



STATE OF MAINE
Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patricia W. Aho
COMMISSIONER

December 3, 2012

Mr. Joseph Donovan
Member Manager
South Bristol Wharf LLC
P.O. Box 389
Portland, ME. 04112

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0023272
Maine Waste Discharge License (WDL) Application #W007095-5P-F-R
Final Permit

Dear Mr. Donovan:

Enclosed please find a copy of your **final** Maine MEPDES/WDL which was approved by the Department of Environmental Protection. Please read the permit and its attached conditions carefully. You must follow the conditions in the order to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State Law and is subject to enforcement action.

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

If you have any questions regarding the matter, please feel free to call me at 287-7693.

Sincerely,

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

Enc.

cc: Denise Behr, DEP/CMRO
Sandy Mojica, USEPA

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-3901 FAX: (207) 287-3435
RAY BLDG., HOSPITAL ST.
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(207) 941-4570 FAX: (207) 941-4584

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

PRESQUE ISLE
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PRESQUE ISLE, MAINE 04769-2094
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

SOUTH BRISTOL WHARF, LLC)	MAINE POLLUTANT DISCHARGE
SOUTH BRISTOL, LINCOLN COUNTY, ME)	ELIMINATION SYSTEM PERMIT
SEAFOOD PROCESSING FACILITY)	AND
ME0023272)	WASTE DISCHARGE LICENSE
W007095-5P-F-R)	RENEWAL
APPROVAL)	

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, § 1251, et. seq. and Maine Law 38 M.R.S.A., § 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of SOUTH BRISTOL WHARF, LLC (permittee hereinafter), with its supportive data, agency review comments, and other related materials on file and **FINDS THE FOLLOWING FACTS:**

APPLICATION SUMMARY

The permittee has submitted a timely and complete application to the Department for the renewal of Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0023272/ Maine Waste Discharge License (WDL) #W007095-5P-E-R, (permit hereinafter) issued by the Department on October 24, 2007, for a five-year term. The permit authorized the discharge of up to a daily maximum of 20,000 gallons per day (gpd) of treated seafood processing waste water to the tidewaters of South Bristol, Class SB, in South Bristol, Maine.

It is noted the permittee is currently not processing any seafood as it is in the processing of developing a long-term business plan for the facility. The facility is currently being utilized as a transfer facility whereby fresh and or frozen seafood is off-loaded from fishing boats and loaded onto trucks to be processed at other facilities. The permittee has indicated it would like to carry forward all the terms and conditions of the 10/24/07 permit as the production figures used to develop the permit limitations remain representative of the processing capacity of the existing facility. Once the permittee completes the aforementioned business plan, it will notify the Department as to whether or not the permit needs to be modified accordingly.

PERMIT SUMMARY

This permitting action is carrying forward the terms and conditions of previous permitting action.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated October 22, 2012 and subject to the Conditions listed below, the Department makes the following conclusions:

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

ACTION

THEREFORE, the Department APPROVES the above noted application of SOUTH BRISTOL WHARF LLC., to discharge of up to a daily maximum of 20,000 gallons per day (gpd) of treated seafood processing waste water to the tidewaters of South Bristol, Class SB, in South Bristol, Maine SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations including:

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

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

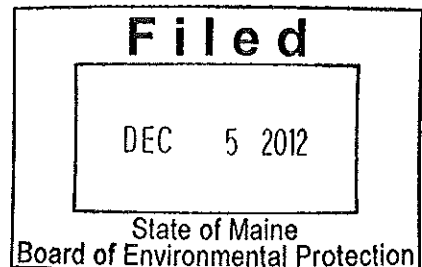
DONE AND DATED AT AUGUSTA, MAINE, THIS 4th DAY OF DECEMBER, 2012.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
For Patricia W. Aho, Commissioner

Date of initial receipt of application October 16, 2012

Date of application acceptance October 22, 2012



Date filed with Board of Environmental Protection: _____

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

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Beginning the effective date of the permit, the permittee is authorized to discharge **treated process waste waters** from **Outfall #001** to the Tidewaters of South Bristol. Such treated waste water discharges shall be limited and monitored by the permittee as specified below.

