



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PATRICIA W. AHO
COMMISSIONER

June 4, 2012

VIA ELECTRONIC MAIL

Mr. Jun Yamada
Fresh Atlantic USA
72 Commercial Street #3
Portland, ME 04101
unione@hotmail.co.jp

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0036943
Maine Waste Discharge License (WDL) Application #W009008-5P-C-R
Final MEPDES Permit/WDL – Fresh Atlantic USA

Dear Mr. Yamada:

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

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

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

Sincerely,

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

Enclosure

Cc: Matt Hight, DEP/SMRO Lori Mitchell, DEP/DMU Sandy Mojica, EPA

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

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

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

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04679-2094
(207) 764-0477 FAX: (207) 760-3143



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

DEPARTMENT ORDER

IN THE MATTER OF

FRESH ATLANTIC USA	)	MAINE POLLUTANT DISCHARGE
PORTLAND, CUMBERLAND CO., MAINE	)	ELIMINATION SYSTEM PERMIT
SEA URCHIN PROCESSING	)	AND
ME0036943	)	WASTE DISCHARGE LICENSE
W009008-5P-C-R	)	RENEWAL
APPROVAL	)	

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

APPLICATION SUMMARY

The permittee has applied for the renewal of Maine Pollutant Discharge Elimination System Permit/Waste Discharge License (WDL) # ME0036943/ W009008-5P-A-N ("permit"), which was issued on July 31, 2007 and is scheduled to expire on July 31, 2012. The permit approved the discharge of up to a daily maximum flow of 12,100 gallons per day (gpd) of process waste water and clean-up waste waters to the Fore River, Class SC, in Portland, Maine. See **Attachment A** of the attached Fact Sheet for a site schematic diagram.

PERMIT SUMMARY

This permitting action is similar to the previous permitting action in that it is carrying forward the terms and conditions from the previous permitting action.

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

1. Requiring the permittee to annually verify the location and condition of Outfall #001.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated June 4, 2012 and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with State law.
3. The provisions of the State's antidegradation policy, 38 MRSA § 464(4)(F), will be met, in that:
 - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - (b) Where high quality waters of the State constitute an outstanding natural resource, that water quality will be maintained and protected;
 - (c) The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
 - (e) Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

ACTION

THEREFORE, the Department APPROVES the above noted application of FRESH ATLANTIC USA to discharge a daily maximum flow of 12,100 gpd of treated sea urchin processing waste water and facility clean-up water to the Fore River, Class SC, in, Portland, Maine, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations including:

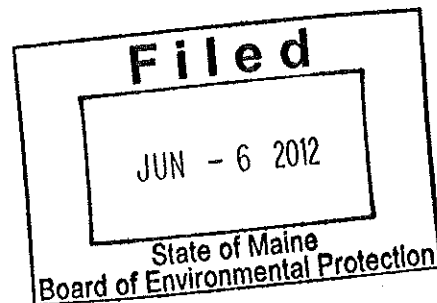
1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits," revised January 16, 2001, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit becomes effective upon the date of signature below and expires at midnight five (5) years from the effective date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the authorization to discharge and the terms and conditions of this permit and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [Maine Administrative Procedure Act, 5 M.R.S.A. § 10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (effective April 1, 2003)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 5th DAY OF June, 2012.

DEPARTMENT OF ENVIRONMENTAL PROTECTION


For Patricia Aho, Commissioner



Date filed with Board of Environmental Protection _____

Date of initial receipt of application April 9, 2012.
Date of application acceptance April 10, 2012.

