

**Updated Response Summary for Comments Received on
Draft Indirect Discharge Permit ID-9-0331
Betty and Michael Gingras
(d/b/a Hog Island Wholesale Bait)**

September 7, 2018

The Agency of Natural Resources' Indirect Discharge Program received an application for an indirect discharge permit from Betty and Michael Gingras (d/b/a Hog Island Wholesale Bait) on August 22, 2017. A draft indirect discharge permit, ID-9-0331, was placed on public notice from February 26, 2018 to March 27, 2018. During this period, comments were received from the general public on the draft permit, including requests for a public hearing.

The Indirect Discharge Program completed an initial Response Summary for Comments Received on Draft Indirect Discharge Permit ID-9-0331 on April 13, 2018 and issued a notice of a public hearing on April 16, 2018.

The Indirect Discharge Program held an informal public hearing on May 22, 2018 at the Swanton Town Offices. Verbal comments and questions were received at the hearing pertaining to the current discharge, stormwater runoff, impacts to private property and Lake Champlain, and many other topics related to the operation of the existing facility and the proposed discharge. A transcript of the public hearing is included with this document, beginning on Page 28.

The public comment period for the draft permit was reopened on May 22, 2018 and closed on June 1, 2018.

This document contains a summary of all of the comments received during both public comment periods and the Agency's response to each comment. For those comments the Agency provided in the initial Response Summary for Comments dated April 13, 2018, the initial response is copied below as well as an updated response where relevant.

The changes made to the draft permit are indicated on Page 26.

I. Initial Comments and 4/13/18 Response Summary

The following comments were received during the public comment period from February 26, 2018 to March 27, 2018 and were summarized in a Response Summary dated April 13, 2018. Some responses have been updated to reflect changes in the Agency's initial response. These changes are labeled 9/7/18 Response Update and are included immediately after the initial response.

Joseph F. Obuchowski & Associates Comments:

GENERAL COMMENT:

"We submit the following comments on behalf of Edward Baker, an abutting land owner. Mr. Baker's goal in making these comments is to assure that the facility is located and constructed in such manner that the facility has no impact, including but not limited to shadowing, or create restrictions on his property and if such impacts and/or restrictions occur, Hog Island Bait must correct or eliminate such impacts within two weeks, pay for any damages to Mr. Baker's property and cease operations until such time as the impacts/ and or restrictions are eliminated.

Comment 1 – Section A. Administration Condition A2. Compliance Schedule:

An additional Condition should be added mandating the construction and operation of this system no later than September 30, 2018. In the event that construction is not completed by September 30, 2018 the permit shall require that Hog Island Bait cease operations until such time that construction is completed.

This is an existing facility with an existing discharge as referenced in Condition B2 of this draft Permit. This discharge is not authorized by any state or federal permit. This discharge is not and never has been authorized by a National Pollution Discharge Permit System (NPDES) permit or any permit issued by the State of Vermont under the requirements of 10 VSA Chapter 47.

The fish rearing wastewater is currently being discharged from the east side of the building into the existing settling pond. This pond was originally designed as an infiltration basin. It has failed. The wastewater overtops the pond/basin and flows into an existing swale on northeast portion of the property. The wastewater is then conveyed via this swale north through the adjacent properties to Lake Champlain. Per 40 CFR Part 122.2 this activity is defined as a "discharge to waters of the United States".

Therefore, the Compliance Schedule of this Indirect Discharge Permit must contain a schedule for the timely completion of the proposed wastewater disposal system to correct this violation of state and federal requirements."

Agency Response:

The indirect discharge permit will eliminate the unpermitted discharge and provide adequate controls to assure that groundwater and surface water standards are being met. The permit will contain a requirement that the disposal system be constructed and operational by September 30, 2018.

9/7/18 Response Update: The final permit contains a June 30, 2019 date for completion and operation of the disposal system. See the response to comments on page 15 for further details.

Comment 2 - Section A. Administration

“This facility has been in operation since 1996 when the first Act 250 permit was issued. The 1996 Act 250 permit never addressed discharge in the event that the infiltration basin failed. Thus, as noted above, wastewater flows onto the adjacent properties and then into Lake Champlain.

Since this facility continues to operate after the failure of the infiltration basin and has had an ongoing discharge to waters of the State and on to adjacent properties for many years, an additional Condition must be added to this Section of the Permit clearly stating that it is not a defense for the permittee, in the event that this proposed system fails, that it would have been necessary to halt or reduce the operations to maintain compliance with the Permit.”

Agency Response:

Condition D1 of the indirect discharge permit contains general operating requirements that prohibit the discharge of process wastewater onto the surface of the ground, the surfacing of process wastewater, or the direct discharge of process wastewater to waters of the State. In the event the proposed system fails, the permittee will need to repair the system in place, design and permit another indirect discharge disposal option that meets the above criteria or obtain a NPDES permit.

Comment 3 – Section D “System Operation”

“An additional Condition must be added in this Section of the Permit requiring quarterly inspections by an independent certified engineer and reporting to the Agency of the operation and condition of filtration system and the solids (sludge) accumulation in the settling tank and pump station.

The most critical component of this wastewater treatment, recycling, and disposal system is the filtration system. If this system does not operate properly, the recycled water could become toxic to the minnows, result in excessive solids being generated

and discharged to the mound disposal system causing it to clog and fail, or result in an excessive volume of wastewater being wasted from the recycling process which would exceed the hydraulic capacity of the mound system causing it to fail.

Therefore, this Indirect Discharge Permit must contain a schedule for the frequent and routine inspection and reporting to the Agency of the status of the filtration system, settling tank, and pump station to ensure that it is properly operating and not generating excessive solids or flows to the mound disposal system. Once the operation of this system has been adequately quantified, the permittee could petition the Agency to reduce this inspection and reporting schedule as supported by the results of previous inspections.”

Agency Response:

It is the Agency’s understanding that the facility operates from December through September each year. The indirect discharge permit requires an annual inspection during the month of April, which falls in the middle of the operating season. Based on the few total suspended solids lab results, the Agency feels that one annual inspection is sufficient. By comparison, the Indirect Discharge Program requires annual inspections for sewage disposal systems with design flows over 6,500 gallons per day for domestic wastewater that contains much more suspended solids than the process wastewater from the bait facility.

The Agency will require that an effluent filter be installed on the outlet of the settling tank for additional solids removal.

Comment 4 – Section D “System Operation”

“An additional Condition must be added in this Section of the Permit requiring the date and description of any maintenance activities conducted on the filtration system to be included on the monthly report required by Condition D7.”

Agency Response:

The Indirect Discharge Program does not regulate process water within a building, so the permit will not contain this requirement. In addition, routine maintenance activities are typically not required to be reported in monthly reports because indirect discharge permits contain general performance standards for the operation of regulated treatment and disposal systems.

9/7/18 Response Update: The final permit contains requirements for reporting any significant repair and maintenance activities, including those performed on the filtration system, for the purpose of providing the Agency with additional information regarding the daily operation of the system.

Comment 5 – Section D “System Operation”

“Condition D4. - System Operation and Maintenance. This Condition must be revised to include language requiring that the operation and maintenance of the system and the sampling as required by Condition E1 only be conducted by qualified personnel. Specifically, language such as the following should be included:

“The Permittee shall provide an adequate operating staff which is properly qualified and trained to carry out the operation, maintenance, and testing functions required to ensure compliance with the conditions of this permit.””

Agency Response:

The Agency does not agree that this additional language is necessary. The language in Condition D4 is standard for all indirect discharge permits and is all encompassing.

Comment 6 – Section D “System Operation”

“Condition D7. - Monthly Report. This Condition must be revised to require the volume of the daily process water recycled back into the minnow rearing operation also be included on the monthly report. This information will provide information on the operation of the filtration units, data on the efficiency of the recycle system, and ensure that the system is operating as designed.”

Agency Response:

The Indirect Discharge Program does not regulate process water within a building, therefore this requirement has not been included in the permit.

9/7/18 Response Update: The final permit does not require reporting of the volume of water recycled through the system but does contain a requirement for the submittal of an Operation and Maintenance Manual including for the filtration system since the process wastewater treatment and disposal system depends on the reduction in wastewater volume that the filtration system will provide.

Neale Comments:

“I am the owner of a seasonal residence at 166 Lakewood Drive in Swanton, Vermont. I recently received notice of the intent to issue an Indirect Discharge Permit to the Hog Island Wholesale Bait and Tackle, Inc., located at 173 Lakewood Drive, which is directly across the road from my property.

My husband (Michael J. Munson) and I have reviewed the draft permit but could not access the plans and details of the application on line. We understand that the proposed permit is for an "Indirect Discharge" of process wastewater (from minnow tanks) via a septic tank and a mound leach field system; and that there will be no surface water emanating from the system. This is of concern because any surface water could drain across my property to Lake Champlain. I would like some assurance that the proposed system will not result in any such surface water discharge."

Agency Response:

The applicant was required to perform a computer mounding analysis as part of the application to demonstrate that process water discharged to the mound system would not surface at the toe of the mound or downgradient of it. The mounding analysis software used by the applicant's engineer assumes a level disposal site. Because the proposed disposal site has a slope of roughly 4%, the Agency's Drinking Water and Groundwater Protection Division staff hydrogeologist was asked to review the analyses. He performed a modified mounding analysis and concluded that at a maximum discharge of 1,200 gallons per day, the process wastewater would not surface at the toe of the mound or downgradient of it.