LOBSTERS, CRAB & SHRIMP

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
	Monthly Average as specified	Weekly Average as specified	Daily Maximum as specified	Monthly Average as specified	Weekly Average as specified	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Production ⁽¹⁾ [00145]	Report lbs/day [26]	---	Report lbs/day [26]	---	---	---	1/Day [01/01]	Measured [MS]
Flow [50050]	Report gpd [07]	---	20,000 gpd [07]	---	---	---	Continuous [99/99]	Metered [MT]
Biochemical Oxygen Demand (BOD ₅) [00310]	80 lbs/Day [26]	---	160 lbs/Day [26]	480 mg/L [19]	---	959 mg/L [19]	2/Month ⁽²⁾ [02/30]	8-Hr. Composite ⁽³⁾ [08]
Total Suspended Solids (TSS) [00530]	240 lbs/Day [26]	---	720 lbs/Day [26]	1,439 mg/L [19]	---	4,316 mg/L [19]	2/Month ⁽²⁾ [02/30]	8-Hr. Composite ⁽³⁾ [08]
Oil & Grease [03582]	84 lbs/Day [26]	---	260 lbs/Day [26]	503 mg/L [19]	---	1,559 mg/L [19]	2/Month ⁽²⁾ [02/30]	Grab [GR]
Total Residual Chlorine ⁽⁴⁾ [50060]	---	---	---	0.73 mg/L [19]	---	1.0 mg/L [19]	1/Week [01/07]	Grab [GR]
pH [00400]	---	---	---	---	---	6.0-9.0 SU [12]	2/Month ⁽²⁾ [02/30]	Grab [GR]

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Beginning the effective date of the permit, the permittee is authorized to discharge **cooking waters** from **Outfall #002** to the Tidewaters of South Bristol. Such treated waste water discharges shall be limited and monitored by the permittee as specified below.

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
	Monthly Average as specified	Weekly Average as specified	Daily Maximum as specified	Monthly Average as specified	Weekly Average as specified	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Flow [50050]	Report gpd [07]	---	Report gpd [07]	---	---	---	1/Week [01/07]	Measure [MS]
Biochemical Oxygen Demand (BOD ₅) [00310]	Report lbs/Day [26]	---	Report lbs/Day [26]	Report mg/L [19]	---	Report mg/L [19]	1/Week [01/07]	Grab [GR]
Total Suspended Solids (TSS) [00530]	Report lbs/Day [26]	---	Report lbs/Day [26]	Report mg/L [19]	---	Report mg/L [19]	1/Week [01/07]	Grab [GR]
Oil & Grease [03582]	Report lbs/Day [26]	---	Report lbs/Day [26]	Report mg/L [19]	---	Report mg/L [19]	1/Week [01/07]	Grab [GR]

SPECIAL CONDITIONS

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

Footnotes:

Sampling Locations:

Effluent sampling for Outfall 001 shall be conducted for all parameters after the last treatment process on a year-round basis. For Outfall 002, sampling shall be conducted prior to co-mingling with any other waste streams. Any change in sampling location(s) must be reviewed and approved by the Department in writing.

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

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

- (1) **Production** – The pounds of raw product processed during each day.
- (2) **2/Month** – There shall be at least seven (7) days between sampling events.
- (3) **Composite sampling** – A sample consisting of a minimum of four (4) grab samples collected at equal intervals during the day's processing period and combined proportional to the flow over the processing time period or a sample continuously collected proportional to flow over the same time period.

SPECIAL CONDITIONS

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

Footnotes:

- (4) **Total residual chlorine (TRC)** – TRC limitations are applicable anytime of year in which elemental chlorine or chlorine based compounds are utilized as disinfectants. If no chlorine based compounds are utilized during a month's reporting period, the permittee shall enter the code "NODI-9" in the applicable space on the corresponding month's DMR. The permittee shall utilize approved test methods that are capable of bracketing the limitations in this permit.

B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time which would impair the usages designated for the classification of the receiving waters.
2. The effluent shall not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated for the classification of the receiving waters.
3. The discharges shall not cause visible discoloration or turbidity in the receiving waters which would impair the usages designated for the classification of the receiving waters.
4. Notwithstanding specific conditions of this permit the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

C. NOTIFICATION REQUIREMENT

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

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

SPECIAL CONDITIONS

D. UNAUTHORIZED DISCHARGES

The permittee is authorized to discharge via Outfall #001 in accordance with the terms and conditions of this permit. Discharges of waste water from any other point source are not authorized under this permit, but shall be reported in accordance with Standard Condition B(5) (*Bypass*) of this permit.

E. COMMENCEMENT OF OPERATIONS

At a minimum of forty five (45) days prior to commencing production/operations, the permittee must meet with the Department's permitting and compliance inspection staff to review applicability of the permit limitations, monitoring requirements and reporting requirements. Should the Department determine the proposed production/operations are significantly different than what has been presented in the previous application materials, the Department may require the permittee to submit a revised application to modify the permit.

F. OPERATION & MAINTENANCE (O&M) PLAN

The permittee shall have a current written comprehensive Operation & Maintenance (O&M) Plan. The plan shall provide a systematic approach by which the permittee shall, at all times, properly operate and maintain all facilities and the systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this license. The O&M plan shall be a working document designed for use by personnel working at the facility.

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

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

G. SCREENING DEVICES

At all times during facility operation, the permittee shall have in place a screening system or other treatment to provide treatment of the effluent equal to or better than that achieved by a 30 mesh screen. **When the individual screening devices are removed for cleaning, a plug shall be installed in the pipe to prevent unscreened waste from being discharged.** Any treatment facility modifications or installations must receive Department approval prior to any construction.