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

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge treated sea urchin processing and facility clean-up waste water to the Fore River, Class SC, from **OUTFALL #001**.^(1,2)

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>				<u>Monitoring Requirement</u>	
	<u>Monthly Average</u>	<u>Daily Maximum</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>	<u>Minimum Measurement Frequency</u>	<u>Sample Type</u>
Flow [50050]	Report, gpd [07]	12,100 gpd [07]	---	---	2/Month ^(3,4) [02/30]	Measure [MS]
Total Suspended Solids [00530]	140 #/day [26]	260 #/day [26]	1,400 mg/l [19]	2,600 mg/l [19]	2/Month ⁽³⁾ [02/30]	Grab [GR]
Oil & Grease [03582]	13 #/day [26]	21 #/day [26]	130 mg/L [19]	210 mg/L [19]	2/Month ⁽³⁾ [02/30]	Grab [GR]
Total Residual Chlorine (TRC) [50060]	---	---	---	1.0 mg/L [19]	2/Month ⁽³⁾ [02/30]	Grab [GR]
Production [00145]	Report, lbs/day [26]	Report lbs/day [26]	---	---	1/Day [01/01]	Grab [GR]
pH (Std. Units) [00400]	The pH shall not be less than 6.0 or greater than 9.0 at any time.				2/Month ⁽³⁾ [02/30]	Grab [GR]

The italicized numeric values bracketed in the table above are code numbers utilized by Department personnel to code the monthly Discharge Monitoring Reports (DMRs).

Footnotes: Footnotes are found on Page 5 of this permit.

SPECIAL CONDITIONS

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

Sampling: Sampling and analysis must be conducted in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136 or c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services. Samples that are sent to a POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000). Laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of 10-144 CMR 263.

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

1. Outfall #001: The location and condition of Outfall #001 shall be verified annually.
2. Effluent Monitoring: Effluent values shall be determined through sampling at Outfall #001, the only authorized facility discharge, following all means of wastewater treatment and in a manner so as to capture conditions representative of wastewater generating processes at the facility. **Any change in sampling location must be approved by the Department in writing.**
3. There shall be at least 10 days between sampling events.
4. Flow: Flow measurements must be conducted in accordance with a methodology reviewed and approved by the Department.

SPECIAL CONDITIONS

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 usage designated for the classification of the receiving waters.
2. The effluent shall not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usage designated for the classification of the receiving waters.
3. The discharge shall not cause visible discoloration or turbidity in the receiving waters which would impair the usages designated for the classification of the receiving waters.
4. Notwithstanding specific conditions of this permit the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

C. UNAUTHORIZED DISCHARGES

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

D. NOTIFICATION REQUIREMENT

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

1. Any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system.
2. For the purposes of this section, adequate notice shall include information on:
 - a. The quality or quantity of wastewater introduced to the waste water collection and treatment system; and
 - b. Any anticipated impact of the change in the quantity or quality of the wastewater to be discharged from the treatment system.

SPECIAL CONDITIONS

E. MONITORING AND REPORTING

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

Department of Environmental Protection
Southern Maine Regional Office
Bureau of Land & Water Quality
Division of Water Quality Management
312 Canco Road
Portland, Maine 04103

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

F. REOPENING OF PERMIT FOR MODIFICATIONS

Upon evaluation of the test results required by 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 anytime and with notice to the permittee, modify this permit to: (1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded; (2) require additional monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

G. 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

June 4, 2012

PERMIT NUMBER: ME0036943

LICENSE NUMBER: W009008-5P-C-R

NAME AND ADDRESS OF APPLICANT:

**Fresh Atlantic USA
1700 E. Garry Ave., Suite 236
Santa Ana, CA 92705**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**Fresh Atlantic USA
72 Commercial Street, #3
Portland, Maine 04101**