The proposed plans and specifications are available from the Agency's Indirect Discharge Program by request. The commenter should send an email to ANR.DWGWPIndirectPermits@vermont.gov to request an electronic copy of the plans and specifications.

9/7/18 Response Update: The approved plans are located on the Indirect Discharge Program's website at <http://dec.vermont.gov/water/public-notices/final-permits>.

"The draft permit notes that the bait facility houses 12 minnow tanks but does not specify their volume. The draft permit goes on to indicate that the process water will be "collected and recirculated through the wholesale bait facility, with a portion of the wastewater discharged to the mound system."

This raises several questions:

1. How big are the tanks, how often will each be drained, and what is the estimated daily volume of process water to be treated?"

Agency Response:

According to the applicant, each of the 12 tanks holds 1,000 gallons of water. A recirculating filter will reduce the through flow from each tank to an estimated 100 gallons, resulting in a discharge of 1,200 gallon per day.

“2. How does the daily volume of process water relate to the capacity of the treatment system specified as 1,200 gallons per day?”

Agency Response:

It is the Agency’s understanding that the facility has historically used approximately 8,000 gallons of water per day. Because a disposal system capable of handling such a volume of water is not possible due to site limitations, the applicant is proposing to recirculate process wastewater in the facility so that only 1,200 gallons per day are discharged to the mound system.

“3. If a portion of the process water is to be discharged to the treatment system, what is that portion, how is it determined, and what happens to the portion that is not discharged to the treatment system?”

Agency Response:

The process water that is not discharged to the mound will be filtered and recirculated through the facility. According to the applicant, the 1,200-gallon average daily flow was determined to be the average design flow that could be obtained by converting the existing ‘flow-through’ system to a recirculating system. This design was performed by Pentair Aquatic Eco-Systems and is based on the total number and size of existing tanks, the maximum total weight of minnows to be expected at any given time, and the water chemistry parameters required to maintain optimal levels of bacteria within the proposed biofilter to adequately process the typical quantities ammonia generated by minnows.

“4. Is there any mechanism to ensure that the portion of the process water to be recirculated within the facility is not simply discharged elsewhere where it might find its way to a stream or Lake Champlain?”

Agency Response:

The existing wastewater pond behind the building will be filled in and replaced by tanks in accordance with the approved plans specified in Condition C1 of the indirect discharge permit. This will eliminate the current discharge of process wastewater to the drainage ditch which may ultimately lead to Lake Champlain.

“5. Where is the proposed mound system to be located and how big will it be? The stated mound system capacity and loading rate indicate that the mound system must have at least 1,715 square feet, but neither the area nor the location is specified in the draft permit, and no plans are shown.”

Agency Response:

The mound would be located in the open field just west of the facility building. It would be roughly 100 feet long by 45 feet wide, including the fill area around the disposal bed. As stated above, the engineering plans and specifications are available from the Indirect Discharge Program upon request.

“6. Since this system is for process water from a commercial operation, should a replacement system be required in the event the primary system fails?”

Agency Response:

The process wastewater will be of less strength and have less organic matter than a typical domestic wastewater disposal system. Therefore, a replacement area is not required. The indirect discharge rules do not require a replacement system for the disposal of process wastewater.

“7. Will the proposed septic tank/mound leach field system provide appropriate treatment for the anticipated process water? The process water probably contains fish excrement and uneaten fish food, but if the floor drains, toilets and other fixtures in the building contribute to the process water flow, there could be other components such human waste and oil and salt drippings from the trucks.”

Agency Response:

The proposed plans include a settling tank for the removal of solids in the process wastewater before it is pumped to the disposal mound. The Agency will also require the installation of an effluent filter on the outlet of the settling tank for additional solids removal.

The indirect discharge permit only authorizes the disposal of process wastewater from the fish tanks. No domestic wastewater or other wastewater is allowed to be discharged to this system. Domestic wastewater from the facility is discharged to an existing mound system previously approved by Public Building Permit # PB-6-0331 and Wastewater System and Potable Water Supply Permit WW-6-0345.

“I hereby request that a hearing be scheduled so that these issues can be aired and resolved before a revised permit is issued. Please advise me of when and where the hearing will take place.

I would appreciate your prompt response.”

Agency Response:

An informal public hearing will be held at the Swanton town offices on May 22, 2018 from 6:30 – 8:30 pm.

9/7/18 Response Update: An informal public hearing was held at the Swanton town offices on May 22, 2018.

LaFarr Comments:

“In reference to section A 1. It addresses the process of wastewater from minnow tanks. It does not address anything about the waste water that enters into the center of the facility to where that discharges into. Soap from washing vehicles, cleaning agents and debris from delivery vehicles.”

Agency Response:

The indirect discharge permit only authorizes the disposal of process wastewater from the fish tanks. No domestic wastewater or other wastewater such as from washing vehicles will be allowed to be discharged to this system.

“In Reference to Section B-2. The disposal capacity of leachfield states 1200 gpd. Fresh water is sprayed into minnow tanks@1 Gal per hour. That equals 1440 gal. per day. That is for 1 minnow tank, the facility has 12 tanks.”

Agency Response:

The applicant is proposing to recirculate the process water through the facility in order to significantly reduce the volume of wastewater being discharged to the mound disposal system.

9/7/18 Response Update: The filtration system is part of the treatment and disposal system and the final permit requires operation of the filtration system in accordance with an acceptable Operation & Maintenance Manual.

“Has any reps from your dept. taken any samples of discharge of wastewater in the past?”

Please take into consideration the past violations the owner has received from you (ANR), Vt. Fish & Wildlife & Civil Corps of Engineers before issuing this permit.
Thank-you.”

Agency Response:

Agency personnel have not taken any samples of the process wastewater. We have received copies of wastewater sampling results from four sampling events performed over the last 5 years. The results from the last three sampling events are as follows:

<u>Parameter</u>	<u>Tanks</u>	<u>Pond</u>
Total Coliform	96 MPN/100ml	1,990 MPN/100ml
E. coli	< 1 MPN/100ml	8.5 MPN/100ml
Biochemical Oxygen Demand	9 mg/L	17 mg/L, < 6.7 mg/L
Total Suspended Solids	4 mg/L	18 mg/L, 9 mg/L
Total Kjeldahl Nitrogen (TKN)	< 0.1 mg/L	2.8 mg/L, 3.3 mg/L
Nitrate	0.42 mg/L	1.0 mg/L, 0.58 mg/L
Total Phosphorus	0.1 mg/L, 0.34 mg/L	0.25 mg/L, 0.036 mg/L
Total Dissolved Phosphorus	0.068 mg/L, 0.25 mg/L	0.16 mg/L, 0.022 mg/L

Each parameter above was analyzed twice during the last three sampling events. The results from the July 16, 2013 sampling event are not included because the results or the chain of custody sheet do not indicate where the sample was collected.

The water quality of the pond may not be indicative of the discharge from the tanks because the ponds have been subject to other contamination sources such as birds. It is only presented here because of the very limited amount of water quality data from the fish tanks.

The draft indirect discharge permit requires sampling of the process wastewater twice per year to assure that the discharge will meet groundwater and surface water standards.

Langlois Comments:

“We received the DRAFT Indirect Discharge Permit ID-9-0331 for Hog Island Wholesale Bait & Tackle, Inc.

We are owners across from the business, located at 164 Lakewood Drive. We are a year-round residence.

After reading the proposal we are concerned with the proposal and request a hearing to discuss.

We are concerned with the discharge and the effects that it may have on our property. What effects would it have on our well system? We are already overshadowed by his current mound system.”

Agency Response:

Based on the seasonal high water table levels observed in test pits excavated on the proposed disposal site, groundwater from the site flows due west toward the lake and not northwest toward the commenter’s property. Even if groundwater flow was toward the commenter’s property, the very dense silty loam and glacial till soils underlying the site would prevent the vertical migration of groundwater diluted with process wastewater into the bedrock and into the commenter’s drilled well.

“Currently his mound system that is in place, has been dug up since January. It appears that the current mound system has issues. Has the state looked at this problem?”

Agency Response:

This comment does not pertain to the proposed disposal system which would be authorized by the indirect discharge permit. However, this comment was forwarded to the Agency’s Essex Regional Office for further investigation since they issued the Wastewater System and Potable Water Supply permit for the existing mound system.

“After previous meetings with the state, we were had the understanding there was a filtered system that was to be cleaned daily.

Why would this system not be drained and filtered down the hog island to across to their property? I do not think this has to be drained to other people’s properties.”

Agency Response:

The Indirect Discharge Program contacted the commenter to get clarification on this comment. The commenter indicated that he was referring to the previously proposed drip disposal system to be located along the applicant’s northern property line, a proposal which was never approved by the Agency. The proposed disposal system subject to the indirect discharge permit is of a different design and location.

“We request a hearing on this proposal. We appreciate your response on this.”

Agency Response:

An informal public hearing will be held at the Swanton town offices on May 22, 2018 from 6:30 – 8:30 pm.

9/7/18 Response Update: An informal public hearing was held at the Swanton town offices on May 22, 2018.

Truax/Ives Comments: (Note: this comment was submitted by two parties)

“I as a land owner of property on Lake Champlain of Hog Island Wholesale Bait & Tackle do have concerns of said permit. Please include me as an interested in a informal hearing.”

Agency Response:

An informal public hearing will be held at the Swanton town offices on May 22, 2018 from 6:30 – 8:30 pm.

9/7/18 Response Update: An informal public hearing was held at the Swanton town offices on May 22, 2018.

