STATE OF MAINE

Department of Environmental Protection

JOHN ELIAS BALDACCI
GOVERNOR

David P. Littell
COMMISSIONER

December 28, 2009

Ms. Ellen Rossi
Jasper Wyman & Son, Inc.
P.O. Box 100
Milbridge, ME 04658
elrossi@wymans.com

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0001953
Maine Waste Discharge License (WDL) Application #W000645-5P-F-R
FINALIZED MEPDES / WDL Renewal
Certified Mail #7008 1830 0000 8209 7616

Dear Ms. Rossi:

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

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

If you have any questions regarding the matter, please feel free to call me at 207-485-2281

Sincerely,

Bill Hinkel

Bill Hinkel
Division of Water Quality Management
Bureau of Land and Water Quality

Enc.

cc: Clarissa Trasko, Lori Mitchell, MeDEP Sandy Mojica, USEPA File #W0645

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

DEPARTMENT ORDER

IN THE MATTER OF

JASPER WYMAN & SON, INC.	) MAINE POLLUTANT DISCHARGE
MILBRIDGE AND CHERRYFIELD,	) ELIMINATION SYSTEM PERMIT
WASHINGTON COUNTY, MAINE	)
SURFACE WASTEWATER DISPOSAL SYSTEM	) AND
SURFACE WATER DISCHARGE	)
#ME0001953	) WASTE DISCHARGE LICENSE
#W000645-5P-G-R **APPROVAL**	) **RENEWAL**

Pursuant to the provisions of the *Federal Water Pollution Control Act*, Title 33 USC, §1251, *Conditions of licenses*, 38 M.R.S.A. § 414-A, and applicable regulations, the Maine Department of Environmental Protection (Department) has considered the application of JASPER WYMAN & SON, INC. (Wyman), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

Wyman has applied to the Department for renewal of Waste Discharge License (WDL) #W000645-5P-E-R, which was issued on October 21, 2004 and expired on October 21, 2009. The 10/21/04 WDL authorized the discharge of 1) up to a daily maximum of 0.10 million gallons per day (MGD) of blueberry canning and processing waste waters to the Narraguagus River in Cherryfield via Outfall #001B; 2) a daily maximum of up to 0.270 MGD of non-contact cooling waters to the Narraguagus River in Cherryfield via Outfall #003B; and 3) the operation of a 10-acre surface waste water (spray irrigation) system in Milbridge to dispose of an average of 40,700 gallons of blueberry processing waste waters per acre per week during the period of April 15th – November 15th of each year via spray irrigation field SF-1.

REGULATORY SUMMARY

On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine, excluding areas of special interest to Maine Indian Tribes. From that point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) permit program, and permit #ME0001953 will be utilized as the primary reference number for the Wyman facility. The previous Department Order was not issued as a combination MEPDES permit / WDL.

PERMIT SUMMARY

This permitting action is <u>significantly different</u> than the 10/21/04 licensing action in that it is:

<u>Process Wastewater via Outfall #001B</u>

1. Establishing a requirement for a Grade II operator;

2. Revising the monthly average and daily maximum mass limits and the daily maximum concentration limit, and establishing a monthly average concentration limit for biochemical oxygen demand (BOD_5);

3. Revising the daily maximum mass limit, and establishing a monthly average concentration limit for total suspended solids (TSS);

4. Eliminating the annual average mass limits for BOD_5 and TSS;

5. Eliminating the daily maximum concentration limit for settleable solids;

6. Eliminating the daily maximum concentration limit for total residual chlorine (TRC);

7. Revising the pH range limitation;

<u>Non-Contact Cooling Water via Outfall #003B</u>

8. Eliminating the daily maximum concentration limit for TRC;

9. Eliminating the pH range limit;

10. Revising the minimum monitoring frequency requirement to the months of June through September only;

<u>Lagoon Effluent via Outfall #006A</u>

11. Establishing (reinstating) a daily maximum monitoring and reporting requirement for BOD_5;

12. Revising the monitoring period to April, May, August and October; and

<u>Spray Irrigation Field SF-1</u>

13. Eliminating the chemical oxygen demand and total nitrogen monitoring and reporting requirements.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated December 28, 2009, and subject to the Conditions listed below, the Department makes the following conclusions:

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

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

3. The provisions of the State's antidegradation policy, *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(F), will be met, in that:

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

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

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

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

   (e) Where a discharge will result in lowering the existing 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.A. § 414-A(1)(D).

ACTION

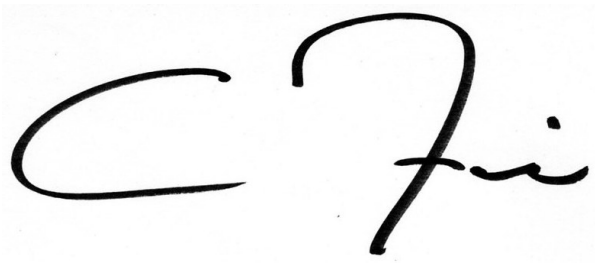
THEREFORE, the Department APPROVES the above noted application of JASPER WYMAN & SON, INC. to 1) operate a surface waste water disposal system (spray irrigation) for the disposal of up to 58,143 GPD of blueberry processing and non-contact cooling waste waters to ground waters, Class GW-A, in Milbridge, Maine; and 2) to discharge up to a daily maximum of up to 0.10 MGD of blueberry processing waste waters and up to a daily maximum of up to 0.270 MGD of non-contact cooling waters to the Narraguagus River, Class B, in Cherryfield, Maine, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations including:

1. "*Standard Conditions of Approval for Industrial Waste Discharge Licenses,"* dated August 14, 1996, copy attached.

2. The attached Special Conditions, including effluent limitations and monitoring requirements.

3. This license expires five (5) years from the date of signature below.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES



This permit has been digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to authority under 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date 2009.12.28 08:37:37 -05'00'

Date of initial receipt of application: September 8, 2009
Date of application acceptance: September 8, 2009

This Order prepared by William Hinkel, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge **TREATED BLUEBERRY PROCESS WASTEWATER via Outfall #001B** to the Narraguagus River in Cherryfield, Maine. Such discharges shall be limited and monitored by the permittee as specified below[(1)]:

Effluent Characteristic	**Discharge Limitations**				**Minimum Monitoring Requirements**	
	Monthly Average as specified	Daily Maximum as specified	Monthly Average as specified	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Flow *[50050]*	---	0.10 MGD *[03]*	---	---	Daily When Discharging *[DL/DS]*	Measured *[MS]*
BOD_5 *[00310]*	19 lbs./day *[26]*	36 lbs./day *[26]*	46 mg/L *[19]*	200 mg/L *[19]*	2/Month *[02/30]*	Grab *[GR]*
TSS *[00530]*	45 lbs./day *[26]*	66 lbs./day *[26]*	54 mg/L *[19]*	80 mg/L *[19]*	2/Month *[02/30]*	Grab *[GR]*
pH *[00400]*	---	---	---	6.0 – 9.0 SU *[12]*	2/Month *[02/30]*	Grab *[GR]*

2. The permittee is authorized to discharge **NON-CONTACT COOLING WASTE WATER EFFLUENT via Outfall #003** to the Narraguagus River in Cherryfield, Maine. Such discharges shall be limited and monitored by the permittee as specified below[(1)]:

Effluent Characteristic	**Discharge Limitations**				**Minimum Monitoring Requirements**	
	Monthly Average as specified	Daily Maximum as specified	Monthly Average as specified	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Flow *[50050]*	---	0.270 MGD *[03]*	---	---	1/Month *[01/30]*	Measured *[MS]*
Effluent Temperature *[00011]*	---	80 degrees Fahrenheit *[15]*	---	---	1/Month[(2)] *[01/30]*	Grab *[GR]*