RECEIVING WATER/CLASSIFICATION: Fore River, Class SC

COUNTY: Cumberland County

**COGNIZANT OFFICIAL AND TELEPHONE NUMBER: Jun Yamada, Plant Manager
(207) 636-6278
email: unione@hotmail.co.jp**

1. APPLICATION SUMMARY:

- a. Application – Fresh Atlantic USA (“permittee”) has applied for the renewal of Maine Pollutant Discharge Elimination System Permit/Waste Discharge License (WDL) # ME0036943/ W009008-5P-A-N (“permit”), which was issued on July 31, 2007 and is scheduled to expire on July 31, 2012. The permit approved the discharge of up to a daily maximum flow of 12,100 gallons per day (gpd) of process waste water and clean-up waste waters to the Fore River, Class SC, in Portland, Maine.
- b. Waste water source description and treatment – The permittee receives live sea urchins at their dockside facility. City water is used to wash down the transport containers inside the processing facility. The wash water drains to a central settling tank/sump inside the building. Solids are periodically cleaned from the sump and disposed of off-site. The supernatant from the sump discharges to the Fore River via Outfall #001 via a plastic pipe measuring four (4) inches in diameter that is approximately six (6) feet below mean low water adjacent to the dock. See **Attachment A** of this Fact Sheet for a site schematic diagram.

1. APPLICATION SUMMARY (cont'd)

During processing, the permittee makes up brine water using City water and salt. During shucking of the sea urchins, the urchin roe are placed in and cleaned with cold brine water with overflow and waste brine discharged to floor drains. The floor drains are connected to a settling tank/sump inside the building. The discharge sump is covered by a sheet of steel and flows through grated drains, preventing the larger solids from entering the sump. The outlet of the sump is covered by a milk crate that further excludes solids. Solids in the sump are manually shoveled into a tote and disposed of off-site. The liquid discharges to Outfall #001 as described on the previous page.

After shucking, metal table tops and roe baskets are disinfected with a 6% sodium hypochlorite solution. The tables, baskets and floors are rinsed with City water. The wash water and diluted disinfectant are collected in floor drains leading to the settling tank/sump inside the building and discharged via Outfall #001. See **Attachment B** of this Fact Sheet for a process flow diagram. Sanitary waste water is conveyed to the Portland Water District's municipal waste water treatment plant.

2. PERMIT SUMMARY

- a. This permitting action is similar to the previous permitting action in that it is carrying forward the terms and conditions from the previous permitting action.
- b. This permitting action is different from the previous permitting action in that is:
 1. Requiring the permittee to annually verify the location and condition of Outfall #001.

3. CONDITIONS OF PERMITS

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

4. RECEIVING WATER QUALITY STANDARDS

Classifications of estuarine and marine waters, 38 M.R.S.A. § 469(1)(F)(1) classifies the tidal waters of South Portland at the point of discharge as Class SC waters. *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B(3) describes the standards for Class SC waters.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2010 Integrated Water Quality Monitoring and Assessment Report, (Report prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists the Fore River Estuary as "*Category 4-A: Estuarine and Marine Waters With Impaired Use, TMDL Completed.*" The source of the impairment is elevated fecal coliform bacteria counts. The Report states, "*A TMDL is complete, but there is insufficient new data to determine if attainment has been achieved. Note: Bacteria may impair either recreational uses (swimming) or shellfish consumption uses, or both. Shell fish consumption impairments only apply to waters naturally capable of supporting the shellfish-harvesting use (i.e., waters of high enough salinity for propagation of shellfish.)*" On September 28, 2009, the USEPA approved the Department's *Maine Statewide Bacteria TMDL (Total Maximum Daily Loads)*, dated August 2009, for fresh, marine and estuarine waters impaired by bacteria. (See: <http://www.epa.gov/region1/eco/tmdl/approved.html>.) The discharge from the permittee is not considered a contributing source of fecal coliform bacteria to the receiving water.

The Report also lists the Fore River Estuary as "*Category 5-A: Estuarine and Marine Waters Impaired by Pollutants Other Than Those Listed in 5-B Through 5-D (TMDL Required).*" The estuary is listed as impaired for failure to meet the marine life standards ascribed to Class SC waters and for the presence of toxic compounds in toxic amounts. The Report lists sources as municipal point source, CSOs, storm water, hazardous waste sites, and nonpoint (spills of all sizes). The discharge from the permittee is not considered a contributing source of toxic compounds in toxic amounts.

