



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI

GOVERNOR

DAVID P. LITTELL

COMMISSIONER

November 21, 2007

Mr. David W. Miller
Atlantic Salmon of Maine LLC
Box 325, Small's Point Road
Machiasport, Maine 04655

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0024058
Maine Waste Discharge License (WDL) Application # W-007951-5P-C-R
Final Permit/License

Dear Mr. Miller:

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

The Department would like to make you aware that your monthly Discharge Monitoring Report (DMR) forms may not reflect the revisions in this permitting action for several months after permit issuance, however, you are required to report applicable test results for parameters required by this permitting action that do not appear on the DMR. Please see the attached April 2003 O&M Newsletter article regarding this matter.

If you have any questions regarding the matter, please feel free to call me at (207) 287-6114 or contact me via email at Robert.D.Stratton@maine.gov.

Sincerely,

Robert D. Stratton
Division of Water Quality Management
Bureau of Land and Water Quality

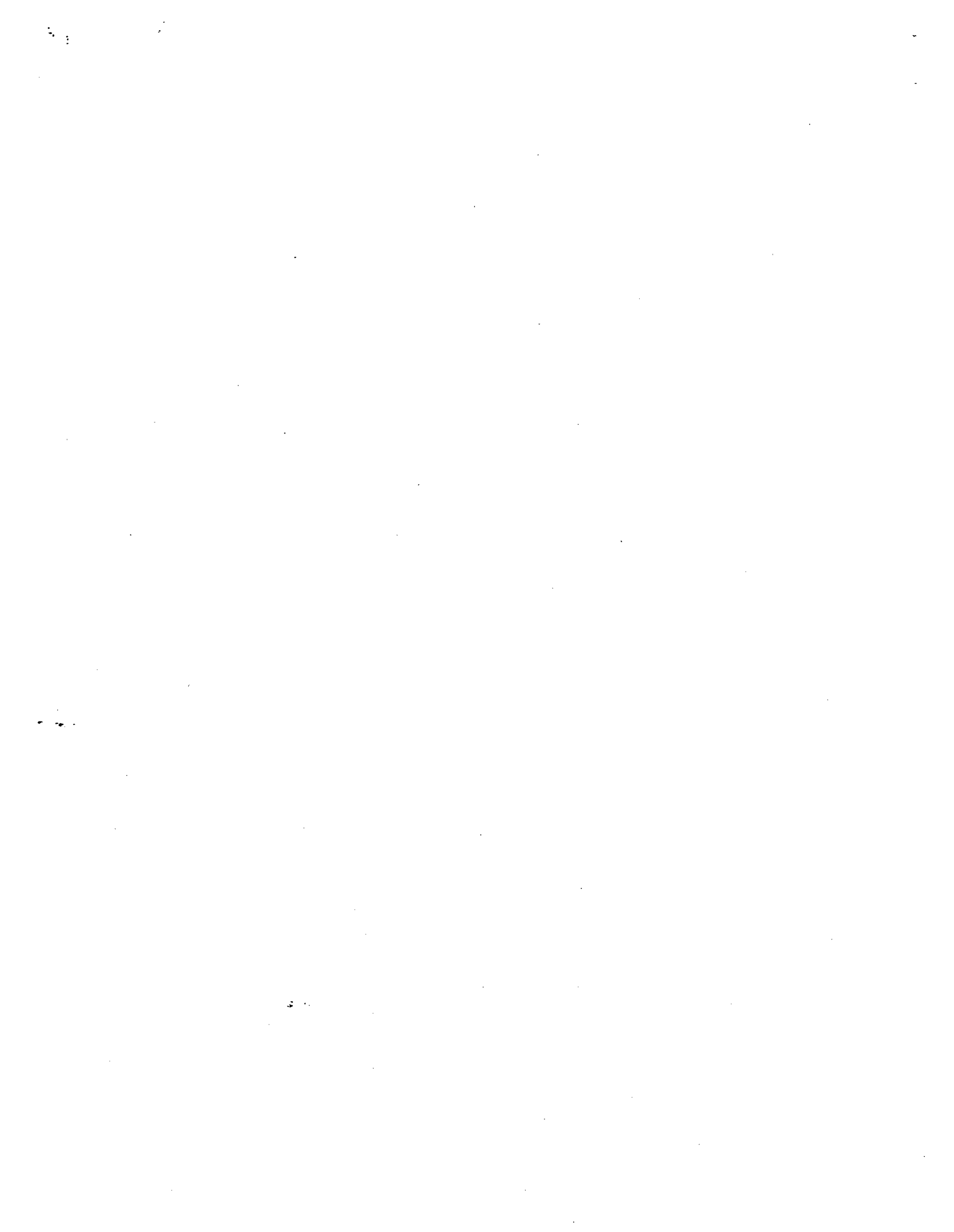
Enc./cc: Jim Sohns (MEDEP); Sandy Lao (USEPA); Jeff Murphy, Sharon Maclean (NOAA Fisheries); Wende Mahaney (USFWS); Steve Ellis (USDA); Samantha Horn-Olsen (MeDMR); Lloyd Purdy, Bill Cusack (Cooke Aquaculture); Andrew Hamilton (Eaton-Peabody)

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
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 04769-2094
(207) 764-0477 FAX: (207) 760-3143



DMR Lag

(reprinted from April 2003 O&M Newsletter)

When the Department renews discharge permits, the parameter limits may change or parameters may be added or deleted. In some cases, it is merely the replacement of the federally issued NPDES permit with a state-issued MEPDES permit that results in different limits. When the new permit is finalized, a copy of the permit is passed to our data entry staff for coding into EPA's Permits Compliance System (PCS) database. PCS was developed in the 1970's and is not user-friendly. Entering or changing parameters can take weeks or even months. This can create a lag between the time your new permit becomes effective and the new permit limits appearing on your DMRs. If you are faced with this, it can create three different situations that have to be dealt with in different ways.

1. If the parameter was included on previous DMRs, but only the limit was changed, there will be a space for the data. Please go ahead and enter it. When the changes are made to PCS, the program will have the data and compare it to the new limit.
2. When a parameter is eliminated from monitoring in your new permit, but there is a delay in changing the DMR, you will have a space on the DMR that needs to be filled. For a parameter that has been eliminated, please enter the space on the DMR for that parameter only with "NODI-9" (No Discharge Indicator Code #9). This code means monitoring is conditional or not required this monitoring period.
3. When your new permit includes parameters for which monitoring was not previously required, and coding has not caught up on the DMRs, there will not be any space on the DMR identified for those parameters. In that case, please fill out an extra sheet of paper with the facility name and permit number, along with all of the information normally required for each parameter (parameter code, data, frequency of analysis, sample type, and number of exceedances). Each data point should be identified as monthly average, weekly average, daily max, etc. and the units of measurement such as mg/L or lb/day. Staple the extra sheet to the DMR so that the extra data stays with the DMR form. Our data entry staff cannot enter the data for the new parameters until the PCS coding catches up. When the PCS coding does catch up, our data entry staff will have the data right at hand to do the entry without having to take the extra time to seek it from your inspector or from you.

EPA is planning significant improvements for the PCS system that will be implemented in the next few years. These improvements should allow us to issue modified permits and DMRs concurrently. Until then we appreciate your assistance and patience in this effort.



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

DEPARTMENT ORDER

IN THE MATTER OF

ATLANTIC SALMON OF MAINE LLC) MAINE POLLUTANT DISCHARGE
MACHIASPORT, WASHINGTON COUNTY, ME) ELIMINATION SYSTEM PERMIT
SALMON PROCESSING PLANT) AND
#ME0024058) WASTE DISCHARGE LICENSE
#W-007951-5P-C-R **APPROVAL**) **RENEWAL**

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

APPLICATION SUMMARY

The applicant has applied for a renewal of Waste Discharge License (WDL) #W-007951-WA-A-N, which was issued on February 25, 1997, for a five-year term. The WDL approved the discharge of a maximum of 21,300 gallons per day (GPD) of salmon processing wastewater to the tidewaters of Machiasport (Bucks Harbor), Class SB, from a salmon processing facility in Machiasport, Maine. The WDL was subsequently modified as noted herein. Though the facility is currently not being operated, the applicant has applied for renewal of the WDL and adjustments of effluent limits and monitoring requirements based on projected future increases in facility production from the previous licensing action. This permitting action incorporates the terms and conditions of the Maine Pollutant Discharge Elimination System (MEPDES) permitting program.

PERMIT SUMMARY

This permitting action is similar to the February 25, 1997 WDL and subsequent license modifications in that it is carrying forward:

1. the monthly average and daily maximum production reporting requirements; and
2. the elimination of reporting requirements for ammonia, nitrite, nitrate, and Total Kjeldahl nitrogen.

This permitting action is different from the February 25, 1997 WDL and subsequent license modifications in that it is:

1. eliminating the two-tiered approach for effluent limitations and monitoring requirements and establishing consistent limits and requirements for all production levels, labeled as Outfall #001A;
2. establishing monthly average discharge flow monitoring requirements and a daily maximum discharge flow limit of 0.11 million gallons per day (MGD);
3. revising biochemical oxygen demand (BOD₅), total suspended solids (TSS), and oil and grease effluent limits to monthly average and daily maximum mass (lbs/day) and concentration (lbs / 1000 lbs of salmon processed) limits based on National Effluent Guidelines (NEGs) for west coast mechanized salmon processing;
4. establishing monthly average and daily maximum best practicable treatment based total residual chlorine concentration limits for de-chlorinated effluent;
5. revising the pH limit range to 6.0 to 9.0 standard units as both monthly average and daily maximum values;
6. establishing minimum monitoring frequency and sample type requirements based on Department Best Professional Judgement;
7. establishing minimum qualification standards for the wastewater treatment system operator;
8. requiring a current facility Operation and Maintenance Plan;
9. requiring compliance with existing state salmonid fish health rules;
10. requiring development and submittal of Biosecurity and Disease Contingency Plans;
11. establishing record keeping requirements for disinfecting/sanitizing agents; and
12. requiring the permittee to meet with the Department prior to commencing production/operations at the facility to review the applicability of the permit limitations, monitoring requirements, and reporting requirements.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated December 20, 2006, and revised March 9, 2007, November 9, 2007, and November 20, 2007, and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 MRSA Section 464(4)(F), will be met, in that:
 - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - (b) Where high quality waters of the State constitute an outstanding national 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 the ASM Machiasport processing facility to discharge a maximum of 0.11 MGD of salmon processing wastewater to Bucks Harbor, Class SB, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits," revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit expires five (5) years from the date of signature below.