SPECIAL CONDITIONS

H. MONITORING AND REPORTING

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

Department of Environmental Protection
Central Maine Regional Office
Bureau of Land & Water Quality
Division of Water Quality Management
State House Station #17
Augusta, Maine 04333

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

Being that the facility is currently shutdown with no plans for resuming operations as of the date of this permit, the permittee will not be receiving DMRs. See Special Condition E, *Commencement of Operations*, of this permit.

I. REOPENING OF PERMIT FOR MODIFICATIONS

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

SPECIAL CONDITIONS

J. SEVERABILITY

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

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

FACT SHEET

October 22, 2012

PERMIT NUMBER: **ME0023272**
LICENSE NUMBER: **W007095-5P-F-R**

NAME AND ADDRESS OF APPLICANT:

**SOUTH BRISTOL WHARF, LLC
75 St. John Street
Portland, ME 04102**

COUNTY: **Lincoln County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**South Bristol Shrimp and Lobster
19 Thompson Inn Road
South Bristol, Maine 04568**

RECEIVING WATER/CLASSIFICATION: **Tidewaters of South Bristol/Class SB**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Joseph Donovan
Member Manager
(207) 879-2665
e-mail: jodonovan@cozyharbor.com**

1. APPLICATION SUMMARY

- a. Application: The permittee has submitted a timely and complete application to the Department for the renewal of Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0023272/ Maine Waste Discharge License (WDL) #W007095-5P-E-R, (permit hereinafter) issued on October 24, 2007 for a five-year term. The permit authorized the discharge of up to a daily maximum of 20,000 gallons per day (gpd) of treated seafood processing waste water to the tidewaters of South Bristol, Class SB, in South Bristol, Maine. See **Attachment A** of this Fact Sheet for a location map.

It is noted the permittee is currently not processing any seafood as it is in the processing of developing a long-term business plan for the facility. The facility is currently being utilized as a transfer facility whereby fresh and or frozen seafood is off-loaded from fishing boats and loaded onto trucks to be processed at other facilities. The permittee has indicated it would like to carry forward all the terms and conditions of the 10/24/07 permit as the production figures used to develop the permit limitations remain

1. APPLICATION SUMMARY (cont'd)

representative of the processing capacity of the existing facility. Once the permittee completes the aforementioned business plan, it will notify the Department as to whether or not the permit needs to be modified accordingly.

- b. Source Description: During the period April through December, the permittee cooks up to 20,000 pounds per day (lb/day) of crabs. The large claws, legs and backs are removed from the crab bodies. The large claws are blast frozen, scored for easy breaking and then packaged for distribution to super markets. The smaller leg sections are broken from the larger leg sections and the large leg sections are placed on a machine where the meat is blown from the leg shell by compressed air. The bodies and smaller leg sections go through a rolling type machine that presses the meat from the bodies and smaller leg sections. The meat from the rolling machine with fine shell pieces goes to the ripple board where the meat and shells are separated. The ripple board is the primary source of waste water. Additionally, approximately 250 gallons of crab cooking water is dumped once per day, and a small volume of facility clean up water is discharged at the end of the processing day. The crab shells are swept up for disposal off site in accordance with local and State regulatory requirements.

During the period January through March, the permittee processes up to 40,000 pounds of shrimp per day. The permittee employs three methods of shrimp processing. For domestic sales, the tails are removed from the bodies, washed, and frozen. The bodies are disposed of off site in accordance with local and State regulatory requirements. For export, the shrimp are washed, graded, and frozen. Two to four times per year, up to 10,000 pounds of shrimp may be cooked per night resulting in one cooker full of shrimp cooking water being dumped per night.

- c. Waste Water Treatment: Present treatment for all processing line waste waters consists of a vibrating screen equivalent to number 30-mesh screen. All waste water (with the exception of the lobster and or crab cook water) is screened prior to discharge. In the summer of calendar year 2004, the permittee installed a new outfall pipe extending out into the receiving water approximately 100 feet. The outfall pipe measures 8 inches in diameter and has approximately 25 feet of water over the crown of the pipe at mean low tide and approximately 35 feet over the crown of the pipe a mean tide. All shells are dry swept from the floor and placed in containers for off-site disposal before washing the facility. Sanitary waste waters generated at the facility are not to be discharged to any surface water body. Any sub-surface waste water disposal system or holding tank installed must be approved by the State's Department of Human Services' Bureau of Health's Division of Health Engineering.

2. PERMIT SUMMARY

- a. Terms & conditions - This permitting action is carrying forward the terms and conditions of the previous permitting action.
- b. History: Relevant regulatory actions include the following:

September 3, 1986 — The Department issued Waste Discharge License (WDL) W007095-41-A-N to Maine Mariculture, Inc. for a five-year term. The WDL authorized the discharge of mussel processing and clean-up waste water to the tidewaters of South Bristol.

