



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR

MELANIE LOYZIM
COMMISSIONER

January 14, 2022

Ms. Tanya Rucosky
Downeast Salmon Federation
EMARC 13 Willow Street
East Machias, ME 04630
tanya@mainesalmonrivers.org

*Sent via electronic mail
Delivery confirmation requested*

*RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0002747
Maine Waste Discharge License (WDL) Application #W009187-5Z-B-M
Minor Revision*

Dear Ms. Rucosky:

Enclosed please find a copy of your MEPDES permit and Maine WDL **minor revision** which was approved by the Department of Environmental Protection. Please read this permit minor revision and its attached conditions carefully. Compliance with this license will protect water quality.

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled “*Appealing a Commissioner’s Licensing Decision.*”

If you have any questions regarding the matter, please feel free to call me at (207) 719-0810.

Your Department compliance inspector (copied below) is also a resource that can assist you with compliance. Please do not hesitate to contact them with any questions.

Thank you for your efforts to protect and improve the waters of the great state of Maine!

Sincerely,

Elizabeth J. Andrews
Division of Water Quality Management
Bureau of Water Quality

Enclosure

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

Downeast Salmon Federation
January 14, 2022
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cc: Kayleigh Burda, MEDEP
Pamela Parker, MEDEP
Lori Mitchell, MEDEP
Irene Saumur, MEDEP
Alex Rosenberg, USEPA
Sandy Mojica, USEPA
Richard Carvalho, USEPA
Nathan Chien, USEPA



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: August 2021

Contact: (207) 314-1458

SUMMARY

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner.

Except as provided below, there are two methods available to an aggrieved person seeking to appeal a licensing decision made by the DEP Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

A person filing an appeal with the Board should review Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); the Maine Administrative Procedure Act, 5 M.R.S. § [11001](#); and the DEP's [Rule Concerning the Processing of Applications and Other Administrative Matters \(Chapter 2\)](#), 06-096 C.M.R. ch. 2.

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

Not more than 30 days following the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The filing of an appeal with the Board, in care of the Board Clerk, is complete when the Board receives the submission by the close of business on the due date (5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

HOW TO SUBMIT AN APPEAL TO THE BOARD

An appeal to the Board may be submitted via postal mail or electronic mail and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection
c/o Board Clerk
17 State House Station
Augusta, ME 04333-0017
ruth.a.burke@maine.gov

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee; and if a hearing was held on the application, (3) any intervenors in that hearing proceeding. **Please contact the DEP at 207-287-7688 with questions or for contact information regarding a specific licensing decision.**

REQUIRED APPEAL CONTENTS

A complete appeal must contain the following information at the time the appeal is submitted.

1. *Aggrieved status.* The appeal must explain how the appellant has standing to bring the appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions of law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing criteria that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license to changes in specific license conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for hearing must be filed as part of the notice of appeal, and it must include an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any witnesses would testify. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed supplemental evidence must be submitted with the appeal. The Board may allow new or additional evidence to be considered in an appeal only under limited circumstances. The proposed supplemental evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Requirements for supplemental evidence are set forth in [Chapter 2 § 24](#).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made accessible by the DEP. Upon request, the DEP will make application materials available to review and photocopy during normal working hours. There may be a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing the appeal.* DEP staff will provide this information upon request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a licensee may proceed with a project pending the outcome of an appeal, but the licensee runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will acknowledge receipt of an appeal, and it will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials admitted by the Board as supplementary evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the application, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant, the licensee, and parties of record are notified in advance of the date set for the Board's consideration of an appeal or request for a hearing. The appellant and the licensee will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding the merits of the appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the licensee, and parties of record of its decision on appeal.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see [38 M.R.S. § 346\(1\)](#); 06-096 C.M.R. ch. 2; [5 M.R.S. § 11001](#); and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

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

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 bill.hinkel@maine.gov, or for judicial appeals contact the court clerk's office in which the appeal will be filed.

Note: This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. The DEP provides this information sheet for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.