DONE AND DATED AT AUGUSTA, MAINE, THIS 29TH DAY OF November, 2007.

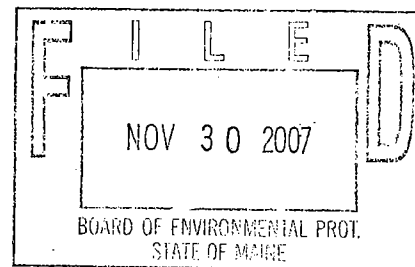
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
David P. Littell, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: June 29, 2001

Date of application acceptance: July 12, 2001



Date filed with Board of Environmental Protection _____.

This Order prepared by Robert D. Stratton, BUREAU OF LAND & WATER QUALITY
W-007951-5P-C-R / #ME0024058 November 20, 2007

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- The permittee is authorized to discharge salmon processing wastewater from **Outfall #001A** to Bucks Harbor. Such discharges shall be limited and monitored by the permittee as specified below:

Monitoring Parameter	Discharge Limitations and Reporting Requirements			Minimum Monitoring Requirements		
	Monthly Average as specified	Daily Maximum as specified	Monthly Average as specified	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Flow <i>[50050]</i>	Report MGD <i>[03]</i>	0.11 MGD <i>[03]</i>	---	---	Daily <i>[01/01]</i>	Measured <i>[MS]</i>
BOD <i>[00310]</i>	6,954 lbs/day <i>[26]</i>	11,346 lbs/day <i>[26]</i>	38 lbs/1000 lbs of production ¹ <i>[31]</i>	62 lbs/1000 lbs of production ¹ <i>[31]</i>	1 per 5 Days of Discharging ² <i>[01/05]</i>	24-hour Composite ³ <i>[24]</i>
TSS <i>[00530]</i>	1,391 lbs/day <i>[26]</i>	2,379 lbs/day <i>[26]</i>	7.6 lbs/1000 lbs of production ¹ <i>[31]</i>	13 lbs/1000 lbs of production ¹ <i>[31]</i>	1 per 5 Days of Discharging ² <i>[01/05]</i>	24-hour Composite ³ <i>[24]</i>
Oil and Grease <i>[00552]</i>	275 lbs/day <i>[26]</i>	769 lbs/day <i>[26]</i>	1.5 lbs/1000 lbs of production ¹ <i>[31]</i>	4.2 lbs/1000 lbs of production ¹ <i>[31]</i>	1 per 5 Days of Discharging ² <i>[01/05]</i>	Grab <i>[GR]</i>
Total Residual Chlorine ⁴ <i>[50060]</i>	---	---	0.1 mg/L <i>[19]</i>	0.3 mg/L <i>[19]</i>	Daily <i>[01/01]</i>	Grab <i>[GR]</i>
Production ⁵ <i>[00145]</i>	Report lbs/day <i>[26]</i>	Report lbs/day <i>[26]</i>	---	---	Daily <i>[01/01]</i>	Measured <i>[MS]</i>
pH <i>[00400]</i>	---	---	6.0-9.0 S.U. <i>[12]</i>	6.0-9.0 S.U. <i>[12]</i>	1 per 5 Days of Discharging ² <i>[01/05]</i>	Grab <i>[GR]</i>

The italicized numeric values bracketed in the table above and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports (DMRs). Footnotes are found on Pages 6 and 7.

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS , Footnotes:

Effluent sampling for all parameters shall be collected at Outfall #001A, the only authorized facility discharge, following all means of wastewater treatment and in a manner so as to capture conditions representative of wastewater generating processes at the facility. Any change in sampling location must be reviewed and approved by the Department in writing. Sampling and analysis must be conducted in accordance with: (a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, (b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or (c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services unless otherwise approved by the Department. 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).

All detectable 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 detection limit achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL is not acceptable and will be rejected by the Department. For mass, if the analytical result is reported as <Y or if a detectable result is less than a RL, report a <X lbs/day, where X is the parameter specific limitation established in the permit.

All waste waters and materials that have been in contact with fish or fish eggs during transport, storage, and processing must be subject to proper wastewater treatment and disinfection or solid waste treatment to remove any potential for transfer of diseases or pathogens prior to discharge to the receiving water or the environment.

1. Production Based Limits: The effluent concentrations of the pollutants noted are limited in pounds of pollutant per 1,000 pounds of fish live weight, processed per day at the facility.
2. Once per Five Days: Sampling shall be conducted at a minimum frequency of one sample for each five days of processing / discharging. Sampling shall be conducted on periods of less than five days of processing / discharging as necessary to complete and start monitoring periods within calendar months.
3. Composite Samples: Samples shall consist of 24-hour composites collected with an automatic composite sampler. Alternatively, when weather conditions and/or equipment prevents automatic compositing and upon Department approval, the permittee may manually composite a minimum of four grab samples collected at two-hour intervals during the working day at the facility.

SPECIAL CONDITIONS

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

4. Total Residual Chlorine (TRC) – Limitations and monitoring requirements for TRC are applicable any time elemental chlorine or chlorine based compounds are being used at the facility to disinfect the discharge or in any way in which they may enter the waste-stream and receiving water. TRC shall be tested using Amperometric Titration or the DPD Spectrophotometric Method. The EPA approved methods are found in Standard Methods for the Examination of Water and Waste Water, (most current approved edition), Method 4500-CL-E and Method 4500-CL-G or U.S.E.P.A. Manual of Methods of Analysis of Water and Wastes.
5. Production: Production refers to the pounds of fish live weight, processed per day at the facility.

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 by 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 by 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 by 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. DISINFECTION

If chlorination is used in any facility processes (pathogen control, disinfection etc.) such that chlorine may be discharged to the receiving water, an approved chlorine contact tank providing the proper detention time consistent with good engineering practice must be utilized, followed by a de-chlorination system if the Total Residual Chlorine (TRC) effluent limits cannot be met by dissipation in the detention tank. The total residual chlorine in the effluent shall at no time cause any demonstrable harm to aquatic life in the receiving waters.

D. TREATMENT PLANT OPERATOR

The wastewater treatment system shall be operated at all times by a person(s) with sufficient knowledge and expertise in the operation of the wastewater treatment system to ensure proper functioning of the system and compliance with all permitting requirements.

SPECIAL CONDITIONS

E. 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.

F. UNAUTHORIZED DISCHARGES:

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

G. OPERATION & MAINTENANCE (O&M) PLAN:

On or before June 1, 2008, the permittee shall submit to the Department a current written comprehensive Operation & Maintenance (O&M) Plan [09699]. The plan shall provide a systematic approach by which the permittee shall at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

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

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

SPECIAL CONDITIONS

H. DISEASE AND PATHOGEN CONTROL AND REPORTING:

ASM Machiasport must comply with appropriate sections of the Maine Department of Inland Fisheries and Wildlife and Maine Department of Marine Resources salmonid fish health rules (12 MRSA, §6071; 12 MRSA, §§7011, 7035, 7201, and 7202, or revised rules). The cited rules include requirements for notification to the appropriate agency within 24-hours of pathogen detection, which is only applicable to the extent that ASM Machiasport detects pathogens and that they are different than anticipated in the Biosecurity and Disease Contingency Plan described below. In the event of a catastrophic pathogen occurrence, the permittee shall submit to the Department for review, information on the proposed treatment including materials/chemicals to be used, material/chemical toxicity to aquatic life, the mass and concentrations of materials/chemicals as administered, and the concentrations to be expected in the effluent. The Department will address such occurrences through administrative modifications of the permit. Based on concerns of the potential for disease transmission from the ASM Machiasport facility to Bucks Harbor and impacts to Atlantic salmon contained therein outlined in Fact Sheet Section 9, this permitting action requires:

On or before March 1, 2008, the permittee shall submit to the Department for review and approval, a scope of work for development of Biosecurity and Disease Contingency Plans. [53999] The scope of work shall generally identify rules/requirements, operational practices and procedures to be identified and/or developed to insure the significant reduction in, or elimination of, the threat of disease transmission from ASM Machiasport to Bucks Harbor. The scope of work shall, at a minimum, identify opportunities for disease transmission and introductions of new pathogens, address appropriate practices for facility wastewater disinfection, identify initial steps for managing outbreaks of diseases of concern, address practices for handling affected fish, and methods for the isolation, containment, and treatment of contaminated water prior to its disposal or discharge to the receiving water.

On or before September 1, 2008, the permittee shall submit to the Department for review and approval, a final Biosecurity and Disease Contingency Plan that addresses items/issues contained in the Department approved Scope of Work and insures the significant reduction in, or elimination of, the threat of disease transmission from ASM Machiasport to Bucks Harbor. [01299] ASM Machiasport is encouraged to consult with the US Food and Drug Administration (USFDA), National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries), and USFWS as it plans for and develops the Biosecurity and Disease Contingency Plans. **Aside from the dates indicated above, the final Biosecurity and Disease Contingency Plan must be approved by the Department and implemented by the permittee prior to the discharge of any wastewater from the ASM Machiasport facility to Bucks Harbor. As of the effective date of this permitting action, all waste waters and materials that have been in contact with fish or fish eggs during transport, storage, and processing must be subject to proper wastewater treatment and disinfection or solid waste treatment to remove any potential for transfer of diseases or pathogens prior to discharge to the receiving water or the environment.**

SPECIAL CONDITIONS

I. DISINFECTING/SANITIZING AGENTS:

Records of all disinfectants and/or sanitizing agents used that have the potential to enter the wastewater or receiving water, their volumes and concentrations as used and concentrations at the point of discharge, shall be maintained at the facility for a period of three years. This permitting action only authorizes the discharge of those materials applied for, evaluated by the Department, and either regulated or determined to be de minimus in this permitting action or in subsequent Department actions.