August 26, 1988 — The United States Environmental Protection Agency (EPA) issued a letter to Maine Mariculture stating National Pollutant Discharge Elimination System (NPDES) permit application #ME0023272 was complete for processing. The application was never acted on and therefore a NPDES permit was never issued.

March 3, 1993 - Reilly's Sea Products (new owner of Maine Mariculture) submitted an application to the Department for renewal of WDL W007095-41-A-N. The Department never acted on the application.

June 1, 1999 - Thomas Massey, Ltd. (new owner of Reilly's Sea Products) submitted an application to the Department for a transfer and renewal of WDL W007095-41-A-N.

January 12, 2001 - The Department received authorization from the EPA to administer the NPDES permit program in Maine. From that point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) permit program.

July 29, 2002 – The Department issued MEPDES permit #ME0023272/WDL W007095-5P-B-R/W007095-5P-C-T for a five-year term.

September 2004 - The permittee completed the extension of the outfall pipe for the discharge from the facility as required by Special Condition C, *Outfall Pipe Extension*, of the previous permitting action.

June 2, 2005 – The State of Maine and Thomas Massey entered into a Consent Agreement to resolve violations of the 7/29/02 MEPDES permit.

August 2005 – Thomas Massey Ltd ceased processing at the South Bristol facility.

2. PERMIT SUMMARY (cont'd)

April 5, 2007 – The Department issued a transfer order (#W007095-5P-D-T) transferring the 7/29/02 permit. The real property in which the seafood processing facility is to be located on is currently owned by the Thompson Inn Road Realty Trust. Thompson Inn Road Realty Trust purchased the property from Damariscotta Bank & Trust in September 2006, after Damariscotta Bank & Trust repossessed the property from Thomas Massey Limited earlier in calendar year 2006. As an exhibit to the transfer application submitted to the Department, SBW has provided a copy of a lease agreement (dated November 10, 2006) that it entered into with the current owner of the facility, Thompson Inn Road Realty Trust.

October 24, 2007 – The Department issued combination MEPDES permit #ME0023272/WDL #W007095-5P-E-R for a five-year term.

October 16, 2012 – South Britol Wharf LLC submitted a timely and complete application to the Department to renew the 10/24/07 MEPDES permit.

3. CONDITIONS OF PERMITS

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

4. RECEIVING WATER QUALITY STANDARDS

Classifications of estuarine and marine waters, 38 M.R.S.A. § 469 classifies the marine waters of the "gut" in South Bristol as a Class SB waterway. *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B (2) describes the classification standards for Class SB waterways as follows;

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

4. RECEIVING WATER QUALITY STANDARDS (cont'd)

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

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

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2010 Integrated Water Quality Monitoring and Assessment Report, (Report) prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists a 550-acre segment of South Bristol (Waterbody ID #729-3), as *Category 2: Estuarine and Marine Waters Attaining Some Designated Uses – Insufficient Information for Other Uses*. The Maine Department of Marine Resources' (MeDMR) Area #24-B Johns Bay (South Bristol and Bristol) is closed to shellfish harvesting. The shellfish closure area is identified on the map included as **Attachment A** of this Fact Sheet. The MeDMR traditionally closes shellfish harvesting areas if there are known sources of discharges with unacceptable bacteria levels (instream thresholds established in the National Shellfish Sanitation Program) or keeps areas closed due to lack of updated information. The Report lists the sources of elevated bacteria levels as overboard discharges and boat discharges.

In addition, all estuarine and marine waters of the State are listed as, "*Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants.*" Impairment in this context refers to the estuarine and marine waters partially supporting the designated use of fishing and harvesting of shellfish due to elevated levels of mercury, PCBs, dioxin, and other persistent bioaccumulating substances in tissues of some fish and in lobster tomalley.

5. RECEIVING WATER QUALITY CONDITIONS

The Department has made the determination that the discharge from the permittee is not causing or contributing to the shellfish closure as the discharge is solely seafood processing and clean-up waters and not sanitary waste waters.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

The former permittee hand processed northern shrimp and cooked and mechanically processed Maine crabs and lobster. The effluent limitations for each process (crab and shrimp) in the previous permitting action were based on National Effluent Guidelines (NEGs) found at Code of Federal Regulations (CFR) Title 40, Part 408 – *Canned and Preserved Seafood Processing Point Source Category*. The shrimp processing limitations for total suspended solids (TSS), oil and grease (O&G) and pH in the July 29, 2002 permit were based on CFR 40, Subpart K, *Northern Shrimp Processing in the Contiguous States Subcategory*, § 408.112. The crab processing limitations for TSS, O&G and pH in the 2002 permit were based on CFR 40, Subpart C, *Mechanized Blue Crab Processing Subcategory*, § 408.32.