The italicized numeric values bracketed in the table and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports (DMRs). **FOOTNOTES: See Pages 8-9 of this permit for applicable footnotes.**

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

3. The permittee is authorized to operate a surface waste water treatment and disposal system. The **LAGOON EFFLUENT DISCHARGE TO THE SPRAY IRRIGATION AREA (OUTFALL #006A)** shall be limited and monitored as specified below [(1)]:

Effluent Characteristic	Discharge Limitations	Minimum Monitoring Requirements	
	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Biochemical Oxygen Demand *[00310]*	Report, mg/L *[19]*	1/Month[(3)] *[01/30]*	Grab *[GR]*
Total Suspended Solids *[00530]*	Report, mg/L *[19]*	1/Month[(3)] *[01/30]*	Grab *[GR]*
Nitrate-Nitrogen *[00620]*	Report, mg/L *[19]*	1/Month[(3)] *[01/30]*	Grab *[GR]*
Total Kjeldahl-Nitrogen *[00625]*	Report, mg/L *[19]*	1/Month[(3)] *[01/30]*	Grab *[GR]*
Chemical Oxygen Demand *[81017]*	Report, mg/L *[19]*	1/Month[(3)] *[01/30]*	Grab *[GR]*
Specific Conductance *[00095]*	Report, umhos/cm *[11]*	1/Month[(3)] *[01/30]*	Grab *[GR]*
pH (Standard Units) *[00400]*	Report S.U. *[12]*	1/Month[(3)] *[01/30]*	Grab *[GR]*
Pesticides[(4)]	Report ug/L *[28]*	1/Month[(3)] *[01/30]*	Grab *[GR]*

4. The permittee is authorized to apply waste water to the land via a spray irrigation system during the time period of **April 15th through November 15th of each calendar year**. The **SPRAY-IRRIGATION FIELD**, **SF-1** shall be limited and monitored as specified below[(1)]:

Effluent Characteristic	Discharge Limitations		Minimum Monitoring Requirements	
	Monthly Total as specified	Weekly Average as specified	Measurement Frequency as specified	Sample Type as specified
Application Rate (Weekly) [(5)] *[51125]*	---	40,700 gal/acre/week (1.5 in/acre/week) *[8B]*	1/Week *[01/07]*	Grab *[GR]*
Flow – Total Gallons *[82220]*	Report (Gallons) *[80]*	---	1/Month *[01/30]*	Grab *[GR]*

The italicized numeric values bracketed in the table and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports (DMRs). **FOOTNOTES: See Pages 8-9 of this permit for applicable footnotes**.

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

5. During the period beginning the effective date of the license and lasting through the license expiration date, **GROUND WATER MONITORING WELLS; MW006B** (the westerly most monitoring well located in spray area C-8), **MW006C** (the easterly most well located in spray area D-12), **MW006D** (located southerly of the lagoon), **MW006E** (located along the easterly embankment of the lagoon), **MW006F** (located along the northerly side of the lagoon) shall be monitored as specified below.

Effluent Characteristic	**Discharge Limitations**	**Minimum Monitoring Requirements**	
	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Nitrate-Nitrogen *[00620]*	10 mg/L *[19]*	2/Year[7] *[02/YR]*	Grab *[GR]*
Total Kjeldahl Nitrogen *[00625]*	Report, mg/L *[19]*	2/Year[7] *[02/YR]*	Grab *[GR]*
Depth to Water Level Below Land Surface *[72019]*	Report (feet)[6] *[27]*	3/Year[6] *[03/YR]*	Measure *[MS]*
Specific Conductance *[00095]*	Report (umhos/cm) *[11]*	2/Year[7] *[02/YR]*	Grab *[GR]*
Temperature *[00011]*	Report (Farhenheit) *[15]*	2/Year[7] *[02/YR]*	Grab *[GR]*
pH (Standard Units) *[0040]}*	Report (S.U.) *[12]*	2/Year[7] *[02/YR]*	Grab *[GR]*
Total Suspended Solids *[00530}*	Report (mg/L) *[19]*	2/Year[7] *[02/YR]*	Grab *[GR]*
Chemical Oxygen Demand *[81017]*	Report (mg/L) *[19]*	2/Year[7] *[02/YR]*	Grab *[GR]*
Pesticides[4]:	Report ug/L *[28]*	1/Month[3] *[01/30]*	Grab *[GR]*

FOOTNOTES: **See Pages 8-9 of this permit for applicable footnotes.**

SPECIAL CONDITIONS
A. 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 as to be representative of end-of-pipe effluent characteristics. 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).

   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. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the actual detection limit achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL is not acceptable and will be rejected by the Department. For mass, if the analytical result is reported as <Y or if a detectable result is less than a RL, report a <X lbs/day, where X is the parameter specific limitation established in the permit. Compliance with this permit will be evaluated based on whether or not a compound is detected at or above the Department's RL.

2. **Non-Contact Cooling Water Monitoring** – Effluent temperature monitoring requirements for non-contact cooling water discharges via Outfall #003 are required only during the months of **June, July, August and September** of each year.

3. **Lagoon Sampling Location** – Lagoon effluent shall be sampled (at a point in the lagoon effluent pump outlet line where a sampling port has been installed) and shall be representative of what is actually sprayed on the fields. Any change in sampling location must be approved by the Department in writing. Lagoon effluent sampling shall be conducted in the months of **April, May, August, and October** of each calendar year in accordance with approved methods for sampling, handling and preservation. The permittee <u>is not</u> required to test for these parameters during a month where no waste water was disposed of via the spray irrigation system.

4. **Pesticide Use Notification – At least 30 days prior to commencing the spray irrigation system each year**, the permittee shall report to the Department any insecticides, fungicides, and herbicides (collectively referred to as pesticides) that have been or may be used during the calendar year on blueberries processed through the facility. Such notification shall include analytical test methods and minimum levels of detection available for each pesticide. The Department, in conjunction with the Maine Department of Agriculture's Board of Pesticide Control, or other State and or federal agency/organization with expertise in pesticides will evaluate the information submitted and determine which pesticide(s) the permittee shall sample for and at what frequency of sampling is appropriate.

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

FOOTNOTES:

Sampling for pesticides in the storage tank/lagoon effluent and ground water shall continue for as long as the parameter is detected at or above a State or federal: (1) Maximum Exposure Guideline (MEG); (2) Action Level (AL); (3) Maximum Contamination Level (MCL); or (4) other scientifically-defensible critical thresholds established in literature. If a parameter is not detected in the storage tank effluent, it does not need to be sampled for in the ground water monitoring locations provided the ground water is satisfying all the critical thresholds listed above.

5. **Spray Application Rate Calculation** – A field's weekly application rate is the total gallons sprayed over the applicable period of time divided by the size of the wetted area of the spray-irrigation field or the area in acres of that portion of the field utilized. Note: 40,700 gallons is equivalent to one and a half inches per acre. The permittee shall measure the flow of waste water to the irrigation area by the use of a flow measuring device that is checked for calibration at least once per calendar year. Weekly is defined as Sunday through Saturday. For Discharge Monitoring Report (DMR) reporting purposes, the permittee shall report the highest weekly application rate for the month in the applicable box on the form. Compliance with weekly reporting requirements must be reported for the month in which the calendar week ends**.**

6. **Depth to Water Level Monitoring** – Measured to the nearest one-tenth ($1/10^{th}$) of a foot as referenced from the surface of the ground at the base of the monitoring well and shall be conducted in the months **of May, August and October** of each calendar year.