J. COMMENCEMENT OF OPERATIONS

Prior to the discharge of wastewater pursuant to the terms and conditions of this permit, the permittee or any new owner/operator must meet with the Department's permitting and compliance inspection staff **at a minimum of ninety (90) days prior to commencing production/operations** at the facility to review the applicability of the permit limitations, monitoring requirements, and reporting requirements. Should the Department determine that the proposed production/operations are significantly different from what was presented in the 2001 application materials or subsequently revised and included in this permitting action, the Department may require the applicable party to modify this permit or to file an application for a new permit. In addition, pursuant to Department Rule, Chapter 2, *Rules Concerning the Processing of Applications and Other Administrative Matters*, Section 21, *License Renewals, Amendments and Transfers*, Sub-section C, *Transfers*, a transferee must make application to the Department no later than two (2) weeks after transfer of ownership or entering into a lease agreement to conduct business on said property. Pending determination on the application for approval of transfer the transferee shall abide by all of the conditions of this permit, and is jointly or severably liable with the permittee for any violation of the terms and conditions thereof.

K. 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 a Department regional office such that the DMR's are received by the Department on or before the fifteenth (15th) day of the month** following the completed reporting period. A signed copy of the DMR and all other reports required herein, shall be submitted to the Department's assigned compliance inspector (unless otherwise specified) at the following address:

Department of Environmental Protection
Bureau of Land and Water Quality
Division of Water Quality Management
106 Hogan Road
Bangor, Maine 04401

SPECIAL CONDITIONS

L. 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, new water quality monitoring data or modeling information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at anytime and with notice to the permittee, modify this 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 monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

M. 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 respects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.

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

FACT SHEET

Date: December 20, 2006

Revised: March 9, 2007, November 9, 2007, November 20, 2007

MEPDES PERMIT NUMBER:

ME0024058

MAINE WDL NUMBER:

W-007951-5P-C-R

NAME AND ADDRESS OF APPLICANT:

**ATLANTIC SALMON OF MAINE LLC
Box 325, Small's Point Road
Machiasport, Maine 04655**

COUNTY: **WASHINGTON COUNTY**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**ATLANTIC SALMON OF MAINE LLC
Box 325, Small's Point Road
Machiasport, Maine 04655**

RECEIVING WATER / CLASSIFICATION: **Bucks Harbor, Class SB**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER:

Mr. David W. Miller, Production Manager, (207) 255-6714, dmiller@cookeaqua.com

1. APPLICATION SUMMARY

The applicant has applied for a renewal of Waste Discharge License (WDL) #W-007951-WA-A-N, which was issued on February 25, 1997, for a five-year term. The WDL approved the discharge of a maximum of 21,300 gallons per day (GPD) of salmon processing wastewater to the tidewaters of Machiasport (Bucks Harbor), Class SB, from a salmon processing facility in Machiasport, Maine. The WDL was subsequently modified as noted herein. Though the facility is currently not being operated, the applicant has applied for renewal of the WDL and adjustments of effluent limits and monitoring requirements based on projected future increases in facility production from the previous licensing action. This permitting action incorporates the terms and conditions of the Maine Pollutant Discharge Elimination System (MEPDES) permitting program.

2. PERMIT SUMMARY

- a. Regulatory - On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine, excluding areas of special interest to Maine Indian Tribes. On October 30, 2003, after consultation with the U.S. Department of Justice, USEPA extended Maine's NPDES program delegation to all but tribally owned discharges. That decision was subsequently appealed. On August 8, 2007, a panel of the U.S. First Circuit Court of Appeals ruled that Maine's environmental regulatory jurisdiction applies uniformly throughout the State. From January 12, 2001 forward, the program has been referred to as the MEPDES program and permit #ME0024058 (same as NPDES permit number) utilized as the primary reference number for the Machiasport facility. Any previous NPDES permits issued by the USEPA will be replaced by the MEPDES permit upon issuance. Once replaced, all terms and conditions of any NPDES permits are null and void.
- b. Terms and conditions – This permitting action is similar to the February 25, 1997 WDL and subsequent license modifications in that it is carrying forward:
1. the monthly average and daily maximum production reporting requirements; and
 2. the elimination of reporting requirements for ammonia, nitrite, nitrate, and Total Kjeldahl nitrogen.

This permitting action is different from the February 25, 1997 WDL and subsequent license modifications in that it is:

1. eliminating the two-tiered approach for effluent limitations and monitoring requirements and establishing consistent limits and requirements for all production levels, labeled as Outfall #001A;
2. establishing monthly average discharge flow monitoring requirements and a daily maximum discharge flow limit of 0.11 million gallons per day (MGD);
3. revising biochemical oxygen demand (BOD₅), total suspended solids (TSS), and oil and grease effluent limits to monthly average and daily maximum mass (lbs/day) and concentration (lbs / 1000 lbs of salmon processed) limits based on National Effluent Guidelines (NEGs) for west coast mechanized salmon processing;
4. establishing monthly average and daily maximum best practicable treatment based total residual chlorine concentration limits for de-chlorinated effluent;
5. revising the pH limit range to 6.0 to 9.0 standard units as both monthly average and daily maximum values;
6. establishing minimum monitoring frequency and sample type requirements based on Department Best Professional Judgement;
7. establishing minimum qualification standards for the wastewater treatment system operator;
8. requiring a current facility Operation and Maintenance Plan;
9. requiring compliance with existing state salmonid fish health rules;
10. requiring development and submittal of Biosecurity and Disease Contingency Plans;
11. establishing record keeping requirements for disinfecting/sanitizing agents; and

2. PERMIT SUMMARY (cont'd)

12. requiring the permittee to meet with the Department prior to commencing production/operations at the facility to review the applicability of the permit limitations, monitoring requirements, and reporting requirements.

c. History: The most recent licensing/permitting actions include the following:

May 31, 1994 - The Maine Department of Environmental Protection issued Waste Discharge License (WDL) #W-7756-WA-A-N to Atlantic Salmon of Maine, Inc. for the discharge of 5,800 gallons per day of treated process wastewater to a tidal creek in Machiasport. The license was issued for a five-year term. A corrected copy was filed with the Board of Environmental Protection on June 14, 1994.

August 9, 1996 - The Department issued #W-7756-WA-B-T transferring #W-7756-WA-A-N from Atlantic Salmon of Maine, Inc. to Atlantic Salmon of Maine LLC.

February 25, 1997 - The Department issued a new WDL #W-7951-WA-A-N to Atlantic Salmon of Maine, LLC for the discharge of 21,300 gallons per day of treated salmon processing wastewater at maximum production levels from a new processing facility to the tidewaters of Machiasport (Bucks Harbor), Class SB. The license was issued for a five-year term. This and subsequent actions are associated with a new facility and discharge location on Small's Point Road.

May 14, 1997 - The Department issued a certification, #W-7951-68-A-N, under Section 401 of the Federal Water Pollution Control Act certifying that the discharge in a pending NPDES Permit was in compliance with applicable sections of the WPCA and State law.

May 22, 1997 - The USEPA issued NPDES Permit #ME0024058 to Atlantic Salmon of Maine, Ltd. Co. for the discharge of a daily maximum of 21,300 gallons per day of salmon processing wastewater at maximum production levels to Bucks Harbor. The Permit was valid through March 31, 2002. Department files contain no information regarding any subsequent federal permitting actions.

April 9, 1998 - The Department administratively modified #W-7951-WA-A-N to change the effluent sampling frequency requirement for total residual chlorine from once per five production days to once every production day.

July 1998 - The Department administratively modified #W-7951-WA-A-N to remove requirements for ammonia, nitrite, nitrate, and Total Kjeldahl nitrogen monitoring.

April 27, 2000 - The Department administratively modified #W-7951-WA-A-N to change the flow limit to a flow reporting requirement.

2. PERMIT SUMMARY (cont'd)

April 4, 2001 - The Department received application #W-7951-5P-B-M from Atlantic Salmon of Maine, LLC. requesting a modification to increase effluent BOD limits based on projected increases in production. The application was essentially superseded by another application two months later and officially withdrawn on July 29, 2003.

June 29, 2001 - The Department received an application from Atlantic Salmon of Maine, LLC for the discharge of salmon processing wastewater from the Machiasport facility. The application was assigned WDL #W-7951-5P-C-R and MEPDES permit #ME0024058.

November 18, 2004 – The Department issued a letter approving a multi-facility process plan to strip, fertilize, and hatch Atlantic salmon eggs and subsequently rear fish involving Cooke Aquaculture / ASM's Starboard Island marine net pen site, the Machiasport salmon processing facility, and Oquossoc and Embden hatcheries and rearing facilities, as part of a Maine Department of Marine Resources Transfer Permit and pursuant to MEPDES Permits and/or Maine WDLs for each facility.

November 15, 2007 – Cooke Aquaculture, the owner of the ASM Machiasport facility, submitted to the Department new projections of the types and levels of production and levels of effluent discharges for the facility, effectively modifying the June 29, 2001 renewal application.

d. Source Description/ Facility Operation:

The ASM Machiasport facility has been closed since 2004, but is anticipated to reopen for processing. The text in this and the following section describes the facility and wastewater treatment operations and infrastructure in place while it was operating and as projected.

Atlantic Salmon of Maine LLC is one of a number of companies associated with Cooke Aquaculture, which owns and operates freshwater hatcheries and rearing facilities, marine aquaculture sites (net pens), and processing facilities for commercially raised Atlantic salmon in Maine and Canada. Farm raised Atlantic salmon are harvested at marine aquaculture sites, then transported to the ASM Machiasport processing plant in a salt/fresh water ice slurry. The fish are cut and bled on barges at the marine sites, with blood captured and transported to the processing plant to avoid the potential for transfer of any diseases or pathogens to the marine environment and native populations. At the processing plant, the fish are automatically and/or manually eviscerated and washed. The fish are then placed in a "chill tank" of ice water and treated with chlorine dioxide to kill any bacteria. The fish are inspected, weighed, sorted by quality, iced, packaged, and stored in the facility cooler room until shipment to consumers. In 2004, approximately 75% of the fish were sold whole, while 25% were further processed into fillets. In future operations, it is projected that further processing into fillets may increase to 60%, with approximately 40% sold as whole fish. The ASM Machiasport facility contains rooms and equipment for fillet and marinating processes when the market supports these products. ASM Machiasport has five source water wells for supplying processing water.