Based on a request by the permittee to consolidate effluent limitations and monitoring requirements in the October 24, 2007 permitting action, this permitting action is carrying forward the more stringent of the two effluent limitations (crab processing) in 40 CFR Part 408, Subpart C, *Mechanized Blue Crab Processing Subcategory*, § 408.32.

Outfall #001 – Process Waste Waters

The permittee has no reported monitoring values to-date.

- a. Flow: This permitting action is carrying forward a daily maximum flow limitation of 20,000 gpd as it remains representative of historic flows discharged.
- b. Dilution Factors: *Surface Water Toxics Control Program*, 06-096 CMR 530 (effective October 9, 2005) § D(3)(b) states that for discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE or CORMIX. Using information provided by the permittee as to the location of the outfall (September 2004) and a daily maximum permitted flow of 20,000 gpd, the Department has determined the dilution factors are as follows:

Acute = 80:1 Chronic = 97:1 Harmon mean 191 :1
- c. Production – This permitting action is carrying forward the technology based limits based on a production value of 20,000 lbs/day of crabs. This value was provided by the permittee as being representative of a normal production. The permittee and Department concur that 20,000 lbs/day remains representative of production and where applicable shall be utilized to establish technology based limits in this permitting action.

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

Outfall #001 – Process Waste Waters

- d. Total Suspended Solids (TSS) and Oil & Grease (O&G) Title 40 Code of Federal Regulations (CFR) part 408-*Canned and Preserved Seafood Processing Point Source Category* does not include the type of crabs, (*Cancer borealis*), which the applicant processes. The crab processing subcategories of 40 CFR part 408-*Canned and Preserved Seafood Processing Point Source Category* include Alaskan, blue, dungeness and tanner crab processing. *Dungeness and Tanner Crab Processing in the Contiguous States Subcategory* (Subpart H) was developed for the west coast crab processing facilities which cooked whole or parts of crabs and generally hand picked the meat. 40 CFR part 408-*Canned and Preserved Seafood Processing Point Source Category* (Subpart B) specifies effluent limitations for conventional blue crab processing. 40 CFR part 408-*Canned and Preserved Seafood Processing Point Source Category* (Subpart C) specifies effluent limitations for mechanized blue crab processing.

Based on the permittee's request to consolidate effluent limitations and monitoring requirements in the 2007 permitting action, the Department has made a best professional judgment to carry forward the limitations in Special Condition A(1) *Effluent Limitations And Monitoring Requirements – Crabs*, from the July 29, 2002 permitting action that were calculated based on the NEG's best practicable treatment (BPT) limitations found in 40 CFR Part 408, Subpart C - *Mechanized Blue Crab Processing Subcategory*. The limits were derived as follows:

Prod. lbs/day	TSS Avg		TSS Max		O&G Avg		O&G Max	
	kg/kkg	lbs/day	kg/kkg	lbs/day	kg/kkg	lbs/day	kg/kkg	lbs/day
20,000	12.0	240	36	720	4.2	84	13	260

It is noted kg/kkg is equivalent to lbs/1,000 lbs.

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

Outfall #001 – Process Waste Waters

Calculations: TSS Average: $\frac{(20,000 \text{ lbs})(12 \text{ lbs})}{1,000 \text{ lbs}} = 240 \text{ lbs/day}$

TSS Max: $\frac{(20,000 \text{ lbs})(36 \text{ lbs})}{1,000 \text{ lbs}} = 720 \text{ lbs/day}$

O&G Average: $\frac{(20,000 \text{ lbs})(4.2 \text{ lbs})}{1,000 \text{ lbs}} = 84 \text{ lbs/day}$

O&G Max: $\frac{(20,000 \text{ lbs})(13 \text{ lbs})}{1,000 \text{ lbs}} = 260 \text{ lbs/day}$

Waste Discharge License Conditions, 06-096 523 § 6, Calculating NPDES permit conditions, sub-§ f(2) states that "... pollutants limited in terms of mass additionally may be limited in terms of other units of measurement and the permit shall require the permittee to comply with both limitations." Due to the large fluctuations in daily production and to ensure best practicable treatment is being applied at all production levels, the Department has made a best professional judgment that carrying forward the monthly average and daily maximum technology-based concentration limits for TSS and Oil & Grease is appropriate. The limits were derived by back-calculating values from the applicable mass limits calculated above and the monthly average flow limit established in Section 6(a) of this Fact Sheet. The calculations are as follows:

TSS Monthly Average: $\frac{240 \text{ lbs/day}}{(8.34)(0.020 \text{ MGD})} = 1,439 \text{ mg/L}$

TSS Daily Maximum: $\frac{720 \text{ lbs/day}}{(8.34)(0.020 \text{ MGD})} = 4,316 \text{ mg/L}$

O&G Monthly Average: $\frac{84 \text{ lbs/day}}{(8.34)(0.020 \text{ MGD})} = 503 \text{ mg/L}$

O&G Daily Maximum: $\frac{260 \text{ lbs/day}}{(8.34)(0.020 \text{ MGD})} = 1,559 \text{ mg/L}$

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

Outfall #001 – Process Waste Waters

- e. Biochemical Oxygen Demand (BOD5) – The NEG's have not established BPT limitations for BOD5 in the crab processing subpart. This permitting action is carrying forward the monthly average and daily maximum reporting requirements expressed as lbs/1/2ton TPR (kg/kg or lbs/1,000 pounds).