Raleigh Comments: (Note: this comment was submitted by two Raleigh parties)

“As a Vermont landowner and resident, I am concerned of the quality of Lake Champlain.

Now is the time to stop anything that may cause it to become unusable. Our state should have been doing something much sooner.

I want to be included in what the Hog Island Wholesale Bait Co. is doing with this permit application. Thank-you.”

Agency Response:

An informal public hearing will be held at the Swanton town offices on May 22, 2018 from 6:30 – 8:30 pm.

9/7/18 Response Update: An informal public hearing was held at the Swanton town offices on May 22, 2018.

II. New Comments

The Agency received a letter on April 18, 2018 from Brenda Luciano, Esq. of Bauer Gravel Farnham in response to the Agency's initial Response Summary for Comments dated April 13, 2018. Because the public comment period was reopened on May 22, the Agency has treated this letter as a public comment and provided a response here.

Comments from Bauer Gravel Farnham, LLP:

"I write this letter on behalf of our client, Hog Island Wholesale Bait & Tackle, Inc., ("Hog Island"). Thank you for your consideration and prompt attention to this matter. I write to express our concerns as well as clarify and draw your attention to Comment 1 - Section A and the agency's response on page 2 of its Response Summary to Public Comment dated April 13, 2018. The agency states in applicable part: "The permit will contain a requirement that the disposal system be constructed and operational by September 30, 2018.

We urge the agency to reconsider and amend its response, based upon the clarifications outlined below, and specifically amend or eliminate the proposed construction deadline for the following reasons, as detailed in the attached response and estimated timeline from REI, (See Attachment A).

As evidenced by the timeline attached, the deadline of September 30, 2018 for construction and operation of the disposal system is not logistically reasonable under the circumstances.

Hog Island is a family run and owned Vermont business, and has been a mainstay in the area for 40 years, since 1978. It provides bait and tackle for numerous customers, so that they may enjoy many outdoor recreational and sport fishing activities in the Swanton and St. Albans area, including at Vermont state parks, rivers and lakes in that area and beyond - in fact this business serves all of New England (VT, NH, NY, MA, CT and parts of ME). It cares deeply about providing its services as a gateway for its customers to enjoy the outdoors. It operates nearly year-round to provide its customers with their fishing needs, including in the wintertime for ice fishing. Hog Island is a supplier for over 55 shops in Vermont, allowing residents and non-residents alike to enjoy outdoor recreational activities including fishing and fishing tournaments and outdoor events in our great state, which also promotes and encourages necessary tourism, commerce, and smart, sustainable economic growth for our State.

With that said, we agree that it is important to set realistic expectations and milestone for this project, so we communicate these below in Attachment A. In setting realistic and

reasonable milestones for this project, we urge the agency to consider all of the factors involved, including REI's response and exhibits attached to this letter.
 Thank you so much for your consideration and for the opportunity to clarify and respond.”

Attachment A - REI Response - Page 1

First, as previously stated in REI's response, the allegation that the existing retention pond is a failed infiltration basin is false. Please refer to the attached design documents for the Sediment Retention Pond that appear as exhibit 12-14 of the permit application materials for Act 250 LUP#6F0501. Please note that a 6" dia. Outlet pipe discharging to an existing ditch is accounted for in the design drawings and calculations.

Please also find attached the approved site plan for Wastewater Permit # WW-6- 0345. This plan references sediment retention pond design (performed by U.S. Dept. of Agriculture) and also depicts and calls out the discharge pipe from the bait tanks to the retention pond.

In consideration of the attached documentation, REI does not agree with the sole justification has been provided for the added condition requiring that the disposal system be constructed and operational by September 30, 2018.

Second, if a condition is to be added requiring that the disposal system be constructed and operational by an arbitrary date, September 30, 2018 is not feasible.

Please see the rough timeline below for this project. This timeline assumes no additional significant delays will arise during the permitting process. In reality there is a significant possibility that the project will be delayed at some point in the process

May 22, 2018	Draft Indirect Discharge Permit Public Hearing
June 1 st , 2018	10 Day period for State to provide written response addressing issues brought up at the public hearing
July 1 st , 2018	Issues brought up at public hearing are adequately addressed, final Indirect Discharge Permit is Issued*
August 1 st , 2018	Appeal period for final Indirect Discharge Permit is concluded*
September 27 th , 2018	Local Approval hearing at the Swanton Town offices on 4 th Thursday of every month (depending on agenda availability)*
October 29, 2018	Appeal period concludes, Local Permit Issued*
November 12, 2018	Act 250 Amendment Application Submitted
November 30, 2018	Draft Act 250 Permit Amendment Issued*
December 15, 2018	Submit Fire Safety Application
December 30, 2018	Act 250 Appeal Period concludes*
January 15, 2019	Fire Safety Permit Issued

No Winter Construction January 15-May 1st, 2019
Busy time of year for sales and deliveries at Hog Island Bait, May 1st - September 19th

August 1st, 2019	Order equipment (we have been informed by the client that there is an approximately 2-month lead time on the materials required for this project)
September 1 st , 2019	Start Construction
September 30 th , 2019	Equipment arrives
January 1 st , 2020	Complete Construction

* For the sake of this timeline, we will assume no additional significant comments or appeals are made.

REI recommends that if this condition is to be included, the date by which the disposal system must be constructed and operational be pushed back to January 1st, 2020.”

Agency Response:

The Agency acknowledges that a completion and operational date of September 30, 2018, as was specified in the draft permit, is not realistic. The permitting process associated with this permit has taken much of the spring and summer, thus leaving little time for construction. In addition, the Agency was not aware that local approval needed to be obtained after the issuance of the indirect discharge permit.

However, the Agency does not agree with the proposed construction schedule provided above. Assuming that the Act 250 and local permits are acquired this fall or winter, construction could begin in the spring of 2019 rather than in the fall. The Agency is also opposed to a construction completion date in the winter. For these reasons, a June 30, 2019 deadline has been included in the permit for the completion and operation of the process wastewater treatment and disposal system.

Other New Comments:

The following comments were received in writing during the public comment period from May 22, 2018 to June 1, 2018. Each comment is followed by the Agency’s response.

Kemp Comments:

“I was at the public hearing on 5/22 over the wastewater permit for Hog Island Bait and learned quite a bit from the participants in the hour-long session. For the record, I live

on the lake, but we don't have any dogs in this fight so to speak, we don't adjoin the HIB property nor live downwind of the discharge, so our concerns are with the lake and after the hearing, equity and fairness to the surrounding property owners. The first thirty minutes had me convinced that 1,200 gal/day was far better than 8,000 gal/day (at peak levels) that had been dumped in a less than ideal way for two decades. However, what was never answered was the question from Mr. Baker of whether the state of VT will guarantee that the adjacent property owners aren't negatively affected by another property owner's choice and the question was asked twice and ignored twice. I don't understand how one owners choice can supersede the surrounding homeowners rights when a modification of that plan would satisfy neighbors who should NOT be affected...it doesn't make sense to put the onus of this on neighbors and I understand not wanting to put more money into a larger mound or forgoing a dream to build an additional home on the property, I truly do, but if a larger mound will satisfy the concerns of both state and surrounding property owners then why shouldn't it go onto the person seeking to do the wastewater in the first place??? If someone has to be affected it should absolutely be the person seeking the permit, right? I can't imagine telling my neighbors they have to live with my choice, it just seems crazy and rude and completely not okay and we're not talking about a junk car in the yard taking down curb appeal, this is a big ask of a neighbor(s) in my mind.

After hearing of 'grandfathering' of various plans from the old days I also understand that the health of this lake isn't that important, it's a good talk issue for all of us but actual action is another thing. I think a regulated system for the major wastewater is a positive step and sounds great, it certainly beats the past and I applaud the corrective actions being taken but again, I think it should be modified in a manner that doesn't negatively impact the neighbors, it simply isn't fair, and I don't think a single person would argue with this if they exchanged places. I certainly don't think anyone (except Mr. Munson) suggests this business should stop operating and thriving, they provide many jobs and many services on this road as told by the cars I see whenever I drive by, and as Mrs. Langlois mentioned, a nice family business, so this isn't about harming anyone's livelihood but more that everyone should be operating in a sense of what is fair to everyone concerned and what is not and this just doesn't feel fair to the people who just happen to live on properties surrounding this business when there are other options.

So, I'm glad for 1,200 vs 8,000 at peak, thanks for getting closer to solving that issue and we hope the issue that has divided this road can be fairly settled for all parties...again, how would YOU feel if this was your property and how would you want to be treated?

That's it from lakeside folks, hoping for a cleaner lake but sadly doubtful.”

Agency Response:

The “grandfathered” system that the commenter is referring to is apparently the dry well across the road where wastewater from the original bait shop is reportedly discharged. That discharge, if it exists, is not part of this indirect discharge permit.

A hydrogeologic mounding analysis performed by an Agency hydrogeologist with extensive computer modeling experience demonstrated that the discharge of process wastewater from the proposed mound system would not surface anywhere downgradient of it. The analysis also showed that the existing domestic wastewater mound system would not be impacted by the additional wastewater volume from the proposed mound system. Therefore, based on the mounding analysis, the proposed mound system will not have any impact on neighboring properties.

