STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

May 21, 2012

VIA ELECTRONIC MAIL

Ms. Abbi Beal
Lawrence Ray Fishing Industries
54 Wyman Road
Milbridge, ME 04658
aebeal@myfairpoint.net

RE:Maine Pollutant Discharge Elimination System (MEPDES) Permit # ME0110272
Maine Waste Discharge License (WDL) Application # W-007894-5P-C-R
Final Permit/WDL – Lawrence Ray Fishing Industries

Dear Ms. Beal:

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

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

If you have any questions regarding this matter, please feel free to contact me at (207) 287-7658 or via email at: phyllis.a.rand@maine.gov.

Sincerely,

Phyllis Arnold Rand

Phyllis Arnold Rand
Division of Water Quality Management
Bureau of Land and Water Quality

Enclosure

Cc: Stacie Beyer, DEP/EMRO Lori Mitchell, DEP/DMU Sandy Mojica, EPA

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

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
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PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
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PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04679-2094
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

CHERRY POINT PRODUCTS, INCORPORATED		)	MAINE POLLUTANT DISCHARGE
d/b/a LAWRENCE RAY FISHING INDUSTRIES		)	ELIMINATION SYSTEM PERMIT
MILBRIDGE, WASHINGTON COUNTY, ME		)	AND
SEA CUCUMBER PROCESSING PLANT		)	WASTE DISCHARGE LICENSE
ME0110272		)	
W007894-5P-C-R	**APPROVAL**	)	**RENEWAL**

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, § 1251, et. seq. and Maine Law 38 M.R.S.A., § 414-A et seq., and applicable regulations, the Department of Environmental Protection ("Department") has considered the application of CHERRY POINT PRODUCTS, INCORPORATED d/b/a LAWRENCE RAY FISHING INDUSTRIES ("permittee"), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

The permittee has applied for a renewal of Maine Pollutant Discharge Elimination System Permit/Waste Discharge License (WDL) #ME0110272/W-007894-5P-B-R ("permit"), which was issued on February 12, 2007 and expired on February 12, 2012. The permit approved the discharge of a maximum of 15,000 gallons per day (GPD) of treated sea cucumber processing wastewater and facility clean-up water to an intertidal section of Sawyer Brook, which is directly affected by and connected with an estuarine section of the Narraguagus River, Class SB, in Milbridge, Maine.

PERMIT SUMMARY

This permitting action is **similar to** the February 12, 2007 permitting action including:

1. Requiring that wastewater discharges only occur between one hour after high tide and two hours before low tide;

2. Carrying forward the 15,000 gallons per day daily maximum discharge flow limit;

3. Carrying forward the average and daily maximum best practicable treatment (BPT) based effluent limits for total suspended solids (TSS) and oil and grease (O&G) in pounds per 1,000 pounds (1/2 ton) of production;

PERMIT SUMMARY (cont'd)

4. Carrying forward the average and daily maximum production reporting requirements;

5. Requiring that wastewater discharges only occur between October 1 and July 3 each year;

6. Carrying forward monthly average flow monitoring and reporting requirements;

7. Carrying forward biochemical oxygen demand (BOD5) monthly average and daily maximum water quality-based limits in pounds per day (lbs/day) and monitoring and reporting requirements in milligrams per liter (mg/L);

8. Carrying forward TSS and O&G monthly average and daily maximum mass limits (lbs/day) based on National Effluent Guidelines (NEG) BPT-based guidelines and previous average production projections as well as concentration reporting requirements (mg/L);

9. Requiring a current facility Operation and Maintenance Plan;

10. Carrying forward the requirement to discharge with a minimum of three (3) feet of water over the outfall pipe.

This permitting action is **different from** the previous permitting action in that it is:

11. Requiring that all cook water and clean up water must be discharged in a minimum volume of 5,700 gallons of holding tank wastewater to provide maximum dilution of the waste streams before being discharged;

12. Eliminating the monitoring requirement for total residual chlorine;

13. Establishing a requirement for a plan to minimize septic conditions in the discharge;

14. Eliminating the ambient water quality monitoring requirement;

15. Eliminating the pH monitoring requirement in order to maintain consistency with similar permits;

16. Revising the effluent sampling requirement from flow-based to time-based compositing;

17. Eliminating monitoring limitations in pounds per ½ ton of production (lbs/ ½ TPR) in order to maintain consistency with similar permits.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated May 21, 2012 and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.

2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.

3. The provisions of the State's antidegradation policy, 38 MRSA § 464(4)(F), will be met, in that:

   (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;

   (b) Where high quality waters of the State constitute an outstanding natural resource, that water quality will be maintained and protected;

   (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;

   (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and

   (e) Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.

4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

ACTION

THEREFORE, the Department APPROVES the above noted application of the LAWRENCE RAY FISHING INDUSTRIES processing facility to discharge up to a maximum of 15,000 GALLONS PER DAY (GPD) of sea cucumber processing and facility cleanup wastewater to Sawyer Brook and the Narraguagus River, 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 becomes effective upon the date of signature below and expires at midnight five (5) years from the effective date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the authorization to discharge and the terms and conditions of this permit and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (effective April 1, 2003)]

DONE AND DATED AT AUGUSTA, MAINE, THIS 21st DAY OF May 2012.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns
For Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date filed with Board of Environmental Protection

Filed
MAY 22 2012
State of Maine
Board of Environmental Protection

Date of initial receipt of application January 9, 2012
Date of application acceptance January 9, 2012

