



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

Mr. Albert Carver  
Carver Shellfish Inc.  
P.O. Box 187  
Beals, ME. 04611

February 3, 2015

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit ME0110442  
Maine Waste Discharge License (WDL) Application #W007803-5P-G-R  
Permit

Dear Mr. Carver:

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

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

If you have any questions regarding the matter, please feel free to call me at 446-1875.

Sincerely,

Rodney Robert  
Division of Water Quality Management  
Bureau of Land and Water Quality

Enc.

cc: Matt Young, DEP/EMRO  
Lori Mitchell, DEP/CMRO  
Sandy Mojica, USEPA

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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

CARVER SHELLFISH INC.	) MAINE POLLUTANT DISCHARGE
BEALS, WASHINGTON COUNTY, MAINE	) ELIMINATION SYSTEM PERMIT
SEAFOOD PROCESSING FACILITY	) AND
ME0110442	) WASTE DISCHARGE LICENSE
W007803-5P-G-R	) RENEWAL
APPROVAL	)

In compliance with the applicable provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et seq. and Maine Law 38 M.R.S.A. Section 414-A, *et seq.*, and applicable rules, the Department of Environmental Protection (Department) has considered the application of CARVER SHELLFISH, INC., (permittee), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

On August 15, 2014, the Department accepted as complete for processing an application from the permittee for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0110442/Maine Waste Discharge License (WDL) #W007803-5P-D-R (permit) which was issued by the Department on November 21, 2009, for a five-year term. The 11/21/09 permit authorized the year round monthly average discharge of 2,000 gallons per day (GPD) of treated clam processing and clean up wastewater (Outfall #001A) to Western Bay, Class SB, in Beals, Maine. The 11/21/09 permit received a minor revision on 8/7/12 increasing the monthly average discharge limitation to 3000 gpd, and another revision on 8/16/13 further increasing the monthly average discharge limitation to 7,600 gpd.

**PERMIT SUMMARY**

This permitting action is similar to the November 21, 2009 permitting action, Except that it is;

1. Carrying forward the monthly average flow limitation established in the 8/16/13 Minor Revision.
2. Revising Mass and Concentration limitations for TSS and Oil & Grease.
3. Establishing a Water-Quality based limit for Total Residual Chlorine.

## CONCLUSIONS

BASED on the findings in the attached **FACT SHEET** dated February 3, 2015, and subject to the Conditions listed below, the Department makes the following **CONCLUSIONS**:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with State law.
3. The provisions of the State's antidegradation policy, 38 M.R.S.A. §464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
  - (c) Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in Maine law, 38 M.R.S.A., §414-A(1)(D).
5. The overboard discharge system was in continuing existence for the 12 months preceding June 1, 1987.
6. A non-discharging sub-surface waste water disposal system could not be installed in compliance with the Maine Subsurface Waste Water Disposal Rules at the time the renewal application was accepted for processing by the Department.
7. A publicly-owned sewer line is not located on or abutting land owned or controlled by the permittee or is not available for the permittee's use.
8. The discharge is not located within the boundaries of a sanitary district or sewer district.

**ACTION**

THEREFORE, the Department APPROVES the application of CARVER SHELLFISH, INC., to discharge a year round, monthly average of 7,600 gallons per day of treated clam and lobster processing and clean up wastewater (Outfall #001A) to Western Bay, Class SB, in Beals, Maine, as described above, SUBJECT TO ALL APPLICABLE STANDARDS AND REGULATIONS AND THE FOLLOWING CONDITIONS:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits," revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit becomes effective upon the date of signature below and expires at midnight five (5) years after that date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of this permit and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [Maine Administrative Procedure Act, 5 M.R.S.A. §10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (amended August 25, 2013)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 4<sup>th</sup> DAY OF February, 2015.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns  
for PATRICIA W. AHO, Commissioner

Date of initial receipt of application: August 15, 2014

Date of application acceptance: August 15, 2014

Filed  
FEB 05 2015  
State of Maine  
Board of Environmental Protection

Date filed with Board of Environmental Protection \_\_\_\_\_.

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

Beginning the effective date of this permit, the permittee is authorized to discharge a year round, monthly average of 7,600 gpd, lobster and clam processing waste water from **Outfall #001A** to the Atlantic Ocean at Western Bay, Class SB, Beals. Such discharges shall be limited and monitored by the permittee as specified below<sup>(1)</sup>:

April 1st – November 30th of each year:

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]	7,600 gpd [26]	---	Report gpd [07]	---	---	---	1/ Discharge Day <sup>(2)</sup> [01/DD]	Measure [MS]
Production [00145]	Report lbs/day [26]	---	Report lbs/day [26]	---	---	---	1/Month [01/30]	Grab [GR]
TSS [00530]	54 lbs/day [26]	---	177 lbs/day [26]	852 mg/L [19]	---	2792 mg/L [19]	1/Month [01/30]	Grab [GR]
Oil & Grease [00556]	0.69 lbs/day [26]	---	1.8 lbs/day [26]	11 mg/l [19]	---	28 mg/l [19]	1/Month [01/30]	Grab [GR]
Settleable Solids [00545]	---	---	---	---	---	1.0 ml/L [25]	1/Week [01/07]	Grab [GR]
Total Residual Chlorine <sup>(3)</sup> [50060]	---	---	---	---	---	0.3 mg/L [19]	1/Month [01/30]	Grab [GR]
pH [00400]	---	---	---	---	---	6.0 – 9.0 SU [12]	1/Month [01/30]	Grab [GR]

Footnotes See Page 5 of this permit for applicable footnotes.

December 1 – March 31 of each year: The permittee is authorized to discharge process wastewater to an onsite subsurface disposal system. See attachment C of the Fact Sheet specifics of the sub-surface disposal system.

## SPECIAL CONDITIONS

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

#### Footnotes

1. **Sampling** – Sampling shall be conducted after the last treatment process such that samples are representative of what is actually being discharged to the receiving waters. Sampling shall be conducted in accordance with federally approved methods for sampling, handling and preservation. Samples shall be analyzed by a laboratory certified by the State of Maine's Department of Human Services and in accordance with methods approved in Title 40, *Code of Federal Regulations* (CFR) Part 136. Samples that are sent to a waste water treatment plant licensed pursuant to *Waste Discharge Licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000).
2. **Authorized Discharge Period** – The permittee is authorized to discharge only between three (3) hours before to three (3) hours after high tide.
3. **Total Residual Chlorine** – Limitations and monitoring requirements are applicable whenever elemental chlorine or chlorine based compounds are being used to disinfect the discharge. The permittee shall utilize approved test methods that are capable of bracketing the TRC limitation in this permit.

