



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS  
GOVERNOR

MELANIE LOYZIM  
COMMISSIONER

February 29, 2024

Ms. Marcia Ismail  
53 N Duck Cove Rd  
Roque Bluffs, ME 04654  
e-mail: [marcia.ismail@gmail.com](mailto:marcia.ismail@gmail.com)

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit # ME0110248  
Maine Waste Discharge License (WDL) Application # W008152-5P-F-R  
**Moosabec Mussels Inc.**  
**Proposed Draft MEPDES Permit**

Dear Ms. Ismail:

Attached is a proposed draft MEPDES/WDL renewal which the Department proposes to issue for your facility as a final document after opportunity for your review and comment. By transmittal of this letter, you are provided with an opportunity to comment on the proposed draft document and its special and standard conditions. If it contains errors or does not accurately reflect present or proposed conditions, please respond to this Department so that changes can be considered.

Beginning today, Thursday February 29, 2024, the draft document is being made available for a formal 30-day public comment period. All comments on the proposed draft document must be received in the Department of Environmental Protection office on or before the close of business on Friday, March 29, 2024. Failure to submit comments in a timely fashion will result in the proposed draft document being issued as drafted.

Comments in writing should be submitted to my attention at the following address:

Maine Department of Environmental Protection  
Bureau of Water Quality  
Division of Water Quality Management  
17 State House Station  
Augusta, ME 04333-0017

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

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

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

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

If you have any questions regarding the matter, please feel free to call me at 680-0576

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney Robert", enclosed in a thin black rectangular border.

Rodney Robert  
Division of Water Quality Management  
Bureau of Water Quality

Enc.

Lori Mitchell, DEP/CMRO  
Irene Saumur, DEP/CMRO  
Mike Loughlin, DEP/EMRO  
Nathan Chien, USEPA  
Richard Carvalho, USEPA  
Lynn Jennings, USEPA



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

DEPARTMENT ORDER

IN THE MATTER OF

MOOSABEC MUSSELS, INC.	)	MAINE POLLUTANT DISCHARGE
JONESPORT, WASHINGTON CTY. MAINE	)	ELIMINATION SYSTEM PERMIT
MUSSEL PROCESSING	)	AND
#ME0110248	)	WASTE DISCHARGE LICENSE
#W008152-5P-F-R	)	<b>RENEWAL</b>
<b>APPROVAL</b>	)	

In compliance with the applicable provisions of *Pollution Control*, 38 M.R.S. § 411-424-B, *Water Classification Program* 38 M.R.S. § 464-470 and *Federal Water Pollution Control Act*, Title 33 USC, § 1251, and applicable rules of the Department of Environmental Protection (Department) has considered the application of MOOSABEC MUSSELS, INC. (MMI), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

On August 29, 2023, the Department accepted as complete for processing an application for the renewal of combination Waste Discharge License (WDL) #W008152-5P-E-R / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0110248, which was issued on December 20, 2018, for a five-year term. The 12/20/2018 permit authorized the daily maximum discharge of 32,000 gallons per day (GPD) or 0.032 million gallons per day (MGD) of process wastewater and clean-up wastewater from a mussel processing facility to the tidewaters of Moosabec Reach, Class SB, in Jonesport, Maine.

**PERMIT SUMMARY**

This permitting action is carrying forward all the terms and conditions of the previous permit except that it is:

1. Reducing the number of ‘grabs’ required for a Composite Sample from 4 per production cycle to not less than 2 for safety reasons.

## CONCLUSIONS

BASED on the findings in the attached PROPOSED DRAFT Fact Sheet dated February 29, 2024, 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 M.R.S. §464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected.
  - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected.
  - (c) Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification.
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing water 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 as defined in 38 M.R.S. § 414-A(1)(D).

**ACTION**

THEREFORE, the Department APPROVES the above noted application of Moosabec Mussels Inc. to discharge a daily maximum flow 0.032 million gallons per day (MGD) of process wastewater and clean-up wastewater from a mussel processing facility to the tidewaters of Moosabec Reach, Class SB, in Jonesport, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including,

1. *Standard Conditions of Industrial Waste Discharge Licenses* (Revised July 1, 2002), copy attached.
2. The attached Special Conditions, including effluent limitations and monitoring requirements.
3. This permit and the authorization to discharge become effective upon the date of signature below and expire 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. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (June 9, 2018)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2024.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
Melanie Loyzim, Acting Commissioner

Date of initial receipt of application: August 24, 2023.

Date of application acceptance: August 29, 2023.

<p><b>Filed</b> February 29, 2024 <b>State of Maine</b> <b>Board of Environmental</b> <b>Protection</b></p>
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Date filed with Board of Environmental Protection

This Order prepared by Rod Robert BUREAU OF WATER QUALITY

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

- The permittee is authorized to discharge treated **mussel processing and facility clean-up wastewater** to the tidewaters of Moosabec Reach in Jonesport, Maine via **Outfall #001A**. Such discharges are limited and must be monitored by the permittee as specified below<sup>(1)</sup>.