In addition, all estuarine and marine waters of the State are listed as, "*Category 5-D: Estuarine and Maine Waters Impaired by Legacy Pollutants.*" Impairment in this context refers to the estuarine and marine waters partially supporting the designated use of fishing and harvesting of shellfish due to elevated levels of mercury, PCBs, dioxin, and other persistent, bioaccumulating substances in tissues of some fish and in lobster tomalley. Pursuant to 38 M.R.S.A. § 420(1-B)(B), "*a facility is not in violation of the ambient criteria for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to section 413 subsection 11.*" The Department has not established interim mercury limits for this facility pursuant to *Interim Effluent Limitations and Controls for the Discharge of Mercury*, 06-096 CMR 519 (last amended October 6, 2001), as the Department does not suspect the facility contributes detectable levels of mercury above the raw water intake concentrations.

The Maine Department of Marine Resources (MeDMR) assesses information on shellfish growing areas to ensure that shellfish harvested are safe for consumption. The MeDMR has authority to close shellfish harvesting areas wherever there is a pollution source, a potential pollution threat, or poor water quality. The MeDMR traditionally closes shellfish harvesting areas if there are known sources of discharges with unacceptable bacteria levels (in-stream thresholds established in the National Shellfish Sanitation Program) or maintains shellfish harvesting closure areas due to lack of updated information regarding ambient water quality conditions. In addition, the MeDMR prohibits shellfish harvesting in the immediate vicinity of all wastewater treatment outfall pipes as a precautionary measure in the event of a failure in the treatment plant's disinfection system. Thus, shellfish harvesting area #13-A is closed to the harvesting of shellfish due to insufficient or limited ambient water quality data to determine that the area meets the standards in the National Shellfish Sanitation Program.

6. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- a. Effluent Limitations: The EPA has established technology-based limitations for numerous seafood processes in National Effluent Guidelines (NEG) found at Code of Federal Regulations Title 40, Part 408 for canned and preserved seafood processing, but not for sea urchin processing. Part 408 Subpart AG—Abalone Processing Subcategory defines abalone and other shellfish as having similar waste loads. The Department has made a best professional judgment determination that the effluent discharges for sea urchin processing are consistent with abalone and limits contained in this permit are based on Subpart AG, § 408.335.
- b. Flow: The daily maximum flow limitation of 12,100 gpd being carried forward in this permitting action was proposed by the permittee in their 5/24/07 application submitted to the Department as being representative of the highest flow discharged at maximum production and clean-up.

A review of the Discharge Monitoring Report (DMR) data for the period February 6, 2009 – February 6, 2012 indicates the following:

Flow

Value	Limit (GPD)	Range (GPD)	Average (GPD)	Number of DMRs	Compliance
Monthly Average	Report	1,365 – 4,390	2,182	27	N/A
Daily Maximum	12,100	2,059 – 8,386	4,622	27	100%

- c. Dilution Factor: The acute dilution factor associated with the daily maximum discharge of 12,100 gpd from the permittee's facility is 180:1 given the 6-foot depth of the discharge pipe outfall below mean low water.
- d. Production, pounds/day: This permitting action is carrying forward the monthly average and daily maximum production reporting requirements from the previous permitting action. The Department made a best professional judgment that a reasonable production rate for calculating production-based technology limits is 10,000 pounds per day, based on information in the permittee's initial waste discharge application dated 5/24/07.

A review of the Discharge Monitoring Report (DMR) data for the period February 6, 2009 – February 6, 2012 indicates the following:

Production

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)	Number of DMRs	Compliance
Monthly Average	Report	6,721 – 10,846	9,436	27	N/A
Daily Maximum	Report	9,316 – 18,972	14,033	27	N/A

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

- e. **Total Suspended Solids (TSS):** This permitting action is carrying forward TSS concentration and mass limits in lieu of the mass per pounds of production in order to simplify the evaluation of the waste water discharges and record keeping. NEGs for Subpart AG establishes limits of 14 pounds per 1,000 pounds of production as a monthly average and 26 pounds per 1,000 pounds production as a daily maximum.