### B. ANNUAL DISCHARGE FEES

Pursuant to Maine law, 38 M.R.S.A. §353-B, the permittee is required to pay an applicable annual fee for discharges authorized by this permit. Failure to pay an annual fee within 30 days of the billing date of a permit is sufficient grounds for accruing interest charges, penalties or revocation of the permit.

### C. NARRATIVE EFFLUENT LIMITATIONS

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

## **SPECIAL CONDITIONS**

### **D. AUTHORIZED DISCHARGES**

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing August 15, 2014; 2) the terms and conditions of this permit; and 3) only from Outfall #001A. Discharges of waste water from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5)(*Bypass*) of this permit.

### **E. NOTIFICATION REQUIREMENT**

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

1. Any substantial change or proposed change in the volume or character of pollutants being introduced into the wastewater collection and treatment system by a source introducing pollutants into the system at the time of permit issuance. For the purposes of this section, notice regarding substantial change shall include information on:
  - (a) the quality and quantity of wastewater introduced to the wastewater collection and treatment system; and
  - (b) any anticipated impact caused by the change in the quantity or quality of the wastewater to be discharged from the treatment system.

## SPECIAL CONDITIONS

### F. MONITORING AND REPORTING

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

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

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

### G. OPERATION & MAINTENANCE (O&M) PLAN

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

**By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades,** the permittee shall evaluate and modify the O&M Plan including site plan(s) and schematic(s) for the wastewater treatment facility to ensure that it is up-to-date.

## **SPECIAL CONDITIONS**

### **G. OPERATION & MAINTENANCE (O&M) PLAN (cont'd)**

The O&M Plan shall be kept on-site at all times and made available to Department and EPA personnel upon request.

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

### **H. REOPENING OF PERMIT FOR MODIFICATIONS**

Upon evaluation of the tests results or monitoring requirements specified in Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at any time and with notice to the permittee, modify this permit to: (1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded; (2) require additional effluent or ambient water quality monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

### **I. SEVERABILITY**

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

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

**PROPOSED DRAFT FACT SHEET**

**February 3, 2015**

MEPDES PERMIT: **ME0110442**  
WASTE DISCHARGE LICENSE: **W007803-5P-G-R**

NAME AND ADDRESS OF APPLICANT:

**CARVER SHELLFISH INC.  
Attn: Mr. Albert Carver  
P.O Box 187  
Beals, ME. 04611**

COUNTY: **Washington County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:  
**125 Black Duck Cove Rd.  
Beals, Maine 04611**

RECEIVING WATER / CLASSIFICATION: **Atlantic Ocean at Western Bay/Class SB**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Albert Carver  
(207) 497-2261  
acarver@acarverinc.com**

**1. APPLICATION SUMMARY**

- a. Application: On August 15, 2014, the Department accepted as complete for processing an application from Carver Shellfish, Inc. for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0110442/Maine Waste Discharge License (WDL) #W007803-5P-G-R (permit) which was issued by the Department on November 21, 2009, for a five-year term. The 11/21/09 permit authorized the year round, monthly average discharge of 2000 gallons per day (GPD) of treated clam processing and clean-up waste waters (Outfall #001A) to the Atlantic Ocean at Western Bay, Class SB, in Beals, Maine. The 11/21/09 permit received a minor revision on 8/7/12 increasing the monthly average discharge limitation to 3000 gpd, and another revision on 8/16/13 further increasing the monthly average discharge limitation to 7,600 gpd. See Attachment A of the Fact Sheet for a location map of the facility.

**1. APPLICATION SUMMARY (cont'd)**

- b. History: This section provides a chronological summary of recent, relevant licensing/permitting actions that have been completed for Carver Shellfish.

January 12, 2001 – The Department received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine, excluding areas of special interest to Maine Indian Tribes. From that point forward, the program has been referred to as the MEPDES program, and MEPDES permit #ME0110442 has been utilized as the primary reference number for Carver Shellfish.

December 27, 2004 – The Department issued MEPDES permit #ME0110442 / WDL #W007803-5P-C-R to Carver Shellfish for a five-year term. The 12/27/04 WDL superseded WDL #W007803-5P-B-R issued on May 5, 1999, and initial WDL #W007803-WA-A-N issued on November 8, 1993.

August 12, 2009 – Carver Shellfish submitted a timely and complete General Application to the Department for renewal of the 12/27/04 MEPDES permit. The application was accepted for processing on August 14, 2009, and was assigned WDL #W007803-5P-D-R / MEPDES #ME0110442.

August 7, 2012 – The Department issued MEPDES permit #ME0110442 / WDL #W007803-5P-E-M as a minor revision to the August 12, 2009 permitting action at the request of the permittee. The Minor Revision increased the monthly average flow limitation from 2000 gpd to 3000 gpd.

August 16, 2013 – The Department issued MEPDES permit #ME0110442 / WDL #W007803-5P-F-M as a minor revision to the August 12, 2009 permitting action at the request of the permittee increasing the monthly average flow limitation to 7,600 gpd.

August 15, 2014 – Carver Shellfish submitted a timely and complete General Application to the Department for renewal of the 08/12/09 MEPDES permit. The application was accepted for processing on August 15, 2014, and was assigned WDL #W007803-5P-G-R / MEPDES #ME0110442.

**1. APPLICATION SUMMARY (cont'd)**

c. Source description: Carver Shellfish Inc. is a clam processing and packaging facility located on Black Duck Cove Road in Beals, Maine. A map showing the location of the facility and Atlantic Ocean at Western Bay is included as **Attachment A** of this fact sheet. Clam processing includes the shucking, cooking, blanching and cooling of the clam product. Cooking, blanching, and cooling water is used in batches and changed on an as-needed basis. No continual flow process is used. Approximately, 3,000 gpd is used in clam processing, including the cooking process, whereas, 2,000 gpd is used for shucking, cooling and cleanup processes during maximum production conditions. The facility uses fresh water from a drilled well. The facility utilizes a chlorinated cleaner for disinfection and cleaning purposes. Carver Shellfish provided the following anticipated production rates for the facility, which is the basis for certain effluent limitations established in the permit.

