	67	26	2.1	11	13	0.76	4

Notes:

0 = parameter not detected

Little Bay Seafood: Outfall 003 Monthly Effluent Monitoring			
Parameter	Flow		Flow
Units	MGD		MGD
Effluent Limit	Report		
Minimum	0.0053		
Maximum	0.019		
Median	0.0122		
Monitoring Period End Date		Monitoring Period End Date	
1/31/2016	0.016	8/31/2018	0.0078
2/29/2016	0.0151	9/30/2018	0.012375
3/31/2016	0.015	10/31/2018	0.0129
4/30/2016	0.0107	11/30/2018	0.0079
5/31/2016	0.0158	12/31/2018	0.0104
6/30/2016	0.0125	1/31/2019	0.0111
7/31/2016	0.014156	2/28/2019	0.0082
8/31/2016	0.0159	3/31/2019	0.0069
9/30/2016	0.01329	4/30/2019	0.0067
10/31/2016	0.016	5/31/2019	0.0063
11/30/2016	0.015	6/30/2019	0.0064
12/31/2016	0.01733	7/31/2019	0.00745
1/31/2017	0.0155	8/31/2019	0.0091
2/28/2017	0.0165	9/30/2019	0.0077
3/31/2017	0.0122	10/31/2019	0.0084
4/30/2017	0.011	11/30/2019	0.00929
5/31/2017	0.015	12/31/2019	0.0058
6/30/2017	0.0154	1/31/2020	0.0062
7/31/2017	0.0183	2/29/2020	0.0075
8/31/2017	0.01075	3/31/2020	0.00552
9/30/2017	0.0153	4/30/2020	0.0053
10/31/2017	0.0166	5/31/2020	0.0067
11/30/2017	0.019	6/30/2020	0.0073
12/31/2017	0.015	7/31/2020	0.0078
1/31/2018	0.0127	8/31/2020	0.0067
2/28/2018	0.013	9/30/2020	0.0093
3/31/2018	0.014	10/31/2020	0.0133
4/30/2018	0.013	11/30/2020	0.0116
5/31/2018	0.012	12/31/2020	0.0085
6/30/2018	0.014	1/31/2021	0.0119
7/31/2018	0.0182	Notes: 0 = parameter not detected	

Little Bay Seafood: Outfall 003 Annual Effluent Monitoring									
Parameter	BOD5	TSS	Ammonia	TKN	Nitrate	TP	Oil & grease	pH	pH
	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max	Daily Max	Minimum	Maximum
Units	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	SU	SU
Effluent Limit	Report	Report	Report	Report	Report	Report	Report	6.5	8
Minimum	0	7.2	0	0.6	0	0.07	0	7.28	7.28
Maximum	56	380	1.6	15	64	11	21	7.89	7.89
Median	10	48	0.75	3.7	14	2.1	0		
No. of Violations	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0	0
Monitoring Period End Date									
8/31/2011	0	54	1.1	3.7	0	0.72	0	7.74	7.74
8/31/2012	10	42	1.6	3.7	5.1	1.1	0	7.38	7.38
8/31/2013	19	63	0.7	4.3	14	1.5	0	7.54	7.54
8/31/2014	56	380	1.5	15	31	7.7	21	7.28	7.28
8/31/2015	19	110	0.8	4.7	28	3.2	0	7.44	7.44
8/31/2016	10	41	0.5	3	16	3.2	0	7.78	7.78
8/31/2017	16	77	0.9	4.8	14	2.7	0	7.79	7.79
8/31/2018	0	7.2	0	0.6	0	0.07	0	7.89	7.89
8/31/2019	0	13	0	1.5	11	1.5	0	7.61	7.61
8/31/2020	0	21	0.6	0.7	64	11	0	7.57	7.57

Notes: 0 = parameter not detected

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY-REGION 1 (EPA)
WATER DIVISION
5 POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109

NEW HAMPSHIRE DEPARTMENT OF
ENVIRONMENTAL SERVICES (NHDES)
WATER DIVISION
P.O. BOX 95
CONCORD, NEW HAMPSHIRE 03302-0095

JOINT EPA PUBLIC NOTICE OF A DRAFT NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE INTO WATERS OF THE UNITED
STATES UNDER SECTION 402 OF THE CLEAN WATER ACT (CWA), AS AMENDED; NHDES
PUBLIC NOTICE OF EPA REQUEST FOR STATE CERTIFICATION UNDER SECTION 401 OF
THE ACT; AND NHDES PUBLIC NOTICE OF ISSUANCE OF A STATE SURFACE WATER
PERMIT UNDER NH RSA 485-A:13, I(a).