Utilizing a production value of 10,000 pounds, monthly average and daily maximum technology-based mass limits can be calculated as follows.

$$\text{Monthly average: } \frac{(10,000 \text{ lbs/day})(14 \text{ lbs})}{1,000 \text{ lbs}} = 140 \text{ lbs}$$

$$\text{Daily maximum: } \frac{(10,000 \text{ lbs/day})(26 \text{ lbs})}{1,000 \text{ lbs}} = 260 \text{ lbs}$$

A review of the Discharge Monitoring Report (DMR) data for the period February 6, 2009 – February 6, 2012 indicates the following:

TSS Mass

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)	Number of DMRs	Compliance
Monthly Average	140	1 – 16	5	27	100%
Daily Maximum	260	1 – 22	7	27	100%

Concentration limits for TSS were back-calculated utilizing the applicable mass limitation calculated above, a flow of 0.012 million gallons per day (MGD) (same as 12,100 gpd) and a conversion factor of 8.34 lbs/gallon of water. Concentration limits are calculated as follows:

$$\text{Monthly average: } \frac{(140 \text{ lbs/day})}{(0.012 \text{ MGD})(8.34 \text{ lbs/gal})} = 1,400 \text{ mg/L}$$

$$\text{Daily maximum: } \frac{(260 \text{ lbs/day})}{(0.012 \text{ MGD})(8.34 \text{ lbs/gal})} = 2,600 \text{ mg/L}$$

A review of the Discharge Monitoring Report (DMR) data for the period February 6, 2009 – February 6, 2012 indicates the following:

TSS Concentration

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Number of DMRs	Compliance
Monthly Average	1,400	92 – 750	250	27	100%
Daily Maximum	2,600	110 – 900	319	27	100%

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

- f. Oil & Grease (O&G): As with TSS, this permitting action is carrying forward concentration and mass limits for oil & grease in lieu of the mass per pounds of production. NEG's for Subpart AG establishes limits of 1.3 pounds per 1,000 pounds of production as a monthly average and 2.1 pounds per 1,000 pounds production as a daily maximum. Utilizing a production value of 10,000 pounds, monthly average and technology-based mass limits can be calculated as follows:

$$\text{Monthly average: } \frac{(10,000 \text{ lbs/day})(1.3 \text{ lbs})}{1,000 \text{ lbs}} = 13 \text{ lbs}$$

$$\text{Daily maximum: } \frac{(10,000 \text{ lbs/day})(2.1 \text{ lbs})}{1,000 \text{ lbs}} = 21 \text{ lbs}$$

A review of the Discharge Monitoring Report (DMR) data for the period February 6, 2009 – February 6, 2012 indicates the following:

Oil & Grease, Mass

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)	Number of DMRs	Compliance
Monthly Average	13	0 – 1	0.5	27	100%
Daily Maximum	21	0 – 2	0.7	27	100%

Concentration limits for oil & grease were back-calculated utilizing the applicable mass limitation calculated on the previous page, a flow of 0.012 MGD and a conversion factor of 8.34 lbs/gallon of water. Concentration limits are calculated as follows:

$$\text{Monthly average: } \frac{(13 \text{ lbs/day})}{(0.012 \text{ MGD})(8.34 \text{ lbs/gal})} = 130 \text{ mg/L}$$

$$\text{Daily maximum: } \frac{(21 \text{ lbs/day})}{(0.012 \text{ MGD})(8.34 \text{ lbs/gal})} = 210 \text{ mg/L}$$

A review of the Discharge Monitoring Report (DMR) data for the period February 6, 2009 – February 6, 2012 indicates the following:

Oil & Grease, Concentration

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Number of DMRs	Compliance
Monthly Average	130	6 – 100	32	27	100%
Daily Maximum	210	6 – 130	41	27	100%