Effluent Characteristic	Discharge Limitations				Minimum Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow <i>[50050]</i>	Report gpd <i>[07]</i>	32,000 gpd <i>[07]</i>	---	---	Continuous <i>[CN]</i>	Recorder <i>[RC]</i>
Total Suspended Solids <i>[00530]</i>	75 lbs./day <i>[26]</i>	135 lbs./day <i>[26]</i>	281 mg/L <i>[19]</i>	506 mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Composite <sup>(2)</sup> <i>[CP]</i>
Oil & Grease (O&G) <i>[03582]</i>	7 lbs./day <i>[26]</i>	11 lbs./day <i>[26]</i>	26 mg/L <i>[19]</i>	41 mg/L <i>[19]</i>	1/Quarter <i>[01/90]</i>	Grab <i>[GR]</i>
Total Residual Chlorine (TRC) <i>[50060]</i>	---	---	---	1.0 mg/L <i>[19]</i>	1/Day <sup>(3)</sup> <i>[01/01]</i>	Grab <i>[GR]</i>
Settleable Solids <i>[00545]</i>	---	---	---	1.0 ml/L <i>[25]</i>	1/Week <i>[01/07]</i>	Grab <i>[GR]</i>
Production <i>[00145]</i>	Report lbs./day <i>[26]</i>	Report lbs./day <i>[26]</i>	---	---	1/Day <i>[01/01]</i>	Measure <i>[MS]</i>
pH <i>[00400]</i>	The pH must not be less than 6.0 or greater than 9.0 SU at any time.				1/Year <i>[1/365]</i>	Grab <i>[GR]</i>

All italicized numeric values bracketed in the tables are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports.

**FOOTNOTES:** See Page 5/6 of this permit for applicable footnotes.

## SPECIAL CONDITIONS

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

#### FOOTNOTES

1. **Sampling** – All effluent monitoring shall be conducted at a location following the last treatment unit in the treatment process to be representative of end-of-pipe effluent characteristics. A routine sampling program must be developed in which samples are taken at the same location, same time and same days of the week each month. Occasional deviations from the routine sampling program are allowed, but the reason for the deviation must be documented as an electronic attachment to the applicable discharge monitoring report.

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 publicly owned treatment works (POTW) licensed pursuant to Waste discharge licenses, 38 M.R.S. § 413 are subject to the provisions and restrictions of Maine Comprehensive and Limited Environmental Laboratory Certification Rules, 10-144 CMR 263 (last amended April 1, 2010). 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 this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the DMR.

In accordance with 40 CFR § 122.44(i)(1)(iv), the permittee must monitor according to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O, for the analysis of pollutants or pollutant parameters (except WET). A method is "sufficiently sensitive" when: 1) The method minimum level (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or 2) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter. The term "minimum level" refers either to the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in the following ways: they may be published in a method; they may be based on the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a laboratory, by a factor.

The facility conducts sampling at a sampling point located under the wharf.

## **SPECIAL CONDITIONS**

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

2. **Composite Samples** – Composite samples collected for TSS must consist of not less than two (2) flow-proportioned grab samples collected over a single production cycle and composited prior to analysis, or a flow-proportioned sample collected by an automatic compositor.
3. **Total Residual Chlorine** – Monitoring for TRC is not required unless 1) more than one (1) tablespoon of a chlorine-based compound containing 5.25% or greater sodium hypochlorite is utilized for sanitization purposes. The permittee must enter “NODI-9” on the monthly Discharge Monitoring Report (DMR) when chlorine or chlorine-based compounds have not been used for an entire reporting period. The permittee must utilize a USEPA-approved test method capable of bracketing the TRC limitations specified in this permit.

### **B. NARRATIVE EFFLUENT LIMITATIONS**

1. The permittee must not discharge effluent that contains 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 permittee must not discharge effluent that contains 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 permittee must not discharge effluent that causes 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 permittee must not discharge effluent that lowers 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. AUTHORIZED DISCHARGES**

The permittee is authorized to discharge only in accordance with 1) the permittee’s General Application for Waste Discharge Permit, accepted for processing on August 29, 2023, 2) the terms and conditions of this permit; and 3) only from Outfall #001A. Discharges of wastewater from any other point source(s) are not authorized under this permit and must be reported in accordance with Standard Condition D(1)(F), *Twenty-four-hour reporting*, of this permit.



## SPECIAL CONDITIONS

### D. NOTIFICATION REQUIREMENT

In accordance with Standard Condition 6, the permittee must notify the Department of the following:

1. Any substantial change in the volume or character of pollutants being introduced into the wastewater collection system.
2. For the purposes of this section, adequate notice must include information on:
  - (a) the quality and quantity of wastewater introduced to the wastewater 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. OPERATIONS AND MAINTENANCE (O&M) PLAN

The permittee must maintain a current written comprehensive Operation & Maintenance (O&M) Plan for the facility. The plan must provide a systematic approach by which the permittee must always, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

**By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades,** the permittee must 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 must be always kept on-site and made available to Department and USEPA personnel upon request.

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

### F. MONITORING AND REPORTING

#### Electronic Reporting

*NPDES Electronic Reporting*, 40 C.F.R. 127, requires MEPDES permit holders to submit monitoring results obtained during the previous month on an electronic discharge monitoring report to the regulatory agency utilizing the USEPA electronic system.

Electronic DMRs submitted using the USEPA NetDMR system, must be:

1. Submitted by a facility authorized signatory; and
2. Submitted no later than **midnight on the 15<sup>th</sup> day of the month** following the completed reporting period.

