STATE OF MAINE

Department of Environmental Protection

JOHN ELIAS BALDACCI
GOVERNOR

David P. Littell
COMMISSIONER

May 19, 2010

Mr. Gary Picard
Mt. Springs Trout Farm
P.O. Box 32
Frenchville, Maine 04745

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0110451
Maine Waste Discharge License (WDL) Application # W-008125-6F-E-R
Final Permit, Mt. Springs Trout Farm, Frenchville

Dear Gary:

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) 215-1579 or contact me via email at Robert.D.Stratton@maine.gov.

Sincerely,

Bob Stratton DEP

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

Enc./cc: Bill Sheehan (MEDEP); Sandy Mojica (USEPA)

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

IN THE MATTER OF

MOUNTAIN SPRINGS TROUT FARM	)	MAINE POLLUTANT DISCHARGE
FRENCHVILLE, AROOSTOOK CTY, MAINE	)	ELIMINATION SYSTEM PERMIT
FISH HATCHERY	)	AND
#ME0110451	)	WASTE DISCHARGE LICENSE
#W-008125-6F-E-R **APPROVAL**	)	**RENEWAL**

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

APPLICATION SUMMARY

The applicant has applied for a renewal of Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0110451 / Maine Waste Discharge License (WDL) #W-008125-5Q-A-N, which was issued on April 25, 2005 for a five-year term. The MEPDES Permit / Maine WDL approved the discharge of a monthly average of 0.65 million gallons per day (MGD) and a daily maximum of 2.0 MGD of fish hatchery wastewater to the St. John River, Class B, from a commercial brook trout hatchery and rearing facility in Frenchville, Maine.

PERMIT SUMMARY

This permitting action is similar to the April 25, 2005 MEPDES Permit / Maine WDL and subsequent permit modifications and revisions in that it is carrying forward all previous terms and conditions with a few exceptions. This permitting action is different in that it is:

1. revising minimum monitoring frequency requirements for fish on hand, formalin, and pH; and
2. updating requirements related to proper use and record keeping of therapeutic agents and disinfecting/sanitizing agents.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated April 16, 2010, and subject to the Conditions listed below, the Department makes the following conclusions:

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

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

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

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

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

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

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

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

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

ACTION

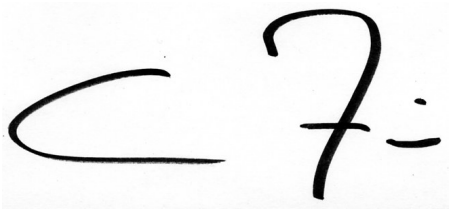
THEREFORE, the Department APPROVES the application of MOUNTAIN SPRINGS TROUT FARM to discharge fish hatchery and rearing facility wastewater consisting of a monthly average flow of 0.65 MGD and a daily maximum flow of 2.0 MGD to the St. John River, Class B, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. "*Maine Pollutant Discharge Elimination System Permit Standard Conditions applicable To All Permits,*" revised July 1, 2002, copy attached.

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

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

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.
2010.05.17 17:30:20 -04'00'

Date of initial receipt of application: February 18, 2010
Date of application acceptance: February 22, 2010

This Order prepared by Robert D. Stratton, BUREAU OF LAND & WATER QUALITY

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge **fish hatchery and rearing facility wastewater from Outfall #001A** to the St. John River. Such discharges shall be limited and monitored by the permittee as specified below. The italicized numeric values bracketed in the table above and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports (DMRs). Footnotes are found on Pages 5 and 6.

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]*	0.65 MGD *[03]*	2.0 MGD *[03]*	---	---	Daily *[01/01]*	Measured *[MS]*
BOD *[00310]*	33 lbs/day *[26]*	54 lbs/day *[26]*	6 mg/L *[19]*	10 mg/L *[19]*	1 / Month *[01/30]*	Composite[1] *[CP]*
TSS *[00530]*	33 lbs/day *[26]*	54 lbs/day *[26]*	6 mg/L *[19]*	10 mg/L *[19]*	1 / Month *[01/30]*	Composite[1] *[CP]*
Fish on Hand *[45604]*	report lbs/day *[26]*	report lbs/day *[26]*	---	---	2 / month *[02/30]*	Calculated *[CA]*
Formalin[2] **1-Hour Treatment Maximum** *[51064]*	report lbs/day *[26]*	7.6 lbs/day *[26]*	report mg/L *[19]*	1,667 mg/L *[19]*	Once per occurrence *[01/OC]*	Calculated *[CA]*
Formalin[2] **24-Hour Treatment Maximum** *[51064]*	report lbs/day *[26]*	7.6 lbs/day *[26]*	report mg/L *[19]*	1,570 mg/L *[19]*	Once per occurrence *[01/OC]*	Calculated *[CA]*
pH *[00400]*	---	---	---	6.0-8.5 S.U. *[12]*	2 / month *[02/30]*	Grab *[GR]*

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS, FOOTNOTES:

Effluent Monitoring: Effluent values shall be collected at Outfall #001A following all means of wastewater treatment prior to discharge to the receiving water. All monitoring shall be conducted so as to capture conditions representative of wastewater generating processes at the facility, such as flow-through and cleaning discharge flows, use of therapeutic and disinfecting/sanitizing agents, etc. and in consideration of settling pond detention times. Any change in sampling location must be reviewed and approved by the Department in writing. Sampling and analysis must be conducted in accordance with: a) methods approved in 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 effluent limits are gross, end of pipe limits, unless otherwise specified**.

All analytical test results shall be reported to the Department including results which are detected below the respective reporting limits (RLs) specified by the Department or as specified by other approved test methods. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the 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.

1. Composite Samples: Composite sample means a sample consisting of a minimum of four grab samples collected at two-hour intervals during the working day at the facility. Alternatively, upon approval by the Department's compliance inspector, the permittee may use 24-hour composites collected with an automatic composite sampler.

2. Formalin: Formalin monitoring shall be conducted only when in use at the facility and shall consist of a calculated effluent value. The permittee shall calculate the effluent formalin concentration through accurate determinations of the formalin mass administered in each facility use, the volume of facility wastewater to which the formalin is added during the treatment period, and the volume of large wastewater structures that receive the effluent (during 1-hour treatments or less). The effluent mass shall be calculated by multiplying the gallons of formalin used by a 9.13 lbs / gallon conversion formula based on the weight of formalin. The permittee shall provide this information and calculations to the Department in a document accompanying the monthly DMR. See Fact Sheet Section 6f for sample calculations. The two-tiered formalin limits correspond to a first tier standard one hour per day treatment typical of hatchery and rearing facility discharges and a second tier for up to a maximum of 24 hours of treatment and discharge for addressing emergency conditions at the facility. Concentration limits for both tiers are based on the Department's BPJ of AWQC that will be protective of aquatic life in the receiving water.

SPECIAL CONDITIONS

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

Note, formalin treatments and discharges pursuant to the second tier limits (1 hour to 24 hour discharges) must be conducted no more frequently than once every four days. The permittee shall provide a list of dates on which the second tier limits were utilized and the length of time of each such treatment, with each monthly DMR.

B. NARRATIVE EFFLUENT LIMITATIONS

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

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

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

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

C. UNAUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on February 22, 2010; 2) the terms and conditions of this permit; and 3) only from Outfall #001A. Discharges of wastewater from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

SPECIAL CONDITIONS

D. NOTIFICATION REQUIREMENT

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

1. Any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system.

2. For the purposes of this section, adequate notice shall include information on:

   a. The quality or quantity of waste water introduced to the wastewater collection and treatment system; and

   b. Any anticipated impact of the change in the quantity or quality of the wastewater to be discharged from the treatment system.

E. 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. If you are receiving printed-copy DMR forms by mail, the completed, returned forms must be **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 Department assigned inspector (unless otherwise specified by the Department) at the following address:

Department of Environmental Protection
Bureau of Land and Water Quality
1235 Central Drive
Skyway Park
Presque Isle, Maine 04769

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

SPECIAL CONDITIONS

F. OPERATION & MAINTENANCE (O&M) PLAN

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 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.

The O&M Plan shall establish Best Management Practices (BMP) to be followed in operating the facility, cleaning the raceways/culture tanks, screens, and other equipment and disposing of any solid waste. The purpose of the BMP portion of the plan is to identify and to describe the practices which minimize the amounts of pollutants (biological, chemical, and medicinal) discharged to surface waters. Among other items, the plan shall describe in detail efficient feed management and feeding strategies to minimize discharges of uneaten feed and waste products, how and when the accumulated solids are to be removed, dewatered, and methods of disposal. The plan shall also describe where the removed material is to be placed and the techniques used to prevent it from re-entering the surface waters from any onsite storage. The plan shall document the recipients and methods of any offsite waste disposal.

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

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

G. SETTLING AND GROW-OUT POND CLEANING

All wastewater settling structures and grow-out ponds shall be cleaned when accumulated materials occupy 20% of any basin's capacity, when material deposition in any area of the basins exceed 50% of the operational depth, or at any time that said materials in or from the basins are contributing to a violation of permit effluent limits. The permittee is responsible for reporting effluent violations pursuant to Standard Conditions D.1 (f) and (g).