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

DEPARTMENT ORDER

IN THE MATTER OF

DOWNEAST SALMON FEDERATION)	MAINE POLLUTANT DISCHARGE
WATER QUALITY IMPROVEMENT PROJECT)	ELIMINATION SYSTEM PERMIT
RICHARDSON BROOK, T19 ED BPP)	AND
WASHINGTON COUNTY, MAINE)	WASTE DISCHARGE LICENSE
#ME0002747)	EXPERIMENTAL PERMIT
#W-009187-5Z-B-M)	MINOR REVISION
		APPROVAL

In compliance with the applicable provisions of *Pollution Control*, 38 M.R.S. §§ 411 – 424-B, *Water Classification Program*, 38 M.R.S. §§ 464 – 470 and *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, and applicable rules of the Department of Environmental Protection (Department), the Department is revising combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0002747/Maine Waste Discharge License (WDL) #W009187-5Z-A-N issued by the Department on August 13, 2018 and granted to Downeast Salmon Federation (permittee/DSF), for a five-year term. The Department considered the request for revision from DSF, with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

REVISIONS REQUESTED

In an email communication from Tanya Rucosky to Cindy Dionne dated 6/29/2020, the permittee requested the following changes (#1-#5) to the 8/13/2018 permit:

Revision Requests:

1. Include “headwater lakes” with any mention of dead water and terrestrial applications.
2. Revisions to Monitoring Table (Special Conditions A):
 - a. Analysis column, add ‘control stream(s)’ to all parameters
 - b. Data sonde – change ‘Who’ to just DEP DEA
 - c. Grab sample/lab analysis – change ‘when’ to 3 times/year: spring (April/May), baseflow (July/August), fall (October/November)
 - d. Fish – change to ‘salmon abundance’ and ‘species diversity’

REVISIONS REQUESTED (cont'd)

3. Revisions to Footnote for monitoring table: The permittee will make a good faith effort to collect high quality data. Missing data may be due to: general field work challenges such as lack of site accessibility due to weather (high water) or road conditions; technical issues such as equipment malfunction, battery failure, or equipment limitations due to expiration/life spans; or unanticipated lack of resources such as staff time due to public health situations, or budget shortfalls. DEP compliance staff will be notified of any modifications to methods/sampling as soon as possible with a rationale explaining what steps were taken to minimize impacts to the data record, as well as being noted in the annual report.
4. Revisions to Special Condition A:
 - a. Strike the requirement for 40 CFR part 136 methods, as this is a restoration permit and not pollution control or wastewater. Instead say methods must be approved by the Department.
 - b. Certified lab requirement – Certified laboratories are preferred for all methods when possible. If certification does not exist for a given method, provide justification for the use of the method and/or lab (such as an academic research lab) prior to use.
5. Revision to Annual report due date – report will be due by the end of March, to allow for receipt and analysis of all required data.
6. Revision requested by Emily Zimmerman (Department Staff), to revise site location map (Attachment A).

REVISIONS GRANTED/DENIED

The Department agrees to revise the 8/13/2018 Permit. An amended “Special Conditions A. Effluent Limitations and Monitoring Requirements”, an amended “Special Conditions E. Monitoring and Reporting”, and map are included in this Minor Revision. Substantive revisions to the permit, which address the requested revisions and comments on the draft permit revisions, are:

1. Special Condition A:
 - a. Table
 - i. Headwater lakes were added as an authorized location for agricultural lime addition.
 - ii. Control stream(s) were added to the analysis location for all parameters.
 - iii. Responsibility for data sonde measurements was changed to DEP DEA.

REVISIONS GRANTED/DENIED (con't)

- iv. The frequency and timing of grab sample / lab analysis was changed from monthly to three times per year.
 - v. Measurement parameters for electrofishing were changed to salmon abundance and species diversity.
 - vi. Electrofishing monitoring period was adjusted to align with the Department of Marine Resources' permit for this activity.
- b. Narrative
- i. Language was added to provide notification and oversight requirements for changes to data collection and reporting.
 - ii. Language was added to provide notification and approval requirements for use of methods that are not listed in 40 Code of Federal Regulations (C.F.R.) Part 136.
2. Special Condition E:
- a. The date the annual report is due was changed to on or before April 30th.
 - b. Documentation of field and laboratory measurements was added to the contents of the annual report.
 - c. The format of the annual report submittal was changed from paper to electronic.

CONCLUSIONS

BASED on the findings in the 8/13/2018 permit as well as those on Pages 1, 2, and 3 of this Minor Revision, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

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

ACTION


THEREFORE, the Department APPROVES the revision to combination MEPDES permit #ME0002747/WDL #W009187-5Z-A-N which was issued by the Department on August 13, 2018 for a five-year term, SUBJECT TO ALL APPLICABLE STANDARDS AND REGULATIONS AND THE FOLLOWING CONDITIONS:

1. “*Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits,*” revised July 1, 2002, copy attached to MEPDES permit ME0002747/WDL #W009187-5Z-A-N last issued by the Department on August 13, 2018, for a five-year term.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit #ME0002747/WDL #009187-5Z-A-N, issued by the Department on August 13, 2018 for a five-year term, not modified by this minor revision remain in effect and enforceable.
4. This minor revision and the authorization to discharge become effective upon the date of signature below and expire at midnight on August 13, 2023. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this minor revision, the authorization to discharge, the terms and conditions of this minor revision, and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. *Maine Administrative Procedure Act*, 5 M.R.S. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (amended June 9, 2018).