2. PERMIT SUMMARY (cont'd)

At the time of the previous licensing action, operations at ASM Machiasport involved the discharge of approximately 21,300 gallons of wastewater per day (GPD) in the processing of a maximum of 80,000 pounds of salmon per day. In its 2001 WDL renewal application, ASM had future projections for the facility involving the discharge of in excess of 43,000 GPD in the processing of up to 120,000 pounds of salmon per day. In November 2007, Cooke Aquaculture revised projections to an average daily production of 183,000 pounds of salmon processed predominantly by mechanized means and 53,250 gallons of associated wastewater discharged per day. Cooke further noted that at such time that production and wastewater discharges reach 90% of this level (48,000 GPD), it will install additional wastewater treatment infrastructure to increase the facility's wastewater treatment and discharge design capacity as necessary, up to a maximum of 110,000 gallons per day. The ASM Machiasport facility discharges to the tidal waters of Machiasport (Bucks Harbor), a Class SB water. The fish transport slurry, blood captured at the marine sites, and waste materials generated during processing are included in the facility wastewater processes described below.

e. Wastewater Treatment:

All wastewater and waste materials generated during processing of salmon and facility clean-up are discharged to a 5-foot by 5-foot by 3-foot (560-gallon) facility wastewater "pit". Solid matter consisting of viscera, bones, scales, and other materials is separated from liquid wastes through use of a number 30 mesh belt filter, routed to a 1.4-foot by 0.67-foot by 1.33-foot (9.4-gallon) "hopper", then pumped to an 8-foot by 8.5-foot by 6-foot (3,000-gallon) holding tank located outside. The contents of the holding tank are transported to a landfill in Marion Township for disposal as necessary. The processing wastewater is routed to a 5.4-foot diameter by 7-foot high (1,200-gallon) circular dissolved air flotation (DAF) tank, where ferric chloride, caustic soda, and polymer are injected to cause fats and oils to float to the surface for removal. The floating materials are removed to the 9.4-gallon hopper that holds the belt filter filtrate and then to the 3,000-gallon solids holding tank. The wastewater is routed to a 4.45-foot diameter by 3-foot high (350-gallon) circular transfer (holding) reservoir, then to a 6.7-foot diameter by 9-foot high (2,350-gallon) circular secondary storage tank, then to a 7.65-foot diameter by 8-foot high (2,730-gallon) circular disinfection tank where sodium hypochlorite is introduced and mixed for 15-minutes to insure complete contact and disinfection at a concentration of approximately 50 mg/L of total residual chlorine. The wastewater is then de-chlorinated with sodium sulfite, then discharged to a 15-foot by 6-foot by 6-foot (4,040-gallon) in-ground discharge buffer tank. When the discharge buffer tank is full, a float valve causes it to automatically discharge to the receiving water through a 3.5-inch diameter discharge pipe that outfalls in Bucks Harbor approximately 300-feet beyond mean low water (MLW). The outfall pipe has a 14-inch diameter bucket-type deflector, the top of which is located eight feet below the water surface at MLW. Effluent samples are collected through a manual composite of grab samples at the landward end of the discharge pipe. ASM Machiasport's wastewater discharge volume depends upon production levels, as reported in Fact Sheet Section 2d, above.

2. PERMIT SUMMARY (cont'd)

Sanitary wastewater is disposed of through an approved on-site septic system. Use of agents for disinfecting/sanitizing purposes are addressed in subsequent Fact Sheet sections titled accordingly.

3. CONDITIONS OF PERMITS

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

4. RECEIVING WATER QUALITY STANDARDS:

Maine law, 38 M.R.S.A., Section 469 classifies the tidal waters of Machiasport (Bucks Harbor) at the point of discharge as a Class SB water. Maine law, 38 M.R.S.A., Section 465-B.2, describes the standards for Class SB waters.

5. RECEIVING WATER QUALITY CONDITIONS:

The State of Maine 2006 *Integrated Water Quality Monitoring and Assessment Report* (DEPLW0817), prepared pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act includes the receiving water in the designation *Bucks Harbor, Machiasport* (Waterbody ID 709-4, DMR Area 55-H) listed in Category 2, Estuarine and Marine Waters Attaining Some Designated Uses – Insufficient Information for Other Uses. The listing identifies a 47-acre segment of Class SB waters listed as being monitored as of the time of publication of the report and with a comment noting the presence of overboard wastewater discharges within the segment area.

The Maine Department of Marine Resources (DMR) assesses information on shellfish growing areas to ensure that shellfish harvested are safe for consumption. The DMR has authority to close shellfish harvesting areas wherever there is a pollution source, a potential pollution threat, or poor water quality. The DMR traditionally closes shellfish harvesting areas if there are known sources of discharges with unacceptable bacteria levels (in-stream thresholds established in the National Shellfish Sanitation Program) or maintains shellfish harvesting closure areas due to lack of updated information regarding ambient water quality

5. RECEIVING WATER QUALITY CONDITIONS (cont'd):

conditions. In addition, the DMR prohibits shellfish harvesting in the immediate vicinity of all wastewater treatment outfall pipes as a precautionary measure in the event of a failure in the treatment plant's disinfection system. Pursuant to Maine DMR Regulation 95.09 RR, Closed Area No. 55-H, Bucks Harbor, Machiasport, as of March 28, 2006, the harvesting of clams, quahogs, oysters or mussels from within the area designated as Area No. 55-H (see Fact Sheet Attachment C) is restricted due to pollution and requires a special Maine DMR permit. Maine DMR personnel *"have sampled and surveyed the flats and waters of Bucks Harbor and have determined that harvested shellfish are subject to intermittent microbiological pollution and are safe for restricted area harvest only"*. The Department has no information that ASM Machiasport causes or contributes to non-attainment conditions in the receiving water or to the closure of the shellfish harvesting area.

If it is determined in the future that ASM Machiasport causes or contributes to non-attainment conditions in the receiving water, this permitting action may be reopened pursuant to Permit Special Condition L and effluent limitations, monitoring and operational requirements, and/or wastewater treatment requirements adjusted accordingly.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS:

Pursuant to Maine Law (38 M.R.S.A., §414-A.1), the Department shall only authorize discharges to Maine waters when those discharges, either by themselves or in combination with other discharges, *"will not lower the quality of any classified body of water below such classification"*. Further, *"the discharge will be subject to effluent limitations that require application of the best practicable treatment"*. *"Best practicable treatment (BPT) means the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically available, for a category or class of discharge sources that the department determines are best calculated to protect and improve the quality of the receiving water and that are consistent with the requirements of the Federal Water Pollution Control Act" (40 CFR)*. *"If no applicable standards exist for a specific activity or discharge, the department must establish limits on a case-by-case basis using best professional judgement..."* considering *"...the existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives..."*. Pursuant to 38 M.R.S.A, §414-A.1 and §464.4, the Department regulates wastewater discharges through establishment of effluent limitations and monitoring requirements that are protective of Maine waters.

There are no National Effluent Guidelines (NEGs) for east coast salmon processing. However, 40 CFR (Code of Federal Regulations), Part 408, Subpart R contains NEGs for the West Coast Hand-Butchered Salmon Processing Subcategory. These NEGs were utilized in developing the previous licensing action as a Department Best Professional Judgement (BPJ) that they represented the closest appropriate BPT guidelines. In the previous licensing action, the Department adjusted the NEG limits for total suspended solids (TSS) and oil and

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

grease based on an understanding that east coast pen-raised salmon contain a higher fat content than west coast salmon and based on limited effluent data from east coast salmon processing. In 2004, the permittee indicated that there is a negligible difference in fat content between east coast and west coast salmon. In November 2007, Cooke Aquaculture indicated that processing procedures for both whole fish and filets at the Machiasport facility will be predominantly mechanized (80% or more). In light of this information, in this permitting action, the Department is utilizing the NEGs contained in 40 CFR, Part 408, Subpart S for West Coast Mechanized Salmon Processing as published in developing BPT technology based effluent limitations for BOD, TSS, oil and grease, and pH. As the Machiasport facility began operation after the promulgation of the NEGs in 1975-76, the facility is considered a new source discharge and performance standards applied accordingly. Monitoring and operational requirements are based on Department BPJ.

The previous licensing action was based on processing projections of up to 80,000 pounds of salmon per day with two separate tiers of effluent limitations based on 0 to 8,000 pounds per day and 8,000 to 80,000 pounds per day. In November 2007, the permittee increased future production goals for the facility from a maximum of 120,000 lbs/day (2001 projection) to an average of 183,000 lbs/day. Pursuant to USEPA guidance, which specifies use of average production values or estimates in development of NEG based effluent limits, this permitting action establishes a single set of effluent limitations and monitoring requirements based on the permittee's processing projections.

The Department advises the permittee that effluent limits established in this permitting action are National Effluent Guideline (technology) based limits and not site specific water quality based limits and that the limits contained herein are less stringent than those in the previous licensing action. **All permittees discharging wastewater to waters of the state of Maine must ensure that their activities do not cause or contribute to violations of applicable numerical and narrative water quality standards (38 M.R.S.A., §414-A.1; §464.4.F(3)). Compliance with technology based limits does not necessarily ensure this. Therefore, the permittee may need to evaluate and revise its wastewater treatment infrastructure and practices to ensure that its effluent quality will provide for protection of ambient water quality, designated uses, and standards.** If necessary, the Department may reopen this permit pursuant to Special Condition L to modify effluent limitations and monitoring requirements as appropriate.

- a. **Flow:** The previous licensing action established a daily maximum flow discharge limit of 7,500 gallons per day (GPD) for processing up to 8,000 pounds per day and a daily maximum limit of 21,300 GPD for processing from 8,000 to 80,000 pounds per day. Based on the licensee's request and the Department's view that effluent quality was effectively managed through limitations on other pollutants, flow limitations were replaced with reporting requirements in a Department administrative modification in April 2000.

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

In November 2007, Cooke Aquaculture revised projections for the Machiasport facility to an effluent discharge of 53,250 gallons of wastewater per day while processing the revised production levels indicated above. Cooke further noted that at such time that production and wastewater discharges reach 90% of this level (48,000 GPD), it will install additional wastewater treatment infrastructure to increase the facility's wastewater treatment and discharge design capacity as necessary, up to a maximum of 110,000 gallons per day (0.11 million gallons per day (MGD)). This permitting action reinstates effluent flow limitations with a daily maximum flow limit of 0.11 MGD based on projections provided by the permittee and requires reporting of the monthly average flow discharged. This permitting action requires daily measurement of discharge flow, consistent with Department guidelines for wastewater treatment facility discharges.