7. **Ground Water Monitoring** – Ground water sampling shall be conducted the months of **May and October** of each year. Sampling, handling and preservation shall be conducted in accordance with federally approved methods. Specific conductance (calibrated to 25.0° C), temperature, and pH are considered to be "field" parameters, and are to be measured in the field via instrumentation. The permittee is required to test for these parameters whether wastewater was disposed of via the spray-irrigation system or not. Specific Conductance values greater than 275 umhos/cm, consistent trends approaching 275 umhos/cm or sudden spikes from previous levels shall be reported immediately to the Department, and may necessitate the need for additional ground-water testing requirements.

B. TREATMENT PLANT OPERATOR

The person who has the management responsibility over the treatment facility must hold a minimum of a **Grade II** certificate (or Registered Maine Professional Engineer) pursuant to Title 32 M.R.S.A. § 4171 *et seq*. and *Regulations for Wastewater Operator Certification,* 06-096 CMR 531 (effective May 8, 2006). All proposed contracts for facility operation by any person must be approved by the Department before the permittee may engage the services of the contract operator.

SPECIAL CONDITIONS

C. AUTHORIZED DISCHARGES

The permittee is authorized to discharge to discharge only: 1) in accordance with the permittee's General Application for Waste Discharge License, accepted for processing on September 8, 2009; 2) in accordance with the terms and conditions of this permit; 3) via Outfall #001B (treated process waste waters to the Narraguagus River); via Outfall #003B (non-contact cooling waters to the Narraguagus River); and 4) to the spray irrigation field (SF-1). Discharges of wastewater from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition 11, *Bypass of Waste Treatment Facilities*, of this permit.

D. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time which would impair the usages designated by the classification of the receiving waters.

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

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

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

5. The effluent shall not contain materials in concentrations or combinations which would impair the uses designated by the classification of the ground water.

6. The effluent must not lower the quality of any classified body of water (ground water is a classified body of water under Title 38, Section 465-C) below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

E. NOTIFICATION REQUIREMENTS

In accordance with Standard Condition 6, *Change of Discharge*, the permittee shall notify the Department of the following:

1. Any substantial change in the volume or character of pollutants being introduced into the treatment system. For the purposes of this section, notice regarding substantial change shall include information on:

   a. the quality and quantity of waste water introduced to the treatment system; and

   b. any anticipated impact caused by the change in the quantity or quality of the waste water to be introduced into the treatment system.

SPECIAL CONDITIONS

F. GENERAL OPERATIONAL CONSTRAINTS

1. All waste water shall receive treatment through a properly designed, operated and maintained screen and settling tank system prior to land irrigation.

2. The spray irrigation facilities shall be effectively maintained and operated at all times so that there is no unauthorized discharge to surface waters, nor any contamination of ground water which will render it unsatisfactory for usage as a public drinking water supply.

3. The surface waste water disposal system shall not cause the lowering of the quality of the ground water, as measured in the ground water monitoring wells specified by this license, below the State Primary and Secondary Drinking Water Standards specified in the Maine State Drinking Water Regulations pursuant to *Safe Drinking Water Act*, 22 M.R.S.A. § 2611. In the event that ground water monitoring results indicate lowering of the existing groundwater quality, the permittee may be required to take immediate remedial action(s), which may include but not limited to, adjustment of the irrigation schedule or application rates, a reduction of the pollutant loading, ground water remediation, or ceasing operation of the system until the groundwater attains applicable standards.

4. The Department shall be notified as soon as the permittee becomes aware of any threat to public health, unlicensed discharge of waste water, or any malfunction that threatens the proper operation of the system. Notification shall be made in accordance with the attached Standard Condition #4, *Monitoring and Reporting*, of this permit.

5. The permittee shall maintain a file on the location of all system components and relevant features. System components including collection pipes, tanks, manholes, pumps, pumping stations, spray disposal fields, and monitoring wells shall be identified and referenced by a unique identifier (alphabetical, numeric or alpha-numeric) in all logs and reports. Each component shall be mapped and field located sufficiently to allow adequate inspections and monitoring by both the permittee and the Department.

G. SPRAY IRRIGATION OPERATIONAL CONSTRAINTS

1. Waste water may not be applied to areas without sufficient vegetation or ground cover as to prevent erosion or surface water runoff within or outside the designated boundaries of the spray fields. There shall be no significant runoff within or out of the spray irrigation area due to the spray irrigation events.

2. At least 10 inches of separation from the ground surface to the ground water table shall be present prior to each spray irrigation.

SPECIAL CONDITIONS

G. SPRAY IRRIGATION OPERATIONAL CONSTRAINTS (cont'd)

3. No waste water shall be applied to the site following a rainfall accumulation exceeding 1.0 inches within the previous 24-hour period. **A rain gauge shall be located on site to monitor daily precipitation.** The permittee shall also manage application rates by taking into consideration the forecast for rain events in the 48-hour period in the future**.**

4. No waste water shall be applied where there is snow present on the surface of the ground.

5. No waste water shall be applied when there is any evidence of frost or frozen ground within the upper 10 inches of the soil profile.

H. SPRAY IRRIGATION OPERATIONAL PROCEDURES, LOGS AND REPORTS

1. No traffic or equipment shall be allowed in the spray-irrigation field except where installation occurs or where normal operations and maintenance are performed.

2. **Prior to the commencement of spray irrigation for the season**, the permittee shall notify the Department's compliance inspector that they have verified that site conditions are appropriate (frozen ground, soil moisture, etc.) for spray irrigation.

3. The permittee shall install the equivalent of one ground water level inspection well to verify that 10 inches of separation from the ground surface to the observed groundwater level is present prior to spraying. Depths to ground water shall be recorded in accordance with the format of *"Depth to Groundwater"* provided as **Attachment A** of this permit.

4. 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. Should significant malfunctions or leaks be detected, the permittee must shut down the malfunctioning portion of the spray system and make necessary repairs before resuming operation. The permittee shall cease irrigation if runoff is observed outside the designated boundaries of the spray field.

5. **The permittee shall maintain a daily log** of all spray irrigation operations which records, the date, weather and soil conditions, rainfall, areas irrigated, volume sprayed (gallons), application rates (daily and weekly), and other relevant observations/comments from daily inspections. The log shall be in accordance with the format of the *"Monthly Operations Log"* provided as **Attachment B** of this permit.

   Weekly spray application rates shall be reported in accordance with the format of the *"Spray Application Report by Week"* provided as **Attachment C** of this permit. The *Monthly Operations Log, Spray Application Report by Week, and Depth to Groundwater* for each month shall be submitted to the Department as an attachment to the monthly Discharge Monitoring Reports (DMRs). Copies will also be maintained on site for Department review and for operation and maintenance purposes.

SPECIAL CONDITIONS

I. VEGETATION MANAGEMENT

1. The permittee shall remove grasses and other vegetation such as shrubs and trees, if necessary, so as not to impair the operation of the spray irrigation system, ensure uniform distribution of waste water over the desired application area and to optimize nutrient uptake and removal.

2. The vegetative buffer zones along the perimeter of the site shall be maintained to maximize vegetation and forest canopy density in order to minimize off-site drift of spray.

J. LAGOON MAINTENANCE

1. The integrity of the lagoons shall be inspected periodically during the operating season and properly maintained at all times. There shall be no overflow through or over the banks of the lagoons. Any signs of leaks or overflow shall be repaired or corrected immediately upon discovery.

2. The permittee shall maintain the lagoon freeboard at design levels or at least two (2) feet whichever is greater. The lagoons shall be operated in such a way as to balance the disposal of waste water via spray irrigation and to ensure that design freeboard levels are maintained.

3. The lagoons shall be cleaned of solid materials as necessary to maintain the proper operating depths that will provide best practicable treatment of the wastewater. All material removed from the lagoon shall be properly disposed of in accordance with all applicable State and Federal rules and regulations.