This Order prepared by Phyllis Arnold Rand, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. **During the period October 1 through July 3 of each year**, the permittee is authorized to discharge treated **sea cucumber processing and facility cleanup wastewater** to Sawyer Brook and the Narraguagus River, Class SB, in Milbridge, Maine, from **OUTFALL #001B between one hour after high tide and two hours before low tide** [1,2]. 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	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
	Units as specified		Units as specified			
Flow *[50050]*	Report GPD *[07]*	15,000 GPD *[07]*	—	—	1/Day *[01/01]*	Measure *[MS]*
BOD_5 *[00310]*	483 lbs/day *[26]*	897 lbs/day *[26]*	Report mg/L *[19]*	Report mg/L *[19]*	1 per 5 Days of Discharging[3] *[01/05]*	Composite[4] *[24]*
TSS *[00530]*	483 lbs/day *[26]*	897 lbs/day *[26]*	Report mg/L *[19]*	Report mg/L *[19]*	1 per 5 Days of Discharging[3] *[01/05]*	Composite[4] *[24]*
Oil & Grease *[00552]*	45 lbs/day *[26]*	72 lbs/day *[26]*	Report mg/L *[19]*	Report mg/L *[19]*	1 per 5 Days of Discharging[3] *[01/05]*	Grab *[GR]*
Production[5] *[00145]*	Report lbs/day *[26]*	Report lbs/day *[26]*	—	—	1/Day *[01/01]*	Measure *[MS]*
pH (Std. Units) *[00400]*	The pH shall not be less than 6.0 S.U. nor greater than 9.0 S.U. at any time.				—	—

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 of this permit.

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

FOOTNOTES:

Sampling: 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. Samples that are sent to a POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000). Laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of 10-144 CMR 263.

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

1. Effluent Monitoring: Effluent values shall be determined through sampling at Outfall #001B, 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 approved by the Department in writing.

2. Operational Discharge Requirements: The discharge shall only occur during the period from October 1 through July 3 each year, between one (1) hour after high tide and two (2) hours before low tide. Tidal information shall be confirmed using NOAA tide charts (http://tidesandcurrents.noaa.gov/tides11/tab2ec1a.html#1). The permittee shall complete and submit supplemental monitoring forms A and B (Permit **Attachment A**) as outlined in this permitting action.

3. Once per Five Days: Sampling shall be conducted at a minimum frequency of one sample for each five days of discharging. Sampling shall be conducted on periods of less than five days of discharging as necessary to ensure a minimum of one sampling event per month.

SPECIAL CONDITIONS

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

FOOTNOTES:

4. Composite Samples: The permittee shall collect a minimum of three equal-volume samples, one at the beginning, one at the middle and one at the end of each discharge event. The permittee shall combine all samples collected over a 24-hour period (i.e., if the permittee discharges twice within a 24-hour period, once per tide event, there shall be a minimum of six samples collected and composited). The samples shall be representative of the effluent discharged over the discharge time period.

5. Production: Production refers to the pounds of sea cucumbers processed during the day, based on the form as they are delivered to the processing 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 for the classification of the receiving waters.

2. The effluent shall not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated for the classification of the receiving waters.

3. The discharges shall not cause visible discoloration or turbidity in the receiving waters which would impair the usages designated for the classification of the receiving waters.

4. Notwithstanding specific conditions of this permit the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

C. UNAUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with the terms and conditions of this permit and only from Outfall #001B, 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.

SPECIAL CONDITIONS

D. 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.

E. MONITORING AND REPORTING

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

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

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

SPECIAL CONDITIONS

F. OPERATION & MAINTENANCE (O&M) PLAN

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.

G. 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.

H. DISCHARGE CONDITIONS

The discharge of wastewater shall be regulated such that **the discharge shall only occur between one (1) hour after high tide and two (2) hours before low tide. Further, discharge shall only occur when there is a minimum of three (3) feet of water over the end of the discharge pipe.** Tidal information shall be confirmed using National Oceanographic and Atmospheric Administration (NOAA) tide charts (http://tidesandcurrents.noaa.gov/tides11/tab2ec1a.html#1).The time of high tide, low tide, start of discharge, completion of discharge, and gallons of wastewater discharged, as well as other information requested, shall be recorded on supplemental monitoring forms A and B (Permit **Attachment A**) and submitted with the monthly DMR. The permittee shall also maintain completed copies of both forms on premises, available to Department personnel at all times during normal working hours, for a period of at least three (3) years.

All cook water and clean up water must be discharged in a minimum volume of 5,700 gallons of holding tank wastewater to provide maximum dilution of the waste streams before being discharged.

The discharge is allowed from October 1 through July 3 and prohibited from July 4 through September 30 each year.

SPECIAL CONDITIONS

I. WASTEWATER DISCHARGE PLAN

By July 1, 2012 ***[PCS Code 54299]***, the permittee shall write and implement a plan to minimize septic conditions from developing in the process wastewater holding tank prior to discharge to the receiving stream. The permittee shall submit the plan to their Department inspector for review and approval. The plan must be reviewed annually and updated where necessary. The plan must be kept onsite and made available to DEP and EPA personnel upon request.

J. DISINFECTING/SANITIZING AGENTS

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, 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.

K. REOPENING OF PERMIT FOR MODIFICATIONS

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

L. 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.

ATTACHMENT A

SUPPLEMENTAL MONITORING FORMS

Note: Forms A and B are required to be completed and submitted monthly per Permit Special Condition H.

Supplemental Monitoring Form A. One copy to be submitted monthly with the DMR, one copy to be maintained on site for a minimum of three years. [1,2,3,4]

Lawrence Ray Fishing Industries, Milbridge, ME Month _____ Year _____

DATE	FLOW	BOD_5			TSS			O&G			Production
	(GPD)	(mg/L)	(lbs/day)	(lbs/ ½ TPR)	(mg/L)	(lbs/day)	(lbs/ ½ TPR)	(mg/L)	(lbs/day)	(lbs/ ½TPR)	(lbs/day)
1.											
2.											
3.											
4.											
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AVE.											