- b. Dilution Factors: Department rule, 06-096 CMR Chapter 530 Section 4.A.2.a, *Surface Water Toxics Control Program*, 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, CORMIX or another predictive model." Based on the location and configuration of the ASM Machiasport discharge pipe and diffuser, the physical properties and flow patterns of Bucks Harbor, and review of a January 2001 Effluent Dilution Assessment prepared by Woodard and Curran, Inc, the Department has determined the dilution factors for ASM Machiasport's effluent discharge to be as follow:

Acute = 102:1

Chronic = 650:1

Harmonic mean¹ = 1,950:1

Footnote:

- (1) The harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by three (3). This multiplying factor is based on guidelines for estimation of human health dilution presented in the USEPA publication "*Technical Support Document for Water Quality-Based Toxics Control*" (Office of Water; EPA/505/2-90-001, page 88), and represents an estimation of harmonic mean flow on which human health dilutions are based in a riverine 7Q10 flow situation.
- c. Production: The previous licensing action established requirements to report the monthly average and daily maximum pounds of fish (live weight) processed for both the 0 to 8,000 lbs/day and 8,000 to 80,000 lbs/day processing scenarios. This requirement is being carried forward in this permitting action with a daily measurement frequency as a means to enable both the Department and the permittee to evaluate management practices at the facility and trends in effluent quality and receiving water impacts.

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

- d. Biochemical Oxygen Demand (BOD): The previous licensing action contained a monthly average BOD mass limitation of 13.6 lbs/day and a daily maximum mass limit of 21.6 lbs/day when processing up to 8,000 lbs/day of salmon. It also contained monthly average mass limits of 136.0 lbs/day and 1.7 lbs per 1,000 pounds of salmon processed as well as daily maximum limits of 216.0 lbs/day and 2.7 lbs per 1,000 pounds of salmon processed when processing from 8,000 to 80,000 pounds of salmon per day. Monitoring requirements consisted of a composite of a minimum of four grab samples collected at equal intervals during the lesser of an eight hour period or the facility's processing day, proportional to flow, at a frequency of once for every five days of production. As described above, mass limits were based on NEGs for West Coast Hand-Butchered Salmon Processing.

In this permitting action the Department is establishing BOD effluent mass limits and concentration limits based on the NEGs for West Coast Mechanized Salmon Processing. 40 CFR, Part 408, Subpart S establishes technology based mass limits of a monthly average of 38 lbs/1,000 lbs of salmon processed and a daily maximum of 62 lbs/1,000 lbs of salmon processed. Pursuant to USEPA guidance for development of NEG based effluent limits, these rates are multiplied by the projected average production value of 183,000 lbs/day to yield conventional mass limits of a monthly average of 6,954 lbs/day and a daily maximum of 11,346 lbs/day. As concentration limits, the Department is applying the NEG production based monthly average and daily maximum limits above.

This permitting action establishes requirements for 24-hour automatic composite sampling at a minimum frequency of one sample for each five days of processing / discharging. Sampling shall be conducted on periods of less than five days of processing / discharging as necessary to complete and start monitoring periods within calendar months. These requirements are based on the Department's BPJ of monitoring frequencies and types necessary to more accurately characterize facility effluent conditions.

- e. Total Suspended Solids (TSS): The previous licensing action contained a monthly average TSS mass limitation of 8.08 lbs/day and a daily maximum mass limit of 13.2 lbs/day when processing up to 8,000 lbs/day of salmon. It also contained monthly average mass limits of 80.8 lbs/day and 1.01 lbs per 1,000 pounds of salmon processed as well as daily maximum limits of 132.0 lbs/day and 1.65 lbs per 1,000 pounds of salmon processed when processing from 8,000 to 80,000 pounds of salmon per day. Monitoring requirements consisted of a composite of a minimum of four grab samples collected at equal intervals during the lesser of an eight hour period or the facility's processing day, proportional to flow, at a frequency of once for every five days of production. As described above, mass limits were based on NEGs for West Coast Hand-Butchered Salmon Processing, with adjustments for believed differences in fat content.

In this permitting action the Department is establishing TSS effluent mass limits and concentration limits based on the NEGs for West Coast Mechanized Salmon Processing. 40 CFR, Part 408, Subpart S establishes technology based mass limits of a monthly

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

average of 7.6 lbs/1,000 lbs of salmon processed and a daily maximum of 13 lbs/1,000 lbs of salmon processed. Pursuant to USEPA guidance for development of NEG based effluent limits, these rates are multiplied by the projected average production value of 183,000 lbs/day to yield conventional mass limits of a monthly average of 1,391 lbs/day and a daily maximum of 2,379 lbs/day. As concentration limits, the Department is applying the NEG production based monthly average and daily maximum limits above.

This permitting action establishes requirements for 24-hour automatic composite sampling at a minimum frequency of one sample for each five days of processing / discharging. Sampling shall be conducted on periods of less than five days of processing / discharging as necessary to complete and start monitoring periods within calendar months. These requirements are based on the Department's BPJ of monitoring frequencies and types necessary to more accurately characterize facility effluent conditions.

- f. Oil and Grease (O&G): The previous licensing action contained a monthly average O&G mass limitation of 0.864 lbs/day and a daily maximum mass limit of 1.416 lbs/day when processing up to 8,000 lbs/day of salmon. It also contained monthly average mass limits of 8.64 lbs/day and 0.108 lbs per 1,000 pounds of salmon processed as well as daily maximum limits of 14.16 lbs/day and 0.177 lbs per 1,000 pounds of salmon processed when processing from 8,000 to 80,000 pounds of salmon per day. Monitoring requirements consisted of grab samples collected at equal intervals during the lesser of an eight hour period or the facility's processing day, proportional to flow, at a frequency of once for every five days of production. As described above, mass limits were based on NEGs for West Coast Hand-Butchered Salmon Processing, with adjustments for believed differences in fat content.

In this permitting action the Department is establishing oil and grease effluent mass limits and concentration limits based on the NEGs for West Coast Mechanized Salmon Processing. 40 CFR, Part 408, Subpart S establishes technology based mass limits of a monthly average of 1.5 lbs/1,000 lbs of salmon processed and a daily maximum of 4.2 lbs/1,000 lbs of salmon processed. Pursuant to USEPA guidance for development of NEG based effluent limits, these rates are multiplied by the projected average production value of 183,000 lbs/day to yield conventional mass limits of a monthly average of 275 lbs/day and a daily maximum of 769 lbs/day. As concentration limits, the Department is applying the NEG production based monthly average and daily maximum limits above.

This permitting action establishes requirements for grab sampling at a minimum frequency of one sample for each five days of processing / discharging. Sampling shall be conducted on periods of less than five days of processing / discharging as necessary to complete and start monitoring periods within calendar months. These requirements are based on the Department's BPJ of monitoring frequencies and types necessary to more accurately characterize facility effluent conditions.

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

g. Total Residual Chlorine (TRC): The previous licensing action established a daily maximum concentration limit for TRC of 1.0 mg/L for both the 0 to 8,000 lbs/day and 8,000 to 80,000 lbs/day processing scenarios. As stated in the WDL, “limits for total residual chlorine are specified to protect aquatic life of the receiving waters”. “The total residual chlorine in the effluent...shall at no time cause any demonstrable harm to aquatic life in the receiving waters and at no time shall the total residual chlorine of the effluent exceed 1.0 mg/L.” Monitoring requirements consisted of grab samples collected at equal intervals during the lesser of an eight hour period or the facility’s processing day, proportional to flow, at a frequency of once for every five days of production. Based on the licensee’s request to add significantly more chlorine to its wastewater and the Department’s concern for an increased potential for adverse ambient effects, the required TRC sampling frequency was increased to once per production day in a Department administrative modification in April 1998. Limits on TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. Permits issued by this Department impose the more stringent of the calculated water quality based or BPT based limits. With anticipated facility flows as described above, end-of-pipe water quality based thresholds for TRC may be calculated as follows:

Acute (a) Criterion	Chronic (c) Criterion	Dilution Factors	Calculated	
			Acute Limit	Chronic Limit
0.013 mg/L	0.0075 mg/L	102:1 (a) 650:1 (c)	1.3 mg/L	4.9 mg/L

The Department has established daily maximum and monthly average BPT limitations of 0.3 mg/L and 0.1 mg/L respectively, for facilities that need to de-chlorinate their effluent. The BPT limitations are more stringent than the calculated water quality based TRC limits of 1.3 mg/L (acute) and 4.9 mg/L (chronic), and are therefore being established as the TRC limits. The sampling type and minimum monitoring frequency of one grab sample per discharge day are being carried forward from the previous WDL and modification based on the Department’s BPJ of monitoring types and frequencies necessary to ensure that ambient water quality standards are maintained and to more accurately characterize facility effluent conditions.

h. pH: The previous licensing action contained the requirement, “the pH shall not be less than 6.0 or greater than 8.5 at any time”. Monitoring requirements consisted of grab samples collected at equal intervals during the lesser of an eight hour period or the facility’s processing day, proportional to flow, at a frequency of once for every five days of production. This permitting action is revising the pH range limitation to 6.0 to 9.0 standard units as both monthly average and daily maximum values, consistent with pH limits established in the NEGs. This permitting action establishes requirements for grab sampling at a minimum frequency of one sample for each five days of processing /

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

discharging. Sampling shall be conducted on periods of less than five days of processing / discharging as necessary to complete and start monitoring periods within calendar months. These requirements are based on the Department's BPJ of monitoring frequencies and types necessary to more accurately characterize facility effluent conditions.