The Department is carrying forward utilizing monthly average and daily maximum values of 4.0 kg/kg and 8.0 kg/kg, respectively, as being representative of the treatment that is consistently achievable at this facility. These values along with a production value of 20,000 lbs/day were utilized to derive the monthly average and daily maximum technology-based mass limits for BOD5 and are being carried forward in this permitting action.

Prod. lbs/day	BOD Avg		BOD Max	
	kg/kg	lbs/day	kg/kg	lbs/day
20,000	4.0	80	8.0	160

Example calculation: BOD5 average: $(20,000 \text{ lbs})(\frac{4.0 \text{ lbs}}{1,000 \text{ lbs}}) = 80 \text{ lbs/day}$

BOD5 average: $(20,000 \text{ lbs})(\frac{8.0 \text{ lbs}}{1,000 \text{ lbs}}) = 160 \text{ lbs/day}$

As with TSS and oil & grease, concentration limits for BOD5 were back-calculating using the respective mass limits and a permitted flow of 20,000 gpd. The calculations are as follows:

BOD5 Monthly Average: $\frac{80 \text{ lbs/day}}{(8.34)(0.020 \text{ MGD})} = 480 \text{ mg/L}$

BOD5 Daily Maximum: $\frac{160 \text{ lbs/day}}{(8.34)(0.020 \text{ MGD})} = 959 \text{ mg/L}$

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

Outfall #001 – Process Waste Waters

- f. pH – This permitting action is carrying forward a pH range limitation of 6.0 – 9.0 standard units based on the pH limitations in 40 CFR Part 408 Subpart C.
- g. Total Residual Chlorine (TRC): Limits on total residual chlorine are specified to ensure attainment of the in-stream water quality criteria for chlorine and that BPT technology is utilized to abate the discharge of chlorine. Permits issued by this Department impose the more stringent of the calculated water quality-based or BPT based limits. The Department has established a daily maximum best practicable treatment (BPT) TRC limitation of 1.0 mg/L for facilities that disinfect their effluent with elemental chlorine or chlorine-based compounds unless the calculated acute water quality based threshold is lower than 1.0 mg/L. For facilities that need to dechlorinate the discharge to meet water quality-based thresholds, the Department has established daily maximum and monthly average best practicable treatment limits of 0.3 mg/L and 0.1 mg/L, respectively. Water quality-based thresholds for TRC are calculated from the water quality-based acute and chronic criteria of 0.013 mg/L and 0.0075 mg/L, respectively.

Acute (A) Criterion	Chronic (C) Criterion	Dilution Factors		Calculated Acute Limit	Calculated Chronic Limit
		(A)	(C)		
0.013 mg/L	0.0075 mg/L	80:1	97:1	1.04 mg/L	0.73 mg/L

The daily maximum technology-based effluent TRC concentration limitation of 1.0 mg/L is more stringent than the acute calculated water quality-based threshold and is therefore being established in this permitting action. For chronic, the calculated water quality based limit is more stringent than the BPT limit of 1.0 mg/L and is therefore being carried forward in this permitting action.

Outfall #002 – Cooking waters

This permitting action is carrying forward the requirement to sample the cook waters discharge for flow, BOD5, TSS and oil & grease at a frequency of 1/Week for at least 10 sampling events to determine the pollutant loading associated with this intermittent discharge. After 10 sampling events, the Department will conducted a review of sampling data to determine if limitations for said parameters is warranted or modify or eliminate sampling from the permit. The Department currently has no data on file from the permittee.

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

Based on the most current information, the Department has determined the existing water uses will be maintained and protected and the discharge as permitted will not cause or contribute to the failure of the waterbody to meet standards for Class SB classification.

8. PUBLIC COMMENTS

Public notice of this application was made in the Lincoln County newspaper on or about October 22, 2012. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

9. DEPARTMENT CONTACTS

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

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

Telephone (207) 287-7693

10. RESPONSE TO COMMENTS

During the period October 22, 2012 through the issuance date of the permit, the Department solicited comments on the proposed draft permit for the permittee's facility. The Department did not receive comments from the permittee, state or federal agencies or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