SPECIAL CONDITIONS

H. DISEASE AND PATHOGEN CONTROL AND REPORTING

Mountain Springs must comply with Maine Department of Inland Fisheries and Wildlife and Maine Department of Marine Resources salmonid fish health rules (12 MRSA, §6071; 12 MRSA, §§7011, 7035, 7201, and 7202, or revised rules). The cited rules include requirements for notification to the appropriate agency within 24-hours of pathogen detection. In the event of a catastrophic pathogen occurrence, in addition to the requirements of the rules, **the permittee shall notify the Department in writing within 24-hours of detection**, with information on necessary control measures and the veterinarian involved. The permittee shall submit to the Department for review and approval, information on the proposed treatment including materials/chemicals to be used, material/chemical toxicity to aquatic life, the mass and concentrations of materials/chemicals as administered, and the concentrations to be expected in the effluent. If, upon review of information regarding a treatment pursuant to this section, the Department determines that significant adverse effects are likely to occur, it may restrict or limit such use.

I. THERAPEUTIC AGENTS

All medicated fish feeds, drugs, and other fish health therapeutants shall be registered with USEPA as appropriate, approved by the US Food and Drug Administration (USFDA), and applied according to USFDA accepted guidelines and manufacturer's label instructions. Records of all such materials used are to be maintained at the facility for a period of five years. This permitting action does not authorize routine off-label or extra-label drug use. Such uses shall only be permitted in emergency situations when they are the only feasible treatments available and only under the authority of a veterinarian. **The permittee shall notify the Department in writing within 24-hours of such use.** This notification must be provided by the veterinarian involved and must include the agent(s) used, the concentration and mass applied, a description of how the use constitutes off-label or extra-label use, the necessity for the use in terms of the condition to be treated and the inability to utilize accepted drugs or approved methods, the duration of the use, the likely need of repeat treatments, and information on aquatic toxicity. Such uses and discharges will be subject to Department review and approval. If, upon review of information regarding the use of a drug pursuant to this section, the Department determines that significant adverse effects are likely to occur, it may restrict or limit such use.

J. DISINFECTING/SANITIZING AGENTS

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

SPECIAL CONDITIONS

K. MINIMUM TREATMENT TECHNOLOGY REQUIREMENT:

Based on the information provided and Department BPJ, the permittee shall provide minimum treatment technology for the Frenchville facility that shall consist of treatment equal to or better than 60-micron microscreen filtration of the effluent, wastewater settling/clarification, and removal of solids. Mountain Springs shall provide treatment and/or effluent quality equal to or better than the BPJ minimum treatment technology and shall comply with all effluent limitations, monitoring requirements, and operational requirements established in this permitting action. Additional treatment may be necessary to achieve specific water quality based limitations.

L. REOPENING OF PERMIT FOR MODIFICATIONS

Upon evaluation of the tests results or monitoring requirements specified in Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at any time and with notice to the permittee, modify this permit to; 1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded, (2) require additional effluent and or ambient water quality monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information including, but not limited to, new information from ambient water quality studies of the receiving water.

M. SEVERABILITY

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND
MAINE WASTE DISCHARGE LICENSE

FACT SHEET

Date: April 16, 2010

MEPDES PERMIT NUMBER: #ME0110451
MAINE WDL NUMBER: # W-008125-6F-E-R

NAME AND ADDRESS OF APPLICANT:

MOUNTAIN SPRINGS TROUT FARM
6 Picard Avenue
P.O. Box 32
Frenchville, Maine 04745

COUNTY: AROOSTOOK

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

MOUNTAIN SPRINGS TROUT FARM
6 Picard Avenue
P.O. Box 32
Frenchville, Maine 04745

RECEIVING WATER / CLASSIFICATION: St. John River / Class B

COGNIZANT OFFICIAL AND CONTACT INFORMATION:

Mr. Gary Picard (207) 543-6887, (207) 592-4838 (cell)
mtsprings@roadrunner.com

1. APPLICATION SUMMARY

The applicant has applied for a renewal of Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0110451 / Maine Waste Discharge License (WDL) #W-008125-5Q-A-N, which was issued on April 25, 2005 for a five-year term. The MEPDES Permit / Maine WDL approved the discharge of a monthly average of 0.65 million gallons per day (MGD) and a daily maximum of 2.0 MGD of fish hatchery wastewater to the St. John River, Class B, from a commercial brook trout hatchery and rearing facility in Frenchville, Maine.

2. PERMIT SUMMARY

a. Regulatory - On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine, excluding areas of special interest to Maine Indian Tribes. On October 30, 2003, after consultation with the U.S. Department of Justice, USEPA extended Maine's NPDES program delegation to all but tribally owned discharges. That decision was subsequently appealed. On August 8, 2007, a panel of the U.S. First Circuit Court of Appeals ruled that Maine's environmental regulatory jurisdiction applies uniformly throughout the State. From January 12, 2001 forward, the program has been referred to as the MEPDES program and permit #ME0110451 (same as NPDES permit number) utilized as the primary reference number for the Frenchville facility.

b. Terms and conditions – This permitting action is similar to the April 25, 2005 MEPDES Permit / Maine WDL and subsequent permit modifications and revisions in that it is carrying forward all previous terms and conditions with a few exceptions. This permitting action is different in that it is:

1. revising minimum monitoring frequency requirements for fish on hand, formalin, and pH; and
2. updating requirements related to proper use and record keeping of therapeutic agents and disinfecting/sanitizing agents.

c. History: The most recent relevant regulatory actions include the following:

April 25, 2005 – The Department issued MEPDES Permit #ME0110451 / Maine WDL #W-008125-5Q-A-N to Mountain Springs Trout Farm for the discharge of a monthly average of 0.65 mgd and a daily maximum of 2.0 mgd of fish hatchery and rearing facility wastewater to the St. John River in Frenchville, Class B. The Permit / WDL was issued for a five-year term.

December 19, 2005 - The Department issued an Administrative Modification of MEPDES Permit #ME0110451 / Maine WDL #W-008125-5Q-A-N. The Modification revised required minimum monitoring frequencies for BOD_5, TSS, Fish on Hand, Formalin, and pH and revised the required sample type for total phosphorus and orthophosphate, based on Department Best Professional Judgment (BPJ) and consistent with other industry permitting actions.

February 5, 2008 – The Department issued a Minor Revision of MEPDES Permit #ME0110451 / Maine WDL #W-008125-5Q-A-N, eliminating seasonal monitoring requirements for total phosphorus and orthophosphate, based on monitoring conducted to date and pursuant to provisions established in the original permitting action.

October 6, 2008 – The Department issued Minor Revision #W-008125-5Q-C-R / MEPDES Permit #ME0110451 to revise effluent formalin limitations based on newly obtained toxicity data and a revision of the Department's BPJ of ambient water quality criteria.

2. PERMIT SUMMARY (cont'd)

July 16, 2009 – The Department issued Minor Revision #W-008125-5Q-D-M / MEPDES Permit #ME0110451 to revise effluent BOD_5 and TSS minimum monitoring frequency requirements from once / 2 weeks to once / month.

February 18, 2010 – Mountain Springs Trout Farm submitted a timely application for renewal of its MEPDES Permit / Maine WDL. The application was assigned MEPDES Permit #ME0110451 / Maine WDL #W-008125-6F-E-R.

d. Source Description/ Facility Operation: Mountain Springs Trout Farm was established in the early 1970's. Mountain Springs Trout Farm is a commercial brook trout hatchery and rearing facility that produces brook trout for private stocking throughout New England, the table market, and that sells certified eggs to hatcheries. Facility site plans are included as Fact Sheet Attachment B.

Influent Water: Mountain Springs receives its source water from three springs located on site with yields of 75 gallons per minute (gpm), 20 gpm, and 100 gpm. It also has six artesian wells that provide a backup source of 800 gpm. These water sources are randomly distributed on the property. Mountain Springs utilizes a 250-foot x 75-foot freshwater storage pond, with water distributed throughout the facility by gravity flow. The storage pond also serves as an influent settling pond for spring water at times of increased silt levels, such as spring thaw and prolonged rain events, and as a natural "warming pond" during the summer season. Water is distributed to facility grow-out ponds via a 4-inch diameter distribution line and to the hatchery and production building via a 6-inch diameter line. Storage pond water can be blended with well water as needed for optimum growing temperatures through inline mixing valves.

Hatchery Operation: Mountains Springs obtains brook trout eggs from its own broodstock supply, which are turned over approximately every 4-5 years. Mountain Springs maintains approximately 50 egg trays, located in twelve, 16-inch wide x 14-foot long x 6-inch deep (45 gallons operational volume) fiberglass troughs used for egg incubation, hatching, and first feeding. Troughs are arranged in rows of two, with flow rates of 5 gpm per row for egg incubation and 8 gpm during first feeding. Maximum flow in the hatchery is 48 gpm. Water temperature for incubating and first feeding is 42º F (5.5º C). The hatchery is operational from October when eggs are taken from broodstock, through January when fish are transferred into the other section of the hatchery. During all other months, water is shut down and redirected to other production facilities. Fish are subsequently kept in six, 6.5-foot diameter fiberglass semicircular tanks to provide for further growth of swim-up fry. The tanks are set up to have two different operational water volumes, 225 gallons and 450 gallons to facilitate first feeding, based on the fish density, size, and ability to feed. Flow rates are variable depending on fish density, with a maximum flow rate of 12 gpm per tank and 72 gpm total. Water temperature at this stage of growth is also 42º F (5.5º C). This part of the hatchery is operational from January through March, when fish are then transferred into the production building. During all other months, water is shut down and redirected to other production facilities.