- i. Ammonia, nitrite, nitrate, Total Kjeldahl nitrogen: The previous licensing action established requirements to report the monthly average and daily maximum pounds of ammonia, nitrite, nitrate, and Total Kjeldahl nitrogen discharged for both the 0 to 8,000 lbs/day and 8,000 to 80,000 lbs/day processing scenarios. Monitoring requirements consisted of grab samples collected at equal intervals during the lesser of an eight hour period or the facility's processing day, proportional to flow, at a frequency of once for every five days of production. The previous licensing action also stated, "*the licensee may apply for a reduction in frequency of sampling requirements for ammonia, nitrite, nitrate, and Total Kjeldahl nitrogen following one year of monitoring*". Based on the licensee's request, monitoring for each of these four nitrogen compounds was eliminated in a Department administrative modification in July 1998. Reportedly, nitrogen monitoring requirements were originally established when the facility was located at a different location and discharged into a tidal creek with eel grass concerns instead of the current discharge location beyond mean low water in Bucks Harbor. The Department's facility inspector reviewed and supported the request "*since past data has not revealed significant quantities of nitrogen in their discharge and with the change in discharge location from the head of the small cove to deeper waters the rational(e) for the testing no longer exist(s)*".

The Department's Division of Environmental Assessment is not aware of any nitrogen related issues within the tidewaters of Machiasport (Bucks Harbor) that would be exacerbated by the ASM Machiasport discharge. Therefore, this permitting action is not establishing effluent limitations or monitoring requirements for the nitrogen compounds listed.

7. ANTI-BACKSLIDING

Federal regulation 40 CFR, §122(l) and Department rules Chapter 523.5(1) contain the criteria for what is often referred to as the anti-backsliding provisions of the Federal Water Pollution Control Act (Clean Water Act). In general, the regulation states that except for provisions specified therein, effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards or conditions in the previous permit. Allowable exceptions to the anti-backsliding provisions include when:

- (1) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation and

7. ANTI-BACKSLIDING (cont'd)

(2) information is available which was not available at the time of the permit issuance (other than revised regulations, guidance or test methods) and which would justify the application of less stringent effluent limitations at the time of permit issuance.

This permitting action revises previously established effluent limitations and monitoring requirements for all pollutants regulated. Effluent limits for BOD, TSS, and oil and grease contained herein are established based on National Effluent Guidelines (NEGs), which are based on the level of production at a facility (pounds of pollutant per 1,000 pounds of fish processed). Effluent limits in the previous licensing action were based on NEGs for West Coast Hand-Butchered Salmon Processing, with adjustments to TSS and oil and grease limits for believed differences in fat content. In November 2007, Cooke Aquaculture submitted to the Department new projections of the types and levels of production and levels of effluent discharges for the facility, effectively modifying the June 29, 2001 renewal application. Thus, effluent limits in this permitting action are based on NEGs for West Coast Mechanized Salmon Processing (40 CFR, Part 408, Subpart S), which are different from the NEGs found in Subpart R. As effluent limits contained in this permitting action were developed pursuant to USEPA guidance for NEG based limits, the Department does not consider the anti-backsliding policy to be of issue.

8. ANTI-DEGRADATION

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

This permitting action revises previously established effluent limitations and monitoring requirements for all pollutants regulated, as stated above. The rationale for these actions is contained in Fact Sheet Section 6, *Effluent Limitations & Monitoring Requirements* and Fact Sheet Section 7, *Anti-Backsliding*. Based on the information provided in the referenced sections as well as the Department's notice to the permittee that regardless of compliance with technology based effluent limits, its discharge must not adversely impact the receiving water's ability to meet its numerical and narrative water quality standards (Fact Sheet Section 6), the Department does not anticipate that the discharge will result in a significant lowering of existing water quality and therefore does not consider the anti-degradation policy to be of issue.

9. DISEASE AND PATHOGEN CONTROL AND REPORTING:

The US Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) formally listed the Atlantic salmon as an endangered species on November 17, 2000. The MEPDES Permit / Maine WDL program for fish hatcheries and rearing facilities has incorporated requirements to prevent impacts to native fish populations and aquatic habitats, which were based on requirements in regulatory programs administered by the Maine Departments of Environmental Protection and Marine Resources related to marine aquaculture sites. The MEPDES Permit / Maine WDL for one freshwater rearing facility that discharges directly to a Gulf of Maine Distinct Population Segment of Atlantic salmon (DPS water) also contained requirements for Biosecurity and Disease Contingency Plans based on additional concerns by NOAA Fisheries and USFWS. As Atlantic salmon received at ASM Machiasport may encounter marine waters in which diseases and pathogens of concern are present, this permitting action establishes requirements for Disease and Pathogen Control and Reporting as well as Biosecurity and Disease Contingency Plans as described below.

Maine Department of Inland Fisheries and Wildlife (MDIFW) Rules (Chapter 2.03-A) and Maine Department of Marine Resources (MeDMR) Rules (Chapter 24.21) state that *"the transfer and/or introduction of organisms fall within the jurisdiction of the Department of Marine Resources (12 MRSA, §6071) into coastal waters within the State of Maine and the Department of Inland Fisheries and Wildlife (12 MRSA, §§7011, 7035 and 7201, 7202) into public and/or private waters within the State of Maine. These rules are intended to protect wild and farmed salmonid fish populations and shall be applicable to all individuals involved in the culture and movement of live salmonids and gametes."* Though ASM Machiasport is a processing facility that does not handle live fish, the handling of fish, blood, and other materials may present opportunities for transfer of diseases and/or pathogens to ambient life and habitats if not properly conducted.

Both agencies' rules define Diseases of Regulatory Concern as *"...infectious agents that have been demonstrated to cause a significant increase in the risk of mortality among salmonid populations in the State of Maine. Diseases of Regulatory Concern are classified by the Commissioner into three (3) disease categories: exotic, endemic (limited distribution) and endemic based on an annual review and analysis of epidemiological data."* In this permitting action, ASM Machiasport must comply with appropriate sections of the Maine Department of Inland Fisheries and Wildlife and Maine Department of Marine Resources salmonid fish health rules (12 MRSA, §6071; 12 MRSA, §§7011, 7035, 7201, and 7202, or revised rules). The cited rules include requirements for notification to the appropriate agency within 24-hours of pathogen detection, which is only applicable to the extent that ASM Machiasport detects pathogens and that they are different than anticipated in the Biosecurity and Disease Contingency Plan described below. In the event of a catastrophic pathogen occurrence, the permittee shall submit to the Department for review, information on the proposed treatment including materials/chemicals to be used, material/chemical toxicity to aquatic life, the mass and concentrations of materials/chemicals as administered, and the concentrations to be expected in the effluent. The Department will address such occurrences through administrative modifications of the permit.

9. DISEASE AND PATHOGEN CONTROL AND REPORTING (cont'd):

Based on concerns of the potential for disease transmission from the ASM Machiasport facility to Bucks Harbor and impacts to Atlantic salmon contained therein outlined above, this permitting action requires that on or before March 1, 2008, the permittee shall submit to the Department for review and approval, a scope of work for development of Biosecurity and Disease Contingency Plans. The scope of work shall generally identify rules/requirements, operational practices and procedures to be identified and/or developed to insure the significant reduction in, or elimination of, the threat of disease transmission from ASM Machiasport to Bucks Harbor. The scope of work shall, at a minimum, identify opportunities for disease transmission and introductions of new pathogens, address appropriate practices for facility wastewater disinfection, identify initial steps for managing outbreaks of diseases of concern, address practices for handling affected fish, and methods for the isolation, containment, and treatment of contaminated water prior to its disposal or discharge to the receiving water. On or before September 1, 2008, the permittee shall submit to the Department for review and approval, a final Biosecurity and Disease Contingency Plan that addresses items/issues contained in the Department approved Scope of Work and insures the significant reduction in, or elimination of, the threat of disease transmission from ASM Machiasport to Bucks Harbor. ASM Machiasport is encouraged to consult with the US Food and Drug Administration (USFDA), NOAA Fisheries, and USFWS as it plans for and develops the Biosecurity and Disease Contingency Plans. Aside from the dates indicated above, the final Biosecurity and Disease Contingency Plan must be approved by the Department and implemented by the permittee prior to the discharge of any wastewater from the ASM Machiasport facility to Bucks Harbor. As of the effective date of this permitting action, all waste waters and materials that have been in contact with fish or fish eggs during transport, storage, and processing must be subject to proper wastewater treatment and disinfection or solid waste treatment to remove any potential for transfer of diseases or pathogens prior to discharge to the receiving water or the environment.

10. DISINFECTING/SANITIZING AGENTS:

This permitting action requires ASM Machiasport to maintain records of all disinfectants and/or sanitizing agents used that have the potential to enter the waste stream or receiving water, their volumes and concentrations as used and concentrations at the point of discharge, at the facility for a period of three years. This permitting action only authorizes the discharge of those materials applied for, evaluated by the Department, and either regulated or determined to be de minimus in this permitting action or in subsequent Department actions. The discharges of any other agents or waste products not specifically included in this permitting action are considered unauthorized discharges pursuant to Permit Special Condition F.

In its application, the permittee indicated that two products, F-25 liquid sanitizer and Foam Safe liquid chlorinated alkaline foam cleaner, are used at the facility according to label instructions and discharged in the facility wastewater flow. The permittee indicates that both products are used at concentrations of approximately 200 parts per million, rinsed with

10. DISINFECTING/SANITIZING AGENTS (cont'd):

approximately 7,000-gallons of fresh water, then discharged through Outfall 001A, where the wastewater is diluted in the receiving water by factors of 102:1 (acute) and 650:1 (chronic) during low flow conditions, as described in Fact Sheet Section 6b, *Dilution Factors*. Based on this information and analysis of these and similar products in use at other types of facilities, the Department considers the labeled use and discharge of these products to constitute de minimus discharges of pollutants. If the permittee's cleaning materials, amounts, or practices significantly change from what is presented, the permittee must contact the Department for review of this determination. Additionally, if adverse impacts are observed, suspected, or if additional toxicity information becomes available, the Department may reopen this permitting action pursuant to Permit Special Condition L and establish / revise effluent limitations and monitoring requirements as appropriate.

11. DISCHARGE IMPACT ON RECEIVING WATER QUALITY:

As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the tidewaters of Machiasport (Bucks Harbor) to meet standards for Class SB classification.

If monitoring conducted pursuant to this permitting action and/or other monitoring efforts indicate that non-attainment conditions exist in the receiving water and that ASM Machiasport causes or contributes to those conditions, this permitting action may be reopened pursuant to Permit Special Condition L and effluent limitations, monitoring and operational requirements, and/or wastewater treatment requirements adjusted accordingly.