## **SPECIAL CONDITIONS**

### **F. MONITORING AND REPORTING (cont'd)**

Documentation submitted in support of the electronic DMR may be attached to the electronic DMR. Toxics reporting must be done using the Department toxsheet reporting form. An electronic copy of the Toxsheet reporting document must be submitted to your Department compliance inspector as an attachment to an email. In addition, a hardcopy form of this sheet must be signed and submitted to your compliance inspector, or a copy attached to your NetDMR submittal will suffice. Documentation submitted electronically to the Department in support of the electronic DMR must be submitted no later than midnight on the 15<sup>th</sup> day of the month following the completed reporting period.

A signed copy of the DMR and all other reports required herein must be submitted to the Department assigned compliance inspector (unless otherwise specified) following address:

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

### **G. REOPENING OF PERMIT FOR MODIFICATION**

In accordance with 38 M.R.S. Section 414-A(5) and upon evaluation of the test 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

### **H. SEVERABILITY**

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

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

**FACT SHEET**

DATE: **February 29, 2024**

PERMIT NUMBER: **#ME0110248**

WASTE DISCHARGE LICENSE: **#W008152-5P-F-R**

APPLICANT INFORMATION: **MOOSABEC MUSSELS, INC.  
P.O. BOX 267  
JONESPORT, ME. 04649**

NAME AND ADDRESS WHERE DICHARGE(S) OCCUR(S):

**MOOSABEC MUSSELS, INC.  
48 OLD HOUSE POINT ROAD  
JONESPORT, ME. 04649**

COUNTY: **WASHINGTON COUNTY**

RECEIVING WATER/CLASSIFICATION: **TIDEWATERS AT MOOSABEC REACH/CLASS  
SB**

COGNIZANT OFFICIAL CONTACT INFORMATION:

**MARCIA ISMAIL  
53 N DUCK COVE RD  
Roque Bluffs, Me 04654  
(207) 907-9293  
[Marcia.ismail@gmail.com](mailto:Marcia.ismail@gmail.com)**

**1. APPLICATION SUMMARY**

Application: On August 29, 2023, the Department accepted as complete for processing an application for the renewal of combination Waste Discharge License (WDL) #W008152-5P-E-R / Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0110248, which was issued on December 20, 2018, for a five-year term. The 12/20/2018 permit authorized the daily maximum discharge of 32,000 gallons per day (GPD) or 0.032 million gallons per day (MGD) of process wastewater and clean-up wastewater from a mussel processing facility to the tidewaters of Moosabec Reach, Class SB, in Jonesport, Maine.

## 2. PERMIT SUMMARY

- a. Terms and Conditions: This permitting action is carrying forward all the terms and conditions of the previous permit except that it is:
  1. Reducing the number of ‘grabs’ required for a Composite Sample for TSS from 4 to not less than 2 for safety reasons.
- b. History: The most current relevant regulatory actions include:

*January 12, 2001* – The Department received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permitting program in Maine, excluding areas of special interest to Maine Indian Tribes. From this point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) program, and MEPDES permit #ME0101443 has been utilized for this facility. On March 26, 2011, the USEPA authorized the Department to administer the MEPDES program in Indian territories of the Penobscot Nation and Passamaquoddy Tribe.

*May 21, 2003* – The Department issued new WDL #W008152-5P-A-N / MEPDES permit #ME0110248 to MMI for the discharge of process wastewater and clean-up wastewater from a mussel processing facility to the tidewaters of Moosabec Reach, Class SB, in Jonesport, Maine.

*April 30, 2008* – MMI submitted a timely and complete General Application to the Department for renewal of the 5/21/03 MEPDES permit. The application was accepted for processing on May 12, 2008, and was assigned WDL #W008152-5P-B-R / MEPDES #ME0110248.

*July 3, 2008* – The Department issued MEPDES combination permit #ME0110248/WDL#008152-5P-B-R for a five-year term.

*October 29, 2009* – The Department issued a minor revision to #ME011024/#W008152-5P-C-M for the reduction in monitoring frequency for O & G.

*May 23, 2013* - MMI submitted a timely and complete General Application to the Department for renewal of the July 3, 2008, MEPDES permit. The application was accepted for processing on May 23, 2013, and was assigned WDL #W008152-5P-D-R / MEPDES #ME0110248.

## 2. PERMIT SUMMARY (cont'd)

*September 11, 2013* – The Department issued MEPDES combination permit #ME0110248/WDL#008152-5P-D-R for a five-year term.

*August 22, 2014*, The Department identified an area of safety concern located at the sampling point while conducting a planned compliance inspection. The Compliance Inspector recommended reducing the number of grab samples from 4 per production cycle to not less than 2 for safety reasons associated with the sampling point. A copy of the compliance inspection report is on file with the Department.

*April 26, 2018* - MMI submitted a complete General Application to the Department for the renewal of MEPDES combination permit #ME0110248/WDL#008152-5P-D-R.

*December 20, 2018* – The Department issued MEPDES combination permit #ME0110248/WDL#008152-5P-E-R for a five-year term.

*August 24, 2023* - MMI submitted a complete General Application to the Department for the renewal of MEPDES combination permit #ME0110248/WDL#008152-5P-E-R.