[1] Record production and flow daily. [2] Production in pounds per day. [3] lbs/day = concentration x 8.34 x flow (million gal).
[4] lbs / ½ TPR = lbs/day ÷ production lbs/1000.

Signature _____ Date _____

<u>Supplemental Monitoring Form B</u>. One copy to be submitted monthly with the DMR, one copy to be maintained on site for a minimum of three years. Two sets of columns for discharge and tidal information are provided for those days in which there are two high tides, making a second discharge possible.

Lawrence Ray Fishing Industries, Milbridge, ME Month _____ Year _____

Date	Discharge #1		#1 Time of tide		#1 Gallons discharged	Discharge #2		#2 Time of tide		#2 Gallons discharged	Total Gallons discharged
	Start time (1,2)	End time (1,2)	High	Low		Start time (1,2)	End time (1,2)	High	Low		
1											
2											
3											
4											
5											
6											
7											
8											
9											
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28											
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30											
31											
---	---	---	---	---	---	---	---	---	---	**TOTAL:**	
---	---	---	---	---	---	---	---	---	---	**AVG.:**	

(1) Record daily when discharging. (2) Record in "24 hour time" or "military" time, the time of the tides from tide tables adjusted for the area.

Signature _____ Date _____

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND
MAINE WASTE DISCHARGE LICENSE

FACT SHEET

May 21, 2012

MEPDES PERMIT NUMBER: **ME0110272**
WASTE DISCHARGE LICENSE: **W007894-5P-C-R**

NAME AND ADDRESS OF APPLICANT:

Cherry Point Products, Incorporated
d/b/a LAWRENCE RAY FISHING INDUSTRIES
54 Wyman Road
Milbridge, Maine 04658

COUNTY: **WASHINGTON**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

Cherry Point Products, Incorporated
d/b/a LAWRENCE RAY FISHING INDUSTRIES
54 Wyman Road
Milbridge, Maine 04658

RECEIVING WATER / CLASSIFICATION: **Sawyer Brook, Narraguagus River, Class SB**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Abbi Beal**
(207) 356-3857
aebeal@myfairpoint.net

PERSON IN RESPONSIBLE CHARGE OF TREATMENT FACILITY OPERATIONS:
David Smeal
(207) 546-0930

1. APPLICATION SUMMARY

Cherry Point Products, Incorporated, d.b.a.Lawrence Ray Fishing Industries ("permittee"), has applied for a renewal of Maine Pollutant Discharge Elimination System Permit/Waste Discharge License (WDL) #ME0110272/W-007894-5P-B-R ("permit"), which was issued on February 12, 2007 and expired on February 12, 2012. The permit approved the discharge of a maximum of 15,000 gallons per day (GPD) of treated sea cucumber processing wastewater and facility clean-up water to an intertidal section of Sawyer Brook, which is directly affected by and connected with an estuarine section of the Narraguagus River, Class SB, in Milbridge, Maine.

2. PERMIT SUMMARY

a. Terms and conditions

This permitting action is **similar to** the February 12, 2007 permitting action including:

1. Requiring that wastewater discharges only occur between one hour after high tide and two hours before low tide and with a minimum of three feet of water over the outfall pipe;
2. Carrying forward the 15,000 gallons per day daily maximum discharge flow limit;
3. Carrying forward the average and daily maximum best practicable treatment (BPT) based effluent limits for total suspended solids (TSS) and oil and grease (O&G) in pounds per 1,000 pounds (1/2 ton) of production;
4. Carrying forward the average and daily maximum production reporting requirements;
5. Requiring that wastewater discharges only occur between October 1 and July 3 each year;
6. Carrying forward monthly average flow monitoring and reporting requirements;
7. Carrying forward biochemical oxygen demand (BOD5) monthly average and daily maximum water quality-based limits in pounds per ½ ton of production and pounds per day (lbs/day) and monitoring and reporting requirements in milligrams per liter (mg/L);
8. Carrying forward TSS and O&G monthly average and daily maximum mass limits (lbs/day) based on National Effluent Guideline (NEG) BPT-based guidelines and previous average production projections as well as concentration reporting requirements (mg/L);
9. Requiring a current facility Operation and Maintenance Plan
10. Carrying forward the requirement to discharge with a minimum of three (3) feet of water over the outfall pipe.

This permitting action is **different from** the previous permitting action in that it is:

11. Requiring that all cook water and clean up water must be discharged in a minimum volume of 5,700 gallons of holding tank wastewater to provide maximum dilution of the waste streams before being discharged.
12. Eliminating the monitoring requirement for total residual chlorine;
13. Establishing a requirement for a plan to minimize septic conditions in the discharge;
14. Eliminating the ambient water quality monitoring requirement;
15. Eliminating the pH monitoring requirement in order to maintain consistency with similar permits;
16. Revising the effluent sampling requirement from flow-based to time-based compositing
17. Eliminating monitoring limitations in pounds per ½ ton of production (lbs/ ½ TPR) in order to maintain consistency with similar permits.

2. PERMIT SUMMARY (cont'd)

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

July 12, 1996 - The Maine Department of Environmental Protection issued Waste Discharge License (WDL) #W007894-WA-A-N / Permit Compliance System tracking number #MEU507894 to the permittee for the discharge of up to 15,000 gallons per day of treated sea cucumber processing wastewater and facility clean-up water to the Narraguagus River, Class SB, in Milbridge. The license was issued for a five-year term.

August 15, 2001 - The Department received an application from the permittee for renewal of its WDL for the discharge of 15,000 gallons per day of treated sea cucumber processing wastewater and facility clean-up water from its Milbridge facility. The application was assigned WDL #W007894-5P-B-R and NPDES / MEPDES permit #ME0110272.