The Agency will not be operating the system, managing the system, or performing any necessary repairs and maintenance of the system. However, the permit does contain general operating requirements in Condition D1 that requires the permittee to operate the system at all times in a manner that will: (1) not permit the discharge of process wastewater onto the surface of the ground; (2) not result in the surfacing of process wastewater; (3) not result in the direct discharge of process wastewater into the waters of the State; (4) not result in a violation of the Vermont Groundwater Protection Rule & Strategy; (5) not result in a violation of the Vermont Water Quality Standards, and (6) not exceed a isposal rate of 1,200 gallons per day. Further, Condition D4 requires the permittee to operate and maintain the system at all times in a manner satisfactory to the Secretary and in a manner that will not pose a risk to the public health and safety, or cause contamination of drinking water supplies, groundwater and/or surface water.

The Agency received many comments at the public hearing regarding runoff from the Hog Island property. The Indirect Discharge Program does not regulate stormwater discharges; however, the Agency’s Stormwater Program has been made aware of the concerns of the neighbors and has conducted a site visit. Compliance with applicable stormwater requirements is separate regulatory process from the permitting of the mound system for the disposal of process wastewater and therefore was not a factor in the decision to issue the indirect discharge permit.

Carole Obuchowski, Esq. Comments on behalf of Edward Baker:

General Comment:

“We submit the following comments on behalf of Edward Baker, an abutting land owner. Prior to the specific comments below, definitional issues need to be resolved by the Agency. Namely, whether the present permit application is for an existing discharge or a new proposed discharge. It is Mr. Baker’s contention that the Applicant is currently in violation of State and Federal statutes and the application is for an existing non-compliance facility.

This distinction is critical. The Application states that the permit is for a “proposed discharge” whereas the facility has been processing unpermitted discharges from minnow tanks since 1996 and as of 2016 the Applicant’s attorney confirmed by letter to Mr. Baker’s counsel that the facility was processing more than 8000 gallons per day. Additionally, the Agency advised the Applicants engineers in 2012 that the facility needed either a direct discharge permit or an indirect discharge permit (see attached copy of an email from Jessanne Wyman to Andrew Hoak dated June 7, 2012).”

Email attachment

From: Wyman, Jessanne
To: Andy Hoak
Subject: Hog Island Bait
Date: Thursday, June 07, 2012 1:27:00 PM

“Do you have any information on the sediment pond – Cindy Parks UIC program said – if the pond is unlined, an UIC Permit will be needed. If it is lined, then they need to communicate w/Randy Bean or Carol Carpenter for NPDES surface water discharge jurisdiction.”

Agency Response:

The discharge of process wastewater from the fish tanks is a “New Indirect Discharge of Non-Sewage Waste” as defined by the Indirect Discharge Rules, effective April 30, 2003, because the mound disposal system will come into existence after May 17, 1986.

The Agency acknowledges that the current method of disposal has been unpermitted and unregulated by the Agency. The issuance of the indirect discharge program will alleviate this situation.

“Reference is also made to the Applicant’s submittals regarding the registration of a Floor Drain System in August 2014 under the UIC Program. In those submittals the Applicant declared the drip dispersal system to be an “existing system”. The drip

dispersal system did not exist and was never built. This system was proposed to be located in an environmental unsuitable area, would not have functioned properly if it had, in fact, been built and would not have corrected the existing unpermitted discharge to adjacent properties and to Lake Champlain.

These incongruities give rise to our Comment No. 3 and our Comment No. 4.”

Agency Response:

The Agency received a set of engineering plans for the drip disposal system with the registration of the floor drain. These plans were not reviewed or approved.

Indirect Discharge System Design and Operation:

“Based on the comments provided at the hearing, the wastewater treatment and disposal system proposed in this application will actually convey 8,000 gallons per day (not 4,000 gallons per day as previously presumed) of minnow rearing wastewater via gravity from the minnow holding tanks through a filtration system for treatment. 6,800 gallons per day of this wastewater will be treated and recycled back into the minnow operation. 1,200 gallons will be removed from the recycling process (aka “wasted”) for disposal via a mound septic system. The “wasted” wastewater will flow from the minnow rearing building to a 1,000 gallon concrete settling tank. The wastewater will then flow to a 2,000 gallon pump station located adjacent to the settling tank. The settling tank and pump station will be located on the east side of the existing building at the location of the existing settling pond which will be filled-in to accommodate the proposed settling tank and pump station. Then wastewater will then be pumped to a mound disposal system located on the west side of the existing building (See Plan Sheet C-2 dated 5/21/13 last revised 12/21/17 and Plan Sheet C-3 dated 07/13/17 last revised 01/17/18).”

“The following comments address the Filtration Unit, the Filter Backwash and Compliance.”

Comment No. 1: Filtration Unit

“The most critical component in the design of the proposed wastewater system is the filtration unit. As proposed, 8,000 gallons per day of wastewater will be discharged from the minnow tanks to the filtration unit for treatment. The filter will treat and recycle 85% of this wastewater (6,800 gpd) to an acceptable quality (pollutant concentration) for reuse in the minnow tanks. The remaining 15% (1,200 gpd) will contain a concentration of pollutants not acceptable for the minnows and will be discharged (a.k.a. “wasted”) into the mound system for disposal. If the filtration unit is not properly designed or does not operate to design specifications (85% recycling rate), the wastewater treatment and recycle system will not work as designed and excessive effluent will be discharged into

the mound. This will violate the disposal limitation in Section D1. of the draft Permit, hydraulically overload the mound, and result in a failure of the system.

Since the filtration unit is the most critical component of the wastewater system did the Agency conduct a detailed evaluation of the design and operation of the filtration unit as part of the Indirect Discharge Permit application review process?

If the Agency conducted a detailed evaluation of the design and operation of the filtration unit, has the Agency made a positive finding that the proposed wastewater treatment and disposal system (including the filtration unit) is adequately designed and can be reliably operated to ensure compliance with the terms and conditions of the draft permit as required by Section 29A-106 of the Vermont Water Quality Standards?

Also considering that the filtration unit is the most critical component of the wastewater treatment system, an additional Condition must be added in the Permit which requires the date and description of any maintenance activities conducted on the filtration system to be included on the monthly report as required by Condition D7.”

Agency Response:

The Agency agrees that the filtration system is an integral part of the process wastewater system because it will significantly reduce the volume of wastewater discharged to the mound system. This position is different than what was stated at the public hearing. Therefore, the permit has been revised to include inspection requirements for the filtration system.

The Agency has not performed a detailed review of the filtration system. According to the applicant’s engineer, a specific filtration system has not been selected. General biological filtration system information was submitted with the Supplemental Information earlier this year. The indirect discharge permit requires the submittal of an Operation and Maintenance manual at least 30 days prior to the operation of the process wastewater treatment and disposal system. The O&M manual will need to include the design, operation and specifications for the selected filtration system.

Comment No. 2: Filter Backwash:

“It will be necessary to periodically backwash the filtration unit to prevent clogging and maintain optimum operation of the unit. Typically filter backwash contains concentrated solids and other pollutants which have accumulated in the filter media over time. Then depending on the design of the wastewater system, the filter backwash is returned into the treatment process or is removed from the treatment process, stored, and then transported for off-site disposal. The application does not contain any information of the backwashing process or any information of the management and disposal of the backwash material.

The draft Permit does not reference the filter backwash process or management of the backwash material. Therefore, how does the Agency ensure that this waste stream is getting properly addressed in design of the wastewater treatment system or regulated by the draft Permit?”

Agency Response:

The final permit requires the off-site disposal of backwash wastewater in accordance with all applicable regulations. Backwash is prohibited from being discharged to the process wastewater mound system.

Comment No. 3: Compliance with the Vermont Water Pollution Control Act & the Clean Water Act:

“This is an existing commercial building with an existing settling pond which discharges into a swale on northeast portion of the property. The wastewater is conveyed via this swale north through the adjacent properties and into Lake Champlain (See Condition B2 of the draft Permit). Per 40 CFR Part 122.2 and Section 29A-102 of the Vermont Quality Standards this discharge is defined as a “discharge” to “waters of the United States” and/or “waters of the State”. This discharge is not and never has been authorized by a National Pollution Discharge Permit System (NPDES) permit or any permit issued by the State of Vermont under the provisions of the Vermont Water Pollution Control Act (10 VSA Chapter 47). Consequently, this discharge is a violation of 10 VSA 1259.a and the Clean Water Act.

Therefore, this Permit must contain an aggressive Compliance Schedule to correct this violation as soon as feasible possible but no later than the end of 2018 construction season. Laboratory analysis of this discharge indicates that it contains elevated concentrations of pollutants including phosphorus. Lake Champlain has been designated in the State of Vermont and the Environmental Protection Agency as impaired due to excessive phosphorus loadings. Therefore, the existing discharge must be eliminated by the expedited construction of the mound system referenced in the draft Permit. If the violation cannot be eliminated in that manner, then the Agency must require the facility to cease discharging until the violation (unpermitted discharge) is corrected. In this case, at a minimum, the Agency should issue an Order under the provisions of 10 VSA Section 1272 or an Administrative Order issued under the authority of 10 VSA Section 8008.”

Agency Response:

Condition B2 of the draft Indirect Discharge Permit did not indicate that the process wastewater is conveyed via the agricultural ditch through the adjacent properties and into Lake Champlain.

The Agency agrees that measures need to be taken to eliminate the current unpermitted discharge. The Agency's Enforcement Division issued a Notice of Alleged Violation to the permittee on July 30, 2018 which required the permittee to immediately cease both the directly and indirectly discharging process water to State waters.