- c. Source Description: Moosabec Mussels, Inc. operates a mussel processing facility on Old House Point in Jonesport. The process includes purging, washing, declumping, debysing, inspection, size grading, and packaging of blue mussels as well as packaging of quahogs. Mussel and quahog processing wastewater and facility clean-up wastewater are discharged to Moosabec Reach. The permittee has estimated average production to be approximately 5,000 pounds of raw product being processed per day. The facility utilizes ground waters from three drilled wells or sea water from an intake pipe located in Moosabec Reach for its source waters. MMI utilizes a 0.05% chlorine solution for sanitizing purposes during facility clean-up. Solid wastes (small live mussels and broken shells) from production are reapplied to the ocean (not via wastewater discharge outfall). A map showing the location of the facility is included as **Attachment A** of this fact sheet.
- d. Wastewater Treatment: Bulk solids are collected in the processing room. The wastewater is then collected through a 20-foot long by 14-inch-wide floor drain covered with a 1/16-inch mesh filter to screen out particulate matter. The wastewater is then conveyed by gravity feed pipe (suspended from the wharf) to the end of the wharf to the outfall location. The outfall discharge pipe is a four-inch diameter conduit constructed of PVC material. The pipe is just below the water at mean low tide. A process schematic prepared by MMI is included as **Attachment B** of this fact sheet.

### 3. CONDITIONS OF PERMIT

*Conditions of licenses*, 38 M.R.S. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require the 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. § 420 and Department rule *Surface Water Toxics Control Program*, 06-096 CMR 530 (effective March 21, 2012), 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 February 16, 2020), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

### 4. RECEIVING WATER QUALITY STANDARDS

*Classifications of estuarine and marine waters*, 38 M.R.S. § 469 classifies the tidewaters of Jonesport as Class SB waters. *Standards for classification of estuarine and marine waters*, 38 M.R.S. § 465-B(2) describes the classification standards for Class SB waters.

### 5. RECEIVING WATER QUALITY CONDITIONS

*The State of Maine 2018/2020/2022 Integrated Water Quality Monitoring and Assessment Report* (Report), prepared by the Department pursuant to Sections 303(d) and 305(b) of the *Federal Water Pollution Control Act*, lists a 589-acre segment of the tidewaters of Jonesport and West Jonesport (waterbody ID 703) as: "Category 5-B-1(a): Estuarine and Marine Waters Impaired for Bacteria Only." The source of the impairment is listed as elevated fecal indicators. The Report states that bacteria may impair either recreational uses (swimming) or shellfish consumption uses, or both. Shellfish consumption impairments only apply to waters naturally capable of supporting the shellfish-harvesting use (*i.e.*, waters of high enough salinity for propagation of shellfish.)

In addition, all estuarine and marine waters of the State are listed under "Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants." The Report states, All estuarine and marine waters capable of supporting American lobster are listed in Category 5-D for shellfish consumption due to elevated levels of PCBs and other persistent, bioaccumulating substances in tomalley. Also included in a statewide marine consumption advisory is a variety of saltwater finfish and shellfish based on elevated mercury, PCB and dioxin levels. Safe eating guidelines for sensitive populations are presented at the following website: [www.maine.gov/dhhs/mecdc/environmental-health/eohp/fish/saltwater.htm](http://www.maine.gov/dhhs/mecdc/environmental-health/eohp/fish/saltwater.htm) .

The Department concludes that compliance with the terms and conditions established in this permitting action ensures that the discharge from the permittee's facility will not cause or contribute to the failure of the receiving water to meet the designated uses of its ascribed classification.

**6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

- a. Flow: The previous permit established a daily maximum discharge flow limitation of 32,000 GPD which is carried forward in this permit.

The Department reviewed 58 Discharge Monitoring Reports (DMRs) that were submitted for the period January 2019 to October 2023. A review of data indicates the following:

**Flow**

<b>Value</b>	<b>Minimum (GPD)</b>	<b>Maximum (GPD)</b>	<b>Mean (GPD)</b>
Monthly Average	1,800	5,082	3,419
Daily Maximum	3,100	8,800	5,441

- 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 configuration of Outfall #001A and a daily maximum discharge flow criterion of 0.0320 MGD (same as 32,000 GPD), dilution factors associated with the discharge of secondary treated wastewater are as follows:

Acute = 80:1                      Chronic = 939:1                      Harmonic mean<sup>1</sup> = 2,817:1

- c. Applicability of Effluent Guideline Limitations (EGLs): The USEPA has promulgated technology-based effluent limitations for numerous seafood processes at the Code of Federal Regulations, Title 40, Part 408 for canned and preserved seafood processing, but not for mussel processing. Part 408 Subpart AG - *Abalone Processing Subcategory* defines abalone and other shellfish as having similar waste loads. In lieu of specific promulgated guidelines for mussel processing, the Department has made a best professional judgment determination to apply the guidelines for abalone as a “best fit” to calculate appropriate technology-based effluent limitation thresholds for this discharge. 40 CFR Part 408.322 establishes effluent limitation guidelines for TSS, oil and grease (O&G), and pH representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

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<sup>1</sup> 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 U.S. EPA 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.