2. PERMIT SUMMARY (cont'd)

Rearing Operation: Connected to the hatchery building is the production building that contains four, 18-foot diameter x approximately 5-foot deep (9,000-gallon) concrete circular tanks used primarily for grow-out to market size. Flow rates are variable depending on fish density, with a maximum flow rate of approximately 75 gpm per tank and 300 gpm total. This part of the facility is in use all year with fingerlings being moved in from the hatchery building in approximately March to April (or as soon as the previous crop is sold) and a portion of the crop moved to outdoor ponds in late September. In recent years, one of the production tanks was used for broodstock from June through November. Mountain Springs also maintains five outdoor ponds for grow-out of fish to market size. The ponds vary in size, consisting of: 140 feet x 150 feet (Pond G, approx. 1.1 million gallons), 140 feet x 50 feet (Pond H, approx. 370,000 gallons), 200 feet x 100 feet (Pond I, approx. 1 million gallons), 200 feet x 150 feet (Pond J, approx. 1.5 million gallons), and 250 feet x 125 feet (Pond K, approx. 1.6 million gallons). The ponds are designed with a sloped bottom to facilitate fish removal, draining, and cleaning. The average operational depth is 3 feet at the upper ends and 10 feet at the lower ends. These ponds are primarily used during the non-summer months, however on occasion they may be used during summer months when market conditions demand, such as when fish need to be held over until fall or the next spring. Supply water flows by gravity from the freshwater storage pond and the production building (reuse) through the rearing grow-out ponds as they progress downgradient. Flow rates are variable depending on fish density, season, and water temperature. The total maximum combined flow rate flow at the last downgradient pond is approximately 400 gpm, although this may be increased for an anticipated future increase in production. Maximum historical flow rates have been up to 800 gpm. Mountain Springs also uses six, 12-foot diameter x approximately 2-foot deep (1,700-gallons) circular fiberglass tanks for temporary holding of fish prior to delivery or during grading.

Mountain Springs uses an on-site quarantine building located at the end of the production building for experimental purposes. It consists of two, 6.5-foot diameter x 2-foot deep (450-gallon) circular fiberglass tanks with a combined flow rate of 20 gpm. This building uses influent water directly from one of the facility's gravity fed springs, and its flow-through and cleaning discharge is combined with the hatchery and production building cleaning flows and routed to the settling ponds. The quarantine facility is currently being used to house and breed Arctic char and brook trout from Big Reed Pond as part of a proposed reclamation program by the Maine Department of Inland Fisheries and Wildlife.

Mountain Springs projects the maximum number of fish on station at any time to consist of: 75,000 1st year brook trout weighing 5,000 pounds, 5,000 2nd year trout weighing 1,000 pounds, and 250 broodstock, weighing 500 pounds. Mountain Springs' broodstock are "turned out" every 4-5 years. In order to achieve continuity in its brood fish program, Mountain Springs maintains "overlapping" brood fish crops every 2 years to replace older "turned out" brood fish. Brood fish are selected from fish that are held in production and only mature in their 2nd year. Total density in the broodstock program is constantly changing due to growth, lethal sampling for fish health screening purposes, and overlapping brood fish years. Mountain Springs' peak feeding period occurs from April to June. It is at this time of

2. PERMIT SUMMARY (cont'd)

the year that Mountain Springs sells most of its product, therefore feeding rates and densities are offset by the movement of fish off station.

e. Wastewater Treatment: As described in Fact Sheet Section 2d above, influent source water is distributed as needed at the Mountain Springs facility through gravity flow. Facility flow through and wastewater flows also use gravity flow, as show in Fact Sheet Attachment B, Facility Site Plans. All hatchery building flows and production building cleaning flows are routed to the facility wastewater settling ponds. Hatchery and production building structures are equipped with in-tank solids removal capabilities, with captured solids routed to the settling ponds. Production building flow-through water flows to downgradient grow-out ponds for reuse. Grow-out pond flow-through water is discharged to an open ditch, which joins the facility wastewater flow after its discharge from the settling ponds. Grow-out ponds are cleaned and maintained as necessary, during the summer season, after fish have been moved off station. Prior to cleaning, water from the pond(s) is drained through the standard flow-through procedure and water flow from other ponds is redirected to facilitate cleaning. The amount of time required to empty facility grow-out ponds, and thus the volume of flow discharged per day, varies depending on the size of the pond, its physical properties, and its outlet structure. The draining times for various ponds range from one to seven days. The maximum facility discharge flow is associated with the typical facility discharge and a simultaneous draining of grow-out Pond J, a 1.5 million gallon pond that can be emptied in 1-2 days. During the cleaning process, the flow-through outfall is closed off and any remaining water is pumped directly to the settling ponds. The grow-out pond bottom is scraped using a small tractor and solids are "pushed" to the deeper end of the pond to be vacuumed out by "highvac" pumping truck and taken offsite for land application. Both flow through and cleaning flows from the temporary holding tanks are routed to the facility settling ponds.

Mountain Springs utilizes two, 100-foot x 35-foot x approximately 3-foot deep (78,540-gallon each) settling ponds, used on an alternating basis to provide wastewater settling. The discharge from the settling ponds is estimated to be less than 50 gpm, while the flow through discharge that bypasses the settling ponds is estimated under current production levels at a maximum of approximately 400 gpm. The combined facility discharge of 450 gpm equates to the 0.65 MGD discharge flow limitation established in this permitting action. All facility wastewater discharges to an approximately 1,000 foot long alternating open and culverted ditch that travels under Route 1 and outlets to the St. John River. As needed, settling ponds are cleaned with either an excavator, or a "highvac" pump truck, with removed waste materials land applied.

Mountain Springs has stainless steel screens at the outlets of the hatchery troughs, hatchery tanks, production tanks, and all grow-out ponds to prevent the escapement of fish. The screens are sized according to the size of the fish. Use of agents for therapeutic and disinfecting/sanitizing purposes are addressed in subsequent Fact Sheet sections titled accordingly.

3. CONDITIONS OF PERMITS

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

4. RECEIVING WATER QUALITY STANDARDS:

Maine law, 38 M.R.S.A., Section 467.15.A(3) classifies the St. John River at the point of discharge as a Class B water. Maine law, 38 M.R.S.A., Section 465.3, describes the standards for Class B waters.

5. RECEIVING WATER QUALITY CONDITIONS:

The State of Maine 2008 *Integrated Water Quality Monitoring and Assessment Report* (DEPLW0895), prepared pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act contains lists of waters in Maine that are attaining water quality standards as well as those that are impaired. The report lists a 21.84 mile segment of the St. John River, main stem, above Madawaska, Class B, in Category 2, Rivers and Streams Attaining Some Designated Uses – Insufficient Information for Other Uses (Assessment Unit ID ME0101000116_116R).

All freshwaters in Maine are listed as only partially attaining the designated use of recreational fishing due to a fish consumption advisory (Category 5-C). The advisory was established in response to elevated levels of mercury in some fish caused by atmospheric deposition. The Department has no information at this time that the Mountain Springs facility causes or contributes to non-attainment of standards in the St. John River.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS:

Pursuant to Maine Law (38 M.R.S.A., §414-A.1), the Department shall only authorize discharges to Maine waters when those discharges, either by themselves or in combination with other discharges, "*will not lower the quality of any classified body of water below such classification*". *Further, "the discharge will be subject to effluent limitations that require application of the best practicable treatment". "Best practicable treatment* (BPT) *means the methods of reduction, treatment, control and handling of pollutants, including process*

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

methods, and the application of best conventional pollutant control technology or best available technology economically available, for a category or class of discharge sources that the department determines are best calculated to protect and improve the quality of the receiving water and that are consistent with the requirements of the Federal Water Pollution Control Act" (40 CFR). "If no applicable standards exist for a specific activity or discharge, the department must establish limits on a case-by-case basis using best professional judgement…" considering "*…the existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives…*". Pursuant to 38 M.R.S.A, §414-A.1 and §464.4, the Department regulates wastewater discharges through establishment of effluent limitations and monitoring requirements that are protective of Maine waters.

At the time of the previous permitting action, the Department undertook to revise its wastewater discharge permitting program for fish hatcheries and rearing facilities to provide for establishment of scientifically valid and consistently applied effluent limitations, monitoring and operational requirements based on the Department's best professional judgement (BPJ) of best practicable treatment (BPT) or site specific water quality conditions. This permitting action represents a continuance of that process based on observations and analyses conducted for Mountain Springs and other facilities since issuance of the previous permitting actions.

a. Flow: The previous permitting action established a monthly average flow limit of 0.65 mgd and a daily maximum flow limit of 2.0 mgd, which are being carried forward in this permitting action. The monthly average limit is representative of typical facility discharges. The daily maximum limit is associated with the typical facility discharge and a simultaneous draining of grow-out Pond J, a 1.5 million gallon pond that can be emptied in 1-2 days. These flow limits are intended to provide Mountain Springs with operational flexibility. The required daily minimum measurement frequency is also being carried forward from the previous permitting action, consistent with Department guidelines for wastewater treatment facility discharges.