July 11, 2003 – In a letter, the Department informed the permittee that on July 1, 2003, Department staff measured and documented conditions indicating non-attainment of water quality classification standards in the receiving water due to the permittee's wastewater discharge. Further, the Department noted that the permittee's discharge was in violation of the WDL operational discharge requirements. The permittee was required to conduct ambient water quality investigations for comparison with effluent data to better determine causative or contributory effects on ambient conditions from the permittee's discharge and assimilative capacity. These and other compliance issues were addressed in a consent order in the Fourth District Court of Southern Washington County, finalized September 22, 2005.

December 3, 2003 – On behalf of the permittee, CES Inc., submitted the Ambient River Water Quality Study Final Report for Lawrence Ray Fishing Industries. Additional effluent sample results were on submitted February 9, 2004.

January 9, 2012 – The permittee submitted a timely application for renewal of WDL #W007894-5P-B-R / MEPDES permit #ME0110272. The Department accepted the application as complete on 1/09/12 and assigned WDL # W007894-5P-C-R

c. Source Description/ Facility Operation:

The permittee obtains sea cucumbers from local fishermen for processing and sale as a commercial food product. Sea cucumbers may be harvested in Maine between October 1 and June 30 each year, while they are prohibited from being harvested between July 1 and September 30. Processing of sea cucumbers harvested during the legal season may extend until July 3 due to transportation and handling times. Most sea cucumbers are harvested during the winter months when much of the lobster fishing gear has been removed from the water.

Sea cucumbers are typically processed by one of two methods. In the first method, which is reportedly used by the permittee, the ends of the raw sea cucumbers are cut off and the carcasses are boiled by immersion into boiling water in two 500-gallon capacity cook tanks.

2. PERMIT SUMMARY (cont'd)

After boiling, the entrails are removed, the carcasses are salted and then placed on trays to dry. An alternate processing method involves removal of the entrails and strips of meat at a different stage in the process. Wastewater is generated during the processing of sea cucumbers and from cleaning the equipment and facility. Source water is obtained from an onsite well.

The permittee discharges to an intertidal section of Sawyer Brook, which is directly affected by and connected to an estuarine portion of the Narraguagus River, Class SB.

d. Wastewater Treatment:

All wastewater generated during boiling, rinsing and facility clean-up is routed to a 1,200-gallon sump. Wastewater is then pumped through a #30-mesh rotostrainer which discharges into a 15,000-gallon concrete holding tank. Wastewater is held in the holding tank until discharge between 1 hour after high tide and 2 hours before low tide to provide for discharge on an outgoing tide. The wastewater is pumped to the receiving stream via Outfall #001B, a six-inch diameter open pipe that outlets to the center of Sawyer Brook. During the tidally timed discharge period, the outfall is located in water depths ranging from a minimum of 3 feet to approximately 7 feet.

The sea cucumber ends and entrails removed during processing, materials recovered during facility clean-up, and solid matter captured on the #30-mesh screen are sent to a compost facility for disposal. Sanitary wastewater is disposed of through an approved on-site septic system.

3. CONDITIONS OF PERMITS

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

4. RECEIVING WATER QUALITY STANDARDS

Classification of Major River Basins, 38 M.R.S.A. §469, classifies the estuarine and marine waters of Milbridge at the point of discharge as a Class SB water. 38 M.R.S.A. §465-B.2, describes the standards for Class SB waters.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2010 *Integrated Water Quality Monitoring and Assessment Report* (also known as the "305b Report") prepared pursuant to §§ 303(d) and 305(b) of the Federal Water Pollution Control Act, includes the receiving water in the designation *Narraguagus River, Milbridge* (Waterbody ID 705-1, DMR Area 53) listed in *Category 4-A: Estuarine and Marine Waters with Impaired Use, TMDL Completed.* The listing identifies an 821-acre segment of Class SB waters listed as being impaired due to the presence of elevated levels of fecal coliform bacteria. The TMDL was completed in 2009.

The Maine Department of Marine Resources (MeDMR) assesses information on shellfish growing areas to ensure that shellfish harvested are safe for consumption. The MeDMR has authority to close shellfish harvesting areas wherever there is a pollution source, a potential pollution threat, or poor water quality. The MeDMR 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 conditions. In addition, the MeDMR 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. The MeDMR has closed Area No. 53, Narraguagus River, Milbridge, for shellfish harvesting (see Fact Sheet **Attachment A**). Ambient water quality monitoring data during the previous permitting cycle indicates effluent from the permittee has a *de minimus* effect on the receiving stream under normal batch discharge conditions. This permitting action is establishing a requirement for the permittee to develop and implement a plan to prevent the discharge of septic effluent which could create dissolved oxygen sags in the receiving stream.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

Pursuant to 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 judgment...*" (BPJ) 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.

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

Title 40, *Code of Federal Regulations,* Part 408, references standards for canned and preserved seafood processing, but not for sea cucumber processing. Therefore, using best professional judgment (BPJ), the Department established Total Suspended Solids (TSS) and Oil and Grease (O&G) license limits in WDL #W007894-WA-A-N issued July 12, 1996 for this sea cucumber processing facility, based on 40 CFR subpart AG – Abalone Processing Subcategory § 408.335. Those limits have been the effluent standards for sea cucumber licenses/permits issued since and are being utilized in this permit. This permitting action is carrying forward a single set of standards for all production levels as the facility does not discharge at production levels below the lower 1,000 lbs/day level.