Product	lbs./ day processed		Processing Period		Daily effluent flows	
	Average lbs./day	Maximum lbs./day	#weeks/year	Months processing	Average	Maximum
Clams	3,000	5,000	52	Jan - Dec	0.0050 MGD	0.0076 MGD

d. Waste water treatment: The treatment of waste water consists of filter fabric that is installed downstream of the outlets from the cooking and cooling vessels on the waste water collection line. The waste water is directed to a sump pump that includes a screen filter with a ½ inch mesh. From the sump pump the waste water is directed to a final screening process using a hydrosieve. The hydrosieve has a screen with a mesh size pore space of 2.5 millimeter diameter. When clean up begins, the processing equipment is washed and cleaned using mild detergents and chlorine-based compounds. The floor is dry swept to remove as many solids as possible. All wastewater is discharged through the grated floor drains and is directed to the screened sump pump and hydrosieve. Wastewater flows from the sump pump through a 2-inch diameter PVC pipe 2,250 feet to the shoreline of Western Bay. The outfall discharges the waste water at a depth of 4 feet below mean low water. The previous permit limited the discharge period to between three (3) hours before to three (3) hours after the high tide in order to satisfy acute ambient water quality considerations. Beginning on or about December 1 of each year the facility disconnects the pump to the Outfall pipe and discharges process water to a leach field. Between December and March of each year production is reduced to less than a third of what it is during the warmer months. Accordingly the amount of water discharged to the subsurface system is well below the systems design capability. The leach field, constructed, licensed and in operation since 1993 has never overflowed or failed due to excessive discharge of process water. See **Attachment B** of this Fact Sheet for a diagram of the facility's treatment system and **Attachment C** of this Fact Sheet for the specifics of the sub-surface disposal system.

## 2. PERMIT SUMMARY

This permitting action is similar to the November 21, 2009 permitting action, Except that it is;

1. Carrying forward the monthly average flow limitation established in the 8/16/13 Minor Revision.
2. Revising Mass and Concentration limitations for TSS and Oil & Grease.
3. Establishing a Water-Quality based limit for Total Residual Chlorine
4. Establishing a seasonal, monthly, reporting requirement for flow to sub-surface disposal system from Dec 1<sup>st</sup> - March 31<sup>st</sup>.

## 3. CONDITIONS OF PERMIT

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

## 4. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A. §469(3-A) classifies Western Bay, at the point of discharge, as a Class SB waterbody. Maine law, 38 M.R.S.A. §465-B(2) contains the standards for Class SB water bodies.

## 5. RECEIVING WATER QUALITY CONDITIONS

*The 2012 Integrated Water Quality Monitoring and Assessment Report* published by the Department pursuant to Section 305(b) of the Federal Water Pollution Control Act lists the south end of Cape Split, Addison to Kelley Point, Jonesport (waterbody ID 703), which includes the tidewaters at the point of discharge as "*Category 2: Estuarine and Marine Waters Attaining Some Designated Uses – Insufficient Information for Other Uses.*" The 2012 Report also lists Maine's marine and estuarine waters as "*Category 5-D: Estuarine and Maine Waters Impaired by Legacy Pollutants.*" Impairment in this context refers to the estuarine and marine waters partially supporting the designated use of fishing and harvesting of shellfish due to elevated levels of PCBs and other persistent bioaccumulating substances in tissues of lobster tomalley. The Department has no information at this time that the discharge from Carver Shellfish, as permitted, causes or contributes to this non-attainment of the receiving water.

## 5. RECEIVING WATER QUALITY CONDITIONS (cont)

Department rule Chapter 519, *Interim Effluent Limitations and Controls for the Discharge of Mercury*, establishes controls on the discharge of mercury to the surface waters of the State through interim effluent limits and implementation of pollution prevention plans.

However, Section 1(A)(1) of the Chapter 519 rule states, in part: "*This rule applies to all persons licensed or permitted pursuant to 38 MRSA §413 to discharge pollutants to the surface waters of the State except as described below. For the purposes of this rule, the term 'licensee' also means, 'permittee.'*"

*Categorical exclusions. This rule does not apply to the following categories of licensees: combined sewer overflows, snow dumps, pesticide applications, and over board discharges licensed pursuant to 38 MRSA §413. [emphasis added] Except, however, specific members of these categories may be required by the department to comply with this rule on a case by case basis..."*

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

a. **Flow:** The previous permitting action established a monthly average discharge flow limitation of 0.0020 MGD for Outfall #001A with a monitoring and reporting requirement to maintain consistency with other permitted facility limitations and to provide operational flexibility to the permittee. The Department granted two Minor Revisions to the previous permitting action, raising the monthly average discharge flow limitation to 0.0030 MGD on August 7, 2012 and to 0.0076 MGD on Aug 16, 2013 at the request of the permittee to accommodate increased production. Carver Shellfish Inc. has indicated in its application that the anticipated wastewater flows discharged from the clam processing and facility cleaning activities is an average of 2,000 gallons per day, with seasonal increases in production raising the level in excess of 5,000 gallons per day. **Therefore, this permitting action is carrying forward the seasonal, monthly average discharge flow limitation of 0.0076 MGD for Outfall #001A. (April 1 – November 30<sup>th</sup>)**

b. **Dilution Factors:** 06-096 CMR 530(4)(A)(2)(a) states that, "*For discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model.*" Based on the configuration of Outfall #001A with a discharge flow limit of 0.0076 MGD (same as 7,600 GPD), and the Department's best professional judgment, the dilution factors associated with the discharge are as follows:

Acute = 25:1

Chronic = 391:1

Harmonic Mean= 1173:1

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

- c. Production: The previous permitting action established, and this permitting action is carrying forward, monthly average and daily maximum production rate reporting requirements. A summary of production data as reported on the monthly DMRs for the period of September 2009 through September 2014 is as follows:

<b>Production</b>	<b>Minimum</b>	<b>Maximum</b>	<b>Arithmetic Mean</b>	<b># DMRs</b>
Monthly Average	0.00 lbs/day	9,321 lbs/day	3,336.47 lbs/day	34
Daily Maximum	0.00 lbs/day	26,701 lbs/day	10,770.29 lbs/day	34

Average production rates anticipated by Carver Shellfish during the term of this permit are summarized in Section 1.c of this fact sheet above.