   A review of the Discharge Monitoring Report (DMR) data for the Mountain Springs facility for the period of May 2005 through March 2010 indicates the following.

EFFLUENT FLOW

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	0.65 MGD	0.16 MGD	0.51 MGD	0.30 MGD	56
Daily Max	2.0 MGD	0.17 MGD	1.50 MGD	0.39 MGD	56

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

b. Dilution Factors: The Department has made the determination that dilution factors associated with the discharge shall be derived in accordance with freshwater protocols established in Department Regulation Chapter 530, *Surface Water Toxics Control Program*, October 2005 and methods for low flow calculation contained in Estimating Monthly, Annual, and Low 7-day, 10-year Streamflows for Ungaged Rivers in Maine (Scientific Investigations Report 2004-5026, US Department of Interior, US Geological Service). To calculate potential effects from a facility's effluent discharge, the Department utilizes the receiving water's available dilution during low flow conditions. The Department currently has no site specific data on the St. John River flow at Mountain Springs' point of discharge. Therefore, based on Best Professional Judgement (BPJ), the Department's Division of Environmental Assessment (DEP DEA) utilized receiving water flows established for the Frenchville wastewater treatment plant discharge immediately upstream. The DEP DEA utilized the full chronic river flow for Mountain Springs' point of discharge, but one-third of the acute flow, based on an estimate of the reduced river flow at the point of discharge. Mountain Springs discharges to an approximately 1,000-foot long alternating open and culverted ditch, which flows into the side of a backchannel of the St. John River. Typically, these types of discharges do not achieve rapid and complete mixing with the receiving water since initial dilution is based on mixing resulting from the momentum of a discharge as it exits a discharge pipe (jet effect) as well as the dispersion of the effluent plume as it rises to the surface of the receiving water. With a monthly average flow limitation of 0.65 MGD, the dilution factors associated with the Mountain Springs facility are calculated as follows:

Mod. Acute: ¼ 1Q10 = 62.1 cfs $\Rightarrow \frac{(62.1 \text{ cfs})(0.6464) + 0.65 \text{ MGD}}{0.65 \text{ MGD}} = 62.8{:}1$

Acute: 1Q10 = 248.4 cfs $\Rightarrow \frac{(248.4 \text{ cfs})(0.6464) + 0.65 \text{ MGD}}{0.65 \text{ MGD}} = 248.0{:}1$

Chronic: 7Q10 = 776.8 cfs $\Rightarrow \frac{(776.8 \text{ cfs})(0.6464) + 0.65 \text{ MGD}}{0.65 \text{ MGD}} = 773.5{:}1$

Harmonic Mean = 2,330.5 cfs $\Rightarrow \frac{(2{,}330.5 \text{ cfs})(0.6464) + 0.65 \text{ MGD}}{0.65 \text{ MGD}} = 2{,}318.6{:}1$

Chapter 530.4.B(1) states that analyses using numeric acute criteria for aquatic life must be based on ¼ of the 1Q10 stream design flow to prevent substantial acute toxicity within any mixing zone. The regulation goes on to say that where it can be demonstrated that a discharge achieves rapid and complete mixing with the receiving water by way of an efficient diffuser or other effective method, analyses may use a greater proportion of the stream design, up to including all of it. As stated above, Mountain Springs' discharge does not achieve rapid and complete mixing, thus the Department is utilizing the default stream flow of ¼ of the estimated 1Q10 pursuant to Chapter 530 in acute evaluations.

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

c. Biochemical Oxygen Demand (BOD_5) and Total Suspended Solids (TSS): The previous permitting action established monthly average and daily maximum concentration limits of 6 mg/L and 10 mg/L respectively for BOD_5 and TSS based on Department BPJ of Best Practicable Treatment (BPT). These limits were based on recommendations included in USEPA's 2002 proposed draft National Effluent Guidelines for TSS from fish hatchery wastewater receiving a secondary level of treatment, the Department's long-standing view of the relationship with and significance of BOD_5, and consideration of effluent quality from facilities utilizing the Department's BPJ of minimum treatment technology. Mass limits were calculated based on the monthly average flow limit, the appropriate concentration limits, and a standard conversion factor. The previously established BOD_5 and TSS mass and concentration limits are being carried forward in this permitting action.

A review of the DMR data for the Mountain Springs facility for the period of May 2005 through March 2010 indicates the following.

BOD MASS

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	33 lbs/day	0.8 lbs/day	13.8 lbs/day	<5.4 lbs/day	56
Daily Max.	54 lbs/day	0.9 lbs/day	22 lbs/day	<6.7 lbs/day	56

BOD CONCENTRATION

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	6 mg/L	1.0 mg/L	4.2 mg/L	<2.4 mg/L	56
Daily Max.	10 mg/L	1.0 mg/L	4.7 mg/L	<2.7 mg/L	56

TSS MASS

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	33 lbs/day	0.6 lbs/day	25.4 lbs/day	7.0 lbs/day	56
Daily Max.	54 lbs/day	0.6 lbs/day	31.5 lbs/day	8.7 lbs/day	56

TSS CONCENTRATION

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	6 mg/L	0.3 mg/L	7.8 mg/L	2.8 mg/L	56
Daily Max.	10 mg/L	0.3 mg/L	10.5 mg/L	3.4 mg/L	56

The previous permitting action established minimum monitoring requirements of once per week for effluent BOD and TSS, which were modified to once per two weeks in December 2005 and once per month in July 2009, based on revised Department BPJ of monitoring frequencies necessary to more accurately characterize effluent conditions for facilities with lower discharge flows. This permitting action carries forward the once per month minimum monitoring frequency requirement.

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

d. Total Phosphorus and Orthophosphate: The previous permitting action established seasonal monitoring and reporting requirements for the monthly average and daily maximum phosphorus and orthophosphate concentrations and masses discharged. The previous permitting action included a provision that once the permittee completed at least one year of monitoring, the Department would evaluate the data to determine if there is a reasonable potential to exceed the water quality based critical thresholds and modify permitting requirements as appropriate. In February 2008, pursuant to this provision, the Department conducted a statistical evaluation of the data collected to date. The Department determined that the average effluent total phosphorus concentration and mass values observed for Mt. Springs Trout Farm fell below the Department's calculated water quality based critical thresholds by at least three orders of magnitude and therefore did not represent reasonable potentials to exceed the critical thresholds. Similarly, the orthophosphate results reported did not present a water quality concern at that time. Based on this analysis and Department BPJ, the Department issued a minor permit revision to eliminate the seasonal monthly average and daily maximum concentration and mass monitoring requirements for total phosphorus and orthophosphate. At this time, this still represents the Department's BPJ and therefore no additional phosphorus or orthophosphate monitoring requirements are being established in this permitting action.

A review of the DMR data for the Mountain Springs facility for the period of May 2005 through March 2010 indicates the following.

PHOSPHORUS MASS

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	report lbs/day	0.005 lbs/day	0.093 lbs/day	0.049 lbs/day	8
Daily Max.	report lbs/day	0.003 lbs/day	0.093 lbs/day	0.065 lbs/day	8

PHOSPHORUS CONCENTRATION

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	report mg/L	0.002 mg/L	0.035 mg/L	0.023 mg/L	8
Daily Max.	report mg/L	0.002 mg/L	0.037 mg/L	0.026 mg/L	8

ORTHO-PHOSPHORUS MASS

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	report lbs/day	0.003 lbs/day	0.008 lbs/day	0.006lbs/day	7
Daily Max.	report lbs/day	0.004lbs/day	0.109 lbs/day	0.033 lbs/day	7

ORTHO-PHOSPHORUS CONCENTRATION

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	report mg/L	0.002 mg/L	0.030 mg/L	0.009 mg/L	7
Daily Max.	report mg/L	0.002 mg/L	0.041 mg/L	0.013 mg/L	7

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

e. Fish on Hand: This permitting action is carrying forward reporting requirements for monthly average and daily maximum mass of fish on hand. This parameter is intended to enable both the Department and the permittee in evaluating management practices at the facility and trends in effluent quality and receiving water impacts. The previous permitting action established a monitoring requirement of once per week, which was modified to once per two weeks in December 2005. This permitting action revises the once per two week minimum monitoring frequency to twice per month based on the Department's BPJ of monitoring frequencies necessary to more accurately characterize facility effluent conditions and to make data collection easier.

A review of the DMR data for the Mountain Springs facility for the period of May 2005 through March 2010 indicates the following.