This permitting action does not limit production; however, effluent limitations for TSS and Oil and Grease are being carried forward from the previous permitting action based on NEG technology-based limits and the monthly average production level described of 34,500 pounds of sea cucumbers per day during the development of the previous permitting action. Water quality-based effluent limitations for BOD5 are equivalent to the TSS limitations. Thus, if the permittee is to operate at higher production levels, it will likely need to incorporate more stringent operations and maintenance practices and wastewater treatment practices and infrastructure in order to achieve the effluent limitations established. This permitting action is carrying forward the requirement that limits effluent discharges to periods of outgoing tides. This permitting action is carrying forward the requirement to discharge when there is a minimum of three (3) feet of water over the outfall pipe in order to prevent a discharge into the intertidal zone. This permitting action is carrying forward the authorization limiting discharges to between October 1 and July 3 of each year.

a. Flow: This permitting action is carrying forward the maximum discharge limit of 15,000 GPD for all production levels, a daily measurement of discharge flow and reporting of the monthly average and daily maximum gallons of wastewater discharged, consistent with Department guidelines for wastewater treatment facility discharges.

   A review of the Discharge Monitoring Report (DMR) data for the period January 10, 2009 – January 10, 2012 indicates the following:

Flow

Value	Limit (GPD)	Range (GPD)	Average (GPD)	Number of DMRs	Compliance
Monthly Average	Report	5,250 – 12,061	8,422	22	N/A
Daily Maximum	15,000	5,550 – 14,700	10,677	22	100%

b. Dilution Factors: 06-096 CMR 530 § 4.A.2.a 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

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

configuration of the discharge pipe, the physical properties and flow patterns of Sawyer Brook and the Narraguagus River, the EPA dye study and discharge restrictions contained in this permitting action, the Department has determined the dilution factors to be as follow:

Acute = 113:1 Chronic = 133:1 Harmonic mean[1] = 399:1

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: This permitting action carries forward the requirement to report the average and maximum sea cucumber production at the facility in pounds per day. Production refers to the pounds of sea cucumbers processed during the day. This requirement is being carried forward 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.

A review of the Discharge Monitoring Report (DMR) data for the period January 10, 2009 – January 10, 2012 indicates the following:

Production

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)	Number of DMRs	Compliance
Monthly Average	Report	8,025 – 42,000	22,821	21	N/A
Daily Maximum	Report	10,500 – 42,000	28,945	21	N/A

d. Biochemical Oxygen Demand (BOD5): This permitting action is carrying forward effluent limitations for monthly average and daily maximum BOD5 mass based on Department BPJ of water quality-based limits necessary to attain the receiving water quality classification standards, as well as reporting requirements in mg/L. This is being done due to past observed discharge-related ambient water quality problems, reports of significantly greater levels of production at the facility than previously predicted, and results of wastewater sampling conducted by the permittee that indicated effluent BOD5 levels of up to 20,000 mg/L. BOD5 numerical limits are equivalent to those for Total Suspended Solids (TSS) (Fact Sheet Section 6.e) because of roughly equivalent effluent results expected from standard means of wastewater treatment and because of the

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

related nature of the pollutants for many types of discharges. To be consistent with similar permits, this permitting action is eliminating mass limits expressed as pounds per ½ ton of production (lb/ ½ TPR). This permitting action is carrying forward the requirement for compositing grab samples as outlined in Permit Special Condition A, Footnote 4, at a minimum frequency of one sample for each five days of discharging. Sampling shall be conducted on periods of less than five days of discharging as necessary to ensure a minimum of one sampling event per month. These requirements are based on the Department's BPJ of monitoring frequencies and types necessary to more accurately characterize facility effluent conditions.

A review of the Discharge Monitoring Report (DMR) data for the period January 10, 2009 – January 10, 2012 indicates the following:

BOD5 Mass Per Production

Value	Limit (lbs per ½ TPR)	Range (lbs per ½ TPR)	Average (lbs per ½ TPR)	Number of DMRs	Compliance
Monthly Average	14	0.6 – 12	6.8	20	100%
Daily Maximum	26	0.6 – 15	8.2	20	100%

BOD5 Concentration

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Number of DMRs	Compliance
Monthly Average	Report	300 – 3,667	2,459	20	N/A
Daily Maximum	Report	300 – 5,500	2,805	20	N/A

BOD5 Mass

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)	Number of DMRs	Compliance
Monthly Average	483	18 – 344	172	20	100%
Daily Maximum	897	18 – 433	211	20	100%

e. Total Suspended Solids (TSS): This permitting action is carrying forward TSS mass limits based on daily sea cucumber production. Pursuant to USEPA guidance for development of NEG-based effluent limits and based on past observed discharge-related ambient water quality problems, these rates are being multiplied by the permittee's previous production projection of a monthly average of 34,500 pounds of sea cucumbers per day. This method yields conventional TSS mass limits of 483 lbs/day (monthly average) and 897 lbs/day (daily maximum), as shown below. If the permittee is to operate at higher production levels, it will likely need to incorporate more stringent operations and maintenance practices and wastewater treatment practices and infrastructure to achieve the effluent limitations established. To be consistent with similar permits, this permitting action is eliminating mass limits expressed as lbs/½ TPR. This permitting action also requires reporting of TSS effluent concentrations in mg/L.

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

Following are examples of the mass limit calculations established in the permit:

Pursuant to the NEGs and as established in the 1996 licensing action, this permit is utilizing technology-based limits of 14 pounds per half ton of production (lb/½ TPR) (monthly average) and 26 lbs/½ TPR (daily maximum) in calculating the permittee's TSS effluent limitations:

Monthly average effluent limitation: 14 lbs/½ TPR
Daily maximum effluent limitation: 26 lbs/½ TPR
Average daily production is 34,500 lbs.