Comment No. 4: Continued Operation Not a Defense:

"This facility is a commercial operation. It does not provide domestic wastewater services to any residential properties. It has had an ongoing discharge to waters of the State and on to adjacent properties in the violations of 10 VSA 1259.a and the Clean Water Act. Requiring the facility to cease discharging if a failure of the proposed wastewater system occurs would not impact any users. While the draft Permit contains conditions regarding non-compliance, it has been demonstrated that the Facility has continued to operate in violation of the Vermont Water Pollution Control Act and the Clean Water Act. Therefore, an additional Condition must be added to the Permit clearly and concisely stating that it is not a defense for the permittee, in the event that this proposed system fails, that it would have been necessary to halt or reduce the operations to maintain compliance with the Permit."

Agency Response:

The final permit contains a requirement for the permittee to develop and submit a contingency plan for review and approval addressing the actions to be taken in the event one or more components of the filtration or disposal system fails.

Comment 5: Necessary Corrections of Application for Accuracy:

"Given the undisputed operation of the facility in violation of the Vermont Water Pollution Control Act and the Clean Water Act and the lack of complete and accurate information in the submittals from the Applicant, it is necessary to focus on and accurately define the Applicant, the history of the discharge for which a permit is sought and the preparation date for the submitted information. In the event of an appeal of this permit issuance, it would be, at best, inexplicable to have a lack of clarity on who is applying for what with regard to a discharge of disputed categorization.

The submitted Application, made under oath, identifies two different owners. Paragraphs 1 and 78 of the Application identify Michael Gingras as the Applicant and Owner. On Page 2 of the Application Betty Gingras signs and writes in that she is the Owner. If called upon to enforce its permits, against whom would the Agency proceed?

The Application classifies the discharge is described as being "proposed" even though the discharge is existing, unpermitted and non-compliant. How can there be a proposed discharge after these many years unless the Agency accepts the position that the

Application for a permit renders the pre-existing discharge a “proposed discharge”? The Agency needs to clarify the classification of the discharge as either proposed or existing.

Lastly, the Supplemental Information is dated January 2017 or inexplicable eight months prior to the original application of August 2017.”

Agency Response:

Betty Gingras signed the application as “Owner”. Since both Betty and Michel Gingras are the property owners, the Agency requested that Michel Gingras sign the application form, which he did and submitted on June 28, 2018.

The Agency does not dispute that there is an existing discharge. However, the mound disposal system authorized by the indirect discharge permit does not exist. In addition, the discharge from the mound system will be to groundwater, not surface water, and in a different location. As previously stated, the discharge to the mound system will be defined as a “New Indirect Discharge of Non-Sewage Waste” as per the Indirect Discharge Rules even though a discharge has existed for many years.

The Supplemental Information was submitted to the Agency on January 26, 2018.

LaFarr Comments:

“Additional comments for above wastewater permit:

We suggest that even though M. Gingras does not want a large mound system, that it would be the most practical. As stated by you and Aaron Brondyke the ANR dept. are limited to funds to monitor operations properly for violations that take place. No one has inspected or tested the current system since 1996. That means pollution to our lake has been going on all this time.

If the large mound system is installed, that would cut costs of testing etc.

If you do decide to grant this permit we ask that M. Gingras or the employees not do their own testing, as their track record isn't that good as you know. Also, we ask that Mr. Ruggiano not be the independent engineer doing the testing, as that would be a conflict of interest.

Also, in the draft it was stated that the minnow business will not operate between Sept. & December. Then no minnow tanks should be operating, and no delivery vehicles should be operating either.”

Agency Response:

A very large mound system designed to accommodate more than 8,000 gallons per day would likely cause surfacing of the process wastewater downslope of the mound because of the limited hydraulic capacity of the native soils. As it is, the Agency required a hydrogeologic mounding analyses of the permittee and performed a modified one of our own to demonstrate that 1,200 gallons per day would not surface. In addition, a larger mound system would not decrease monitoring costs because the Agency would still require effluent monitoring. The permit will require that a qualified third-party entity do the effluent and groundwater sampling and analysis. The Agency cannot disallow the permittee from retaining Mr. Ruggiano from doing the annual inspection.

The draft Indirect Discharge Permit states that the permittee operates the facility from December through September each year. During the public hearing, Mr. Gingras indicated that the business operates year-round but slows down in the fall. Therefore, the final indirect discharge permit does not have any limitations on when the permittee can discharge process wastewater to the leachfield mound. There is no need to limit usage of the mound to a portion of the year.

The Indirect Discharge Program does not regulate traffic; therefore, the indirect discharge permit will not contain any restrictions on delivery vehicles.

Maxham Comments:

“As thirty-five-year residents living lakeside at 312 Lakewood Drive in Swanton, we are naturally concerned about the water quality of Lake Champlain. Over the years, we have seen the deterioration of water quality due to algae blooms in front of our property located about a mile south of Hog Island Wholesale Bait and Tackle. Whether the dumping of untreated water from said business is “grandfathered in” or not, clearly it needs to be corrected and cannot be allowed to continue. The long-term health of our lake must take precedence over a polluting business.”

Agency Response:

The Indirect Discharge Permit gives the permittee authorization to discharge process wastewater in a manner that eliminates potential water quality impacts.

Neale Comments:

Note: these comments were submitted after the close of the public comment period but are included because the commenters attended the public hearing, are neighbors of the applicant and have relevant comments.

“I am the owner of a seasonal residence at 166 Lakewood Drive in Swanton, Vermont. My husband (Michael J. Munson) and I recently attended the May 22, 2018, informal hearing on the draft Indirect Discharge Permit for the Hog Island Wholesale Bait and Tackle, Inc., located at 173 Lakewood Drive, which is directly across the road from my property.

After reflecting on and discussing the information shared at the hearing, my husband and I believe that there are two basic issues that must be resolved in any permit that may be issued.

1. Mr. Gingras must not be allowed to continue to discharge the untreated process water as he is currently doing. It was stated unambiguously that he has no permit for this discharge, yet he continues to discharge without penalty. This has been going on for years-possibly since the original Act 250 permit was issued in 1996, and certainly since the application for amendment in 2013. The application for a permit has dragged on for five years and is no closer to a resolution than it was at the beginning. Mr. Gingras has no incentive to rectify the situation as long as he is allowed to continue his current operation. Thus, any permit issued must contain a condition that all operations at the bait company cease until a permit is issued and the required treatment and disposal system is fully constructed and operational. An alternative is for all process water to be collected in a holding tank and trucked to an approved site for disposal.”

Agency Response:

The Agency’s Enforcement Division issued a Notice of Alleged Violation to the permittee on July 30, 2018 which required the permittee to immediately cease both the directly and indirectly discharging process water to State waters.

2. “There was a very obvious lack of confidence among the neighbors present at the hearing that Mr. Gingras will actually comply with the conditions of any permit issued. This was expressed in terms of such questions as what will happen if the discharge exceeds the specified volume? What will happen if the filter on the recirculating system becomes clogged or is improperly cleaned or if the holding tank overflows? While the designed treatment and disposal system may be adequate and effective, it is not at all clear that it will be properly operated at all times. Thus, any permit issued must contain a condition requiring some form of alert mechanism, in

addition to the monthly reporting, to both notify the agency of any malfunction and to shut down the system until such time as the malfunction is remedied.

My husband and I believe that these conditions are necessary to ensure the protection of our property and that our neighbors, and to maintain the health of Lake Champlain and the waterways of Vermont.

We appreciate the opportunity to participate in these discussions and hope that you will act affirmatively on our recommendations.”

Agency Response:

The indirect discharge permit requires the permittee to operate the treatment and disposal system in a manner that will not allow the discharge of process wastewater onto the ground surface. As such, the permittee should consider installing an early warning mechanism in case the filtration system is not operating properly or if the wastewater level in the settling tank is not at normal operating level. The pump station is already specified to have a high water alarm.

A contingency plan is also required in case one or more components of the treatment and disposal system fails or will not be operational.

III. Final Action Taken

The Agency is issuing Indirect Discharge Permit ID-9-0331 to Betty and Michael Gingras (d/b/a Hog Island Wholesale Bait) for the treatment and discharge of process wastewater from the fish tanks to a new leachfield mound system.

The following changes have been made to the draft indirect discharge permit in part as a result of comments received during the public comment periods:

1. Condition A3 has been revised so that the permit is valid until June 30, 2023.
2. Condition C3 has been added to require the installation of an effluent filter on the outlet of the settling tank.
3. Condition C4 has been added to require that the treatment and disposal system be constructed and operational by June 30, 2019.
4. Condition D2 has been expanded to include an evaluation of the filtration system as part of the annual inspection.

5. Condition D3 has been expanded to include requirements for the proper disposal of backwash wastewater.
6. Condition D7 has been added to include a requirement that the permittee submit an Operation and Maintenance Manual for the filtration system to the Secretary for review and comment, and that the permittee operate the system in accordance with an acceptable O&M Manual.
7. Condition D8 has been added to require submittal of a contingency plan for the management of process wastewater if one or more components of the treatment and disposal system fails or is not operational.
8. Condition D9 (formerly D7) has been expanded to include a requirement that the monthly reports include any significant repair or operational notes.
9. Condition E1 has been revised to require sampling by a qualified professional proficient in the sampling procedures referenced in Condition E3. Sodium has been removed from the parameter list and replaced by ammonia. The second sampling event has been moved from June to May.
10. Condition E2 has been revised to include groundwater monitoring twice per year for chloride, total phosphorus, ammonia, nitrate and pH to determine compliance with Water Quality Standards.