PUBLIC NOTICE PERIOD: **6/4/2021 - 7/6/2021**

PERMIT NUMBER: **NH0020923**

PUBLIC NOTICE NUMBER: **NH-005-21**

NAME AND MAILING ADDRESS OF APPLICANT:

Little Bay Seafood LLC and Lordco Pier Associates
158 Shattuck Way
Newington, NH 03801

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

Little Bay Seafood
158 Shattuck Way
Newington, NH 03801

RECEIVING WATER AND CLASSIFICATION:

Lower Piscataqua River (Class B)

PREPARATION OF THE DRAFT PERMIT, EPA REQUEST FOR CWA § 401 CERTIFICATION, AND
PROPOSED ISSUANCE OF A STATE SURFACE WATER PERMIT:

EPA is issuing for public notice and comment the Draft NPDES Permit for the Little Bay Seafood facility, which discharges lobster holding water, water from baitfish wetting, fish container rinse water, and truck rinse water. The effluent limits and permit conditions imposed have been drafted pursuant to, and assure compliance with, the CWA, including EPA-approved State Surface Water Quality Standards at Env-Wq 1700 et seq. NHDES cooperated with EPA in the development of the Draft NPDES Permit. NHDES plans to adopt EPA's permit under Chapter 485-A of the New Hampshire Statutes (NH RSA 485-A:13, I(a)).

In addition, EPA has requested that NHDES grant or deny certification of this Draft Permit pursuant to Section 401 of the CWA and implementing regulations. Under federal regulations governing the NPDES program at 40 Code of Federal Regulations (CFR) § 124.53(e), state certification shall contain conditions that are necessary to assure compliance with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law, including any conditions more stringent than those in the Draft Permit that NHDES finds necessary to meet these requirements. In

addition, NHDES may provide a statement of the extent to which each condition of the Draft Permit can be made less stringent without violating the requirements of State law.

INFORMATION ABOUT THE DRAFT PERMIT:

The Draft Permit and explanatory Fact Sheet may be obtained at no cost at <https://www.epa.gov/npdes-permits/new-hampshire-draft-individual-npdes-permits> or by contacting:

Danielle Gaito
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (06-4)
Boston, MA 02109-3912
Telephone: (617) 918-1297
gaito.danielle@epa.gov

Following U.S. Centers for Disease Control and Prevention (CDC) and U.S. Office of Personnel Management (OPM) guidance and specific state guidelines impacting our regional offices, EPA's workforce has been directed to telework to help prevent transmission of the coronavirus. While in this workforce telework status, there are practical limitations on the ability of Agency personnel to allow the public to review the administrative record in person at the EPA Boston office. However, any electronically available documents that are part of the administrative record can be requested from the EPA contact above.

PUBLIC COMMENT AND REQUESTS FOR PUBLIC HEARINGS:

All persons, including applicants, who believe any condition of the Draft Permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by July 6, 2021, which is the close of the public comment period. Comments, including those pertaining to EPA's request for CWA § 401 certification and/or NHDES proposed issuance of a State Surface Water Permit, should be submitted to the EPA contact at the address or email address listed above. Upon the close of the public comment period, EPA will make all comments available to NHDES.

Any person, prior to the close of the public comment period, may submit a request in writing to EPA and NHDES for a public hearing on the Draft Permit under 40 CFR § 124.10, CWA § 401 certification and/or NHDES proposed issuance of a State Surface Water Permit. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held after at least thirty days public notice if the Regional Administrator finds that response to this notice indicates significant public interest. In reaching a final decision on the Draft Permit, the Regional Administrator will respond to all significant comments and make the responses available to the public.

Due to the COVID-19 National Emergency, if comments are submitted in hard copy form, please also email a copy to the EPA contact above.

FINAL PERMIT DECISION:

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

KEN MORAFF, DIRECTOR
WATER DIVISION
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY – REGION I

THOMAS E. O'DONOVAN, DIRECTOR
WATER DIVISION
NEW HAMPSHIRE DEPARTMENT OF
ENVIRONMENTAL SERVICES

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY-REGION 1 (EPA)
WATER DIVISION
5 POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109

NEW HAMPSHIRE DEPARTMENT OF
ENVIRONMENTAL SERVICES (NHDES)
WATER DIVISION
P.O. BOX 95
CONCORD, NEW HAMPSHIRE 03302-0095

JOINT EXTENSION OF PUBLIC NOTICE PERIOD OF A DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE INTO WATERS OF THE UNITED STATES UNDER SECTION 402 OF THE CLEAN WATER ACT (CWA), AS AMENDED; NHDES PUBLIC NOTICE OF EPA REQUEST FOR STATE CERTIFICATION UNDER SECTION 401 OF THE ACT; AND NHDES PUBLIC NOTICE OF ISSUANCE OF A STATE SURFACE WATER PERMIT UNDER NH RSA 485-A:13, I(a).