12. PUBLIC COMMENTS:

Public notice of this application was made in the Machias Valley News newspaper on or about March 28, 2001. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

13. DEPARTMENT CONTACTS:

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

Robert D. Stratton
Division of Water Quality Management
Bureau of Land and Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Telephone: (207) 287-6114
Fax: (207) 287-3435
email: Robert.D.Stratton@maine.gov

14. RESPONSE TO COMMENTS:

During the period of December 20, 2006 through January 22, 2007, the Department solicited comments on the proposed draft Maine Pollutant Discharge Elimination System Permit / Maine Waste Discharge License to be issued to ASM Machiasport for the proposed discharge. The Department, ASM Machiasport / Cooke Aquaculture, and its representatives met to discuss their concerns with the Proposed Draft Permit on January 12 and March 7, 2007, and corresponded throughout the January through March time period. Based on these communications and understandings, the Department issued a Final Draft MEPDES Permit / Maine WDL on March 9, 2007 for comment until March 14, 2007, with plans to issue the final permit shortly thereafter. However, the permittee expressed significant concerns with effluent limits established in the draft permit (initially oil and grease, later BOD, TSS, flow as well). The Department and the permittee communicated intermittently through the summer and fall of 2007 to attempt to address and resolve the permittee's concerns. In November 2007, the permittee provided new projections of the types and levels of production and levels of effluent discharges for the facility that necessitated application of different National Effluent Guidelines and revision of previously proposed NEG-based effluent limits. The issues of concern to ASM Machiasport and the Department's responses are summarized below.

Comment 1 (March 2007 Final Draft): ASM Machiasport expressed concerns with Permit Special Condition H, *Disease and Pathogen Control and Reporting*. ASM Machiasport intends to establish procedures at the facility to ensure that diseases and pathogens are not passed on to the receiving water or native fish, but requested that the language in Special Condition H be made as specific to its function as a processing facility as possible. ASM Machiasport provided information on regulatory requirements used in New Brunswick for reference.

Response 1: The Department has modified the language in Permit Special Condition H accordingly.

Comment 2 (March 2007 Final Draft): ASM Machiasport expressed concerns with the Oil and Grease limits contained in the (12/20/06) Proposed Draft Permit that were based on NEGs for West Coast Hand-Butchered Salmon Processing. Discharge Monitoring Report data from 2002-2004 when the facility was operating indicates that the facility should be able to comply with the proposed limits. However, ASM Machiasport and its consultants' analyses of production and effluent quality from similar facilities that are currently operating and limited bench testing designed to replicate treatment processes at the Machiasport facility, project significantly higher levels of effluent O&G. ASM Machiasport can not explain the differences between past effluent quality and the results from other facilities / bench testing, but theorizes that seasonal fat variations in fish, fish dietary differences, and potential differences in product development and treatment technology at the facility may contribute. The permittee's consultant further theorizes that the chlorine used in ASM Machiasport's disinfection system may somehow increase O&G treatment efficiency, but that has not yet been verified. ASM Machiasport believes that technology based effluent

14. RESPONSE TO COMMENTS (cont'd):

limits should be based on NEG's or site specific treatment results as appropriate, but is concerned that future improvements in technology may or may not carry the unanticipated benefits that the Machiasport facility's current infrastructure may have experienced.

ASM Machiasport plans to conduct additional bench testing to determine the causes for these differences and requests technology based O&G limits more in line with the results of bench testing conducted in 2007, as well as the ability to revisit limits in the future following additional testing planned.

Response 2: The Department is equally unable at this time to resolve the differences between past DMR data and current analyses and testing results. The Department encourages ASM Machiasport to conduct additional testing under production and wastewater treatment conditions as close as possible to those at the Machiasport facility. The Department is optimistic that actual ASM Machiasport effluent will be of better quality than testing estimates when the facility is consistently operating its production and wastewater treatment infrastructure and processes again. However, based on this preliminary data, the Department considers it appropriate to modify the proposed technology based O&G effluent limits and establish site specific limits.

Based on best professional judgement and technology performance analyses, the Department is establishing a monthly average O&G effluent mass limit of 9.6 lbs/day, based on testing described above. The Department is carrying forward the 14.2 lbs/day daily maximum limit from the previous WDL. This permitting action establishes concentration limits of 33 mg/L (monthly average) and 49 mg/L (daily maximum) based on the mass limits and the projected average discharge flow of 35,000 GPD. The Department cautions ASM Machiasport that these limits are based on technology and not water quality, and that its discharge is not allowed to cause or contribute to non-attainment of receiving water classification standards or designated uses. This permit may be reopened pursuant to testing described above and Permit Special Condition L to modify effluent limitations and monitoring requirements as necessary. (Issue nullified by action below)

Comment 3 (November 2007): Cooke Aquaculture / ASM Machiasport submitted to the Department new projections of the types and levels of production and levels of effluent discharges for the facility, effectively modifying the June 29, 2001 renewal application.

Response 3: Effluent limits established in the previous licensing action and in earlier drafts of this permitting action were developed pursuant to National Effluent Guidelines for West Coast Hand-Butchered Salmon Processing (40 CFR, Part 408, Subpart R) based on information provided. Based on the information provided by the permittee in November 2007, the Department has revised effluent limitations in this permitting action pursuant to National Effluent Guidelines for West Coast Mechanized Salmon Processing (40 CFR, Part 408, Subpart S).

ATTACHMENT A
(Facility Location Maps)

Legend

Streams

AA
A
B
C

Ponds and Lakes

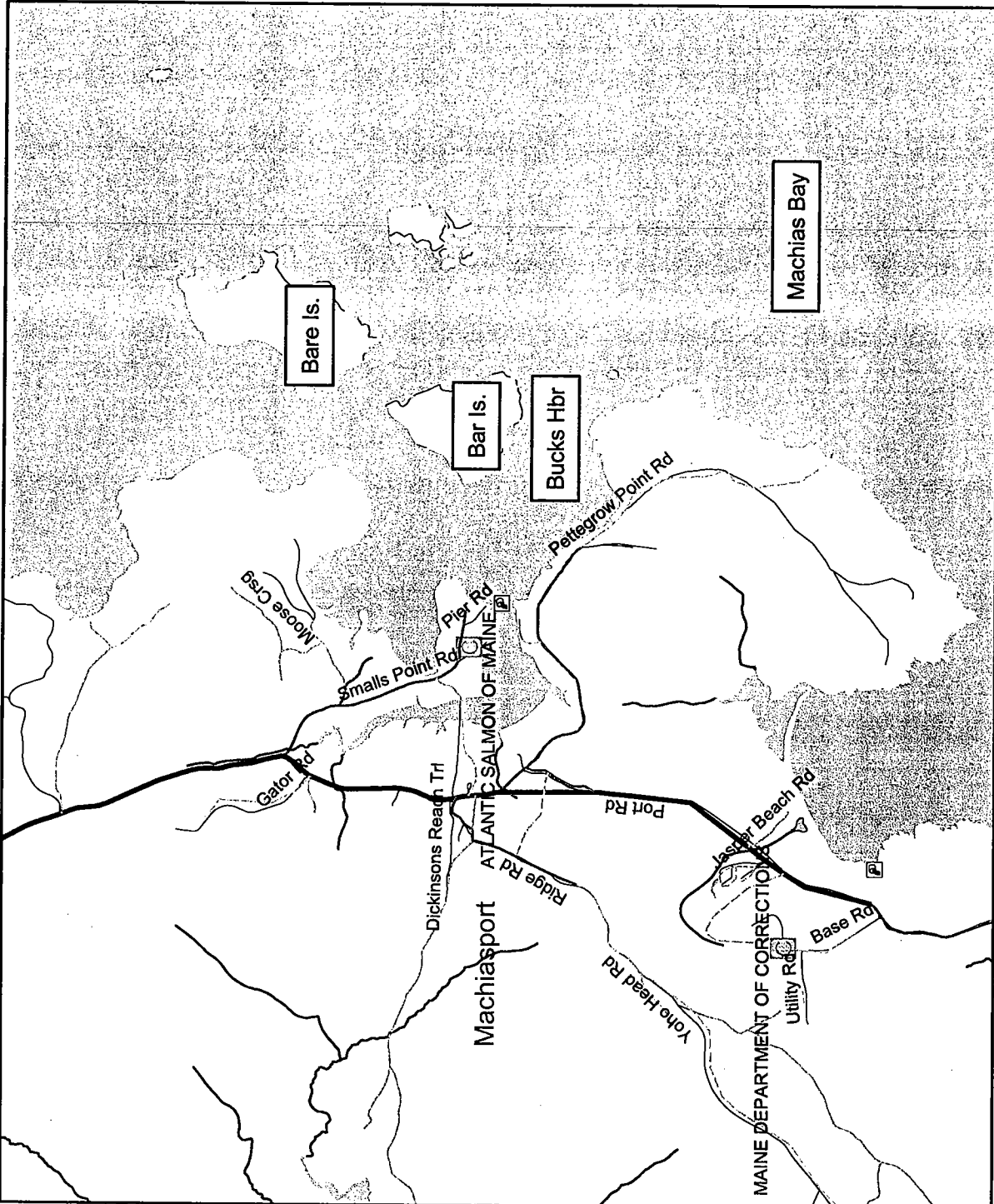
Wastewater_Facilities
Wastewater_Outfalls

Roads

JURISDICTION

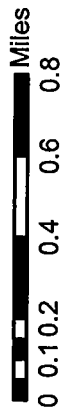
Town Road
Town Road - Summer
Town Road - Winter
State-aided Highway
State Highway
Toll Highway
Private Road
Reservation Road
Seasonal Parkway

SA
SB
sa
sb
sc



Map created by:
 Bob Stratton
 Division of Water Quality Management
 Maine Department of Environmental Protection