K. INSPECTIONS AND MAINTENANCE

The permittee shall periodically inspect all system components to ensure the facility is being operated and maintained in accordance with the design of the system. Maintenance logs shall be maintained for each major system component including pumps, pump stations, storage tanks, spray apparatus, and pipes. At a minimum, the logs shall include the unique identifier [alphabetic, numeric or alpha-numeric -see Special Condition F(5) of this permit], the date of maintenance, type of maintenance performed, names of person(s) performing the maintenance, and other relevant system observations.

L. GROUND WATER MONITORING WELLS

1. All monitoring wells shall be equipped and maintained with a cap and lock to limit access and shall be maintained in a secured state at all times. The integrity of the monitoring wells shall also be verified annually.
2. The Department reserves the right to require increasing the depth and or relocating any of the ground water monitoring wells if the well is perennially dry or is determined not to be representative of ground water conditions.

SPECIAL CONDITIONS

M. OPERATIONS AND MAINTENANCE (O & M) PLAN AND SITE PLAN(S)

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

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 personnel upon request.

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

N. MONITORING AND REPORTING

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

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

Alternatively, if you are 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

O. 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, for surface water discharges, 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.

P. SEVERABILITY

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

ATTACHMENT A

Depth to Groundwater (Tenths of Feet) **Attachment A** **(Month _____, Year _____)**

WDL#_____

Field Name/#	**Monitoring Location**	**Depth to Groundwater (Measured From Ground Surface in Tenths of Feet)**					**Number of Exceptions**	**Monthly Average Depth**
		Week 1	**Week 2**	**Week 3**	**Week 4**	**Week 5**		
					Total Number of Exceptions			

Note: The Waste Discharge License requires that a depth of 10 inches from the ground surface to the groundwater table must be present prior to spraying. The licensee shall report the minimum depth to groundwater in the table above.

Signature of Responsible Official: _____, Date _____

ATTACHMENT B

Monthly Operations Log **Attachment B** **(Month/Year) _____)**

WDL #_____ Fields #_____Weekly Application Rate: _____ gallons/acre (_____ inches)

	A	B	C	D	E	F	G	H	I	J	K
Day	DATE	PRECIP Inches	TEMP	WEATHER	WIND-Direction Speed	Soil Moisture	Quantity-Total Gallons Pumped	Name of Field(s) Used	Acres Sprayed (Sum of Col H x Area of Each Field)	Gallons/Acre (inches) (Col G divided by I)	Total Inches
	1										
	2										
	3										
	4										
	5										
	6										
	7										
	8										
	9										
	10										
	11										
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	22										
	23										
	24										
	25										
	26										
	27										
	28										
	29										
	30										
	31										
Monthly Total =											

ATTACHMENT C

Spray Application Report by Week **Attachment C** **Facility Name_____;**

WDL #_____ Month _____, Year _____ Weekly Application Rate _____ gallons/acre _____ inches

Field Name/#	Effective Spray Area (Acres)	Weekly Limit (Gallons/Acre)	Actual Spray Application Rates (Gallons per Acre)					Number of Exceptions to Weekly Limit	Monthly Average
			Week 1	Week 2	Week 3	Week 4	Week 5		

Note: 1 acre-inch is equivalent to 27,150 gallons of liquid
27,150 gallons per acre is equivalent to 1.0 inch

Total Number of Exceptions

A spray-field's weekly application rate if the total gallons sprayed (Sunday through Saturday) divided by the size of the spray-field in acres or the size in acres of that portion of the spray field utilized.

Signature of Responsible Official: _____, Date _____

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND
MAINE WASTE DISCHARGE LICENSE

FACT SHEET

DATE: **DECEMBER 28, 2009**

MEPDES PERMIT: **#ME0001953**
WASTE DISCHARGE LICENSE: **#W000645-5P-G-R**

NAME AND MAILING ADDRESS OF APPLICANT:

JASPER WYMAN & SON, INC.
P.O. BOX 100
MILBRIDGE, MAINE 04658

COUNTY: **WASHINGTON COUNTY**

NAME AND ADDRESS OF FACILITY:

JASPER WYMAN & SON, INC.
ROUTE 193
CHERRYFIELD, ME

RECEIVING WATER/CLASSIFICATION: **NARRAGUAGUS RIVER / CLASS B**
GROUND WATER / CLASS GW-A

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **ELLEN ROSSI**
(207) 546-3381
elrossi@wymans.com

1. APPLICATION SUMMARY:

a. Application: Jasper Wyman & Son, Inc. (Wyman) has applied to the Maine Department of Environmental Protection (Department) for renewal of Waste Discharge License (WDL) #W000645-5P-E-R, which was issued on October 21, 2004 and expired on October 21, 2009. The 10/21/04 WDL authorized the discharge of 1) up to a daily maximum of 0.10 million gallons per day (MGD) of blueberry canning and processing waste waters to the Narraguagus River in Cherryfield via Outfall #001B; 2) a daily maximum of up to 0.270 MGD of non-contact cooling waters to the Narraguagus River in Cherryfield via Outfall #003B; and 3) the operation of a 10-acre surface waste water (spray irrigation) system in Milbridge to dispose of an average of 40,700 gallons of blueberry processing waste waters per acre per week during the period of April 15th – November 15th of each year via spray irrigation field SF-1.

2. REGULATORY SUMMARY

On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine, excluding areas of special interest to Maine Indian Tribes. From that point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) permit program, and permit #ME0001953 will be utilized as the primary reference number for the Wyman facility. The previous Department Order was not issued as a combination MEPDES permit / WDL.

3. PERMIT SUMMARY

a. Terms and Conditions: **This permitting action is significantly different from the 10/21/04 licensing action in that it is:**

Process Wastewater via Outfall #001B

1. Establishing a requirement for a Grade II operator;

2. Revising the monthly average and daily maximum mass limits and the daily maximum concentration limit, and establishing a monthly average concentration limit for biochemical oxygen demand (BOD_5);

3. Revising the daily maximum mass limit, and establishing a monthly average concentration limit for total suspended solids (TSS);

4. Eliminating the annual average mass limits for BOD_5 and TSS;

5. Eliminating the daily maximum concentration limit for settleable solids;

6. Eliminating the daily maximum concentration limit for total residual chlorine (TRC);

7. Revising the pH range limitation;

Non-Contact Cooling Water via Outfall #003B

8. Eliminating the daily maximum concentration limit for TRC;

9. Eliminating the pH range limit;

10. Revising the minimum monitoring frequency requirement to the months of June through September only;

Lagoon Effluent via Outfall #006A

11. Establishing (reinstating) a daily maximum monitoring and reporting requirement for BOD_5;

12. Revising the monitoring period to April, May, August and October; and

Spray Irrigation Field SF-1

13. Eliminating the chemical oxygen demand and total nitrogen monitoring and reporting requirements.

3. PERMIT SUMMARY (cont'd)

b. History: This section provides a summary of significant licensing/permitting actions and milestones that have been completed for Wyman's Cherryfield facility.

October 21, 2004– The Department issued WDL #W000645-5P-E-R to Wyman for a five-year term. The 10/21/04 license superseded previous WDL #W000645-WA-D-R, which was issued on September 7, 1993 for a five-year term, and WDL #W000645-42-A-N, which was issued on March 17, 1987 for a five-year term (earliest Order on file with the Department).

September 8, 2009 – Wyman submitted a timely and complete General Application to the Department for renewal of the 10/21/04 WDL. The application was accepted for processing on September 8, 2009, and was assigned WDL #W000645-5P-G-R / and MEPDES permit #ME0001953.

c. Source Description: The Jasper Wyman & Son, Inc. facility processes fresh blueberries between July and October, operates a canning line and rerun line year-round, and also operates a frozen storage warehouse year-round. Wastewater is generated in three operational modes identified as fresh blueberry processing mode, frozen blueberry processing mode, and canning blueberry processing mode.