FISH ON HAND

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	report lbs/day	8 lbs/day	8,825 lb/day	3,426 lb/day	55
Daily Max.	report lbs/day	8 lbs/day	8,825 lb/day	3,555 lb/day	55

f. Formalin: Fish hatcheries and rearing facilities commonly use formalin based biocides for therapeutic treatment of fungal infections and external parasites of finfish and finfish eggs. Mt. Springs reports that a maximum of 5 gallons of formalin are used at the Frenchville facility annually, though none has been used in the past five years. The previous permitting action established monthly average mass and concentration reporting requirements and daily maximum mass and concentration limits for formalin with a required minimum monitoring frequency requirement of once per week and guidance for calculating the levels of effluent formalin. For the previous permitting action, as existing studies revealed significant variability in formalin toxicity, the MEDEP undertook its own investigation to determine appropriate limitations, contracting with a commercial laboratory for Whole Effluent Toxicity (WET) testing on *Ceriodaphnia dubia* for 48-hour acute toxicity, pursuant to standard methods. Pursuant to MEDEP's long standing goal of 100% survival of the test species, Lotic Inc. identified a BPJ of ambient water quality criteria (AWQC) of 1.56 mg/L. The 1.56 mg/L BPJ of AWQC was multiplied by the facility's acute (1Q10) ambient to effluent dilution to calculate concentration limits under acute critical low flow conditions. Mass limits were calculated based on the projected maximum amount of formalin used per day, multiplied by a conversion factor of 9.13 lbs / gallon representing the weight of formalin. The minimum required monitoring frequency was modified to once/2 weeks in December 2005. Though standard methods and assumptions were utilized in the Lotic study, realistically no facilities utilize formalin for 48-hours continuously. Thus, using the standard methods and assumptions appeared to overestimate impacts to aquatic life. In 2008, the Maine Department of Inland Fisheries and Wildlife (MDIFW) provided results of its study of acute toxicity at more targeted time frames of less than 48-hours, typical of rearing facility operations.

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

MDIFW utilized statistical "bootstrapping" to lend greater statistical significance to the data set. These results were reviewed by MEDEP and determined to represent a more appropriate means of establishing toxicity based effluent limits for formalin. Simultaneously, MEDEP revised its survival goals to 95% of test species to correspond with toxicity work conducted by USEPA. A MEDEP biologist noted, "*the basis for all of EPA's ambient water quality criteria for aquatic life (is) to protect 95% of the species*" and determined that using the 5th percentile of MDIFW's 1-hour exposure data "*gives an equivalent amount of protection to aquatic life*." Based on this, in 2008 the Department developed a revised BPJ of AWQC of 45 mg/L based on a one hour treatment, typical of most hatchery and rearing facility discharges. Under emergency conditions, it is acknowledged that additional rearing structures may need to be treated, causing formalin discharges to extend beyond the typical one hour period. To accommodate this, the Department also developed a BPJ of AWQC of 25 mg/L based on a maximum 24-hour treatment period. Such emergency treatments and discharges must be conducted no more frequently than once every four days to ensure the average formalin concentration does not exceed the 5th percentile level. Based on this research, the Department revised Mt. Spring's MEPDES Permit / Maine WDL on October 10, 2008, revising hatchery and rearing station permit concentration limits for formalin.

In this permitting action, the Department is utilizing the same procedure to calculate formalin concentration limits. These calculations utilize a 1-hour exposure criteria typical of normal treatment operations, a 24-hour exposure criteria to accommodate emergency treatment conditions, and the 62.8:1 effluent to ambient acute dilution applicable to this facility and its receiving water.

45 mg/L (1-hour acute criteria) x 62.8 (effluent dilution) = 2,826 mg/L formalin limit.
25 mg/L (24-hour acute criteria) x 62.8 (effluent dilution) = 1,570 mg/L formalin limit.

The permittee's maximum therapeutic dose for egg treatments of 1,667 mg/L is considered the maximum possible effluent concentration.

The previously established daily maximum formalin mass limit of 7.6 lbs/day, developed pursuant to Department Rules, Chapter 523.6(f) based on projected use at Mt. Springs, is being carried forward in this permitting action. It must be noted that the concentration and mass limits are derived separately and that compliance with one does not guarantee compliance with the other. Throughout the term of the permit, the permittee shall report the monthly average effluent formalin mass and concentration. Effluent values shall be determined through calculations, as described below. This permitting action is establishing effluent limitations and monitoring requirements for formalin, as this is the commonly used form, and not for formaldehyde. The Department is requiring Mt. Springs to report therapeutic agents used at the facility that have the potential to be discharged to the receiving water. This permitting action revises the minimum monitoring frequency requirement to once per occurrence (each formalin use), consistent with Department BPJ and requirements for other facilities within this industry.

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

A review of the DMR data for the Mountain Springs facility for the period of May 2005 through March 2010 indicates the following.

FORMALIN MASS

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg. 1-hr treatment 24-hr treatment	 report lbs/day report lbs/day	 0 lbs/day	 0 lbs/day	 0 lbs/day	 0
Daily Max. 1-hr treatment 24-hr treatment	 7.6 lbs/day 7.6 lbs/day	 0 lbs/day	 0 lbs/day	 0 lbs/day	 0

FORMALIN CONCENTRATION

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg. 1-hr treatment 24-hr treatment	 report mg/L report mg/L	 0 mg/L	 0 mg/L	 0 mg/L	 0
Daily Max. 1-hr treatment 24-hr treatment	 1,667 mg/L 1,570 mg/L	 0 mg/L	 0 mg/L	 0 mg/L	 0

Effluent levels of formalin can be calculated based on the amount of formalin used at the facility for hatchery, rearing, and broodstock functions and the dilution available in large wastewater settling structures and through mixing in the total facility waste-stream. Previously, the Department developed methods for calculating effluent formalin concentrations and mass values utilizing the varying treatment concentrations in the different facility functions and various internal dilutions provided within the facility. In this permitting action, the Department is providing a more simplified recommendation that utilizes the total mass of formalin used for all functions during the treatment period and the dilutions described above during the same time period. The facility may propose alternative methods for Department review and approval. Effluent formalin values must be calculated upon each use at the facility.

In this example, a theoretical facility adds approximately 0.172-gallons (650 ml) of undiluted formalin directly to each line of hatchery egg troughs to achieve the desired dose during a 15-minute treatment period. The hatchery facility uses a maximum of 6 lines of egg troughs for treatment at a time. The hatchery facility wastewater joins with the total facility wastewater prior to discharge to the receiving water. With a total facility discharge flow of 3.0 MGD, the flow during the 15-minute treatment period equates to 31,250-gallons (3.0 MGD / 24-hours / 4) available for dilution of the 1.03 gallons of formalin administered (0.172 gal x 6 troughs). The combined wastewater flow is then discharged to the receiving water. The end of pipe concentration from egg treatments can be calculated as follows, using 1 million parts per million to provide for the concentration of undiluted formalin.

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

31,250-gal wastewater / 1.03 gal formalin = 30,340:1 dilution
1,000,000 ppm (undiluted) formalin / 30,340 = 33 ppm formalin discharged

For treatments on fish in rearing structures, the same facility adds approximately 6-gallons of undiluted formalin at the head of raceway pools by drip and allows it to flow through the entire line over a one hour period. As in the example above, the rearing facility wastewater joins with the total facility wastewater prior to discharge to the receiving water. With a total facility discharge flow of 3.0 MGD, the flow during the one hour treatment period equates to 125,000-gallons (3.0 MGD / 24-hours) available for dilution of the 6.0 gallons of formalin administered. The combined wastewater flow is then discharged to the receiving water. The end of pipe concentration from fish treatment can be calculated as follows:

125,000-gal rearing facility wastewater / 6 gal formalin = 20,833:1 dilution
1,000,000 ppm (undiluted) formalin / 20,833 = 48 ppm formalin discharged

These examples consider hatchery and rearing facility treatments to be conducted on different occasions. If multiple treatments occur simultaneously, the total amount of formalin must be considered in calculating the end of pipe concentration. For brevity, these examples do not include a broodstock function, which would be calculated in a similar manner. If extended period pool treatments are conducted at the facility, the time during which the pool volume is discharged into the facility waste-stream should be used to determine an appropriate dilution volume instead of the time the formalin is added to the pool. Also, these examples utilized a facility that discharges its effluent without significant wastewater settling. If the facility used a 500,000-gallon settling basin, the rearing facility discharge under the one-hour discharge scenario could be analyzed as follows.

125,000-gal rearing facility wastewater / 6 gal formalin = 20,833:1 dilution
500,000-gal basin volume / 125,000 combined waste-stream = 4:1 dilution
1,000,000 ppm (undiluted) formalin / 20,833 / 4 = 12 ppm formalin discharged

Use of the settling basin volume as an additional dilution is only applicable for the one-hour treatment scenario. Under a greater period of time of treatment and discharge, the additional settling volume becomes part of the facility infrastructure and the total facility discharge flow is used. It must be noted that to obtain an accurate end-of-pipe calculation, each facility must utilize accurate amounts of formalin used for all treatment functions, accurate volumes of the facility's effluent flow during the treatment period, and accurate volumes of water within any large settling structures. Effluent flow limits and design criteria can not be used. These examples illustrate end-of-pipe (EOP) concentrations, which would be further diluted depending upon the facility's effluent dilution in the receiving water. If a facility receives a 3:1 effluent dilution in the receiving water, the calculated EOP concentration should be divided by three to provide the concentration in the receiving water after mixing.