ATTACHMENT A



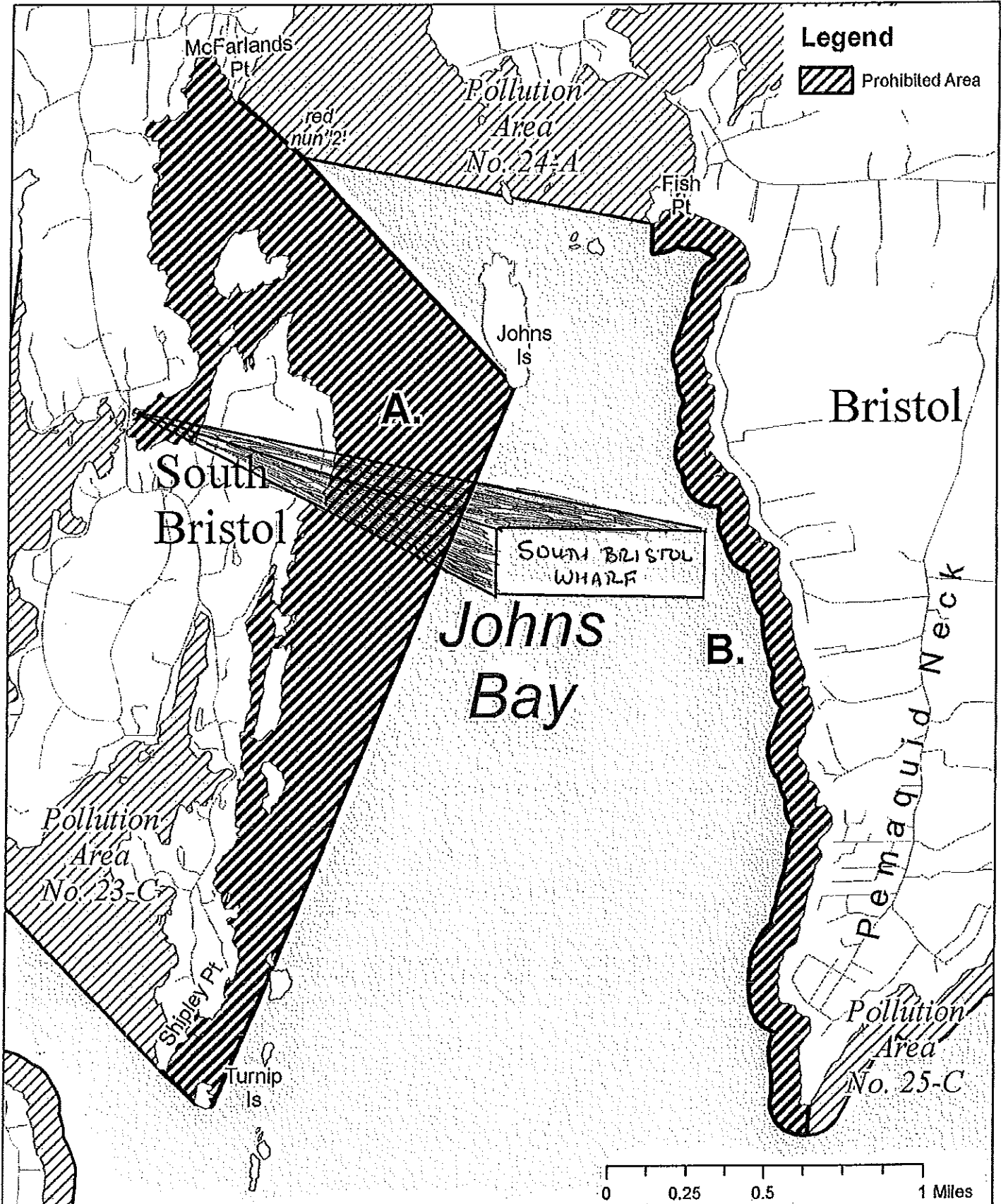
Maine Department of Marine Resources

Pollution Area No. 24-B

Johns Bay (South Bristol and Bristol)



3/27/08



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

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A. GENERAL PROVISIONS

1. **General compliance.** All discharges shall be consistent with the terms and conditions of this permit; any changes in production capacity or process modifications which result in changes in the quantity or the characteristics of the discharge must be authorized by an additional license or by modifications of this permit; it shall be a violation of the terms and conditions of this permit to discharge any pollutant not identified and authorized herein or to discharge in excess of the rates or quantities authorized herein or to violate any other conditions of this permit.

2. **Other materials.** Other materials ordinarily produced or used in the operation of this facility, which have been specifically identified in the application, may be discharged at the maximum frequency and maximum level identified in the application, provided:

(a) They are not

- (i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
- (ii) Known to be hazardous or toxic by the licensee.

(b) The discharge of such materials will not violate applicable water quality standards.

3. **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of State law and the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

- (a) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act, and 38 MRSA, §420 or Chapter 530.5 for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- (b) Any person who violates any provision of the laws administered by the Department, including without limitation, a violation of the terms of any order, rule license, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

4. **Duty to provide information.** The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

5. **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

6. **Reopener clause.** The Department reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedule of compliance or other provisions which may be authorized under 38 MRSA, §414-A(5).