Fresh blueberries are delivered from the fields to the fresh processing line and are brought to cold storage upon completion. The blueberries are cleaned by the principal of differential buoyancy in a processing system that uses sugar-laden water as a transport medium (where the lighter berries float) and then the berries are frozen for future uses. Waste water is generated from the float-tank effluent, non-contact cooling water, used in this line to feed the individual quick frozen tunnels which freeze the blueberries for storage, and wash-down water used for sanitation and cleaning. At the end of a production day, the waste water is drained from the tank and discharged through a screen for solids reduction and then pumped to a storage tank with a capacity of 12,000 gallons. Between mid-May and October, the combined flow (100,250 gpd) of cooling water, process waste water and wash-down water is discharged to the storage lagoon for spray irrigation.

Frozen (rerun) blueberries are delivered from cold storage to the rerun line for processing and are returned to cold storage upon completion. Waste water (16,500 gpd) is generated from non-contact cooling water and wash-down water. Waste water is discharged to the lagoon between mid-May and October.

Canning blueberry processing involves delivery of frozen blueberries from cold storage and the canned product is transported to dry storage for shipping. Wastewater is generated from non-contact cooling water, and wash-down water.

d. Wastewater Treatment: All wastewater from the fresh and frozen processing areas is discharged to the wastewater treatment system. Wastewater is funneled through the process wastewater basin and is treated by screening and settling including solids removal in riffle and floatation tanks, settling in a discharge basin, and further solids separation in a rotoscreen with a 1/8" mesh, then to a storage lagoon for spray irrigation.

3. PERMIT SUMMARY (cont'd)

Wyman conveys as much wastewater (processing waste waters and non-contact cooling waters) to the storage lagoon as is practical and discharges wastewater that exceeds the lagoon storage capacity to the Narraguagus River.

A map showing the location of the facility, receiving water and outfall is included as Attachment A of this fact sheet.

4. CONDITIONS OF PERMIT

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.

5. RECEIVING WATER QUALITY STANDARDS

Classification of ground water, 38 M.R.S.A. § 470 states *"All ground water shall be classified as not less than Class GW-A, except as otherwise provided in this section." Standards of classification of ground water*, 38 M.R.S.A. § 465-C(1) contains the standards for the classification of ground waters. *"Class GW-A shall be the highest classification and shall be of such quality that it can be used for public drinking water supplies. These waters shall be free of radioactive matter or any matter that imparts color, turbidity, taste or odor which would impair usages of these waters, other than that occurring from natural phenomena."*

Classification of major river basins, 38 M.R.S.A. § 467(6-A)(2) classifies the Narraguagus River from the confluence with the West Branch of the Narraguagus River in Cherryfield to tidewater as a Class B waterbody. *Standards for classification of fresh surface waters*, 38 M.R.S.A. § 465(3) describes the standards for Class B waters.

6. RECEIVING WATER CONDITIONS

The State of Maine 2008 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 the Narraguagus River and its tributaries as *"Category 2: Rivers and Streams Attaining Some Designated Uses – Insufficient Information for Other Uses."*

The 2008 Report also lists Maine's fresh waters as *"Category 4-A: Rivers and Streams with Impaired Use, TMDL Completed."* All freshwaters formerly listed in Category 5-C are moved to Category 4-A (TMDL Completed) due to USEPA approval of a Regional Mercury TMDL. Impairment in this context refers to a statewide fish consumption advisory due to elevated

6. RECEIVING WATER CONDITIONS (cont'd)

levels of mercury in some fish tissues. The Report states, *"Impairment caused by atmospheric deposition of mercury; a regional scale TMDL has been approved. Maine has a fish consumption advisory for fish taken from all freshwaters due to mercury. Many waters, and many fish from any given water, do not exceed the action level for mercury. However, because it is impossible for someone consuming a fish to know whether the mercury level exceeds the action level, the Maine Department of Human Services decided to establish a statewide advisory for all freshwater fish that recommends limits on consumption. Maine has already instituted statewide programs for removal and reduction of mercury sources."* Pursuant to 38 M.R.S.A. § 420(1-B)(B), *"a facility is not in violation of the ambient criteria for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to section 413 subsection 11."* The Department is making a best professional judgment determination that the wastewaters have not come in contact with compounds or materials containing mercury and is therefore exempt from the establishment of interim mercury limits pursuant to 06-096 CMR 519(1)(A)(2).

7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

a. Groundwater Monitoring Wells: There are five monitoring wells associated with the spray irrigation area and lagoon. The five monitoring wells are:

Monitoring Wells	Location
MW006B	Westernmost well located in spray area associated with spray zone C-8.
MW006C	Easternmost well located in spray area associated with spray zone D-12.
MW006D	Southernmost well located on southerly side of lagoon.
MW006E	Located along the eastern berm of the lagoon.
MW006F	Located along the northern berm of the lagoon.

This permitting action is carrying forward the daily maximum monitoring and reporting requirements for nitrate-nitrogen, total Kjeldahl nitrogen, depth to water level below surface, specific conductance, temperature, pH, total suspended solids, chemical oxygen demand and pesticides for the five ground water monitoring wells identified above. Monitoring for all parameters except pesticides shall be conducted at a minimum frequency of twice per year during the months of May and October. Additional monitoring for depth to water level below surface shall be conducted during the month of August. These monitoring requirements are consistent with those established for other spray irrigation facilities. Review of ground water monitoring well data for calendar years 2006 through 2009 does not indicate significant increases in any of the pollutants of concern that have been monitored.

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

Spray Irrigation Monitoring: Slow rate land irrigation treatment is an environmentally sound and appropriate technology for best practicable treatment and disposal of waste water. The theory behind surface waste water disposal systems is to utilize the top 10-12 inches of organic matter and in-situ soils to attenuate the pollutant loadings in the applied waste waters. The soils and vegetation within the spray field area will provide adequate filtration and absorption to preserve the integrity of the soil, and both surface and ground water quality in the area. **This section discusses monitoring requirements for lagoon effluent that will disposed of through spray irrigation**.

b. Biochemical Oxygen Demand (BOD_5) & Total Suspended Solids (TSS): The previous licensing action established a daily maximum monitoring and reporting requirement for BOD_5, which is a measure of the rate at which organisms use the oxygen in waste water while stabilizing decomposable organic matter under aerobic conditions and can indicate the organic strength of wastes in water. The monitoring requirement was established at a minimum monitoring frequency requirement of once per month (during the months of April, May, August and September) for calendar year 2005 only. The Department has instituted routine monitoring for BOD_5 in licenses for the disposal of blueberry processing wastewater through spray irrigation. This permitting action is re-instituting (establishing) a daily maximum concentration monitoring and reporting requirement for BOD_5 to assist in the characterization of wastewater disposed of through spray irrigation. This permitting action is revising the minimum monitoring frequency requirement from once per month during the months of April, May, August and *September* of each year to once per month during the months of April, May, August and *October* of each year for consistency with the monitoring requirements for other blueberry processing facilities. Based on information provided in Wyman's 9/8/2009 application, the lagoon effluent BOD_5 results for 2005 range from 66 mg/L to 590 mg/L with an arithmetic mean of 204 mg/L (n = 6).