**6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

- d. Total Suspended Solids (TSS): The previous permit established a monthly average mass limit of 102 lbs./day, and a daily maximum mass limit of 184 lbs./day. Concentration limits were established as 382 mg/L and 689 mg/L for monthly average and daily maximum, respectively. The best practicable technology (BPT) based effluent guideline limits (EGLs) at 40 CFR Part 408.322 for TSS are expressed as a monthly average of 15 pounds per 1,000 pounds of production and a daily maximum of 27 pounds per 1,000 pounds production. Utilizing a production value of 5,000 lbs./day, monthly average and daily maximum technology-based mass limits can be calculated as follows:

$$\text{Monthly Average: } \frac{(5,000 \text{ lbs./day})(15 \text{ lbs.})}{1,000 \text{ lbs.}} = 75 \text{ lbs./day}$$

$$\text{Daily Maximum: } \frac{(5000 \text{ lbs./day})(27 \text{ lbs.})}{1,000 \text{ lbs.}} = 135 \text{ lbs./day}$$

Concentration limits for TSS may be back calculated utilizing the applicable mass limitation calculated above, a flow of 0.0320 million gallons per day (MGD) (same as 32,000 gpd) and a conversion factor of 8.34 lbs./gallon of water. Concentration limits are calculated as follows

$$\text{Monthly Average: } \frac{(75 \text{ lbs./day})}{(0.0320 \text{ MGD})(8.34 \text{ lbs./gal})} = 281 \text{ mg/L}$$

$$\text{Daily Maximum: } \frac{(135 \text{ lbs./day})}{(0.0320 \text{ MGD})(8.34 \text{ lbs./gal})} = 506 \text{ mg/L}$$

A summary of TSS data as reported on the monthly DMRs for the period of January 2019 to October 2023 is as follows:

**TSS mass**

Value	Minimum (lbs./day)	Maximum (lbs./day)	Average (lbs./day)
Monthly Average	0.03	2.9	0.79
Daily Maximum	0.03	2.9	0.79

**TSS concentration**

Value	Minimum (mg/L)	Maximum (mg/L)	Average (mg/L)
Monthly Average	2.5	77	25
Daily Maximum	2.5	77	25

This permit carries forward the minimum monitoring frequency requirement of once per month for TSS.



**6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

- e. Oil & Grease (O&G): The previous permit established EGLs based on 40 CFR Part 408.3 which regulates O&G in terms of a monthly average of 1.4 pounds per 1,000 pounds of production and a daily maximum of 2.2 pounds per 1,000 pounds of production. Utilizing a production value of 5000 pounds, monthly average and technology-based mass limits can be calculated as follows.

$$\text{Monthly Average: } \frac{5000 \text{ lbs./day}(1.4 \text{ lbs.})}{1,000 \text{ lbs.}} = 7 \text{ lbs./day}$$

$$\text{Daily Maximum: } \frac{(5000 \text{ lbs./day})(2.2 \text{ lbs.})}{1,000 \text{ lbs.}} = 11 \text{ lbs./day}$$

Concentration limits for O&G may be back calculated utilizing the applicable mass limitation, a flow of 0.0320 MGD and a conversion factor of 8.34 lbs./gallon of water. Concentration limits are calculated as follows:

$$\text{Monthly Average: } \frac{(7 \text{ lbs./day})}{(0.0320 \text{ MGD})(8.34 \text{ lbs./gal})} = 26 \text{ mg/L}$$

$$\text{Daily Maximum: } \frac{(11 \text{ lbs./day})}{(0.0320 \text{ MGD})(8.34 \text{ lbs./gal})} = 41 \text{ mg/L}$$

A summary of O&G data as reported on the monthly DMRs for the period of January 2019 to October 2023 is as follows:

**O&G mass**

Value	Minimum (lbs./day)	Maximum (lbs./day)	Average (lbs./day)
Monthly Average	0.01	0.10	0.05
Daily Maximum	0.01	0.10	0.05

**O&G concentration**

Value	Minimum (mg/L)	Maximum (mg/L)	Average (mg/L)
Monthly Average	<1.4	2.6	<1.55
Daily Maximum	<1.4	2.6	<1.55

This permitting action is carrying forward the minimum monitoring frequency requirement of once per calendar quarter for O&G.

**6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

- f. Total Residual Chlorine: The previous permit established a daily maximum technology-based concentration limit of 1.0 mg/L for TRC. The permittee is not required to monitor the effluent for TRC unless:
- 1) more than one (1) tablespoon of a chlorine-based compound containing 5.25% or greater sodium hypochlorite is utilized for sanitization purposes, or.
  - 2) any quantity of a cleaning solution containing greater than 5.25% sodium hypochlorite is utilized for sanitization purposes.

When either or both criteria are in effect, the minimum monitoring frequency requirement is 1/day based on best professional judgment.

Department licensing/permitting actions impose the more stringent of either a water quality based or BPT based limit. End-of-pipe acute and chronic water quality-based concentration thresholds may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A & C Dilution Factors	Calculated	
			Acute Threshold	Chronic Threshold
0.013 mg/L	0.0075 mg/L	80:1 (A) 939:1 (C)	1.0 mg/L	7.0 mg/L

The Department has established a daily maximum BPT limitation of 1.0 mg/L for facilities that disinfect their effluent with elemental chlorine or chlorine-based compounds. The technology-based limit of 1.0 mg/L is equivalent to the calculated acute water quality-based threshold above and is therefore being carried forward in this permitting action.

This permitting action is carrying forward the variable minimum monitoring frequency requirement based on the use of sanitizing agents (when using chlorine-based compounds) based on best professional judgment.

**6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)**

- g. Settleable Solids: The previous permit established, and this permit carries forward a daily maximum settleable solids limit of 1.0 ml/L based on best professional judgment of best practicable treatment. The previous permit also established the minimum monitoring frequency of 1/week.

The Department reviewed DMRs that were submitted for the period January 2019 to October 2023. A review of data indicates the following:

**Settleable solids concentration**

Value	Minimum (ml/L)	Maximum (ml/L)	Average (ml/L)
Daily Maximum	0.03	2.9	0.79

This permitting action is carrying forward the minimum monitoring frequency requirement of once per week for settleable solids.