IV. Transcript of Public Hearing

Bryan Harrington of the Agency's Indirect Discharge Program conducted a public hearing on May 22, 2018 at the Swanton Town Offices. Below is a transcript of the comments and questions received at the hearing (the opening introduction and closing remarks are not included).

Ed Baker: Is it possible to have that plan explained to us because I don't think anyone here has a clear description of what is actually being proposed here. If that is possible and we could start with that I would appreciate it.

Bryan Harrington: Absolutely. I'm sure you are all familiar with the current disposal system where they are discharging the processed water into an outside lagoon which overflows into an agricultural drainage ditch, which leaves the property. This proposed system would do away with that discharge method. They are proposing to fill in that lagoon, get rid of the overflow pipe and get rid of the discharge to that drainage ditch and in its place, they would construct a mound system on the property where they would recirculate the processed water within the facility. Currently they generate about 8,000 gallons a day of processed wastewater and they would recirculate and filter it so that they would only be discharging about 1,200 gallons per day and recycling the rest since they would be using the water. That 1,200 gallons a day would be discharged to a settling tank where the solids in it, which shouldn't be many solids in it to begin with. The purpose of the tank is to let the discharged water settle and the solids settle to the bottom. From there it would be transferred to a pump station which would pump it to the mound disposal system on the property. And I believe this would operate during the operational season from April to September. Is that correct?

Mr. Gingras: December 1st. It is year-round and slows down quite a bit in the fall.

Ed Baker: Can I take a look at the plans?

Bryan Harrington: Absolutely. That's why I brought them. Here is the plan that is proposed. This is the building, and this is the mound system. This here is the lagoon they are using, and they would fill this in and put in that settling tank.

Ed Baker: Is there a permit in place now for the way this is sitting and being operated?

Bryan Harrington: No, there is not.

Ed Baker: This is a direct discharge straight system. This is now going to – you're going to eliminate this. So how big is this mound system.

Bryan Harrington: This mound is 1,700 square feet. The application rate would be 0.7 gallons per day per square foot.

Ed Baker: This will also have a shadowing boundary like this existing system.

Bryan Harrington: I would like to receive comments from other people and we can have a private discussion a little later if you want. I don't want to interfere with everybody else here.

Ed Baker: Well I think that is a piece of information for everybody.

Bryan Harrington: Well, I don't want to have a private conversation now. If you want to ask questions I want to give the answers to everybody.

Ed Baker: So where is the new settling tank.

Bryan Harrington: The new settling tank is right here and the pump station is right here.

Ed Baker: How many gallons is that?

Bryan Harrington: This one is 1,000 and this one is 2,000. There are a few more people that just arrived so we will let them sign in if you want to take a few minutes to look at this before you start asking questions. If you would please identify yourself so that we have a record of who is asking what that would be great. Anybody want to start with a question or a comment?

Ed Baker: I'll start. Looking at proposed plan we are showing another mound system on this property. My question is - there is an existing wastewater mound system down on the front of the property but now that shadows on the existing property owners. This new mound system that you are proposing to put in, how is that going to shadow and impact the adjoining property? This is what we are experiencing now as adjacent property owners is restrictions to our property for that property making gains.

Bryan Harrington: You are referring to the existing mound system that serves these camps along the lake?

Ed Baker: Exactly.

Bryan Harrington: That mound system was permitted through the Essex Regional office. It was issued many years ago. We have nothing to do with that system, so I really can't answer those questions about that system because the permitting was from the Essex Regional Office. In terms of this system here, the proposed mound system for the process water is based on the soils that we saw when we did the test pits out there and the elevations of the mottling in the test pits which indicates seasonal high groundwater, that the groundwater flows due west towards the lake and when the process water is discharged, will infiltrate to groundwater and be diluted and dispersed as it travels toward the lake.

Commenter: You didn't answer the question. Is there going to be a separation distance around this new mound system and if so what is it and does it extend onto anyone else's property?

Bryan Harrington: There is no identified separation distance identified on the plans nor is there any specified in the permit.

Commenter: So, it could impact our property?

Bryan Harrington: It is my understanding that your property is to the north. Groundwater flows towards the west from that site.

Sam Ruggiano: The mound system was designed as if it was a wastewater disposal system. A domestic waste water disposal system so it is very conservatively designed. The shield and the placement of that mound system does not encroach onto anybody else's property. We didn't show it on the plan because we are not required to show it but if that is something that the Agency would like to see we can put that on the plan.

Bryan Harrington: Showing isolation distances?

Sam Ruggiano: Yes.

Michael Munson: I would ask the engineer what the dimensions of the separation distance would be.

Sam Ruggiano: Without drawing it on the plan, typically the mound system has to be 200 feet away from a drilled well if it is located uphill from the drilled well and 100 feet if it is located downhill from a drilled well. So, it ends up it looks like a shield, generally speaking.

Bryan Harrington: And we would put the same requirements in any of the discharges. Let me explain – this is a non-sewage disposal and we have very few design criteria in our rules addressing a type of discharge like this, so I have to defer to the sewage

disposal criteria.

Michael Farr: Now this would be the third mound system on this piece of property, correct?

Bryan Harrington: There is another smaller mound it looks like across the driveway. Is that the one you are referring to?

Michael Farr: Probably.

Bryan Harrington: Okay.

Commenter: This is a separate lot.

Ed Baker: It is still on the same property. I don't care if this is a separate lot or not. All that flows west you said.

Bryan Harrington: The groundwater from the proposed site flows west and I am assuming that it would be accurate for the other two, but I don't know that for sure.

Ed Baker: Well _____ the existing large mound so that water coming from the bait barn will flow to the existing mound which runs to the lake. West.

Bryan Harrington: Okay I see what you are saying. There may be some overshadowing from the proposed mound system to the southern end of existing mound system. Is that what you are referring to?

Michael Farr: Run off from the driveway and everything runs that way.

Ed Baker: If you actually look at that and that is where a lot of our concern is, the Impact of adjacent properties – we have a 9-acre lot that we are looking at with this business with a mound system down by the lake already and we are going add one more for this filtration system. From looking at your sketch, correct me if I'm wrong, but up in the back it looks like you have another proposed mound system on that same property.

Bryan Harrington: If you could point that out to me?

Ed Baker: Right here. Is that a separate lot at this time?

Commenter: Yes.

Ed Baker: Okay, but it is still on the same. So, what my question is how does that impact storm water, the runoff all coming down to the west side? We are generating an abundant amount of water and we are funneling it all down to the west side straight towards the properties and towards the lake and I don't know if you are familiar with the site but down by there, that road sits up from where all this water is going to be coming down. I'm not an engineer, but common-sense steps in and says it is going to puddle.

Bryan Harrington: It appears that it is a separate lot. It looks like a small mound system that is serving another residence. I don't know anything about this system here, the one you just pointed out, but you're right, it probably does flow towards the lake to the west. Again, I have not seen any soil data so it's an assumption.

Ed Baker: I think most of us who live there, we all agree, that you can dig down in one spot three feet and then move over 6 inches and you have shale.

Bryan Harrington: I will say that I was onsite when they dug the test pits for the proposed site and it is very shallow to the glacial till and bedrock. So, there is no question that there is limited capacity for any effluent to discharge to the groundwater and flow latterly. But the engineer did do a modeling analysis to determine that any effluent that infiltrated into the system will stay below ground surface at all times and that was verified by a hydrogeologist in our office who did a modified calculation and came up with the same conclusion. So, what I am trying to say is that the process water for this proposed mound system will not surface.

Commenter: That's guaranteed?

Bryan Harrington: That is according to the modeling. Now that is different from storm water.

Michael Munson: Somehow, we have gone from 8,000 gallons a day on the flow through system they currently have to 1,200 gpd. The permit refers to something kind of mystically called a recirculating system and I would like to know more about that. What it is and how does it work and what safety devices are there to ensure if it fails that it doesn't overwhelm the proposed settling tank and if the settling tanks gets overwhelmed where does that go. So, I would like to hear some more information about that.

Bryan Harrington: I can't provide too much because we don't regulate processes inside a building. We only regulate what comes out as the wastewater. I know that they are proposing a recirculating system where they are going to filter the water and reuse it. So perhaps the engineer can elaborate on that and answer your question.

Sam Ruggiano: Basically, you explained it right there. We would be recirculating and filtering the water reusing it and discharging 1,200 gpd on a worst-case scenario. We submitted with our application the recirculating specifications that the public can take a look at.

Bryan Harrington: I think I have those with me, actually.

Michael Munson: Does that include some kind of filtration mechanism? I am just trying to understand how we are going through this process in such a way that the actual discharge isn't many, many more times toxic than the flow through discharge.

Bryan Harrington: I know from a hydrogeologic standpoint, this system couldn't handle 8,000 gallons a day so they had to come up with another system to reduce that number significantly in order for the effluent discharge to the mound would stay subsurface.

Michael Munson: I understand that, and that's part of the problem. We have been living with 8,000 gallons a day coming off of that site and causing problems and I'm trying to understand and in fact feel confident that it will be reduced and there is not going to be a chance of an internal failure that will result in us being right back where we started.

Bryan Harrington: Right, I understand. Again, we don't regulate processes inside the building but will require the permittee if and when we issue a final permit to monitor the flow from the facility so we know what is actually going out there to the mound.

Michael Munson: I saw some discussion in your response to the comments that had to do with monitoring the pump logs from the tank to the mound system. But I didn't see anything about monitoring the flow into the settling tanks.

Bryan Harrington: No, typically that is done at the pump station where they have the meter and run times.