The previous licensing action established a daily maximum monitoring and reporting requirement for TSS, which is a measure of the effectiveness of the lagoon treatment processes and the condition of the waste water being applied to the spray irrigation field, and a minimum monitoring frequency requirement of once per month during the months of April, May, August and *September* of each year. Based on a review of lagoon effluent TSS data as reported on the DMRs for the period of April 2006 through May 2009, the value has ranged from 24 mg/L to 110 mg/L with an arithmetic mean of 49 mg/L. This permitting action is carrying forward a daily maximum concentration monitoring and reporting requirement for TSS to assist in the characterization of wastewater disposed of through spray irrigation. This permitting action is revising the minimum monitoring frequency requirement from once per month during the months of April, May, August and *September* of each year to once per month during the months of April, May, August and *October* of each year for consistency with the monitoring requirements for other blueberry processing facilities.

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

c. Nitrate-Nitrogen and Total Kjeldahl Nitrogen (TKN): The previous licensing action established daily maximum monitoring and reporting requirements for nitrate-nitrogen and TKN during the months of April, May, August and *September* of each year. Nitrogen compounds can indicate human health concerns if elevated in a drinking water supply. Therefore, this permitting action is carrying forward a ground water monitoring well limit of 10 mg/L for nitrate-nitrogen, which is based on state and federal drinking water standards. Based on a review of lagoon effluent data as reported on the DMRs for the period of April 2006 through May 2009, the nitrate-nitrogen values have all been less than 0.10 mg/L (n = 9) and TKN vales have ranged from 0.79 mg/L to 3.5 mg/L with an arithmetic mean of 4.1 mg/L and no increasing trends. This permitting action is carrying forward daily maximum concentration monitoring and reporting requirements for nitrate-nitrogen and TKN to assist in the characterization of wastewater disposed of through spray irrigation. This permitting action is revising the minimum monitoring frequency requirement from once per month during the months of April, May, August and *September* of each year to once per month during the months of April, May, August and *October* of each year for consistency with the monitoring requirements for other blueberry processing facilities.

The previous licensing action established an annual total nitrogen spray field monitoring requirement. The Department has reconsidered this monitoring requirement and is making a best professional judgment determination that lagoon effluent and ground water monitoring well sampling efforts are sufficient to assess potential nitrogen impacts caused by the spray irrigation activities.

d. Chemical Oxygen Demand (COD): The previous licensing action established a daily maximum monitoring and reporting requirement for COD during the months of April, May, August and *September* of each year. COD is a measure of the oxygen consuming capacity of organic matter present in wastewater. Based on a review of lagoon COD effluent data as reported on the DMRs for the period of April 2006 through May 2009, the values have ranged from 330 mg/L to 2,700 mg/L with an arithmetic mean of 1,390 mg/L (n=9) and no increasing trends. This permitting action is carrying forward the daily maximum concentration monitoring and reporting requirement for COD to assist in the characterization of wastewater disposed of through spray irrigation. This permitting action is revising the minimum monitoring frequency requirement from once per month during the months of April, May, August and *September* of each year to once per month during the months of April, May, August and *October* of each year for consistency with the monitoring requirements for other blueberry processing facilities.

The previous licensing action established a weekly COD spray field monitoring requirement. The Department has reconsidered this monitoring requirement and is making a best professional judgment determination that lagoon effluent and ground water monitoring well sampling efforts are sufficient to assess potential nitrogen impacts caused by the spray irrigation activities.

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

e. Specific Conductance: The previous licensing action established a daily maximum monitoring and reporting requirement for specific conductance during the months of April, May, August and *September* of each year. Specific conductance is considered a surveillance level monitoring parameter that is used as an early-warning indicator of potential ground water or surface water contamination. Based on a review of lagoon specific conductance effluent data as reported on the DMRs for the period of April 2006 through May 2009, the values have ranged from 347 umhos/cm to 566 umhos/cm with an arithmetic mean of 404 umhos/cm (n=9) and no increasing trends. This permitting action is carrying forward the daily maximum concentration monitoring and reporting requirement for specific conductance to assist in the characterization of wastewater disposed of through spray irrigation. This permitting action is revising the minimum monitoring frequency requirement from once per month during the months of April, May, August and *September* of each year to once per month during the months of April, May, August and *October* of each year for consistency with the monitoring requirements for other blueberry processing facilities.

f. pH: The previous licensing action established a daily maximum monitoring and reporting requirement for pH during the months of April, May, August and *September* of each year. pH is considered a surveillance level monitoring parameter that is used as an early-warning indicator of potential ground water or surface water contamination. Based on a review of lagoon pH effluent data as reported on the DMRs for the period of April 2006 through May 2009, the values have ranged from 4.3 standard units (SU) to 7.2 SU (n=9) and no trends. This permitting action is carrying forward the daily maximum monitoring and reporting requirement for pH to assist in the characterization of wastewater disposed of through spray irrigation. This permitting action is revising the minimum monitoring frequency requirement from once per month during the months of April, May, August and *September* of each year to once per month during the months of April, May, August and *October* of each year for consistency with the monitoring requirements for other blueberry processing facilities.

g. Pesticides: Insecticides, fungicides, and herbicides are collectively referred to as pesticides in this permitting action. Farmers may utilize insecticides such as (phosmet), fungicides (chlorothalonil, propiconazole), and other pesticides on the crop at various times during berry producing years. Based on varying persistence of these and other pesticides in water and soil, in consideration of pre-harvest time of application requirements, and based on the concentration of these chemicals in facility waste water, the Maine Board of Pesticide Control has recommended that pesticides be monitored in storage tank/lagoon effluent, groundwater monitoring locations, and spray irrigation site soils. The previous licensing action established a daily maximum monitoring and reporting requirement for specific conductance during the months of April, May, August and *September* of each year.

The previous licensing action established, and this permitting action is carrying forward, a requirement for the permittee to report to the Department (prior to the commencement of spray irrigation each year) any pesticides that have been or may be used during the calendar year on blueberries processed through the facility. The Department, in conjunction with the Maine Department of Agriculture's Board of Pesticide Control, or other State and or federal

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

agency/organization with expertise in pesticides will evaluate the information submitted and determine which pesticide(s) the permittee shall sample for and at what frequency of sampling is appropriate.

Sampling for pesticides in the storage tank/lagoon effluent and ground water is required for as long as the parameter is detected at or above a State or federal: (1) Maximum Exposure Guideline (MEG); (2) Action Level (AL); (3) Maximum Contamination Level (MCL); or (4) other scientifically-defensible critical thresholds established in literature.

h. Spray Application Rate: The previous licensing action established, and this permitting action is carrying forward, a weekly average spray irrigation rate of 40,700 gallons per acre (1.5 inches per week). The weekly limit is based on the characteristics of in-situ soils. The maximum limit (1.5 inch per week) is being established as a margin of safety against hydraulically overloading a spray area on any one given day.

The previous licensing action established, and this permitting action is carrying forward, a monthly total flow reporting requirement for the quantity (gallons) of wastewater applied to the spray irrigation field.

Narraguagus River Discharges: The previous licensing action authorized the discharge of treated blueberry processing wastewater and non-contact cooling water to the Narraguagus River at Cherryfield. Wyman conveys as much of its wastewater and non-contact cooling waters to the storage lagoon as possible, but discharges these waste waters to the river to avoid exceeding the storage capacity of the lagoon. **This section discusses monitoring requirements for process wastewater (Outfall #001B) and non-contact cooling water (Outfall #003B) discharges to the Narraguagus River.**

i. Flow: The previous licensing action established a daily maximum discharge flow limitation of 0.10 million gallons per day (MGD) for process waste waters via Outfall #001B. Based on a review of effluent data as reported on the DMRs for the period of January 2006 through May 2009, process wastewater flows have ranged from 0.008 MGD to 0.033 MGD with an arithmetic mean of 0.015 MGD (#DMRs = 22). This permitting action is carrying forward the daily maximum discharge flow limit of 0.10 MGD and is revising the minimum monitoring frequency requirement to daily when discharging.