DATE OF ORIGINAL PUBLIC NOTICE PERIOD: 6/4/2021 - 7/6/2021

PUBLIC NOTICE EXTENDED TO: 7/21/2021

PERMIT NUMBER: NH0020923

PUBLIC NOTICE NUMBER: NH-005-21

NAME AND MAILING ADDRESS OF APPLICANT:

Little Bay Seafood LLC and Lordco Pier Associates
158 Shattuck Way
Newington, NH 03801

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

Little Bay Seafood
158 Shattuck Way
Newington, NH 03801

RECEIVING WATER AND CLASSIFICATION:

Lower Piscataqua River (Class B)

PREPARATION OF THE DRAFT PERMIT, EPA REQUEST FOR CWA § 401 CERTIFICATION, AND PROPOSED ISSUANCE OF A STATE SURFACE WATER PERMIT:

EPA is issuing for public notice and comment the Draft NPDES Permit for the Little Bay Seafood facility, which discharges lobster holding water, water from baitfish wetting, fish container rinse water, and truck rinse water. The effluent limits and permit conditions imposed have been drafted pursuant to, and assure compliance with, the CWA, including EPA-approved State Surface Water Quality Standards at Env-Wq 1700 et seq. NHDES cooperated with EPA in the development of the Draft NPDES Permit. NHDES plans to adopt EPA's permit under Chapter 485-A of the New Hampshire Statutes (NH RSA 485-A:13, I(a)).

In addition, EPA has requested that NHDES grant or deny certification of this Draft Permit pursuant to Section 401 of the CWA and implementing regulations. Under federal regulations governing the NPDES program at 40 Code of Federal Regulations (CFR) § 124.53(e), state certification shall contain conditions that are necessary to assure compliance with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law, including any conditions more stringent than those in the Draft Permit that NHDES finds necessary to meet these requirements. In

addition, NHDES may provide a statement of the extent to which each condition of the Draft Permit can be made less stringent without violating the requirements of State law.

INFORMATION ABOUT THE DRAFT PERMIT:

The Draft Permit and explanatory Fact Sheet may be obtained at no cost at <https://www.epa.gov/npdes-permits/new-hampshire-draft-individual-npdes-permits> or by contacting:

Danielle Gaito
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (06-4)
Boston, MA 02109-3912
Telephone: (617) 918-1297
gaito.danielle@epa.gov

Following U.S. Centers for Disease Control and Prevention (CDC) and U.S. Office of Personnel Management (OPM) guidance and specific state guidelines impacting our regional offices, EPA's workforce has been directed to telework to help prevent transmission of the coronavirus. While in this workforce telework status, there are practical limitations on the ability of Agency personnel to allow the public to review the administrative record in person at the EPA Boston office. However, any electronically available documents that are part of the administrative record can be requested from the EPA contact above.

EXTENSION OF PUBLIC COMMENT PERIOD:

All persons, including applicants, who believe any condition of the Draft Permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by **July 21, 2021**, which is the close of the public comment period. Comments, including those pertaining to EPA's request for CWA § 401 certification and/or NHDES proposed issuance of a State Surface Water Permit, should be submitted to the EPA contact at the address or email address listed above. Upon the close of the public comment period, EPA will make all comments available to NHDES.

Any person, prior to the close of the public comment period, may submit a request in writing to EPA and NHDES for a public hearing on the Draft Permit under 40 CFR § 124.10, CWA § 401 certification and/or NHDES proposed issuance of a State Surface Water Permit. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held after at least thirty days public notice if the Regional Administrator finds that response to this notice indicates significant public interest. In reaching a final decision on the Draft Permit, the Regional Administrator will respond to all significant comments and make the responses available to the public.

Due to the COVID-19 National Emergency, if comments are submitted in hard copy form, please also email a copy to the EPA contact above.

FINAL PERMIT DECISION:

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

KEN MORAFF, DIRECTOR
WATER DIVISION
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY – REGION I

THOMAS E. O'DONOVAN, DIRECTOR
WATER DIVISION
NEW HAMPSHIRE DEPARTMENT OF
ENVIRONMENTAL SERVICES