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

g. pH – This permitting action is carrying forward the daily maximum pH range limit of 6.0 – 8.5 standard units (su), considered by the Department as a best practicable treatment standard for fish hatcheries and rearing facilities and consistent with the pH limit established in discharge permits for these facilities. The previous permitting action established a monitoring requirement of once per week, which was modified to once per two weeks in December 2005. This permitting action revises the once per two week minimum monitoring frequency to twice per month based on the Department's BPJ of monitoring frequencies necessary to more accurately characterize facility effluent conditions and to make data collection easier.

A review of the DMR data for the Mountain Springs facility for the period of May 2005 through March 2010 indicates the following.

pH RANGE

Value	Limit	Minimum	Maximum	Average	# Values
Monthly Avg.	---	6.4 s.u.	7.4 s.u.	---	55
Daily Max.	6.0-8.5 s.u.	6.8 s.u.	8.3 s.u.	---	55

7. SETTLING AND GROW-OUT POND CLEANING:

Discharge of inadequately treated fish hatchery wastewater (excess feed and fish waste) contributes solids, BOD, and nutrients to receiving waters, which can contribute to eutrophication and oxygen depletion. This, in combination with other pollutant specific toxic effects, impacts the aquatic life and habitat value in the receiving water. Typical hatchery wastewater treatment practices include effluent filtration and settling with solids removal.

This permitting action carries forward requirements that the permittee must clean any settling structures and grow-out ponds at a minimum when accumulated materials occupy 20% of a basin's capacity, when material deposition in any area of the basin exceeds 50% of the operational depth, or at any time that said materials in or from the basins are contributing to a violation of permit effluent limits.

8. DISEASE AND PATHOGEN CONTROL AND REPORTING:

Maine Department of Inland Fisheries and Wildlife (MDIFW) Rules (Chapter 2.03-A) and Maine Department of Marine Resources (MeDMR) Rules (Chapter 24.21) state that *"the transfer and/or introduction of organisms fall within the jurisdiction of the Department of Marine Resources (12 MRSA, §6071) into coastal waters within the State of Maine and the Department of Inland Fisheries and Wildlife (12 MRSA, §§7011, 7035 and 7201, 7202) into public and/or private waters within the State of Maine. These rules are intended to protect wild and farmed salmonid fish populations and shall be applicable to all individuals involved*

8. DISEASE AND PATHOGEN CONTROL AND REPORTING (cont'd)

in the culture and movement of live salmonids and gametes." Further, both agencies' rules define Diseases of Regulatory Concern as *"…infectious agents that have been demonstrated to cause a significant increase in the risk of mortality among salmonid populations in the State of Maine. Diseases of Regulatory Concern are classified by the Commissioner into three (3) disease categories: exotic, endemic (limited distribution) and endemic based on an annual review and analysis of epidemiological data."* This permitting action carries forward requirements that the permittee must comply with MDIFW and MeDMR salmonid fish health rules (12 MRSA, §6071; 12 MRSA, §§7011, 7035, 7201, and 7202, or revised rules). The cited rules include requirements for notification to the appropriate agency within 24-hours of pathogen detection. In the event of a catastrophic pathogen occurrence, in addition to the requirements of the rules, the permittee shall notify the Department in writing within 24-hours of detection, with information on necessary control measures and the veterinarian involved. The permittee shall submit to the Department for review and approval, information on the proposed treatment including materials/chemicals to be used, material/chemical toxicity to aquatic life, the mass and concentrations of materials/chemicals as administered, and the concentrations to be expected in the effluent. If, upon review of information regarding a treatment pursuant to this section, the Department determines that significant adverse effects are likely to occur, it may restrict or limit such use.

9. THERAPEUTIC AGENTS:

In the June 30, 2004, USEPA Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category (National Effluent Guidelines), EPA requires proper storage of drugs, pesticides and feed and requires facilities to report use of any investigational new animal drug (INAD), extra-label drug use, and spills of drugs, pesticides or feed that results in a discharge to waters of the U.S. This permitting action carries forward the previous requirements that all medicated fish feeds, drugs, and other fish health therapeutants shall be approved by the US Food and Drug Administration (USFDA) and applied according to USFDA accepted guidelines and manufacturer's label instructions and that therapeutic agents must also be registered with USEPA, as appropriate. Further, records of all such materials used must be maintained at the facility for five years.

This permitting action does not authorize routine off-label or extra-label drug use. Such uses shall only be permitted in emergency situations when they are the only feasible treatments available and only under the authority of a veterinarian. The permittee shall notify the Department in writing within 24-hours of such use. This notification must be provided by the veterinarian involved and must include the agent(s) used, the concentration and mass applied, a description of how the use constitutes off-label or extra-label use, the necessity for the use in terms of the condition to be treated and the inability to utilize accepted drugs or approved methods, the duration of the use, the likely need of repeat treatments, and information on aquatic toxicity. If, upon review of information regarding the use of a drug pursuant to this section, the Department determines that significant adverse effects are likely to occur, it may restrict or limit such use.

9. THERAPEUTIC AGENTS (cont'd)

This permitting action does not authorize the discharge of drugs authorized by the USFDA pursuant to the Investigational New Animal Drug (INAD) program. As the INAD program typically involves the long-term study of drugs, their benefits and effects, the permittee is anticipated to be able to notify the Department of its intent to conduct, and provide information related to, such study. The permittee is required to provide notification to the Department for review and approval prior to the use and discharge of any drug pursuant to the INAD program. This notification must include information to demonstrate that the minimum amount of drug necessary to evaluate its safety, efficacy, and possible environmental impacts will be used. Notifications must also include an environmental monitoring and evaluation program that at a minimum describes sampling strategies, analytical procedures, evaluation techniques and a timetable for completion of the program. The program must consider the possible effects on the water column, benthic conditions and organisms in or uses of the surrounding waters. INAD related uses and discharges will be subject to Department review and approval.

Mt. Springs indicates that the following therapeutic agents may be used at the Frenchville facility. Each of these materials was evaluated pursuant to the same conditions and details for the previous permitting action and descriptions of the Department's analyses are included in that Permitting Action's Fact Sheet. These agents must be used pursuant to the requirements specified herein.

Formalin. Effluent limitations and monitoring requirements related to the use of formalin at the facility are addressed in Permit Special Condition A, footnotes and Fact Sheet Section 6.f.
Sodium chloride. Used for external fungal/parasitic control of trout at concentrations of up to 30,000 ppm (3%), used 20-30 times per year, estimated total 500 pounds per year.
MS 222. Fish anesthetic to allow for close examination including fin clippings, vaccinations, measuring, and grading at concentrations of 80-135 ppm, used up to 30 times per year, estimated total 100 grams per year. Active ingredient ethyl m-amino benzoate.

10. DISINFECTING/SANITIZING AGENTS:

Mt. Springs indicates that the following disinfecting/sanitizing agents may be used at the Frenchville facility. Each of these materials was evaluated pursuant to the same conditions and details for the previous permitting action and descriptions of the Department's analyses are included in that Permitting Action's Fact Sheet. These agents must be used pursuant to the requirements specified herein.

Ovadine (iodine) for disinfection of salmonid eggs, sterilization of fish transport vehicles and nets, and footbaths. The 1% iodine solution is diluted to a concentration of approximately 100 ppm for use and is subsequently further diluted in the full facility wastewater stream and

10. DISINFECTING/SANITIZING AGENTS (cont'd)

the facility settling pond prior to discharge. Annual use is estimated at 2 gallons per year. At this time, there are no ambient water quality criteria for iodine.
Sodium thiosulfate may be used in small quantities to neutralize iodine disinfectants.

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

11. MINIMUM TREATMENT TECHNOLOGY REQUIREMENT:

Between 2000 and 2002, eleven Maine fish hatcheries were evaluated to identify potential options for facility upgrades. All nine Maine Department of Inland Fisheries and Wildlife hatcheries were evaluated by FishPro Inc., while the two USFWS hatcheries were evaluated by the Freshwater Institute. Recommended wastewater treatment upgrades for each of the facilities included microscreen filtration of the effluent. In the previous permitting action, based on the information provided and Department BPJ, the Department required that the permittee shall provide minimum treatment technology for the Frenchville facility that shall consist of treatment equal to or better than 60-micron microscreen filtration of the effluent, wastewater settling/clarification, removal of solids. This determination is being carried forward in this permitting action. Mt. Springs shall provide treatment and/or effluent quality equal to or better than the BPJ minimum treatment technology and shall comply with all effluent limitations, monitoring requirements, and operational requirements established in this permitting action. Additional treatment may be necessary to achieve specific water quality based limitations.

12. AMBIENT MACROINVERTEBRATE BIOMONITORING:

Based on limited available data and Department concerns with potential effects of effluent discharges from some hatchery/rearing facilities on the aquatic life in receiving waters, some previous permitting actions required the permittee to conduct annual ambient macroinvertebrate biomonitoring. The Department determined that annual macroinvertebrate biomonitoring was not necessary for Mountain Springs based on results of biomonitoring conducted on the St. John River in 1999 that indicated that aquatic life standards were met at that time and based on Department plans to conduct additional biomonitoring in 2005. Samples were not obtained in 2005 due to high water levels. However, samples were collected in 2009 which are currently being analyzed. The Department has no information that indicates that additional macroinvertebrate testing is required at this time.