Monthly average mass limit: 34,500 lbs x 14 lbs/1,000 lbs = 483 lbs/day
Daily maximum mass limit: 34,500 lbs x 26 lbs/1,000 lbs = 897 lbs/day

This permitting action is carrying forward the monitoring frequency requirement of once per five processing days. This permitting action is carrying forward requirements for compositing samples as outlined in Permit Special Condition A, Footnote 4, at a minimum frequency of one sample for each five days of discharging. Sampling shall be conducted on periods of less than five days of discharging as necessary to ensure a minimum of one sampling event per month. These requirements are based on the Department's BPJ of monitoring frequencies and types necessary to more accurately characterize facility effluent conditions. As described in Fact Sheet Section 6.d, equivalent limitations are being carried forward as water quality-based effluent limits for BOD5.

A review of the Discharge Monitoring Report (DMR) data for the period January 10, 2009 – January 10, 2012 indicates the following:

TSS Mass Per Production

Value	Limit (lbs per ½ TPR)	Range (lbs per ½ TPR)	Average (lbs per ½ TPR)	Number of DMRs	Compliance
Monthly Average	14	0.8 – 5.7	3.5	20	100%
Daily Maximum	26	0.8 – 6.9	4.1	20	100%

TSS Concentration

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Number of DMRs	Compliance
Monthly Average	Report	420 – 1,700	1,217	20	N/A
Daily Maximum	Report	420 – 2,700	1,478	20	N/A

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

TSS Mass

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)	Number of DMRs	Compliance
Monthly Average	483	25 – 213	87	20	100%
Daily Maximum	897	25 – 253	109	20	100%

f. Oil & Grease (O&G): This permitting action is carrying forward O&G mass limits based on daily sea cucumber production. Pursuant to USEPA guidance for development of NEG-based effluent limits and based on past observed discharge-related ambient water quality problems, these rates are being multiplied by the permittee's previous production projection of a monthly average of 34,500 pounds of sea cucumbers per day. This method yields conventional O&G mass limits of 45 lbs/day (monthly average) and 72 lbs/day (daily maximum), as shown below. If the permittee is to operate at higher production levels, it will likely need to incorporate more stringent operations and maintenance practices and wastewater treatment practices and infrastructure to achieve the effluent limitations established. To be consistent with similar permits, this permitting action is eliminating mass limits expressed as lbs/½ TPR. This permitting action also requires reporting of TSS effluent concentrations in mg/L.

Following are the mass limit calculations established in the permit:

Monthly average effluent limitation: 1.3 lbs/½ TPR
Daily maximum effluent limitation: 2.1 lbs/½ TPR
Average daily production is 34,500 lbs.

Monthly average mass limit: 34,500 lbs x 1.3 lbs/1,000 lbs = 45 lbs/day
Daily maximum mass limit: 34,500 lbs x 2.1 lbs/1,000 lbs = 72 lbs/day

This permitting action is carrying forward the monitoring frequency requirement of once per five discharging days. Sampling shall be conducted on periods of less than five days of discharging as necessary to ensure a minimum of one sampling event per month.

A review of the Discharge Monitoring Report (DMR) data for the period January 10, 2009 – January 10, 2012 indicates the following:

Oil & Grease, Mass Per Production

Value	Limit (lbs per ½ TPR)	Range (lbs per ½ TPR)	Average (lbs per ½ TPR)	Number of DMRs	Compliance
Monthly Average	1.3	0.1 – 1.8	0.9	20	95%
Daily Maximum	2.1	0.1 – 1.9	1.1	20	100%

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

Oil & Grease, Concentration

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Number of DMRs	Compliance
Monthly Average	Report	38 – 870	343	20	N/A
Daily Maximum	Report	44 – 870	420	20	N/A

Oil & Grease, Mass

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)	Number of DMRs	Compliance
Monthly Average	45	2 – 69	25	20	95%
Daily Maximum	72	2 – 81	32	20	95%

g. Total Residual Chlorine (TRC): During the previous permitting action, the Department established TRC limits to ensure that ambient water quality standards were maintained and that BPT was being applied to the discharge.

The permittee reported that chlorine and/or chlorine-based products were not used during the processing of the sea cucumbers, but were used for cleaning. The sampling type and minimum monitoring frequency of one grab sample per discharge day were established during the previous permitting action 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. It was noted that the calculation of the TRC effluent limitation was purely mathematical and did not account for effects from the wastewater in the holding tank. Further, the Department anticipated that effluent chlorine would be substantially lower than the calculated value due to interactions with the permittee's BOD5-rich wastewater; however, the Department did not have accurate effluent TRC data at the time.

A review of the Discharge Monitoring Report (DMR) data for the period January 10, 2009 – January 10, 2012 indicates the following:

Total Residual Chlorine

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Number of DMRs	Compliance
Daily Maximum	1.5	0 – 0	0	22	100%

The TRC data indicates that the permittee does not discharge detectable levels of chlorine. Therefore, this permitting action is eliminating the TRC monitoring requirement.

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

h. pH: This permitting action is carrying forward the pH range limitation of 6.0 to 9.0 standard units (SU), based on 40 CFR subpart AG – Abalone Processing Subcategory §408.335 and consistent with pH limits established for other similar facilities. This permitting action is eliminating the pH monitoring requirement in order to maintain consistency with similar permits.