- h. Production, pounds/day: The previous permit established, and this permit carries forward, monthly average and daily maximum production reporting requirements.

The Department reviewed DMRs that were submitted for the period January 2019 to October 2023 A review of data indicates the following:

**Production**

Production	Minimum (lbs./day)	Maximum (lbs./day)	Average (lbs./day)
Monthly Average	1,392	4,400	2,614
Daily Maximum	2,400	6,900	4,028

This permit carries forward the minimum monitoring frequency requirement of once per day for production.

- i. pH: The previous permit stated the USEPA has promulgated a pH range limitation of 6.0 – 9.0 SU at 40 CFR Part 408.322, which is consistent with the range considered by the Department to be BPT for other categories of discharges in Maine. Therefore, this permit carries forward the established pH range limitation to 6.0 – 9.0 SU. Pursuant to 40 CFR 122.44(i)(2), this permit carries forward a once per year monitoring frequency for pH.

## 7. ANTI-DEGRADATION

Federal regulation 40 CFR, §122(l) contains the criteria for what is often referred to as the anti-backsliding provisions of the Federal Water Pollution Control Act (Clean Water Act). In general, the regulation states that except for provisions specified in the regulation, effluent limitations, standards, or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit. Applicable exceptions include: (1) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation and (2) information is available which was not available at the time of the permit issuance (other than revised regulations, guidance, or test methods) and which would justify the application of less stringent effluent limitations at the time of permit issuance. All limitations in this permit are equally or more stringent than those in the previous permit.

## 8. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

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

## 9. PUBLIC COMMENTS

Public notice of this application was made in the *Machias Valley News Observer* newspaper on August 9, 2023. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits must 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).

## 10. DEPARTMENT CONTACTS

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

Rodney Robert  
Division of Water Quality Management  
Bureau of Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 680-0576  
[rodney.robert@maine.gov](mailto:rodney.robert@maine.gov)

## 11. RESPONSE TO COMMENTS

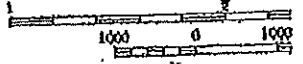
*Reserved until the end of the formal thirty-day comment period.*

# **ATTACHMENT A**



Mapped by U. S. Coast and Geodetic Survey  
 Edited and published by the Geological Survey  
 Control by USGS, USC&GS (O), and USED (E)  
 Topography from aerial photographs by multiplex methods  
 1944

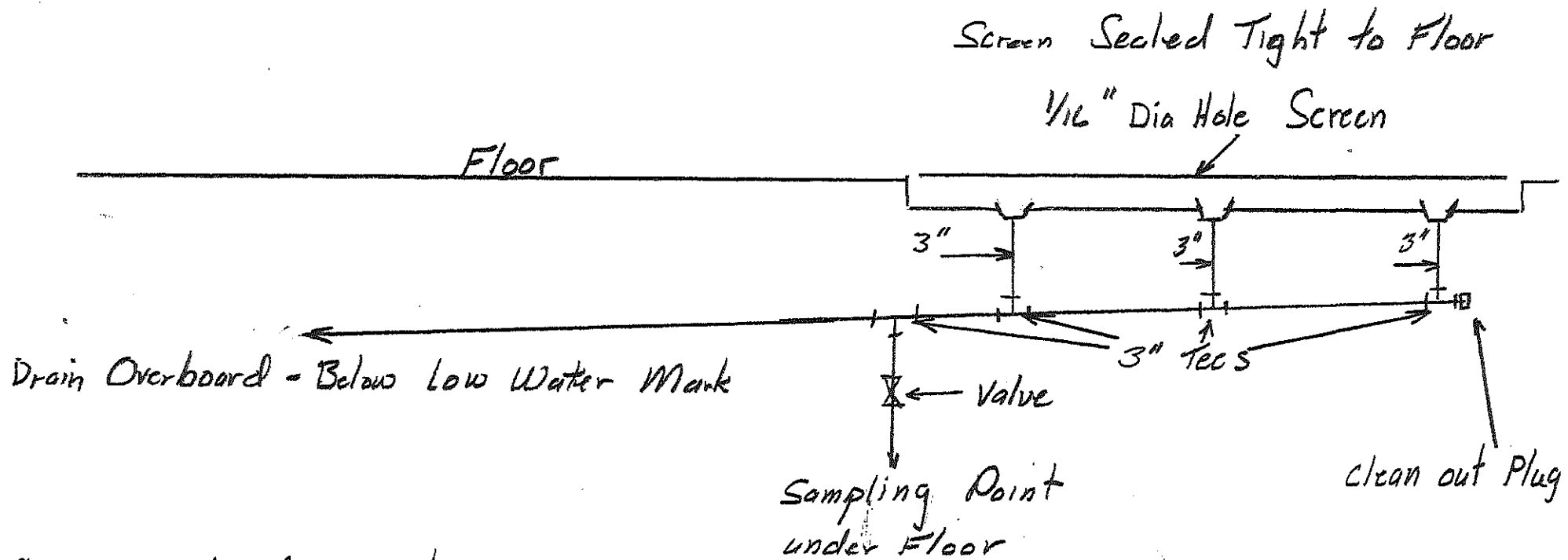
DRAWN (ISLANDS)  
 1942 (NW)



# **ATTACHMENT B**

# Moosabec Mussel Processing Room Drainage

Drawing # 1.