13. SALMON GENETIC INTEGRITY AND HATCHERY ESCAPE PREVENTION:

The US Fish and Wildlife Service and the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) formally listed the Atlantic salmon as an endangered species on November 17, 2000. In that decision, the Gulf of Maine Distinct Population Segment (DPS) encompassed all naturally reproducing remnant populations of Atlantic salmon downstream of the former Edwards Dam site on the Kennebec River northward to the mouth of the St. Croix River. The watershed structure, available Atlantic salmon habitat, and abundance of Atlantic salmon at various life stages were best known for the following eight rivers: Dennys River, East Machias River, Machias River, Pleasant River, Narraguagus River, Ducktrap River, Sheepscot River, and Cove Brook. On June 15, 2009, the two agencies expanded the Gulf of Maine DPS to include salmon in the Penobscot, Kennebec, and Androscoggin Rivers and their tributaries. Two significant issues of concern regarding the rearing of salmon in Maine involve the genetic integrity of the salmon and escape prevention to avoid impacts on native fish.

Leading up to the 2000 listing and in review of MEPDES Permit / Maine WDLs for other fish hatchery and rearing facilities in Maine, the USFWS and NOAA Fisheries have advocated for genetic testing of Atlantic salmon housed at hatchery and rearing facilities to ensure that they are of North American origin, as well as employment of a fully functional Containment Management System (CMS) at facilities to prevent the escape of raised salmon or other species of concern in order to avoid impacts on native fish populations. The escape of reared fish also has the potential for transmission of diseases and pathogens to native fish populations.

Mountain Springs Trout Farm is a commercial brook trout hatchery and rearing facility that produces brook trout for private stocking throughout New England, the table market, and that sells certified eggs to hatcheries. Mountain Springs does not raise Atlantic salmon and thus is not subject to salmon genetic testing requirements. Its original brook trout egg stock came from the Maine Department of Inland Fisheries and Wildlife hatchery in Phillips, Maine. Mountain Springs reports that stainless steel screens are in place at the outlets of the hatchery troughs, hatchery tanks, production tanks, and all grow-out ponds to prevent the escapement of fish. The grow-out pond outlets contain two screens at the top and bottom of the standpipes to provide containment in surface and bottom discharges. All screens are sized according to the size of the fish and are inspected regularly. Any escapees would have to elude these measures and a 1,000-foot long alternating open and culverted ditch to enter the receiving water, the St. John River. The St. John River is reportedly managed by the Maine Department of Inland Fisheries and Wildlife (MDIFW) for native brook trout.

USFWS and NOAA Fisheries have previously stated that a CMS plan is not required at Mountain Springs Trout Farm, unless the facility raises salmon at some point in the future. MDIFW Fisheries and Hatchery Divisions have indicated that they also see no need for a CMS plan at Mountain Springs and point out that MDIFW regulates the species raised at hatcheries and rearing facilities in Maine through Cultivation Licenses issued by that agency. Therefore, this permitting action does not require a CMS plan at this time, but advises Mountain Springs that if the facility ever intends to house Atlantic salmon or other species

13. SALMON GENETIC INTEGRITY AND HATCHERY ESCAPE PREVENTION (cont'd)

determined by USFWS, NOAA Fisheries, or MDIFW to be of risk to native salmon, other native species, or to aquatic habitats, it must submit plans for initiating genetic testing (salmon only) and/or a CMS for review and approval prior to introducing those species at the facility.

14. DISCHARGE IMPACT ON RECEIVING WATER QUALITY:

As permitted, based on the information available to date and best professional judgement, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the St. John River to meet standards for Class B classification.

15. PUBLIC COMMENTS:

Public notice of this application was made in the St. John Valley Times on or about February 17, 2010. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

16. DEPARTMENT CONTACTS:

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

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

Telephone (207) 215-1579
Fax (207) 287-3435
email: Robert.D.Stratton@maine.gov

17. RESPONSE TO COMMENTS:

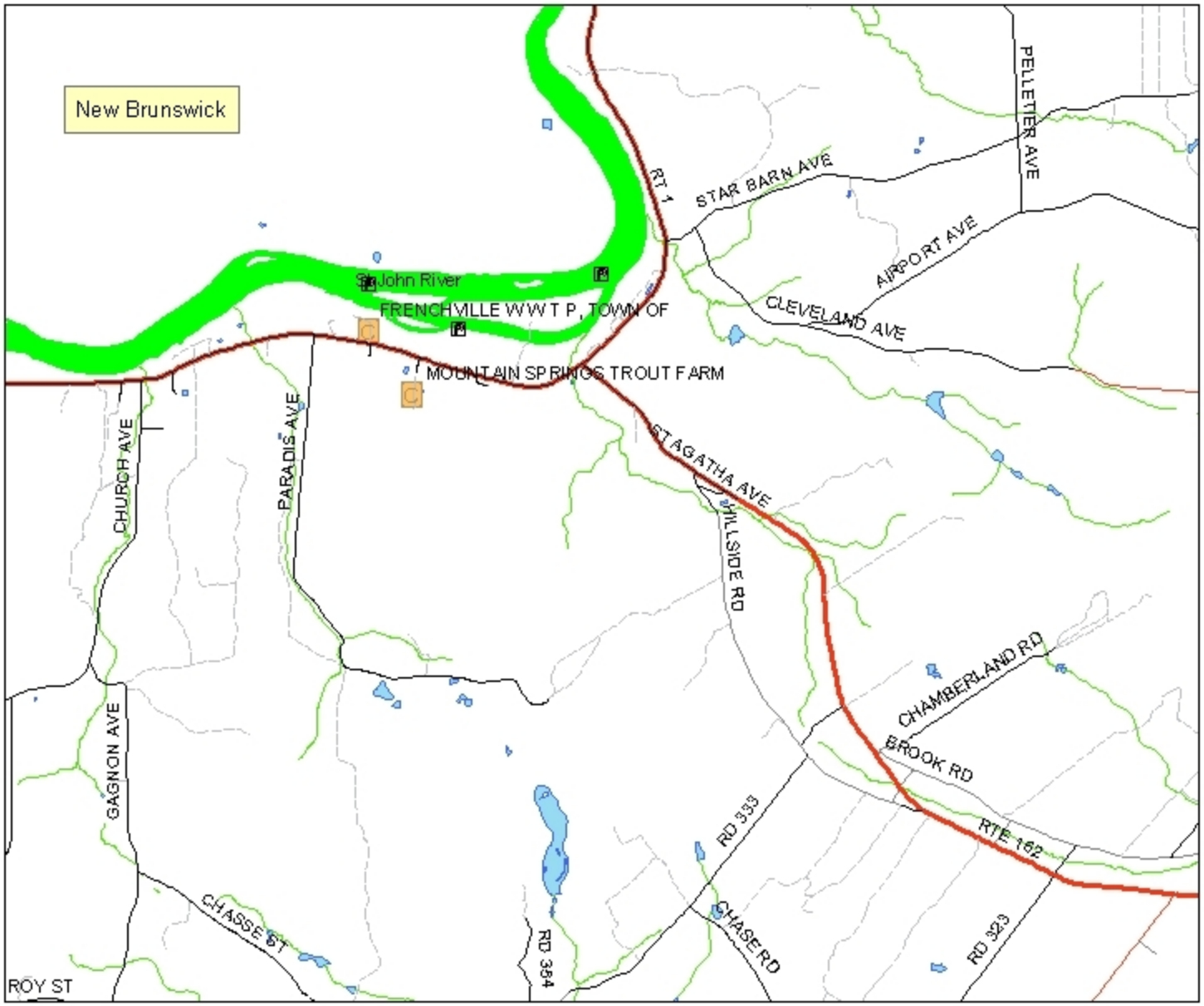
During the period of April 16, 2010 through May 17, 2010, the Department solicited comments on the proposed draft Maine Pollutant Discharge Elimination System Permit / Maine Waste Discharge License to be issued to Mt. Springs Trout Farm for the proposed discharge. The Department did not receive any comments that resulted in significant revisions to the permit. Therefore, no response to comments has been prepared.