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

- g. **Total Residual Chlorine:** Chlorine and/or chlorine based products are not utilized during the processing of the sea urchins but are utilized for facility and equipment cleaning. Limitations on TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either a water quality-based or BPT-based limit. With the dilution factor as determined in section 6(c) of this Fact Sheet, an end-of-pipe (EOP) water quality-based concentration threshold for TRC may be calculated as follows:

Parameter	Acute Criteria	Acute Dilution	Daily maximum threshold
Chlorine	0.013 mg/L	180:1	2.3 mg/L

Example calculation, Acute: $0.013 \text{ mg/L} (180) = 2.3 \text{ mg/L}$

The Department has established a daily maximum BPT limitation of 1.0 mg/L for facilities that disinfect their effluent with elemental chlorine or chlorine-based compounds. For facilities that dechlorinate the discharge in order to meet water quality based thresholds, the Department has established daily maximum and monthly average BPT limits of 0.3 mg/L and 0.1 mg/L, respectively. The permittee does not have to dechlorinate the effluent to achieve compliance with water quality-based threshold calculated above.

The daily maximum technology-based effluent TRC concentration limitation of 1.0 mg/L is more stringent than the calculated water quality-based threshold calculated above and is therefore being carried forward from the previous permitting action.

A review of the Discharge Monitoring Report (DMR) data for the period February 6, 2009 – February 6, 2012 indicates the following:

Total Residual Chlorine

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)	Number of DMRs	Compliance
Daily Maximum	1.0	0 – 0.2	0.1	27	100%

- h. **pH Limits:** Limits for pH are based on 40 CFR subpart AG – Abalone Processing Subcategory § 408.335. This permitting action is carrying forward the daily maximum pH limitations of 6.0 standard units (SU) to 9.0 SU from the previous permitting action.

A review of the Discharge Monitoring Report (DMR) data for the period February 6, 2009 – February 6, 2012 indicates the following:

pH

Value	Limit (SU)	Range (SU)	Number of DMRs	Compliance
Daily Maximum	6.0 – 9.0	6.3 – 7.0	27	100%

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

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

8. PUBLIC COMMENTS

Public notice of this application was made in the *Portland Press Herald* newspaper on or about April 2, 2012. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