- d. Total Suspended Solids (TSS): The previous permitting action established monthly average concentration and mass limitations of 36 lbs./day and 2,158 mg/L, respectively, and daily maximum concentration and mass limitations of 118 lbs./day and 7,074 mg/L, respectively, for TSS. These limits were derived in accordance with the BPT-based guidelines at 40 CFR 408.232 and based on production rates at that time.

The BPT-based effluent guidelines at 40 CFR Part 408.232 express TSS limits as a monthly average of 18 pounds per 1,000 pounds of production and a daily maximum of 59 pounds per 1,000 pounds production.

Monthly average and daily maximum end-of-pipe effluent TSS limitations are calculated utilizing a production value of 3,000 lbs./day, monthly average and daily maximum technology-based mass limits can be calculated as follows. It is noted that the previous permitting action established TSS effluent limitations using the maximum production value of 2,000 lbs/day and a maximum flow value of 2,000 GPD. For consistency with other MEPDES permits, this permitting action is utilizing the average production value (3000 lbs/day) and average wastewater flow (7,600 GPD) in the technology-based limit calculations. The difference between the average and maximum effluent guideline limitations accounts for variability in effluent quality discharged from the facility.

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

**Revised TSS Mass Limitations:**

$$\text{Monthly Average: } \frac{(3,000 \text{ lbs/day})(18 \text{ lbs})}{1,000 \text{ lbs}} = 54 \text{ lbs./day}$$

$$\text{Daily Maximum: } \frac{(3,000 \text{ lbs/day})(59 \text{ lbs})}{1,000 \text{ lbs}} = 177 \text{ lbs./day}$$

Concentration limits for TSS may be back-calculated utilizing the applicable mass limitations calculated above, a flow of 0.0076 million gallons per day (MGD) (same as 7,600 gpd) and a conversion factor of 8.34 lbs/gallon of water. Concentration limits are calculated as follows:

**Revised TSS Concentration Limitations:**

$$\text{Monthly Average: } \frac{(54 \text{ lbs/day})}{(0.0076 \text{ MGD})(8.34 \text{ lbs/gal})} = 852 \text{ mg/L}$$

$$\text{Daily Maximum: } \frac{(177 \text{ lbs/day})}{(0.0076 \text{ MGD})(8.34 \text{ lbs/gal})} = 2,792 \text{ mg/L}$$

A summary of the effluent TSS data as reported on the DMRs submitted to the Department for the period September 2009 through September 2014 is as follows:

TSS	Minimum	Maximum	Arithmetic Mean	# DMRs
Monthly Average	0.0 lbs./day 35 mg/L	6.0 lbs./day 500 mg/L	1.5 lbs./day 106 mg/L	28
Daily Maximum	0.1 lbs./day 35 mg/L	6.0 lbs./day 500 mg/L	1.6 lbs./day 106 mg/L	28

This permitting action is carrying forward the minimum monitoring frequency requirement of once per week based on best professional judgment.

- e. Oil & Grease (O&G): The previous permitting action established monthly average concentration and mass limitations of 0.63 lbs./day and 15 mg/L, respectively, and daily maximum concentration and mass limitations of 2.8 lbs./day and 67 mg/L, respectively, for O&G. These limits were derived in accordance with the BPT-based guidelines at 40 CFR 408.232 and based on production rates at that time.

The BPT-based effluent guidelines at 40 CFR Part 408.232 express O&G limits as a monthly average of 0.23 pounds per 1,000 pounds of production and a daily maximum of 0.6 pounds per 1,000 pounds production.

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

**Revised O&G Mass Limitations:**

$$\text{Monthly Average: } \frac{(3,000 \text{ lbs/day})(0.23 \text{ lbs})}{1,000 \text{ lbs}} = 0.69 \text{ lbs./day}$$

$$\text{Daily Maximum: } \frac{(3,000 \text{ lbs/day})(0.60 \text{ lbs})}{1,000 \text{ lbs}} = 1.8 \text{ lbs./day}$$

Concentration limits for O&G may be back-calculated utilizing the applicable mass limitations calculated above, a flow of 0.0076 million gallons per day (MGD) (same as 7,600 gpd) and a conversion factor of 8.34 lbs/gallon of water. Concentration limits are calculated as follows:

**Revised O&G Concentration Limitations:**

$$\text{Monthly Average: } \frac{(0.69 \text{ lbs/day})}{(0.0076 \text{ MGD})(8.34 \text{ lbs/gal})} = 10.8 \text{ mg/L}$$

$$\text{Daily Maximum: } \frac{(1.8 \text{ lbs/day})}{(0.0076 \text{ MGD})(8.34 \text{ lbs/gal})} = 28.4 \text{ mg/L}$$

A summary of the effluent O&G data as reported on the DMRs submitted to the Department for the period September 2009 to March 2013 is as follows:

O&G	Minimum	Maximum	Arithmetic Mean	# DMRs
Monthly Average	0.0 lbs./day 4.1 mg/L	0.20 lbs./day 14.0 mg/L	0.08 lbs./day 6.97 mg/L	23
Daily Maximum	0.01 lbs./day 4.1 mg/L	0.33 lbs./day 14.0 mg/L	0.108 lbs./day 6.96 mg/L	23

This permitting action is carrying forward the minimum monitoring frequency requirement of once per week based on best professional judgment.

- f Total Residual Chlorine (TRC): The previous permitting action carried forward a technology-based, daily maximum effluent limitation of 1.0 mg/L for TRC. The limit was established to ensure protection of receiving water quality from effluents containing residual chlorine from facility clean-up water. Limitations on TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either the water quality-based or technology-based based limits.

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

With acute and chronic dilution factors associated with the discharge, water quality-based concentration thresholds the discharge may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A & C Dilution Factors	Calculated	
			Acute Threshold	Chronic Threshold
0.013 mg/L	0.0075 mg/L	25:1 (A) 391:1 (C)	0.3 mg/L	2.93 mg/L

The water quality-based effluent limit of 0.3 mg/L calculated above is more stringent than the previously established technology-based threshold and is therefore being established in this permitting action.

g. Settleable Solids: The previous permitting action carried forward daily maximum, settleable solids limitation of 1.0 ml/L and minimum monitoring frequency requirement of once per week based on best professional judgment. The Department has established a daily maximum effluent limit of 1.0 ml/L for several seafood processing facilities as best professional judgment of best practicable treatment. This permitting action is also carrying forward the daily maximum settleable solids limitation of 1.0 ml/L.

h. pH: The previous permitting action established, and this permitting action is carrying forward, a daily maximum pH range limitation of 6.0 – 9.0 standard units (SU) based on 40 CFR Part 408.232, which is consistent with the range considered by the Department to be BPT for discharges from seafood processing facilities in Maine.