Michael Munson: I guess I'm a little concerned about that because if that settling tank overflows, no matter what the pump log says we still have a problem.

Bryan Harrington: Okay, I understand. Anyone else who has not spoken want to speak?

Randy Bean: I represent Mr. Baker as a consultant. Nobody at the Agency has made a positive finding that the filter is reliably and adequately designed to do 85% recirculation as proposed?

Bryan Harrington: That is correct, we have not reviewed that at all.

Ed Baker: Will that be reviewed and considered?

Bryan Harrington: No, not as part of this program, because again, we don't regulate processes inside of building.

Ed Baker: So, let's talk about once it leaves the building and goes to holding tanks – what are these holding tanks constructed of?

Bryan Harrington: Concrete.

Ed Baker: Concrete. Is there a requirement for inspection for decay and breakdown over time because we are holding toxins in these tanks now? To make sure that none of this ever leaks out.

Bryan Harrington: The permit does require an annual inspection by a registered professional engineer to inspect the entire system, the tank, the mound system, the pump, etc. on an annual basis.

Ed Baker: What happens with that waste? I am going to assume that tank is a 1,000 or 2,000 gallon.

Bryan Harrington: The settling tank is 1,000 gallons.

Ed Baker: 1,000 gallons. So, with the amount of volume in which they put out because I am going to assume that we are going to go from 8,000 to 1,200 he is going to reduce his production in order to get down to that 1,200 gallons. If we are doing an 85% recycle and he has 12 minnow tanks and you are pumping 8,000 gallons of water a day, right, but we are only actually going to put 1,200 gallons out to the mound system. I'm just trying to understand the engineering.

Bryan Harrington: The remaining amount will stay inside the building and be recirculated.

Ed Baker: And be used over to a certain extent, how long can that happen before that has to be changed out.

Bryan Harrington: That I don't know.

Ed Baker: This is where all of the sudden are we going to get flooded with this or is this system going to be able to hold it or do we sit back like in the situation that we are in now and say Oh it doesn't work, that's life? And now we are all on the phone calling

saying hey what are you going to do for me. Nobody knows. That's where we are at now and that's what we don't want to be at again.

Bryan Harrington: Okay. Thank you. Anybody else who has not spoken?

Ed Polk: I would like for you to correct me if I am wrong. I think we need to have an understanding of what this entire system is about. I for one growing up I lived on a bait minnow farm in South Georgia, so I kind of understand what has transpired. When a person makes a purchase of minnows from a grower, before that shipment is made those minnows are isolated for a minimum 24 hours and not fed. There is a reason for that – if they are fed or allowed to feed and then begin transportation whether it is for a day or two days or three days it allows opportunity for nitrogen to build up from fecal matter waste generated by the minnows. Minnows that have been fed. So, if they are not fed and by doing that it is having an insurance policy to the purchaser that the minnows will arrive healthy due to the low nitrogen content. When they are placed into a holding tank within a bait facility they again are not fed but fresh water is waiting for them, oxygenated water to provide them life and then they are quickly moved out generally within a day or two having not been fed. So, they are coming in to basically clean water, clean fish and are departing as such and we at our place, while we had multiple tanks and when we would empty a tank because people were buying the minnows and they needed to be transported we would empty a whole tank. If that water condition was suitable, it remained, if it wasn't it was either disposed of or recycled through filtration to cut down use of additional water. That moved from tank to tank and by doing that it minimizes the amount of water that needs to be discharged totally, completely not recycled to an acceptable level. Am I wrong with what I just said.

Michel Gingras: No.

Ed Polk: Is that not the case, also because I understand, and I reviewed several different bait facilities it is the same principal.

Bryan Harrington: Again, I can't speak about the processes that will go on inside the facility. That is outside the realm of the permit.

Ed Polk: It does directly impact what these other people are saying. They are asking toxicity. In essence, there is negligible amounts of toxins or toxicity because it hasn't been introduced. That is what my point is. So, it does impact their questions because it shows a different light in that it is a negligible amount if you are saying it is a 1,000 gallon holding tank it is probably 99% is just water. Any effluent that is left is negligible. So therefore, when it has been moved it has been moved through this proposed mound system it actually is not much more than subterranean rain water that passes through an aquaphere system and is then leach field out underground.

Bryan Harrington: I will add that we do have monitoring requirements in the draft permit to test the discharge effluent for nitrogen, phosphorus, etc . We can certainly focus on those parameters that would be of concern like ammonia, for instance, would be a good example.

Jackie Langlois: Who monitors the amount of discharge per day? Who is responsible for how much is being discharged? Is it like I tell you it is this amount and you agree with it or is there a monitoring system for that? You know like underneath the store there is also a tank of bait/minnows. Is that anywhere, where does that go?

Bryan Harrington: The permittee, if and when we issue a permit, would be responsible for reporting those flow numbers to us. Does that answer your questions as to who is actually collecting those numbers?

Jackie Langlois: So, it is up to Mr. Gingras.

Bryan Harrington: Yes, or one of his employees.

Jackie Langlois: And does that holding tank under the store get filtered?

Bryan Harrington: Underneath the store?

Jackie Langlois: Yeah there is a minnow tank.

Bryan Harrington: I'm a little confused. Are you talking about a different tank or not?

Jackie Langlois: It holds minnows. It is a different location.

Bryan Harrington: I'm not familiar with this other tank.

Jackie Langlois: It's in a different location from the Hog Island. It's in another store.

Bryan Harrington: So, it's not on this site.

Commenter: It's on the other side of the road.

Bryan Harrington: In the old facility, is that right? It is my understanding that any waste from that old facility is not part of this, correct? I don't know how that waste is disposed of from the old facility across the road.

Diane LaFarr: I would like to know.

Bryan Harrington: Mr. Gingras would you care to answer that question?

Michel Gingras: It is just grandfathered in. It goes into a drywell on the property.

Bryan Harrington: On that property of the former shop?

Michel Gingras: Yes.

Mike LaFarr: I used to work for him and that water went directly to the lake. I don't know if he is saying that it's a dry well, but that lake is not a dry well.

Bryan Harrington: Are you saying that it flows on the surface to the lake or subsurface to the lake?

Mike LaFarr: Underground.

Bryan Harrington: So, it sounds like it has a drywell that would probably _____.

Commenter: Dry well?

Bryan Harrington: Yes, that's a term of art.

Ed Baker: I want to get back to the disposal part of this waste from this tank because this is what concerns us. Under the assumption that he is going to monitor everything in the building, coming out of the building now the state will make sure that is being maintained and monitored to a standard in which our wells and properties won't be affected. Correct?

Bryan Harrington: Well, let me clarify something. He would be required to hire a professional engineer to go out once a year to inspect the system. Is that what you are referring to?

Ed Baker: Correct.

Bryan Harrington: The engineer would write a report and send it to us and we would review it and make comments on it.

Ed Baker: We have a 1,000-gallon waste tank, we are expecting once a year to have to pump this?

Bryan Harrington: There should be minimal solid accumulation in that tank based on the lab results that I have.

Ed Baker: If this fails, here's what I'm trying to get at – where is this waste going to go? Once it goes into the tank and the tank has to be cleaned. Where is that waste going?

Bryan Harrington: Typically, it goes to a certified wastewater treatment facility.

Ed Baker: So, it's not going out to the back of the property and a hole dug and buried?

Bryan Harrington: It is a condition of the permit that they have to report where that waste is taken but this waste is typically taken to a certified wastewater treatment facility.

Ed Baker: Now again, I would like to just to be reassured the shadowing conditions and impact from storm water runoff all coming down on that site to the west side. Everything's got to run west now, we're forcing it west – what precautions are going to be taken not to impact the adjacent property. I think it's a fair question that many of us in this room are concerned about. What is the impact to our properties? In some way or another each one of us right now is impacted by that bait business. And that's what we would like you, the state, to step in and say we are here to protect you. We are not looking to force them out of business. We just want our land protected. We don't receive letters from the state saying guess what, you got 70 feet of property, Mr. Baker, that you can't drill a well, you can't put a septic system on it, other than mow the grass. That's a lot of land. And I don't think it is fair to say, guess what he is grandfather because I don't think anybody in this room will disagree with me.

Bryan Harrington: Right. Well, certainly, this is not a grandfathered situation.

Ed Baker: We're here to say hey, protect us please. You don't have the laws or the rules to stop it, I don't think we should go forward with this one.

Bryan Harrington: We have the authority to take provisions as we see fit. Now, they also have to comply with the groundwater protection rule & strategy and the water quality standards and that's why we will be requiring monitoring of the process wastewater.

Ed Baker: But again, I hope you understand where we are coming from - none of this has been going on and we are all impacted in one way or another by it. And the frustration has hit this level, that's why we are all here.

Jackie Langlois: Shouldn't it be an engineer from the state monitoring it instead of someone hired by the business.

Bryan Harrington: I would have doubts about that due to limited resources and so forth, but for all of our systems in the indirect discharge program, and we have over 200 that we regulate, this is probably the smallest one in the state. We have some very

large ones but, in all cases, the permittee hires a private consulting firm or an engineer to do these annual inspections.

Ed Baker: On the outside.

Bryan Harrington: Yes.

Ed Baker: Everything that is being projected and for whatever fails, monitoring, maintaining, is on his honor system.

Bryan Harrington: For the annual inspection, we would review that. We would also review the monthly reports that come in and the lab results of the effluent. If I see anything that that is askew, I am going to raise a question and ask what's going on here?