9. DEPARTMENT CONTACTS

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

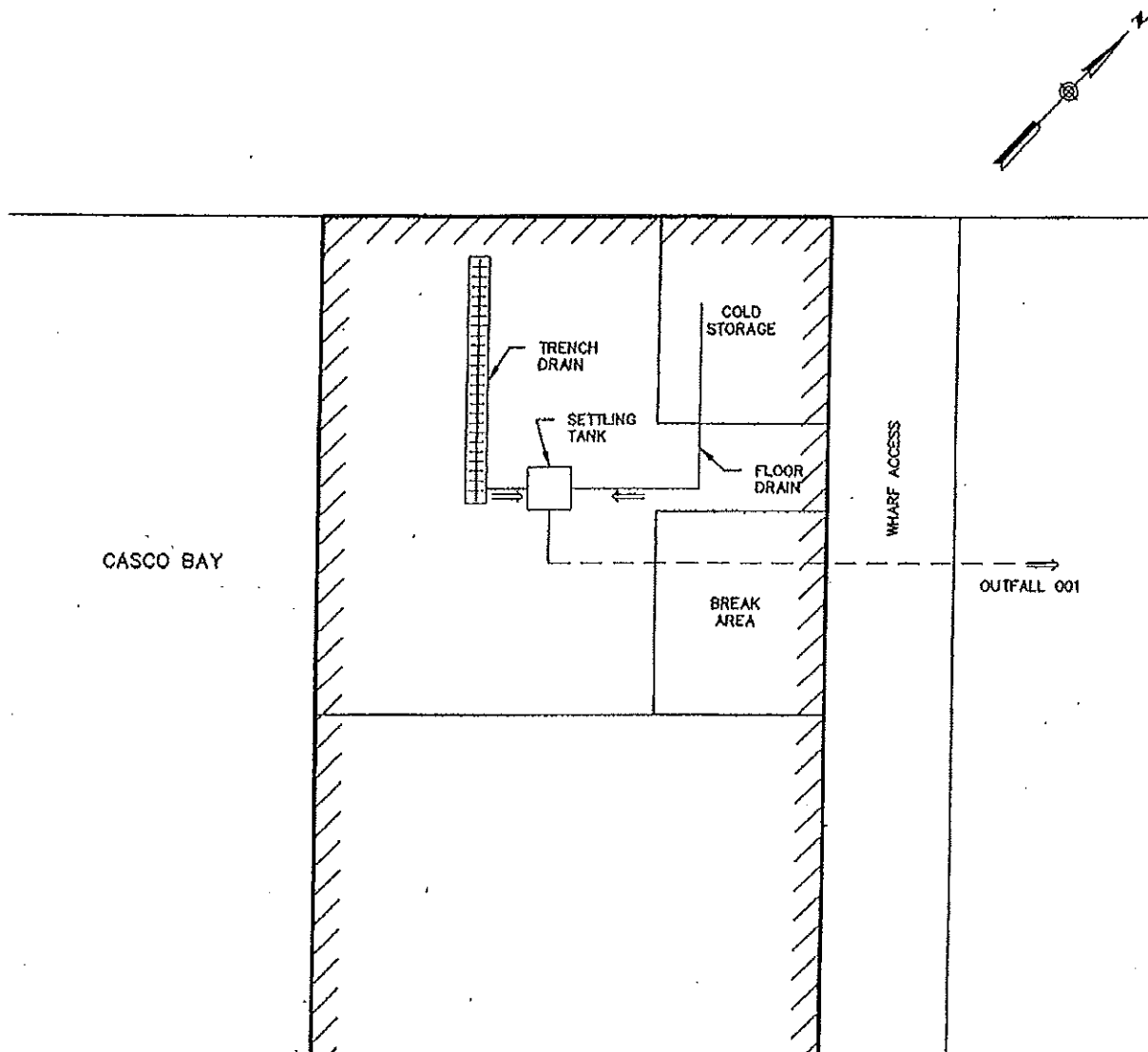
Phyllis Rand
Division of Water Quality Management
Bureau of Land and Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
Email: phyllis.a.rand@maine.com

Telephone (207) 287-7658

10. RESPONSE TO COMMENTS

During the period of May 1, 2012 through the issuance date of the permit, the Department solicited comments on the proposed draft permit to be issued for the discharge from the permittee. The Department did not receive comments from the permittee, state or federal agencies or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

ATTACHMENT A



NOTES:

1. SITE PLAN BASED ON MEASUREMENTS AND OBSERVATIONS MADE BY RANSOM ENVIRONMENTAL CONSULTANTS, INC.
2. SOME FEATURES ARE APPROXIMATE IN LOCATION AND SCALE.
3. THIS PLAN HAS BEEN PREPARED FOR FRESH ATLANTIC USA. ALL OTHER USES ARE NOT AUTHORIZED, UNLESS WRITTEN PERMISSION IS OBTAINED FROM RANSOM ENVIRONMENTAL CONSULTANTS, INC.

RANSOM

Environmental
Consultants, Inc.

SITE SCHEMATIC

PREPARED FOR:

FRESH ATLANTIC USA
72 COMMERCIAL STREET
PORTLAND, MAINE

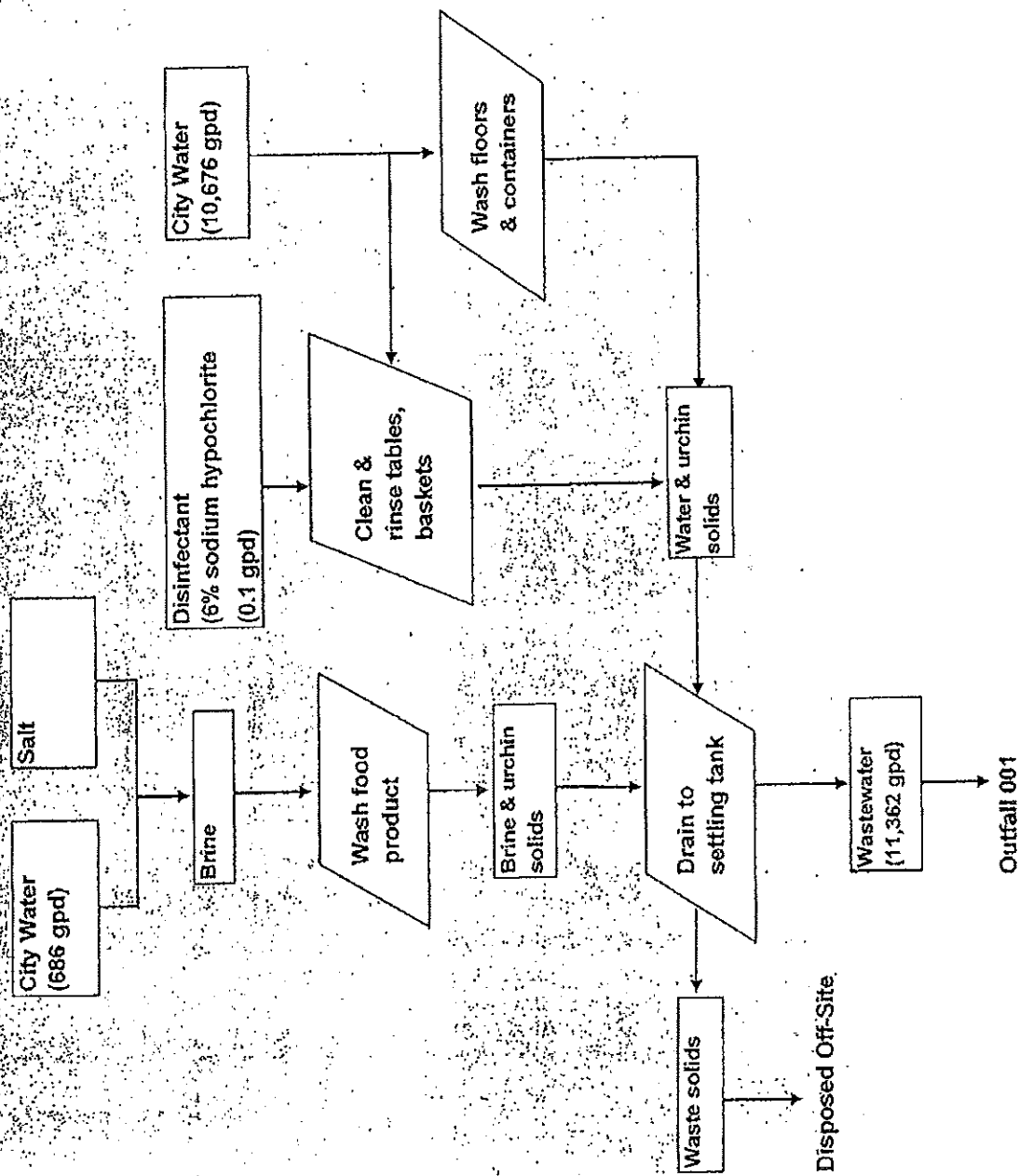
SITE:

FRESH ATLANTIC USA
72 COMMERCIAL STREET
PORTLAND, MAINE

DATE: MAY 2007
PROJECT: 066064
FIGURE: 2

ATTACHMENT B

Process Flow Schematic
 Fresh Atlantic USA
 Portland, Maine



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

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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).

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

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

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

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

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

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

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

B. OPERATION AND MAINTENANCE OF FACILITIES

1. General facility requirements.

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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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.

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- (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.

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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.

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D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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