**ASM Salmon Processing
 Machiasport, Maine**



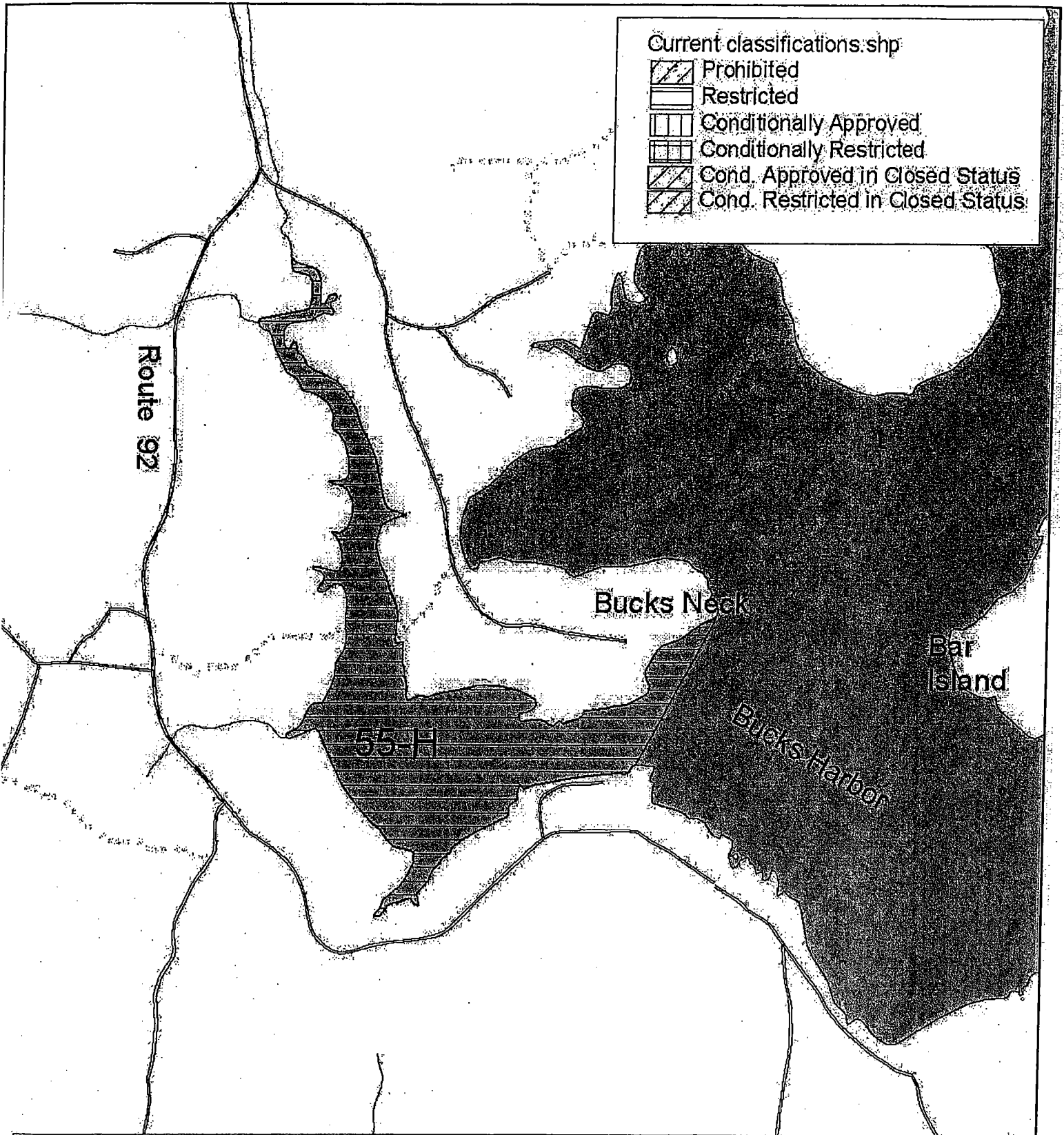
ATTACHMENT B
(Maine DMR Shellfish Closure Map)



Maine Department of Marine Resources

Legal Notice of Shellfish Closure Area

55-H Bucks Harbor, Machiasport March 28, 2006



THERE MAY BE OTHER CLOSURES WITHIN THIS MAP AREA

NOTICE OF EMERGENCY RULE REPEAL AND PROMULGATION

AGENCY: Department of Marine Resources

STATUTORY AUTHORITY: 12 M.R.S.A. §§ 6172, 6192, & 6193

RULE REPEAL AND PROMULGATION: DMR Regulation 95.09 RR, Closed Area No. 55-H, Bucks Harbor, Machiasport, promulgated on September 4, 1990, is repealed and replaced with the following rule:

TEXT OF RULE: DMR Regulation 95.09 RR, Closed Area No. 55-H, Bucks Harbor, Machiasport

Effective immediately, because of pollution, it shall be unlawful to dig, take or possess any clams, quahogs, oysters or mussels taken from the shores, flats and waters of Bucks Harbor, Machiasport, inside and westerly of a line extending southwest from the most eastern tip of Bucks Neck to the nearest point (approximately 1000 feet) on the south side of Bucks Harbor. This area is classified restricted and harvesting requires a special MDMR permit.

EFFECTIVE DATE: March 28, 2006

EFFECTIVE TIME 1:20 PM

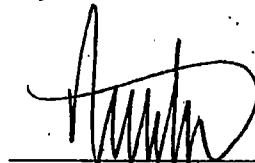
AGENCY CONTACT PERSON: Amy M. Fitzpatrick
Department of Marine Resources
194 McKown Point Road
W. Boothbay Harbor, Maine 04575
http://www.maine.gov/dmr/m/public_health/closures/closedarea.htm

BANGOR DAILY NEWS
April 1, 2006

STATEMENT OF FACT AND POLICY

The Commissioner of the Maine Department of Marine Resources repeals emergency DMR Regulation 95.09 RR, Closed Area No. 55-H, Bucks Harbor, Machiasport, promulgated on September 4, 1990, and replaces it with a new regulation. This new regulation reclassifies this area restricted and harvesting requires a special MDMR permit.

Department personnel have sampled and surveyed the flats and waters of Bucks Harbor and have determined that harvested shellfish are subject to intermittent microbiological pollution and are safe for restricted area harvest only.

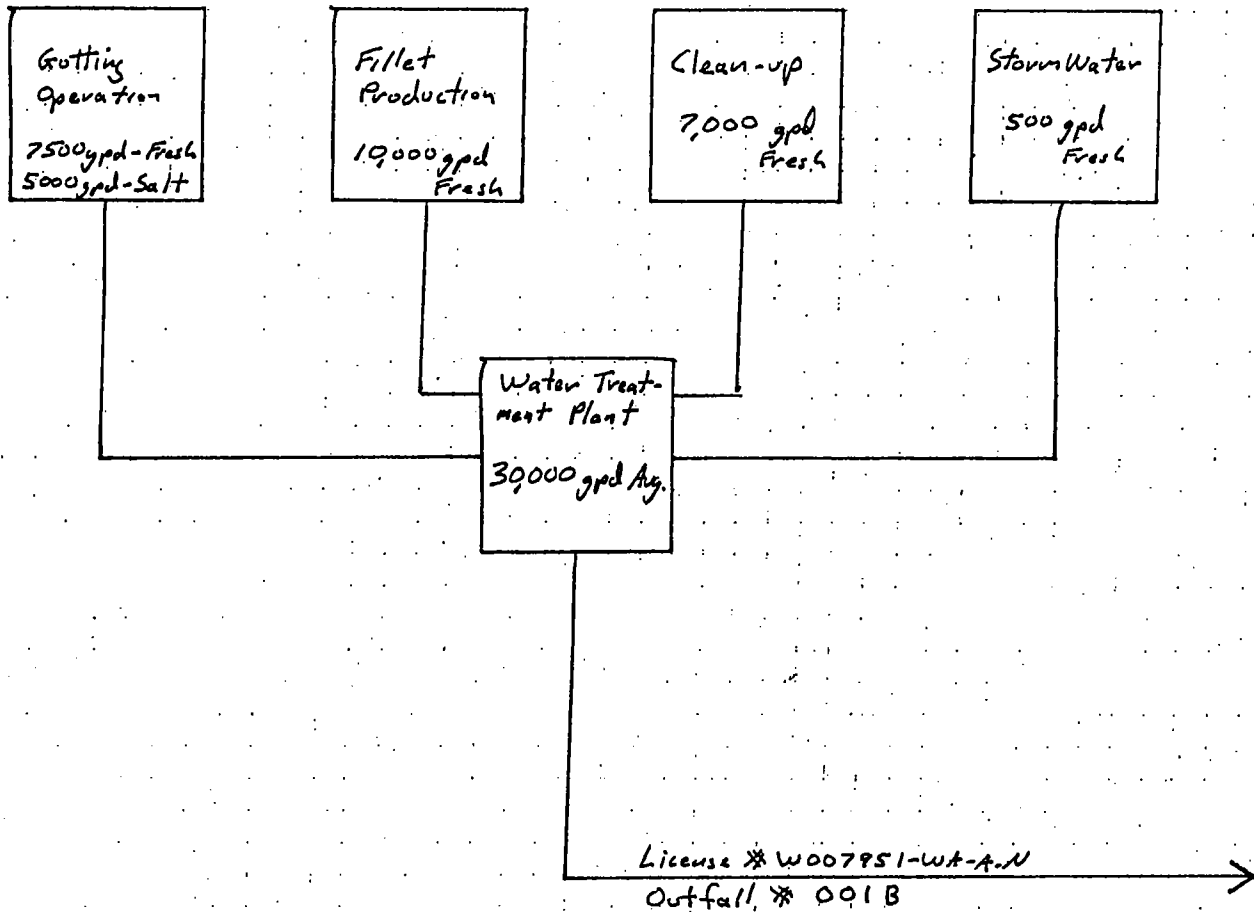


DAVID ETNIER
DEPUTY COMMISSIONER

ATTACHMENT C
(Facility Site Plans)

Atlantic Salmon of Maine

Water Flow - Line Drawing



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

A. GENERAL PROVISIONS

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

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

(a) They are not

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

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

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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

(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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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 MRS.A, §349.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

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

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

- (A) Any unanticipated bypass which exceeds any effluent limitation in the permit.
- (B) Any upset which exceeds any effluent limitation in the permit.
- (C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

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

- (g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this section.
- (h) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

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

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

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

- (a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (i) One hundred micrograms per liter (100 ug/l);
 - (ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
 - (iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

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. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days 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 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 and the applicant a copy of the documents. All 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

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by 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 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 as part of an appeal only when 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 show 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, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information 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.* An applicant proceeding with a project pending the outcome of an appeal 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 initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final 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. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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.