A review of the Discharge Monitoring Report (DMR) data for the period January 10, 2009 – January 10, 2012 indicates the following:

pH

Value	Limit (SU)	Range (SU)	Number of DMRs	Compliance
Daily Maximum	6.0 – 9.0	6.5 – 7.5	20	100%

i. Temperature: The Department regulation relating to tidal water thermal discharges, *Regulations Relating To Temperature*, 06-096 CMR 582 [last amended February 18, 1989] states, *"No discharge of pollutants shall cause the monthly mean of the daily maximum ambient temperatures in any tidal body of water, as measured outside the mixing zone, to be raised more than 4 degrees Fahrenheit, nor more than 1.5 degrees Fahrenheit from June 1 to September 1. In no event shall any discharge cause the temperature of any tidal waters to exceed 85 degrees Fahrenheit at any point outside a mixing zone established by the Board."*

The permittee discharges approximately 1,000 gallons of sea cucumber cooking water once per day at the end of the processing day or as tides allow, pursuant to discharge restrictions contained in this permit. This permitting action is carrying forward the requirement that all processing, clean-up and cooking wastewaters be discharged together to provide for maximum dilution of wastewater in the receiving water. The potential ambient temperature effects can be calculated as follows:

Assume 212°F cook water and 45°F process and cleaning water:
(1,000 gallons x 212°F) + (4,700 gallons x 45°F) /5,700 gallons = "X"
"X" = 74.3°F- 45°F=29.3°F change prior to mixing.
With a dilution of 113:1, the post-mixing temperature change = 29.3 °F /113 = 0.26°F

The Department assumes a 45°F water temperature for the receiving water during the month of June. Presently, the sea cucumber harvesting season in Maine is closed from July 1 through September 30. The permittee is prohibited from discharging wastewater during the period of July 4 through September 30, providing for processing of late season harvests. Considering this as well as the regulations cited above, June constitutes the month in which

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

temperature is of most concern. In this calculation, the Department utilized a required minimum discharge volume of 5,700 gallons and the dilution provided by the current outfall location and structure to calculate a conservative value. Based on these calculations, the discharge of the 1,000 gallons of sea cucumber cooking water will not violate the Department temperature standards if it is discharged with 4,700 gallons of processing and clean-up wastewater. Based on discharge restrictions contained in this permit and the calculations above, this permitting action does not require monitoring of effluent temperature.

7. DISINFECTING/SANITIZING AGENTS

The previous permitting action required the permittee 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 deminimus 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 C.

The permittee stated the following disinfecting/sanitizing agents are in use: F-48, Dawn, Clorox and Mia Brite Foam.

8. AMBIENT WATER QUALITY MONITORING

Standards for classification of estuarine and marine waters, 38 M.R.S.A., § 465-B.2, states that the "*dissolved oxygen content of Class SB waters must be not less than 85%*". Further, "*the habitat must be characterized as unimpaired*" and "*discharges to Class SB waters shall not cause adverse impact to estuarine and marine life in that the receiving waters shall be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community*". On July 1, 2003, the Department measured and documented non-attainment of water quality classification standards in the receiving water due to the permittee's wastewater discharge. Pursuant to Department requirements, the permittee conducted ambient water quality investigations in 2003 to yield additional and more in-depth data necessary for relicensing the permittee's discharge. The investigations yielded information on the receiving water, but did not provide for analysis of the effects on the receiving water from the permittee's discharge due to minimal simultaneous effluent data. In light of ongoing concerns with the effects of the permittee's discharge on water quality in Sawyer Brook and the Narraguagus River, reports of significantly greater levels of production at the facility than previously predicted, and results of wastewater sampling conducted by the permittee that indicates effluent BOD5 levels of up to 20,000 mg/L, the previous permitting action required that the permittee

8. AMBIENT WATER QUALITY MONITORING (cont'd)

conduct ambient water quality monitoring simultaneously with effluent discharging and monitoring.

Department review of the ambient monitoring data collected during the previous permitting cycle and a dye study conducted by EPA Region I (October 16, 2007) indicated that under normal discharge conditions, the permittee's wastewater showed a *de minimus* effect on the receiving stream; however, dissolved oxygen sags in the mixing zone were associated with discharges of the permittee's process wastewater that is likely to turn septic in the holding tank. Therefore, the Department is establishing a requirement in this permitting action for the permittee to develop and implement a plan to minimize the discharge of septic process wastewater into the receiving stream.

9. 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 Sawyer Brook and the Narraguagus River 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 the permittee causes or contributes to those conditions, this permitting action may be reopened pursuant to Permit Special Condition K and effluent limitations, monitoring and operational requirements, and/or wastewater treatment requirements adjusted accordingly.

10. PUBLIC COMMENTS

Public notice of this application was made in the *Downeast Coastal Press* newspaper on or about January 6, 2012. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

11. DEPARTMENT CONTACTS

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

Phyllis Rand
Division of Water Quality Management
Bureau of Land and Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Tel: (207) 287-7658 Email: phyllis.a.rand@maine.com

12. RESPONSE TO COMMENTS

During the period of April 13, 2012, through the issuance date of the permit, the Department solicited comments on the proposed draft permit to be issued for the discharge from the permittee's facility. Comments were received from Department staff (Staff). No comments were received from other state or federal agencies or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Comments and responses to comments are as follows:

Staff Comment #1: Removal of the discharge condition (requiring a minimum of 3 feet of water over the end of the discharge pipe) would allow a discharge to the intertidal zone.

Response #1: The discharge condition has been reinstated in permit Special Condition H, *Discharge Conditions*.

Staff Comment #2: Slightly higher calculated lb/1000 lb BOD5 and TSS conversion factors exist in a similar permit and do not include the lb/1000 limits in Special Condition A. Is there a requirement to have the lb/1000 lb limits in the permit?

Response #2: The slightly higher calculated limits in the similar permit were based on 40 CFR 408.332, *Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of best practicable control technology currently available*. Lawrence Ray Fishing Industries' technology-based TSS mass limits and water quality-based BOD5 mass limits were calculated based on 40 CFR 408.335, *Standards of performance for new sources*. Although the mass limits conversion factor in 40 CFR 408.332 could be used to calculate new, slightly higher effluent limits in this permit, doing so now would relax the effluent limitations for a permittee that discharges into the watershed of an Endangered Species Act-listed salmon river.