ATTACHMENT A

Site Map

ATTACHMENT B

Site Plans (3)



Legend

Rivers
- AA
- A
- B
- C

Streams
- AA
- A
- B
- C

- Ponds and Lakes
- Wastewater_Facilities
- Wastewater_Outfalls

Roads

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

N

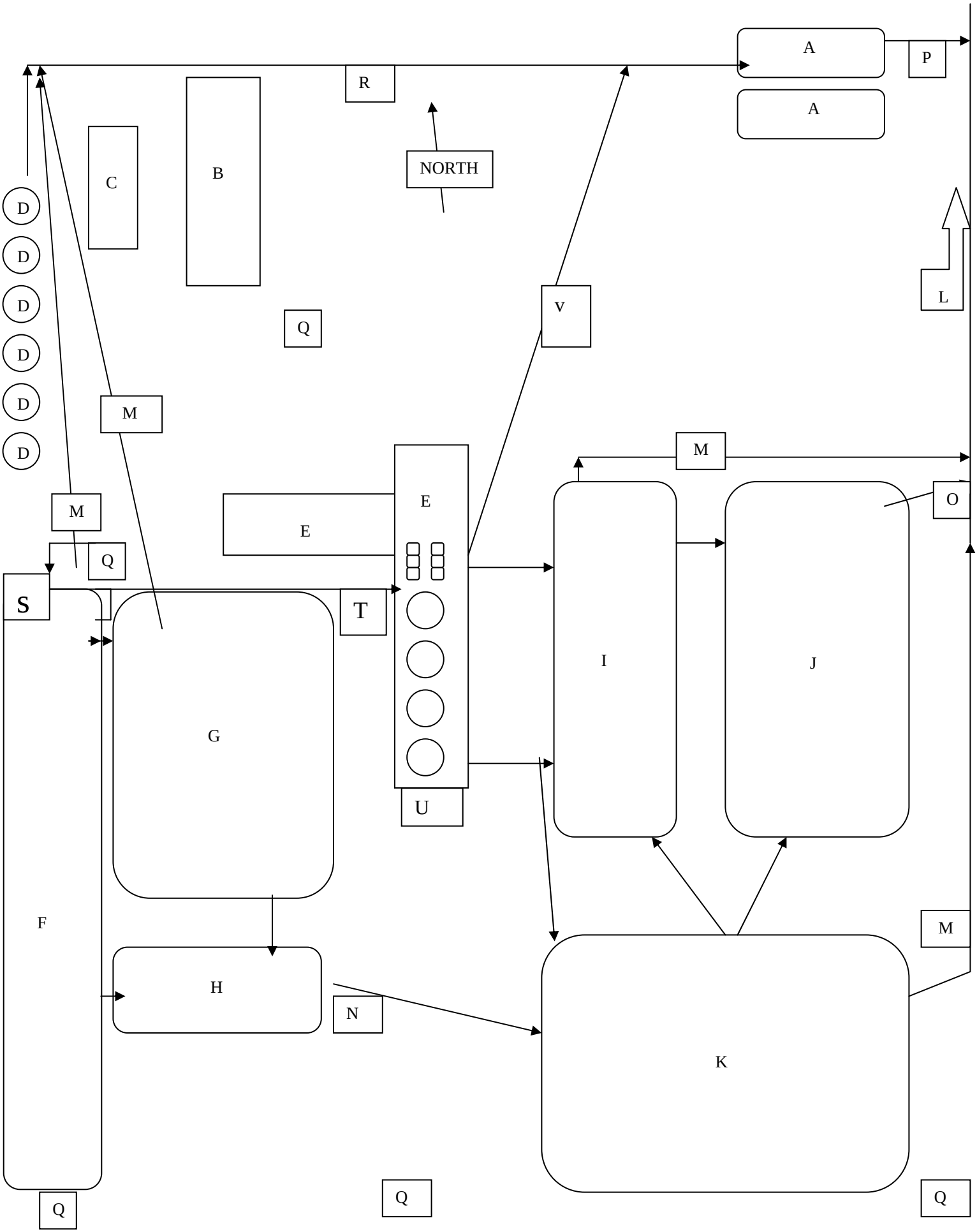
Miles
0 0.2 0.4 0.8 1.2 1.6

Mtn Springs Trout Farm
Frenchville, Maine

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE OF MAINE

Facility Layout



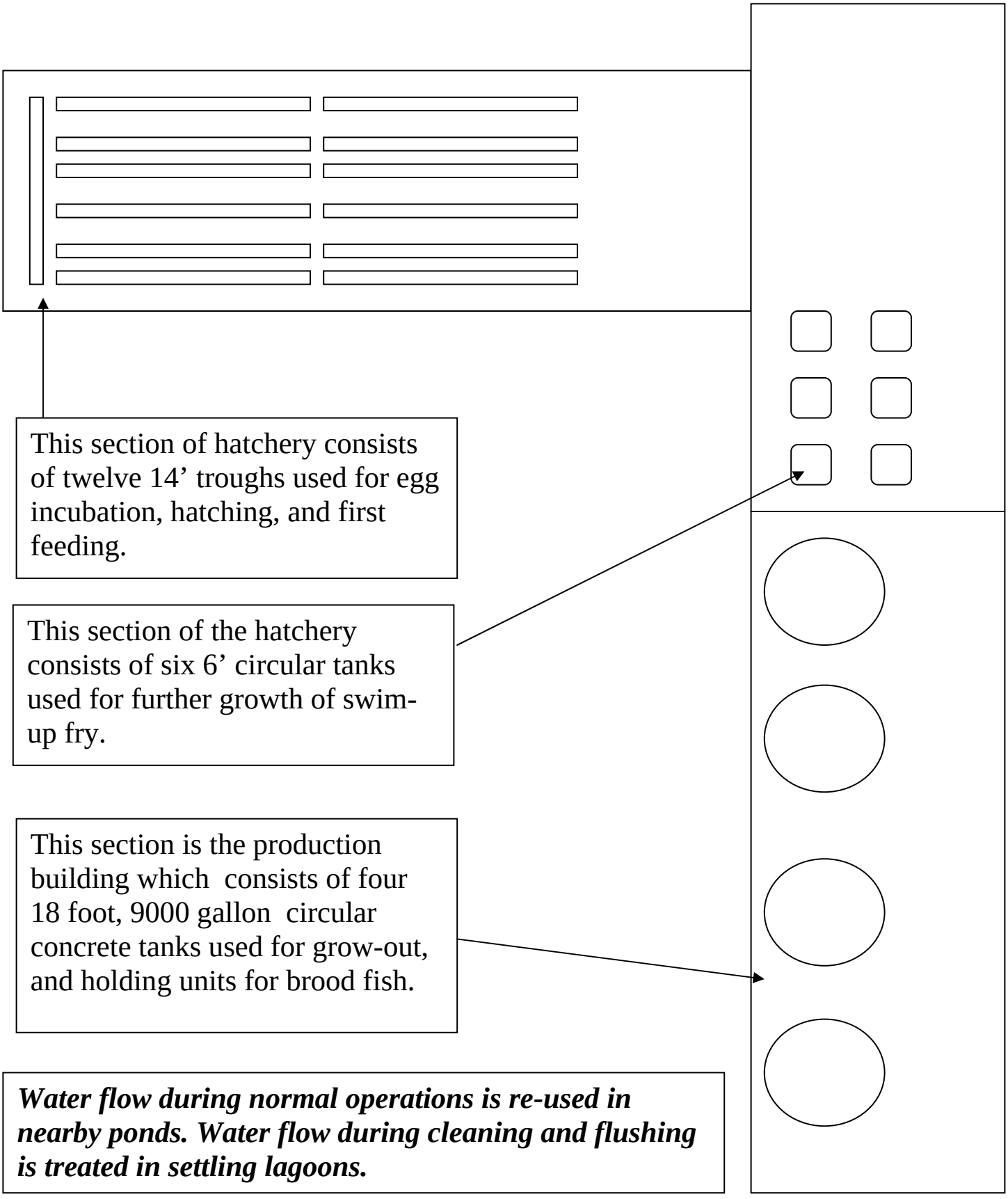
Description of Facility

Use as reference with facility layout

A> Two 100’ X 35’ settling ponds, used alternately when one is being cleaned out.
B> 100’ X 50’ metal storage building
C> 30’ X 40’ building used for storage of feed & supplies, and also office space.
D> Series of 12’ circular fiberglass tanks used as temporary holding units for fish to be delivered. Flow from these tanks is directed into the settling ponds.
E> These building are the hatchery & production buildings. You will find a description of these buildings on the following page.
F> 250’ X 75’ reservoir used for distribution of water. Not used as a growout pond.
G> 140’ X 150’ growout pond, used to grow fish to market size.
H> 140’ X 50’ growout pond used to grow fish to market size.
I> 200’ X 100’ growout pond use to grow fish to market size.
J> 200’ X 150’ growout pond used to grow fish to market size.
K> 250’ X 125’ growout pond used to grow fish to market size.
L> This is the area of the drainage where the hatchery water flows into. Note that the arrow indicates direction of water flow.
M> These are the outlets of ponds used only for draining.
N> These are the outlets of ponds that direct normal water flow.
O> This is the outfall from all water flow. This is also the location of the weir where total flow is measured and samples are collected for compliance testing. Note that facility reuses water from pond to pond. This is possible because of elevation, F is the highest point, J and A are the lowest points.
P> This is the outfall from the settling ponds, used for cleaning operations only.
Q> These are the springs and wells that supply water to the facility.
R> These indicate a line or ditch that directs water to settling ponds during cleaning operations.
S> Well water degassing column & water temperature mixing valves.
T> Six inch line that feeds water from the reservoir and degassing column to the production building.
U> Experimental quarantine building used for rainbow smelt culture.
V> Six inch line which directs effluent water from cleaning to the settling ponds.

Note that all other arrows not labeled indicate normal water flow from pond to pond. Also note that the drawing is not a true scale of size and distance.

FISH HATCHERY DETAIL



This section of hatchery consists of twelve 14’ troughs used for egg incubation, hatching, and first feeding.

This section of the hatchery consists of six 6’ circular tanks used for further growth of swim-up fry.

This section is the production building which consists of four 18 foot, 9000 gallon circular concrete tanks used for grow-out, and holding units for brood fish.

Water flow during normal operations is re-used in nearby ponds. Water flow during cleaning and flushing is treated in settling lagoons.

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.