The previous licensing action established a daily maximum discharge flow limitation of 0.270 million gallons per day (MGD) for non-contact cooling waters via Outfall #003B. Based on a review of effluent data as reported on the DMRs for the period of April 2006 through May 2009, process wastewater flows have ranged from 0.0048 MGD to 0.005 MGD with an arithmetic mean of 0.0049 MGD (#DMRs = 7). This permitting action is carrying forward the daily maximum discharge flow limit of 0.270MGD and is carrying forward the minimum monitoring frequency requirement of once per month.

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

j. Biochemical Oxygen Demand (BOD_5): The previous licensing action established a daily maximum concentration limit of 60 mg/L, a daily maximum mass limit of 50 lbs./day (back-calculated from the concentration limit and discharge flow limit of 0.10 MGD), a monthly average mass limit of 25 lbs./day and an annual average mass limit of 24 lbs./day for BOD_5. The fact sheet associated with the previous license states that the daily maximum concentration limit of 60 mg/L is based on "past demonstrated performance of the treatment system," but does not specify the origin of the monthly average mass or annual average mass limits. The administrative record suggests that certain BOD_5 limits, including the annual average, may have been derived in consideration of the effluent guideline limitations promulgated at 40 CFR Part 407 Subpart F, *Canned and Preserved Fruits Subcategory*. The applicability of this subpart does not include discharges from blueberry processing facilities.

A summary of the effluent BOD_5 data for Outfall #001B as reported on the DMRs submitted to the Department for the period January 2006 through May 2009 is as follows:

BOD_5	**Minimum**	**Maximum**	**Arithmetic Mean**	**# DMRs**
Monthly Average	0.2 lbs./day	26 lbs./day	7.5 lbs./day	22
Daily Maximum	0.2 lbs./day	60.5 lbs./day	13.2 lbs./day	22
	5.7 mg/L	260 mg/L	102 mg/L	22

Based on these data, only one daily maximum mass test result (60.5 lbs./day from January 2008) and one monthly average mass test result (26.0 lbs./day from January 2008) exceeded the corresponding numeric mass limits. However, 13 of the 22 test results summarized above for the daily maximum concentration value exceed the numeric limit.

Based on a calendar year 2005 effluent evaluation study prepared by Wyman's consultant, Wyman has proposed to modify the limits for BOD_5 as follows:

Daily maximum mass: 215 lbs./day Daily maximum concentration: 260 mg/L
Monthly average mass: 130 lbs./day Annual average: 90 lbs./day

The Department concludes that the proposed limits are significantly higher than the historical performance data summarized in the table above and are not justifiable in the context of best practicable treatment. Therefore, the Department has performed a statistical evaluation of calendar years 2006-2009 effluent data to determine appropriate performance-based effluent thresholds to ensure that the wastewater receives best practicable treatment. Based on the 95th and 99th percentiles[1] for the data set, effluent limit thresholds were determined to be as follows:

Monthly average:	19 lbs./day 46 mg/L	Daily maximum:	36 lbs./day 200 mg/L

[1] 95th percentile = (Std. Dev.)(1.960) 99th percentile = (Std. Dev.)(2.576)

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

Based on available information, the Department is making a best professional judgment determination that the revised BOD_5 limits will not violate the State's antidegradation policy, *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(F). The Department is making a best professional judgment that an annual average mass limitation is not necessary to demonstrate BPT or to ensure that the water quality standards ascribed to Class B waters are met, and is therefore eliminating the previously established limit.

This permitting action is revising the minimum monitoring frequency requirement for BOD_5 for Outfall #001B to twice per month during any month in which a discharge of process wastewater from Outfall #001B occurs.

k. Total Suspended Solids (TSS): The previous licensing action established a daily maximum concentration limit of 80 mg/L, a daily maximum mass limit of 65 lbs./day (back-calculated from the concentration limit and discharge flow limit of 0.10 MGD), a monthly average mass limit of 45 lbs./day and an annual average mass limit of 30 lbs./day for TSS. The basis for these limits is identical to that described above for BOD_5.

A summary of the effluent TSS data for Outfall #001B as reported on the DMRs submitted to the Department for the period January 2006 through May 2009 is as follows:

TSS	Minimum	Maximum	Arithmetic Mean	# DMRs
Monthly Average	0.16 lbs./day	3.1 lbs./day	1.4 lbs./day	22
Daily Maximum	0.16 lbs./day	7 lbs./day	2.3 lbs./day	22
	4 mg/L	70 mg/L	19.2 mg/L	22

The Department is carrying forward the daily maximum concentration limit of 80 mg/L and the monthly average mass limit of 45 lbs./day based on best professional judgment of best practicable treatment. This permitting action is revising the daily maximum mass limit to 66 lbs./day[2] based on a reduction in the discharge flow limit, and is establishing a monthly average concentration limit of 54 mg/L[3]. The Department is making a best professional judgment that an annual average mass limitation is not necessary to demonstrate BPT or to ensure that the water quality standards ascribed to Class B waters are met, and is therefore eliminating the previously established limit.

This permitting action is revising the minimum monitoring frequency requirement for TSS for Outfall #001B to twice per month during any month in which a discharge of process wastewater from Outfall #001B occurs.

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[2] (80 mg/L)(8.34 lbs./gal)(0.10 MGD) = 66 lbs./day

[3] (45 lbs./day)/[(8.34 lbs./gal)(0.10 MGD)] = 54 mg/L

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

l. Settleable Solids: The previous licensing action established a daily maximum concentration limit of 0.5 ml/L for settleable solids. The basis for the limit was not documented in the previous license. Of 21 settleable solids test results submitted by Wyman on DMRs for the period of January 2006 through May 2009, 20 are 0.1 ml/L and one result is 0.2 ml/L. The Department is making a best professional judgment determination in this permitting action that settleable solids do not constitute a significant fraction of the effluent and that monitoring for TSS is sufficient to evaluate the application of best practicable treatment of solids materials to this discharge. Therefore, this permitting action is eliminating the daily maximum settleable solids limit.

m. Total Residual Chlorine (TRC): The previous licensing action established daily maximum concentration limits of 0.1 mg/L for TRC for both Outfall #001B (process water) and Outfall #003B (non-contact cooling waters). The basis for the limits was not documented in the previous license. The permittee specified in its 9/8/09 application that sodium hypochlorite is utilized for sanitation or disinfection during clean-up operations. Therefore, residual chlorine may be present in the final effluent.

Limitations on TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. Department licensing/permitting actions impose the more stringent of either the water quality-based or technology-based based limits.

The Department has determined based on USGS river gage data for the Narraguagus River at Cherryfield that applicable acute (modified) and chronic dilution factors associated with the discharge of 0.10 MGD of process water are 75:1 and 296:1, respectively. With modified acute (¼ 1Q10) and chronic (7Q10) dilution factors associated with the discharge, water quality-based concentration thresholds the discharge may be calculated as follows:

			Calculated	
Acute (A) Criterion	Chronic (C) Criterion	Mod. A & C Dilution Factors	Acute Threshold	Chronic Threshold
0.019 mg/L	0.011 mg/L	75:1 (Mod. A) 296:1 (C)	1.4 mg/L	3.3 mg/L

The calculated water quality-based threshold of 1.4 mg/L is an order of magnitude higher than the highest TRC test result on file with the Department for Outfall #001B (0.1 mg/L during January 2006 – May 2009). The Department is making a best professional judgment determination that the permittee has satisfactorily demonstrated that the effluent discharged via Outfall #001B does not contain toxic levels of chlorine and that limits and monitoring requirements for this outfall point should be eliminated. Wyman has also confirmed that chlorine-based compounds are not added to non-contact cooling waters; therefore residual chlorine is not present in this discharge. This permitting action is eliminating TRC limits for both outfall points.