There is no requirement to have the lb/1000 lb limits in the permit. The permit was written using those mass limits 5 years ago in order to be consistent with the units developed for the Department's Permit Compliance System, and were carried forward in the new permit. The Department is no longer using those reporting units in similar permits, so those units will be eliminated from the final permit.

Staff Comment #3: The similar permit made no mention of rotary screens in the treatment section of the fact sheet. Is the NEG for Abalone based on #30 mesh screen, or does it require that level of treatment?

Response #3: The requirements for effluent treatment technology are based on the technology that was available at the time the rule was promulgated (December 1, 1975). The Department is unaware of which treatment processes (rotary screens, for example) the EPA considered BPT in 1975. The Department could not find that [specific] Federal Register online (40 FR 55800). The permittee has been using a rotary screen since first permitted in 1996.

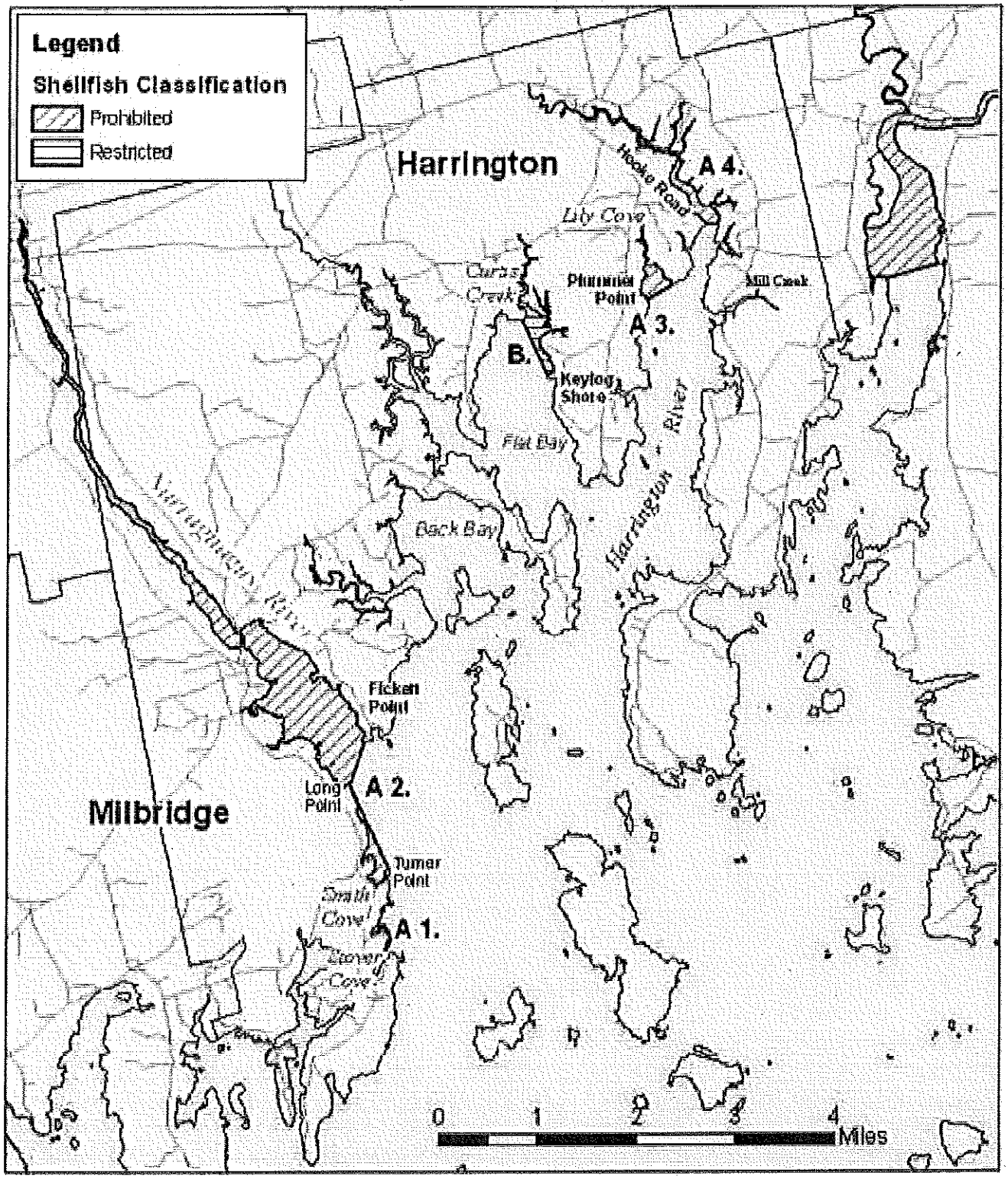
ATTACHMENT A

Maine Department of Marine Resources

Pollution Area No. 53

Narraguagus River and vicinity to Harrington River
(Cherryfield, Millbridge, Harrington)

12/22/2011



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

CONTENTS

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).

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 if 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 MAINTENACE 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

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.

(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.

C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.

(c) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;
(ii) The individual(s) who performed the sampling or measurements;
(iii) The date(s) analyses were performed;
(iv) The individual(s) who performed the analyses;
(v) The analytical techniques or methods used; and
(vi) The results of such analyses.

(d) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in the permit.

(e) State law provides that any person who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule license, permit approval or decision is subject to the penalties set forth in 38 MRSA, §349.

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

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).

(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.

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 contaminates 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.

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.

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

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

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

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

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

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

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

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

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

DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012 **Contact: (207) 287-2811**

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

Other Considerations in Appealing a Decision to the Board

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

What to Expect Once You File a Timely Appeal with the Board

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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