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

DONE AND DATED AT AUGUSTA, MAINE, THIS 20 DAY OF January 2022.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 

for Melanie Loyzim, Commissioner

Date of initial receipt of application June 29, 2020
Date of application acceptance July 14, 2020

FILED

JAN 20, 2022

State of Maine
Board of Environmental Protection

Date filed with Board of Environmental Protection _____

This Order prepared by Elizabeth Andrews, Bureau of Water Quality

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

The permittee is authorized to conduct a water quality improvement project by depositing clam shells in Richardson Brook. Control sites for the project are located in Creamer Brook, Barney Brook, and Beaverdam Stream. The permittee is also authorized to use agricultural lime in headwater lakes, dead water, and terrestrial applications adjacent to Richardson Brook. Such discharges are limited and must be monitored by the permittee as specified below.

Method	Measurements	Analysis Location	When	Who
Data sonde	<ul style="list-style-type: none"> pH Temperature Dissolved oxygen 	<ul style="list-style-type: none"> Up and down stream Control stream(s) 	<ul style="list-style-type: none"> Before, during, and after treatment Hourly (May-November) 	DEP DEA
Grab sample / lab analysis	<ul style="list-style-type: none"> Acid neutralization capacity (ANC) Aluminum species Calcium Dissolved organic carbon 	<ul style="list-style-type: none"> Up and down stream Control stream(s) 	<ul style="list-style-type: none"> Before, during, and after treatment Spring (April/May) Baseflow (July/August) Fall (October /November) 	DEP DEA
DEP biomonitoring protocol	<ul style="list-style-type: none"> Macroinvertebrates 	<ul style="list-style-type: none"> Up and down stream Control stream(s) 	<ul style="list-style-type: none"> 1/3 Years 	DEP DEA
Electrofishing	<ul style="list-style-type: none"> Salmon abundance Species diversity 	<ul style="list-style-type: none"> Up and down stream Control stream(s) 	<ul style="list-style-type: none"> Before, during, and after treatment Yearly (August-October) 	Department of Marine Resources (DMR)

SPECIAL CONDITIONS

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

In coordination with the DEP DEA biologist, if project conditions (e.g. low water flow, water temperature, site access limitations, or field safety) necessitate modifications to the required monitoring, the permittee will make a good faith effort to collect complete, high quality monitoring data. The permittee must notify DEP compliance staff of any modifications to the monitoring plan and schedule as soon as possible with a rationale explaining what steps were taken to minimize impacts to the data record, and document it in the annual report. Missed or invalidated samples may be made up as determined and required by the Department DEA biologist.

Sampling and analysis methods, methodology, and associated quality control must be approved by the Department DEA biologist assigned to the project. Laboratories certified by the State of Maine's Department of Health and Human Services are preferred for all methods when possible. If certification does not exist for a given method, provide written justification for the use of the method and/or lab (such as an academic research lab) at least 30 days prior to use. If a method that is not approved by 40 C.F.R. Part 136 is used, the Department DEA biologist overseeing the project must approve its use and notify DEP compliance staff in advance of its use.

The permittee must post signs at all treatment sites to explain the nature and purpose of the project and to provide contact information for people having questions or concerns.

The permittee must use shells that have been aged for a minimum of two years to reduce the potential transmittal of pathogens to the receiving waters. Shells will also be cleaned of organic material reduce biochemical loading due to decomposition in the receiving waters. Shells may be stockpiled adjacent to the stream prior to placement.