Floor is made of cement

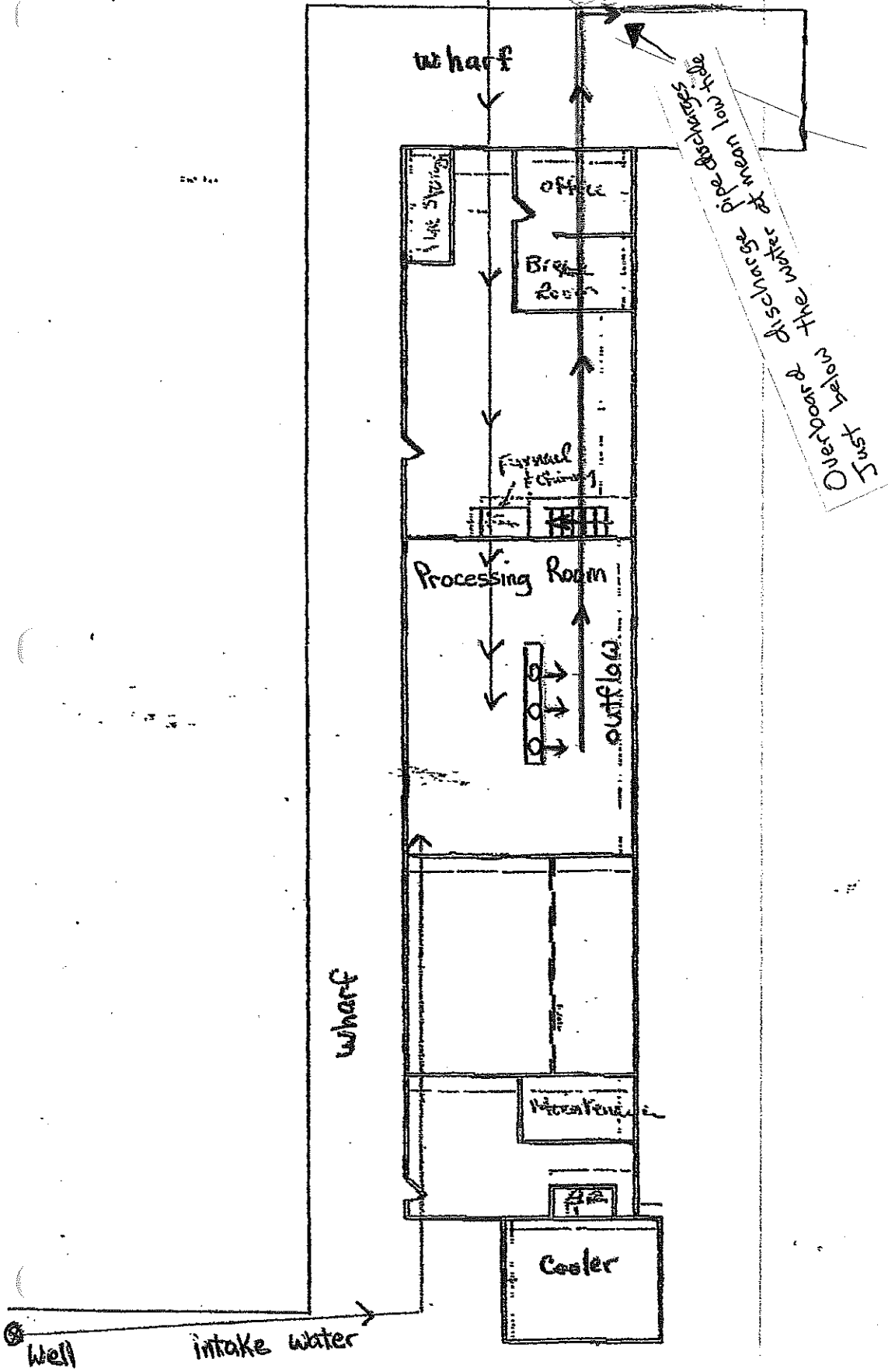
Drain Screen is made of Stainless steel

All Piping is PVC



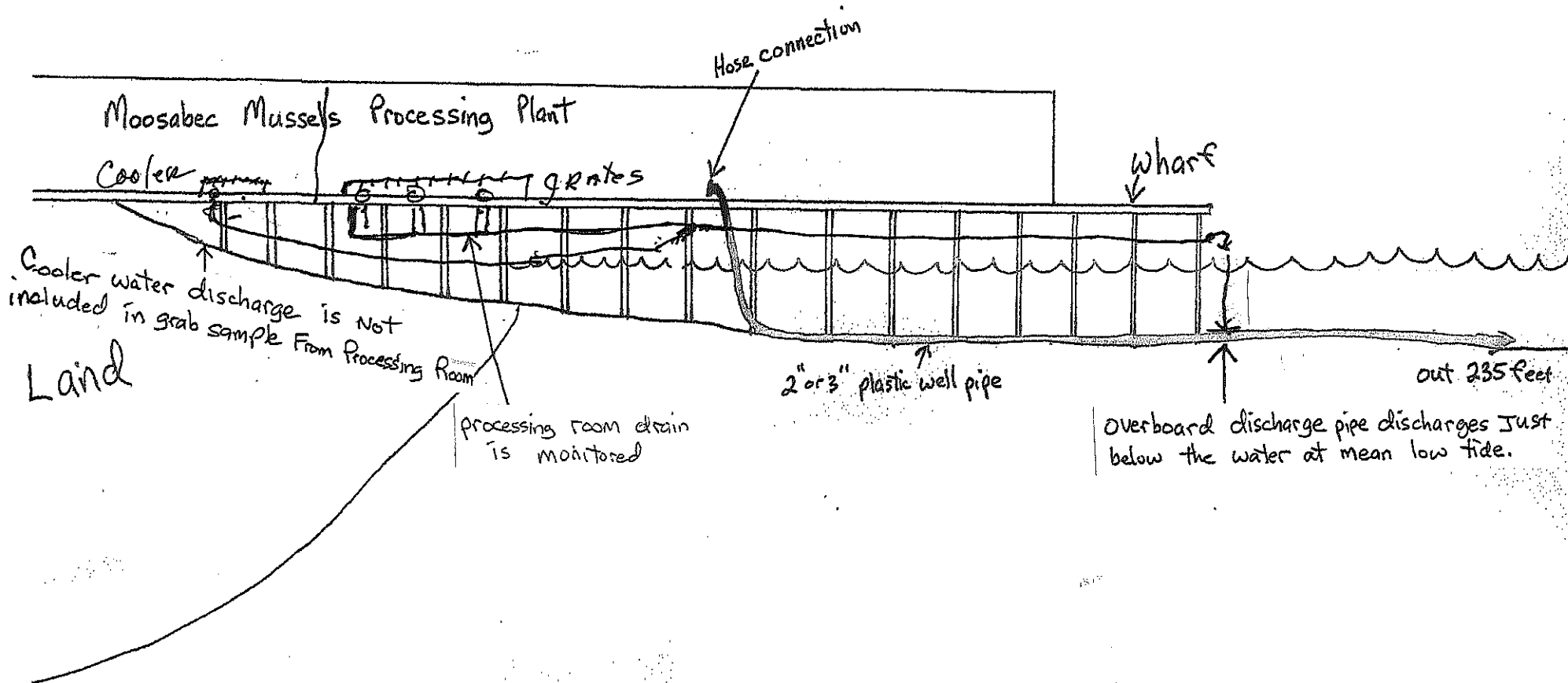
Intake of ocean water  
from 235 feet out  
in Moosabec Reach

outfall #1  
Moosabec Reach



Drawing 2

water intake pipe



Drawing 3.

Moosabec Mussels Inc.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

CONTENTS

SECTION	TOPIC	PAGE
A	GENERAL PROVISIONS	
1	General compliance	2
2	Other materials	2
3	Duty to Comply	2
4	Duty to provide information	2
5	Permit actions	2
6	Reopener clause	2
7	Oil and hazardous substances	2
8	Property rights	3
9	Confidentiality	3
10	Duty to reapply	3
11	Other laws	3
12	Inspection and entry	3
B	OPERATION AND MAINTENANCE OF FACILITIES	
1	General facility requirements	3
2	Proper operation and maintenance	4
3	Need to halt reduce not a defense	4
4	Duty to mitigate	4
5	Bypasses	4
6	Upsets	5
C	MONITORING AND RECORDS	
1	General requirements	6
2	Representative sampling	6
3	Monitoring and records	6
D	REPORTING REQUIREMENTS	
1	Reporting requirements	7
2	Signatory requirement	8
3	Availability of reports	8
4	Existing manufacturing, commercial, mining, and silvicultural dischargers	8
5	Publicly owned treatment works	9
E	OTHER PROVISIONS	
1	Emergency action - power failure	9
2	Spill prevention	10
3	Removed substances	10
4	Connection to municipal sewer	10
F	DEFINITIONS	10

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

**A. GENERAL PROVISIONS**

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

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

- (a) They are not
  - (i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
  - (ii) Known to be hazardous or toxic by the licensee.
- (b) The discharge of such materials will not violate applicable water quality standards.

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

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

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

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

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

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

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

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

**B. OPERATION AND MAINTENANCE OF FACILITIES**

**1. General facility requirements.**

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

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

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

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

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

**5. Bypasses.**

- (a) Definitions.
  - (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
  - (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.
- (c) Notice.
  - (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

- (ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D(1)(f), below. (24-hour notice).
- (d) Prohibition of bypass.
  - (i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:
    - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
    - (C) The permittee submitted notices as required under paragraph (c) of this section.
  - (ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (d)(i) of this section.

**6. Upsets.**

- (a) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- (c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
  - (ii) The permitted facility was at the time being properly operated; and
  - (iii) The permittee submitted notice of the upset as required in paragraph D(1)(f) , below. (24 hour notice).
  - (iv) The permittee complied with any remedial measures required under paragraph B(4).
- (d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

**C. MONITORING AND RECORDS**

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

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

**3. Monitoring and records.**

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



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

**D. REPORTING REQUIREMENTS**

**1. Reporting requirements.**

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

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).

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

**5. Publicly owned treatment works.**

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

**E. OTHER REQUIREMENTS**

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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

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

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

**Maximum daily discharge limitation** means the highest allowable daily discharge.

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: August 2021**

**Contact: (207) 314-1458**

### SUMMARY

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

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

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

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

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

#### **DEADLINE TO SUBMIT AN APPEAL TO THE BOARD**

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

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

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

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

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

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

### **REQUIRED APPEAL CONTENTS**

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

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

### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

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



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

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

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

## **II. JUDICIAL APPEALS**

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

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

#### **ADDITIONAL INFORMATION**

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

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

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