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

n. pH: The previous licensing action established a daily maximum pH range limitation of 6.0 – 8.5 SU for Outfall #001B and Outfall #003B. This permitting action is revising the pH range limitation to 6.0 – 9.0 for Outfall #001B based on best professional judgment of best practicable treatment. A summary of pH data as reported on the monthly DMRs for the period of January 2006 through May 2009 (# DMRs = 22) indicates effluent pH for Outfall #001B has ranged from 6.2 SU to 7.0 SU, and for Outfall #003B has ranged from 6.6 SU to 7.7 SU (# DMRs = 7). This permitting action is revising the minimum monitoring frequency requirement to once per week during any month in which a discharge from Outfall #001B occurs. This permitting action is eliminating the pH range limitation for Outfall #003B for consistency with the monitoring requirements established for other non-contact cooling water discharges.

o. Temperature: The previous permitting action established, and this permitting action is carrying forward, a daily maximum effluent temperature limitation of 80^{o} F for Outfall #003B (non-contact cooling water) to ensure that the discharge complies with the requirements of *Regulations Relating to Temperature*, 06-096 CMR 582 (last amended February 18, 1989).

The maximum effluent temperature ($X^{o}F$) that at the full permitted flow rate of 100,000 GPD for Outfall #003B will, by itself, comply with the weekly rolling average limit of 0.5°F (when the receiving water is $\geq$66°F and <73°F) and not exceed the assimilative capacity of the Narraguagus River may be calculated as follows:

$$(100{,}000 \text{ GPD})(X^{o}F - 66^{o}F)(8.34 \text{ lbs/gal}) = 8.5 \times 10^{7} \text{ BTU/day}$$

$$\frac{8.5 \times 10^{7} \text{ BTU/day}}{(100{,}000 \text{ GPD})(8.34 \text{ lbs./gal})} = 1{,}019°F$$

$$X = 66^{o}F + 1{,}019°F$$

Maximum Effluent Temperature, $X^{o}F$, = 1,085°F

When the receiving water is >73°F, the temperature difference of 0.5°F is a daily maximum limit and the maximum allowable effluent temperature for Outfall #003B is $73^{o}F$ + 1,085°F = 1,158°F.

These calculations clearly demonstrate that the discharge of non-contact cooling waters from Wyman will not violate the requirements of 06-096 CMR 582. The daily maximum effluent temperature limit of 80°F based on best professional judgment of best practicable treatment for this discharge. This permitting action is revising the minimum monitoring frequency requirement to twice per month during the months of June, July, August and September only.

8. SYSTEM CALIBRATION

Discharge rates, application rates and uniformity of application change over time as equipment gets older and components wear, or if the system is operated differently from the assumed design. Operating below design pressure greatly reduces the coverage diameter and application uniformity (resulting in increased ponding). For these reasons, the permittee should field-calibrate equipment on a regular basis to ensure proper application and uniformity, and when operating conditions are changed from the assumed design.

9. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

Based on information to date, the Department has determined the existing water uses will be maintained and protected provided the permittee complies with the terms and conditions established herein.

10. PUBLIC COMMENTS

Public notice of this application was made in the *Bangor Daily* newspaper on or about August 4, 2009. 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 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

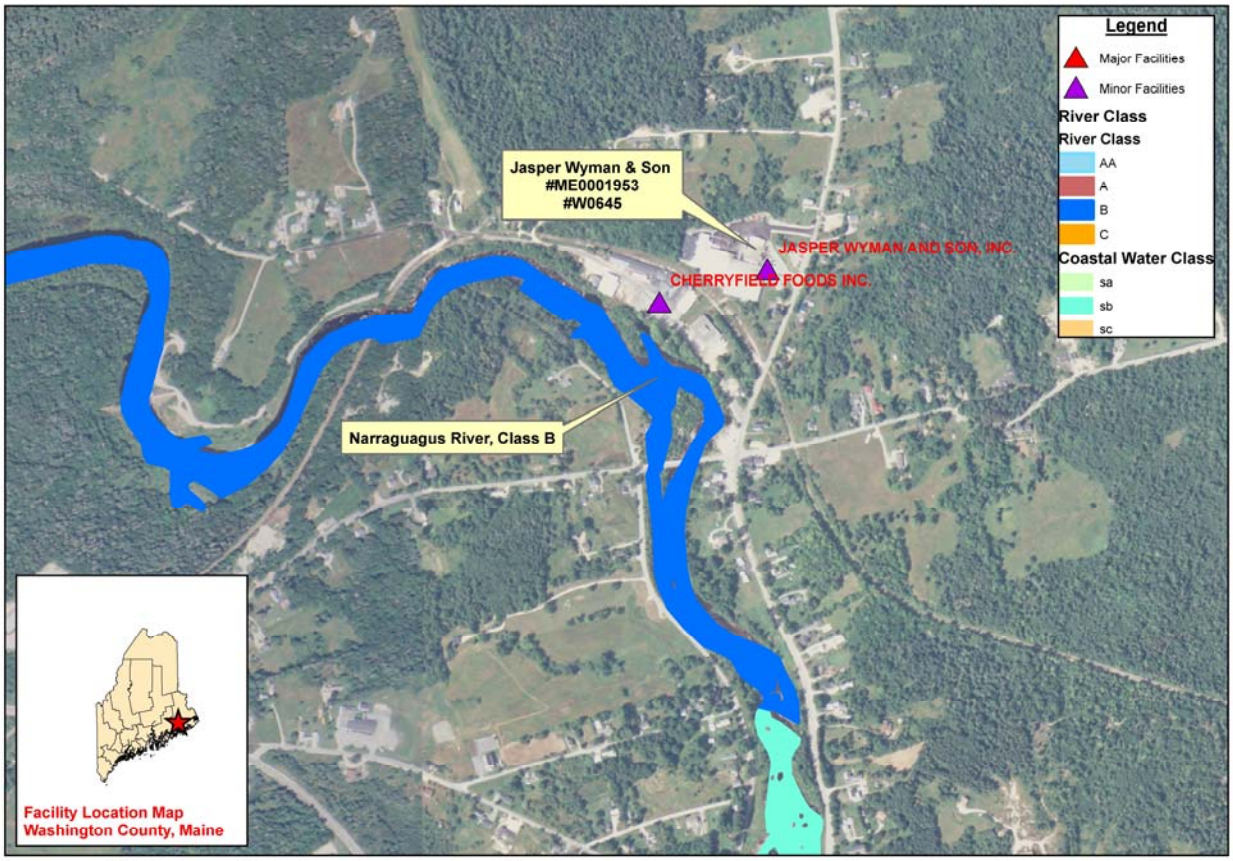
Additional information concerning this permitting action may be obtained from, and written comments sent to:

William F. Hinkel
Division of Water Quality Management
Bureau of Land & Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone: (207) 485-2281 Fax: (207) 287-3435
e-mail: bill.hinkel@maine.gov

12. RESPONSE TO COMMENTS

During the period of November 23, 2009 through December 23, 2009, the Department solicited comments on the proposed draft MEPDES permit to be issued to Wyman & Son, Inc. for the proposed discharges. The Department did not receive significant comments on the draft permit; therefore, a Response to Comments was not prepared.

ATTACHMENT A



Jasper Wyman & Son, Inc. - Cherryfield/Milbridge, Maine

Map created by Maine DEP
November 2009

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 Commissioner's Licensing Decision

Dated: May 2004 **Contact: (207) 287-2811**

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

1. *Aggrieved Status*. Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.

7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.

3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

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

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

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

ADDITIONAL INFORMATION

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

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