A summary of pH data as reported on the monthly DMRs for the period of September 2009 through September 2014 (# DMRs = 34) indicates the facility has had zero excursions below the lower pH range limit of 6.0 SU and has ranged from 6.96 – 7.52 SU.

This permitting action is carrying forward the minimum monitoring frequency requirement of once per month based on best professional judgment.

i. Nitrogen - The permittee has not been conducting total nitrogen testing on its discharge to date. However, the USEPA requested the Department evaluate the reasonable potential for the discharge of total nitrogen to cause or contribute to non-attainment of applicable water quality standards, namely algal blooms, in marine waters. As of the date of this permitting action, the State of Maine has not promulgated numeric ambient water quality criteria for any of the nitrogen compounds. The Department has 50 total nitrogen data results with an arithmetic mean total nitrogen discharge concentration of 14.3 mg/L collected on effluent from five municipally-owned treatment works and one industrial facility that discharge to Casco Bay which the Department is considering to be considered representative of discharges in the absence of facility specific data. With an arithmetic mean total nitrogen

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

discharge concentration of 14.3 mg/L or and a near field chronic dilution factor of 391:1 for the Carver facility, an in-stream concentration can be calculated as follows:

Total nitrogen concentrations in effluent = 14.3 mg/L  
Chronic dilution factor = 391:1

In-stream concentration after dilution:  $\frac{14.3 \text{ mg/L}}{391} = 0.04 \text{ mg/L}$

Because nitrogen is not acutely toxic, the Department is considering a far-field dilution to be more appropriate when evaluating impacts of total nitrogen to a marine environment. Far field dilutions are significantly higher than the near-field dilution, ranging from 100 – 10,000 times higher depending on the location of the outfall pipe. With outfalls located in protected coves or embayments without significant flushing, the far field dilutions factors would tend to be on the order of 100 – 1,000 times higher. With open ocean discharges, far field dilutions would tend to be 1,000 – 10,000 times higher.

The discharge from the permittee's facility to Western Bay would be considered a discharge to the open ocean thus, the far field dilution would likely be on the lower end of the 1,000 – 10,000 range. As a result, the far-field dilution may be as high as 391,000:1, thereby limiting the increase in the ambient total nitrogen by 0.0004 mg/L based on the following calculation:

Total nitrogen concentrations in effluent = 14.3 mg/L  
Chronic dilution factor = 391,000:1

In-stream concentration after dilution:  $\frac{14.3 \text{ mg/L}}{127,600} = 0.00004 \text{ mg/L}$

The Department has been collecting ambient total nitrogen data in close proximity to the Maine coastline to support an effort to develop statewide nutrient criteria for marine waters. For the Carver facility, the Department calculated a mean background concentration of 0.29 mg/l based on ambient data collected in the general vicinity of the discharge. As a result, after reasonable opportunity for far field mixing, the increase in the concentration of total nitrogen in the receiving water due to the discharge from the permittee's facility will not be measureable thus, the instream concentration of total nitrogen will remain at 0.29 mg/L. This concentration is lower than the Department's and EPA's best professional judgment of a critical threshold of 0.45 mg/L to protect aquatic life in marine waters using dissolved oxygen as the indicator. Therefore, the Department is making a best professional judgment determination that the discharge of total nitrogen from the permittee's facility does not exhibit a reasonable potential to exceed applicable water quality standards for Class SB waters.

## **7. ANTI-BACKSLIDING**

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

This permitting action is establishing less stringent mass and concentration BPT limitations for TSS and oil & grease based on new information that was not available at the time of the previous permitting action. More specifically, the permittee has applied for an increase in production from 2,000 lbs/day to 3,000 lbs/day.

## **8. ANTI-DEGRADATION - IMPACT ON RECEIVING WATER QUALITY**

Maine's anti-degradation policy is included in 38 M.R.S.A., Section 464(4)(F) and addressed in the Conclusions section of this permit. Pursuant to the policy, where a new or increased discharge is proposed, the Department shall determine whether the discharge will result in a significant lowering of existing water quality. Increased discharge means a discharge that would add one or more new pollutants to an existing effluent, increase existing levels of pollutants in an effluent, or cause an effluent to exceed one or more of its current licensed discharge flow or effluent limits, after the application of applicable best practicable treatment technology.

This permitting action revises previously established effluent limitations and monitoring requirements for TSS and oil & grease. The rationale for these actions is contained in Section 6 of this Fact Sheet. Based on the information provided in the referenced section, the Department has made the determination that the discharge approved by this permit will not result in a significant lowering of water quality. As permitted, the Department has determined the existing and designated water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the receiving water to meet standards for Class SB classification.

## **9. DISCHARGE IMPACT ON RECEIVING WATER QUALITY**

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

## 10. PUBLIC COMMENTS

Public notice of this application was made in *The Downeast Coastal Press* newspaper on or about August 5, 2014. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