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

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maximize removal of pollutants unless authorization to the contrary is obtained from the Department.

- (b) The permittee shall at all times maintain in good working order and operate at maximum efficiency all waste water collection, treatment and/or control facilities.
- (c) All necessary waste treatment facilities will be installed and operational prior to the discharge of any wastewaters.
- (d) Final plans and specifications must be submitted to the Department for review prior to the construction or modification of any treatment facilities.
- (e) The permittee shall install flow measuring facilities of a design approved by the Department.
- (f) The permittee must provide an outfall of a design approved by the Department which is placed in the receiving waters in such a manner that the maximum mixing and dispersion of the wastewaters will be achieved as rapidly as possible.

2. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

3. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

5. Bypasses.

(a) Definitions.

- (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.

(c) Notice.

- (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

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(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D(1)(f), below. (24-hour notice).

(d) Prohibition of bypass.

(i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (c) of this section.

(ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (d)(i) of this section.

6. Upsets.

(a) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph D(1)(f), below. (24 hour notice).

(iv) The permittee complied with any remedial measures required under paragraph B(4).

(d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

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C. MONITORING AND RECORDS

1. General Requirements. This permit shall be subject to such monitoring requirements as may be reasonably required by the Department including the installation, use and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). The permittee shall provide the Department with periodic reports on the proper Department reporting form of monitoring results obtained pursuant to the monitoring requirements contained herein.

2. Representative sampling. Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. If effluent limitations are based wholly or partially on quantities of a product processed, the permittee shall ensure samples are representative of times when production is taking place. Where discharge monitoring is required when production is less than 50%, the resulting data shall be reported as a daily measurement but not included in computation of averages, unless specifically authorized by the Department.

3. Monitoring and records.

- (a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (b) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.
- (c) Records of monitoring information shall include:
 - (i) The date, exact place, and time of sampling or measurements;
 - (ii) The individual(s) who performed the sampling or measurements;
 - (iii) The date(s) analyses were performed;
 - (iv) The individual(s) who performed the analyses;
 - (v) The analytical techniques or methods used; and
 - (vi) The results of such analyses.
- (d) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in the permit.
- (e) State law provides that any person who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule license, permit approval or decision is subject to the penalties set forth in 38 MRSA, §349.

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D. REPORTING REQUIREMENTS

1. Reporting requirements.

- (a) Planned changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - (i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or
 - (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D(4).
 - (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;
- (b) Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- (c) Transfers. This permit is not transferable to any person except upon application to and approval of the Department pursuant to 38 MRSA, § 344 and Chapters 2 and 522.
- (d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
 - (i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices.
 - (ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.
 - (iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.
- (e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- (f) Twenty-four hour reporting.
 - (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance

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has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit.

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

(iii) The Department may waive the written report on a case-by-case basis for reports under paragraph (f)(ii) of this section if the oral report has been received within 24 hours.

(g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this section.

(h) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

2. Signatory requirement. All applications, reports, or information submitted to the Department shall be signed and certified as required by Chapter 521, Section 5 of the Department's rules. State law provides that any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any order, rule, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

3. Availability of reports. Except for data determined to be confidential under A(9), above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. As required by State law, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal sanctions as provided by law.

4. Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under this Section, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) One hundred micrograms per liter (100 ug/l);

(ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or

(iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

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- (b) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
- (i) Five hundred micrograms per liter (500 ug/l);
 - (ii) One milligram per liter (1 mg/l) for antimony;
 - (iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
 - (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

5. Publicly owned treatment works.

- (a) All POTWs must provide adequate notice to the Department of the following:
- (i) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA or Chapter 528 if it were directly discharging those pollutants.
 - (ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
 - (iii) For purposes of this paragraph, adequate notice shall include information on (A) the quality and quantity of effluent introduced into the POTW, and (B) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
- (b) When the effluent discharged by a POTW for a period of three consecutive months exceeds 80 percent of the permitted flow, the permittee shall submit to the Department a projection of loadings up to the time when the design capacity of the treatment facility will be reached, and a program for maintaining satisfactory treatment levels consistent with approved water quality management plans.

E. OTHER REQUIREMENTS

1. Emergency action - power failure. Within thirty days after the effective date of this permit, the permittee shall notify the Department of facilities and plans to be used in the event the primary source of power to its wastewater pumping and treatment facilities fails as follows.

- (a) For municipal sources. During power failure, all wastewaters which are normally treated shall receive a minimum of primary treatment and disinfection. Unless otherwise approved, alternate power supplies shall be provided for pumping stations and treatment facilities. Alternate power supplies shall be on-site generating units or an outside power source which is separate and independent from sources used for normal operation of the wastewater facilities.
- (b) For industrial and commercial sources. The permittee shall either maintain an alternative power source sufficient to operate the wastewater pumping and treatment facilities or halt, reduce or otherwise control production and or all discharges upon reduction or loss of power to the wastewater pumping or treatment facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

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

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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