Ed Baker: And that's what we are asking. What gets done? Because say that askew emerges, what do we do? What do we shut the operation down until it is to satisfaction? Because this is what we have for a hurdle now for the situation we are in. Nobody is doing anything. Nobody is doing anything.

Bryan Harrington: For the existing...

Ed Baker: For the existing, there is no permit.

Bryan Harrington: That is the purpose of this is to alleviate that discharge.

Commenter: So, are you saying if you do find something you will indeed shut them down?

Bryan Harrington: Well certainly that is a very drastic option, but I don't see that happening. We have all sorts of different measures, penalties, fines, enforcement action, requiring them to do additional monitoring. We have that ability to require those things.

Ed Baker: I'm a little upset when you say we wouldn't go that drastic. We are talking about our lake. I think we need to be drastic.

Commenter: We know what you're saying, your hands are tied, and you're only given so many tools to work with and I can respect that.

Bryan Harrington: Again, for instance, if I have a lab result that came in with a very high, say, nitrate level, I'm not going to ask Mr. Gingras to shut his operation down. It could be a lab error, it could be other things.

Commenter: So, you would ask them to run it again to verify what is going on.

Bryan Harrington: Yes, verify what is going on and further investigation.

Commenter: One of the reasons I suggested earlier that we should also monitor the discharge into the settling tank is to get an early warning system of when something might be going wrong before it actually shows up in the effluent.

Bryan Harrington: The effluent would be monitored at the pump station.

Commenter: If effluent overflows, it doesn't affect the pump station. The settling tank could overflow before the pump station shows anything going wrong.

Sam Ruggiano: That's not true. If in fact that would ever happen, the pump station would be full also and there are alarms that would go off saying that there is something wrong.

Commenter: But that's after it goes wrong. I'm trying to get _____.

Commenter: Is there a high-water alarm that goes off before it overflows? Is there an alarm in the settling tank? Is that proposed?

Sam Ruggiano: There is an alarm in the pump station and goes into the pump station from the settling tank, if it's that high it would be high in the pump station as well.

Bryan Harrington: Is there any telemetry associated with this system?

Sam Ruggiano: There can be, we can do that, so that it goes to a source that detect an issue. But you are going to have alarms and buzzers going off.

Bryan Harrington: But if someone is here on the property, right?

Sam Ruggiano: Right.

Tom Langlois: What happens if this all goes into effect and all of the sudden there is ponding what would be the circumstances if there is ponding going on?

Bryan Harrington: That would be an unpermitted discharge which is subject to enforcement action and penalties or corrective action.

Tom Langlois: So, you would operate with the ponding?

Bryan Harrington: Well it depends on what caused it, say if there was a crack in the tank. It depends on the situation. Maybe the outlet from the tank is plugged and you might have to have a pumper to come in and pump the tank to unplug the line, for instance. That doesn't warrant shutting the business down.

Mike LaFarr: It says that in the permit here that the discharge waste water would settle in a 1,000-gallon septic tank before flowing to a 2,000-gallon septic tank and 8,000 gallons – I don't really believe that, how can you, and the mound only take 1,200 gallons a day, how can that settle if you've got this water just circulating and circulating? How can anything settle in the 1,000-gallon tank?

Bryan Harrington: The 1,200 gallons per day would be going through that tank, not the full 8,000.

Mike LaFarr: Right, but I mean that water is constantly coming. How can it settle? You shake up some dirt and water in a glass you've got to let it settle, right?

Bryan Harrington: I don't know what the rate is that the wastewater would be discharged into the tank. Do you know Sam?

Sam Ruggiano: I don't know off the top of my head, but we are dosing the pump station, the mound system, so there is four doses so if you divide that 1,200 by four, 300 gallons a dose.

Bryan Harrington: The other thing that is not part of the plan that we are going to require is an effluent filter on the outlet end of that settling tank and that will capture the remaining solids that may still be in it.

Ed Baker: So, can he use a garden hose and hose it off and put it right back in and leave that on your lawn or whatever?

Commenter: On the ground.

Bryan Harrington: No, he shouldn't.

Ed Baker: Another question, if this is approved by you, your company – completion dates?

Bryan Harrington: In the response summary I did put in a Sept 30, 2018 date but that is unrealistic. I did not realize at the time that there was a town permit required as well. I knew about the Act 250 process, but I had some legal advice that advised me just to keep it separate. Reality being what it is, that date is unrealistic, so I can't tell you what

the completion date would be at this time. I do know that September 30th date of this year is not achievable.

Michael Munson: I don't know as it's too important what the completion date is, but I do think it is important that he not be operating until this system is in place. We have been living with it for years now and it's time for it to stop until a proper treatment place in there. It is kind of like my going in and say I've got a piece of land and I'd like to build a house on and they say you have to build a septic system and I say well no I want to live in it for 2 years and I'll build a system later. I would get laughed out of the house. I think that it is unrealistic to assume that you can push this completion date back for two years and still be operating in that interim.

Bryan Harrington: Well, I didn't say I would push back for two years.

Michael Munson: Well like I said I don't really care when it is, the important thing is the wholesale bait operation not function until there is a system in place and inspected.

Randy Bean: I have a question back to the filters. Filters need to be routinely backwashed. How is the filter backwash and the solids that come out the of filter going to be handled?

Bryan Harrington: That's a good question.

Randy Bean: I kind of expected when I reviewed the plans to see a storage tank for filter backwash which would then be routinely pumped out and be taken to St. Albans or a treatment facility.

Bryan Harrington: That is what I would anticipate, and I would like to see happen here and be included in part of this proposed system.

Randy Bean: Because if the filter backwash is just going into the settling tank you are just concentrating your solids and you're going to have a mess.

Bryan Harrington: I understand. Sam, do you have any insight on that?

Sam Ruggiano: From the testing that we've done, the water that comes out of those tanks is not much different than the lake water. As far as the suspended solids there wasn't a whole heck of a lot of suspended solids in this either.

Bryan Harrington: I agree with what Sam just said, although there is very limited testing, we are going to need more testing to verify that.

Randy Bean: You've got a TSS result from July 26, 2013 of 85 mg/l, I mean, that's kind of like primary sewage concentration. You've got another TSS result from February 24, 2016 at 9 mg/l, that's not lake water. Lake water I would expect less than 1 mg/l. So those filters will need to be backwashed.

Bryan Harrington: Right, but these numbers are way, way less than domestic sewage discharge.

Sam Ruggiano: Way less, not even close.

Jackie Langlois: I just want to say that they are a family run business and a nice business and my only concern as a neighbor, it's a nice family business and they work for it is I am just concerned about my property, I'm right across the road. That's all. I would hope that they would do that if I was across the road and I was doing something. I'm not against them personally and their business.

Bryan Harrington: One thing I want to mention, you mentioned storm water earlier. We don't regulate storm water. I just to make that clear.

Ed Baker: Should storm water be looked at?

Bryan Harrington: Yes, they may require a storm water permit. I don't know what those regulations are as far as the amount of impervious area that is required for a permit.

Ed Baker: It just seems like there are a lot of factors in here other than just going ahead with this.

Bryan Harrington: It's possible they may need a storm water permit from the Watershed Management Division of the Agency. I don't know whether they do or not.

Ed Baker: One more question. The enforcement and making sure it is followed, that is the critical part. Is this something that you will take a strong look at. If we allow this to go through these things have to be in place and these things will be monitored otherwise, here's the penalty. I think that is what everybody in this room really wants to make sure. We would like for you to consider. Okay, we are crowding an awful lot on this piece of land – is it going to impact the adjacent properties? And how is it going to impact those property. If it does – here is what we have to do. I don't think that is being unrealistic to ask.

Bryan Harrington: The processed waste water is going to be treated through the soil underneath the mound system. It will remove the solid matter. It should take up the phosphorus, the nitrates would probably pass through, but they are pretty low to begin

with. But again, we would be requiring monitoring for the processed waste water for those constituents.

Ed Baker: I think in the time frame in which this has been going on for direct discharge for quite some time. I think the time frame is of the essence here. It is a business that depends on that lake to begin with. Why would you want to contribute to something that _____?

Bryan Harrington: We can't issue a permit unless we are confident that it is going to meet water quality standards which apply to Lake Champlain.

Tom Langlois: I am concerned that I have a well right downstream – as it is right now we don't drink our water. So that leaves us concerned about how this water filtrates.

Bryan Harrington: I believe I corresponded with you before. You have a bedrock well, correct?

Tom Langlois: It is a drilled well.

Bryan Harrington: And it is in bedrock?

Tom Langlois: I'd say.

Bryan Harrington: And if I remember it is fairly deep?

Tom Langlois: 157 feet deep.

Bryan Harrington: This site is underlain by glacial till material, tight material, so even if the effluent from this system discharge toward your property, which I don't believe it does, there is that protective layer of 100 plus feet of this very tight glacial till soil to protect your water supply.

Michael Munson: Just picking up on what Ed Baker said, we are concerned about what could or might happen to our property and I think in my own case I am fairly comfortable that the system that is designed will work but what I'm looking for is some protection in the event it doesn't.

Bryan Harrington: A contingency plan?

Michael Munson: Yes, exactly and that is why I was talking about monitoring the flow in the tanks. That's why I was talking about some kind of warning devices and those kinds of things that will catch any kind of malfunction before it has a chance to impact on the neighboring properties.

Bryan Harrington: That is why I asked about the telemetry earlier and whether that was being considered or not. An early warning mechanism.

Michael Munson: I agree with that.

End of Transcript