## 11. DEPARTMENT CONTACTS

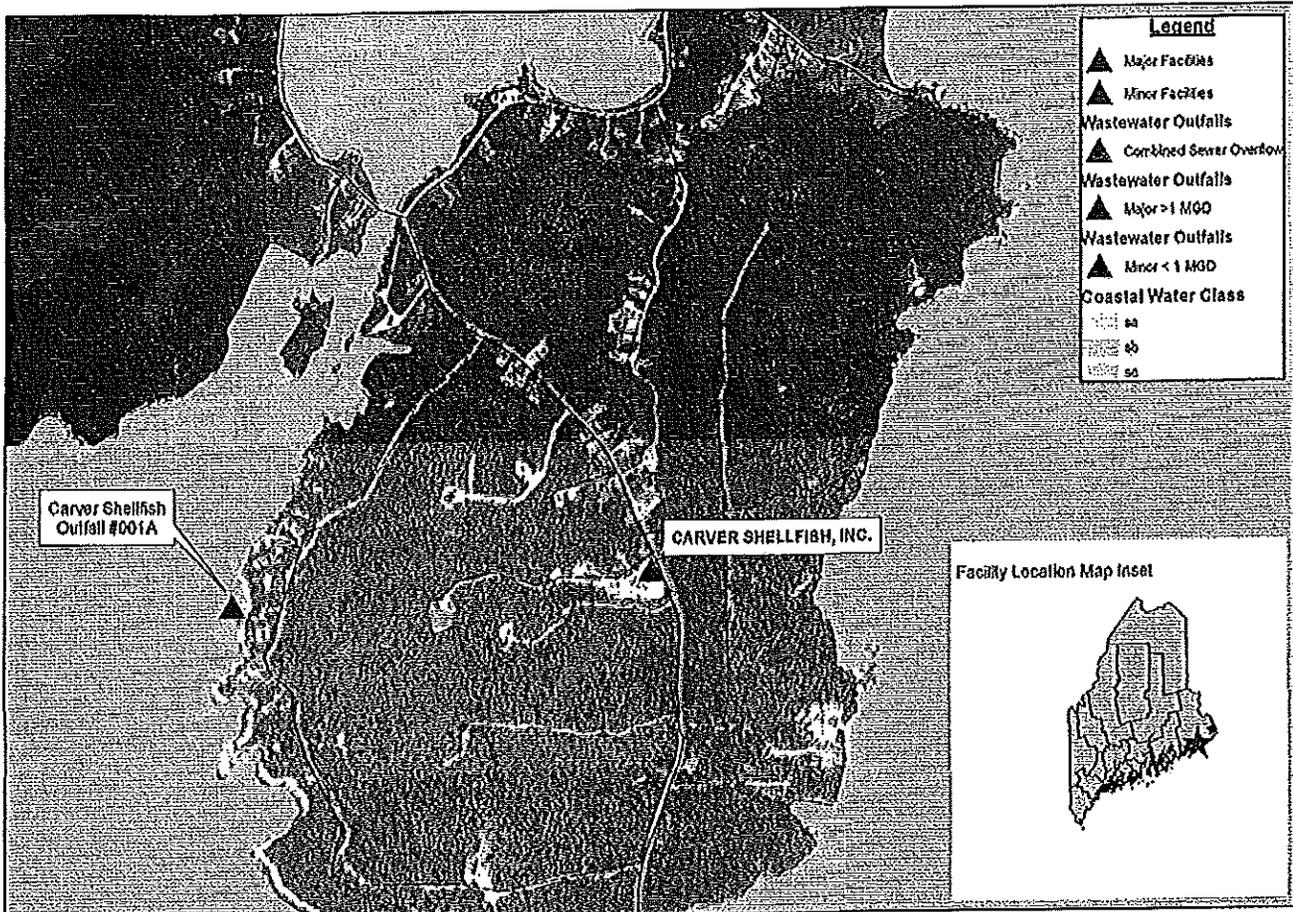
Additional information concerning this permitting action may be obtained from, and written comments sent to:

Rodney Robert  
Division of Water Quality Management  
Bureau of Land & Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 446-1875  
e-mail: [rodney.robert@maine.gov](mailto:rodney.robert@maine.gov)

## 12. RESPONSE TO COMMENTS

During the period of December 23, 2014 through the issuance date of the permit/license, the Department solicited comments on the proposed draft permit/license to be issued for the discharge from Carver Shellfish Inc.. The Department did not receive comments from the permittee, state or federal agencies, or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