E. MONITORING AND REPORTING

Annual report [ICIS code ANNRP]: On or before April 30th of each year, the permittee must submit to the Department a report that includes:

- a detailed description of the treatment activities conducted at the study sites for that calendar year
- the results of all monitoring conducted in that year and an evaluation those results
- a narrative of lessons learned from the results
- the permittee's plans for the sites for the next year
- identification of missing data and explanations for missing data as described in Special Condition A

(continued on the next page)

SPECIAL CONDITIONS

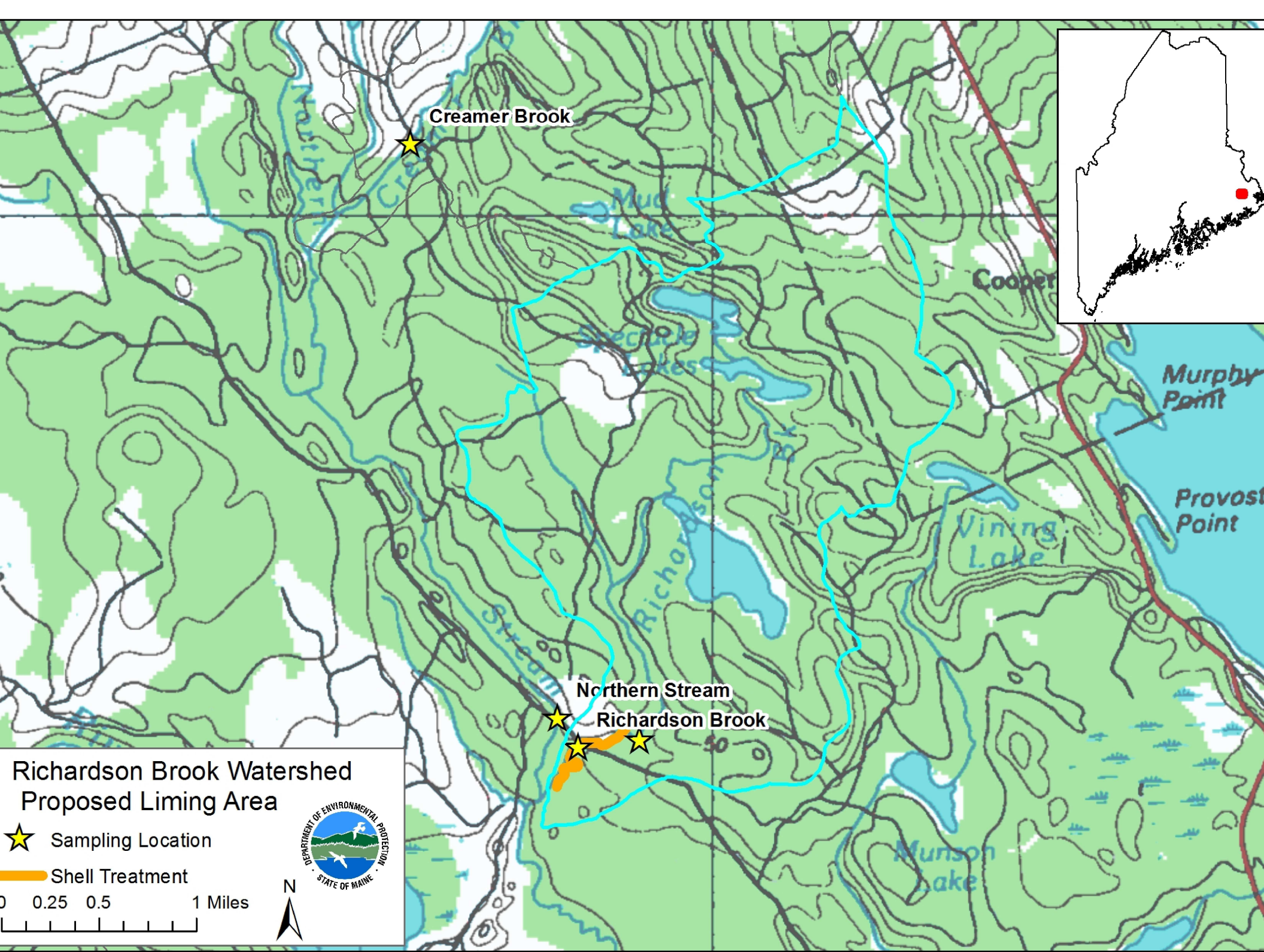
E. MONITORING AND REPORTING

(continued from the previous page)

- documentation of field and laboratory measurements performed, including
 - method used
 - analyst and associated organization who performed the analysis or measurement
 - quality assurance and quality control documentation for all field measurements.

Signed, electronic copies of all reports required herein must be submitted via email to the Department's assigned compliance inspector (unless otherwise specified by the Department) and permitting staff. The annual report must be received no later than midnight on the day specified above.

ATTACHMENT A



Creamer Brook

Cooper

Murphy Point

Provost Point

Northern Stream

Richardson Brook

Munson Lake

Richardson Brook Watershed Proposed Liming Area

★ Sampling Location

Shell Treatment

0 0.25 0.5 1 Miles