ATTACHMENT A



0 0.125 0.25 0.5 Miles



**Carver Shellfish, Beals, Maine**

Map created by Maine DEP  
October, 2009

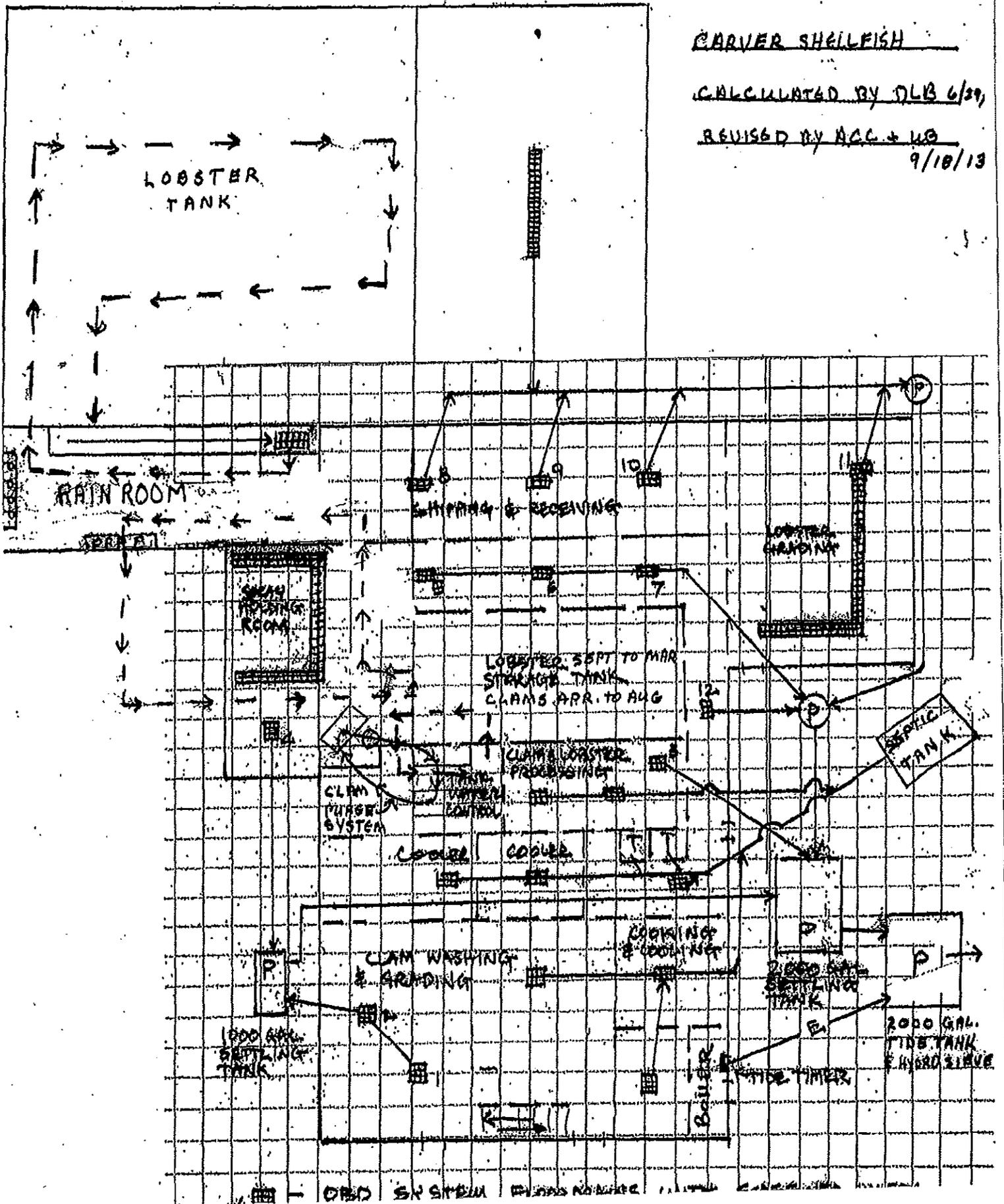


**ATTACHMENT B**

CARVER SHELLFISH

CALCULATED BY DLB 6/29,

REVISED BY ACC + US  
9/10/13



**ATTACHMENT C**

# SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Department of Human Services  
Division of Health Engineering  
(207)289-3826

<b>PROPERTY ADDRESS</b>	
Town Or Plantation	BEALS
Street Subdivision Lot #	BLACK DUCK COVE RD
<b>PROPERTY OWNERS NAME</b>	
Last: CARVER SITHILL FISH INC.	
Applicant Name:	ALBERT CARVER
Mailing Address of Owner/Applicant (if Different)	BEALS, ME. 04611

**Caution: Permit Required**

*The Subsurface Wastewater Disposal System shall not be installed until a Permit is attached here by the Local Plumbing Inspector. The Permit shall authorize the owner or installer to install the disposal system in accordance with this application and the Maine Subsurface Wastewater Disposal Rules.*

**Owner/Applicant Statement**

*I certify that the information submitted is correct to the best of my knowledge and understand that any falsification is reason for the Local Plumbing Inspector to deny a Permit.*

Signature of Owner/Applicant \_\_\_\_\_ Date \_\_\_\_\_

**Caution: Inspection Required**

*I have inspected the installation authorized above and found it to be in compliance with the Subsurface Wastewater Disposal Rules.*

Local Plumbing Inspector Signature \_\_\_\_\_ Date Approved \_\_\_\_\_

PERMIT INFORMATION		
<p><b>THIS APPLICATION IS FOR:</b></p> <ol style="list-style-type: none"> <li><input type="checkbox"/> NEW SYSTEM</li> <li><input type="checkbox"/> REPLACEMENT SYSTEM</li> <li><input checked="" type="checkbox"/> EXPANDED SYSTEM</li> <li><input type="checkbox"/> EXPERIMENTAL SYSTEM</li> </ol> <p><b>SEASONAL CONVERSION</b> to be completed by the LPI</p> <ol style="list-style-type: none"> <li><input type="checkbox"/> SYSTEM COMPLIES WITH RULES</li> <li><input type="checkbox"/> CONNECTED TO SANITARY SEWER</li> <li><input type="checkbox"/> SYSTEM INSTALLED - P# _____</li> <li><input type="checkbox"/> SYSTEM DESIGN RECORDED AND ATTACHED</li> </ol> <p><b>IF REPLACEMENT SYSTEM:</b> YEAR FAILING SYSTEM INSTALLED _____</p> <p><b>THE FAILING SYSTEM IS:</b></p> <ol style="list-style-type: none"> <li><input type="checkbox"/> BED</li> <li><input type="checkbox"/> CHAMBER</li> <li><input type="checkbox"/> TRENCH</li> <li><input type="checkbox"/> OTHER: _____</li> </ol> <p>SIZE OF PROPERTY: 1.5 AC      ZONING: NONE</p>	<p><b>THIS APPLICATION REQUIRES:</b></p> <ol style="list-style-type: none"> <li><input checked="" type="checkbox"/> NO RULE VARIANCE</li> <li><input type="checkbox"/> NEW SYSTEM VARIANCE Attach New System Variance Form</li> <li><input type="checkbox"/> REPLACEMENT SYSTEM VARIANCE Attach Replacement System Variance Form             <ol style="list-style-type: none"> <li><input type="checkbox"/> Requiring Local Plumbing Inspector Approval</li> <li><input type="checkbox"/> Requires State and Local Plumbing Inspector Approval</li> </ol> </li> <li><input type="checkbox"/> MINIMUM LOT SIZE VARIANCE</li> </ol> <p><b>DISPOSAL SYSTEM TO SERVE:</b></p> <ol style="list-style-type: none"> <li><input type="checkbox"/> SINGLE FAMILY DWELLING</li> <li><input type="checkbox"/> MODULAR OR MOBILE HOME</li> <li><input type="checkbox"/> MULTIPLE FAMILY DWELLING</li> <li><input checked="" type="checkbox"/> OTHER <u>LOBSTER PROCESSING</u> SPECIFY FACILITY _____</li> </ol>	<p><b>INSTALLATION IS:</b></p> <p>COMPLETE SYSTEM</p> <ol style="list-style-type: none"> <li><input checked="" type="checkbox"/> NON-ENGINEERED SYSTEM</li> <li><input type="checkbox"/> PRIMITIVE SYSTEM (Includes Alternative Toilet)</li> <li><input type="checkbox"/> ENGINEERED (+ 2000 gpd)</li> </ol> <p>INDIVIDUALLY INSTALLED COMPONENTS:</p> <ol style="list-style-type: none"> <li><input type="checkbox"/> TREATMENT TANK (ONLY)</li> <li><input type="checkbox"/> HOLDING TANK _____ GAL</li> <li><input type="checkbox"/> ALTERNATIVE TOILET (ONLY)</li> <li><input type="checkbox"/> NON-ENGINEERED DISPOSAL AREA (ONLY)</li> <li><input type="checkbox"/> ENGINEERED DISPOSAL AREA (ONLY)</li> <li><input type="checkbox"/> SEPARATED LAUNDRY SYSTEM</li> </ol> <p><b>TYPE OF WATER SUPPLY</b> EXISTING DRILLED WELL</p>

DESIGN DETAILS (SYSTEM LAYOUT SHOWN ON PAGE 3)				
<p><b>TREATMENT TANK</b></p> <ol style="list-style-type: none"> <li><input checked="" type="checkbox"/> SEPTIC: <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Low Profile</li> <li><input type="checkbox"/> AEROBIC</li> </ol> <p>SIZE: _____ GALS.</p>	<p><b>WATER CONSERVATION</b></p> <ol style="list-style-type: none"> <li><input checked="" type="checkbox"/> NONE</li> <li><input type="checkbox"/> LOW VOLUME TOILET</li> <li><input type="checkbox"/> SEPARATED LAUNDRY SYSTEM</li> <li><input type="checkbox"/> ALTERNATIVE TOILET</li> </ol> <p>SPECIFY: _____</p>	<p><b>PUMPING</b></p> <ol style="list-style-type: none"> <li><input checked="" type="checkbox"/> NOT REQUIRED</li> <li><input type="checkbox"/> MAY BE REQUIRED (DEPENDS ON TREATMENT TANK LOCATION AND ELEVATION)</li> <li><input type="checkbox"/> REQUIRED</li> </ol> <p>DOSE: _____ GALS.</p>	<p>CRITERIA USED FOR DESIGN FLOW (BEDROOMS, SEATING, EMPLOYEES, WATER RECORDS, ETC.)</p> <p><b>EXPANSION OF EXISTING SYSTEM BY 450 GPD CAPACITY, TO A TOTAL OF 900 GPD. WATER IS APPROX 30% SANITARY AND 70% PROCESS</b></p> <p>DESIGN FLOW: 900 (GALLONS/DAY)</p>	
<p><b>SOIL CONDITIONS USED FOR DESIGN PURPOSES</b></p> <table style="width: 100%;"> <tr> <td>PROFILE: 2</td> <td>CONDITION: A</td> </tr> </table> <p>DEPTH TO LIMITING FACTOR: 30"</p>	PROFILE: 2	CONDITION: A		<p><b>SIZE RATINGS USED FOR DESIGN PURPOSES</b></p> <ol style="list-style-type: none"> <li><input type="checkbox"/> SMALL</li> <li><input type="checkbox"/> MEDIUM</li> <li><input checked="" type="checkbox"/> MEDIUM-LARGE</li> <li><input type="checkbox"/> LARGE</li> <li><input type="checkbox"/> EXTRA LARGE</li> </ol>
PROFILE: 2	CONDITION: A			

**SITE EVALUATOR STATEMENT**

On 6/2/93 (date) I conducted a site evaluation for this project and certify that the data reported is accurate. The system I propose is in accordance with the Subsurface Wastewater Disposal Rules.

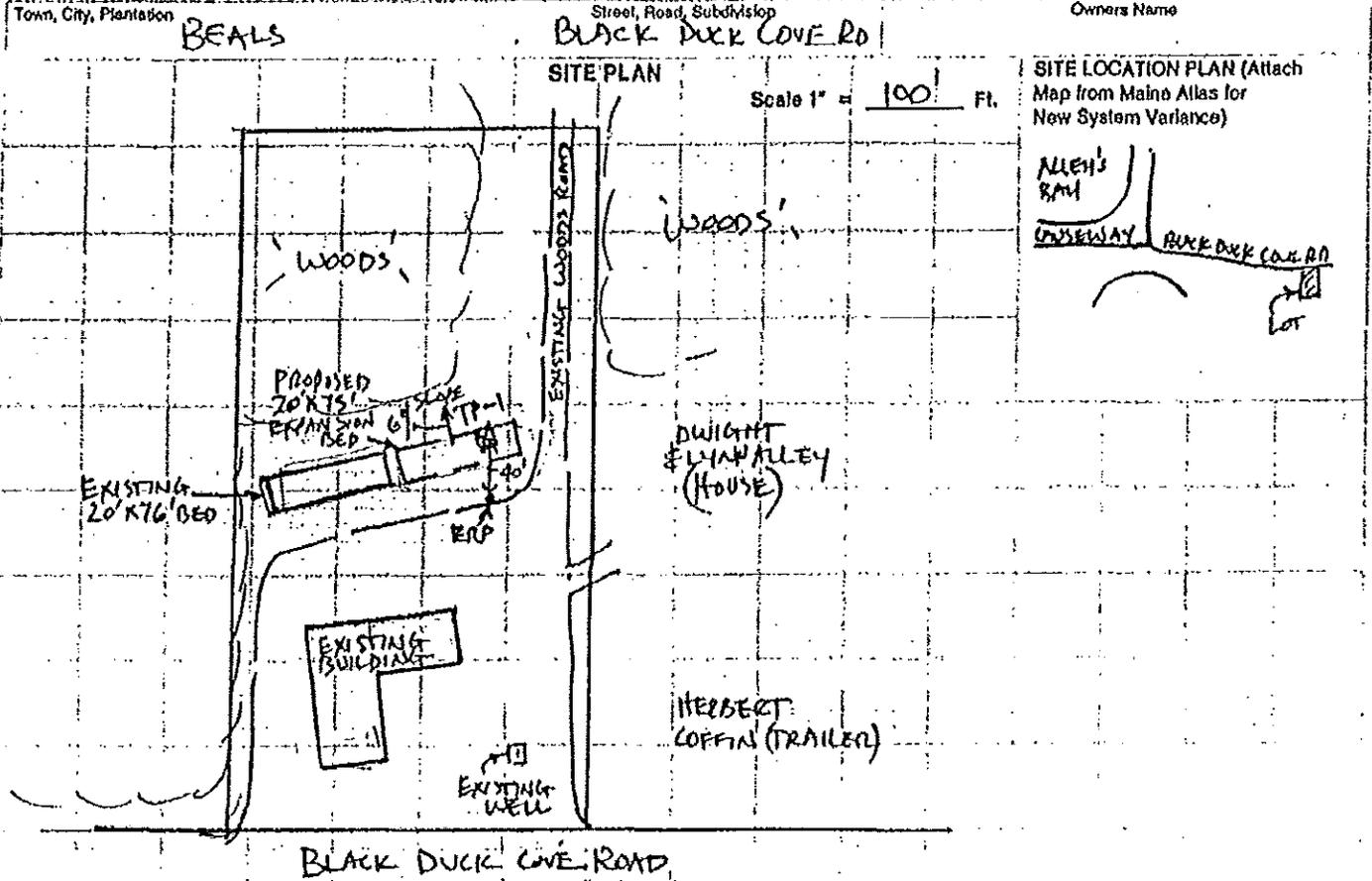
Deane L Bradshaw      #159      6/15/93

Site Evaluator Signature      SE#      Date

(Local Plumbing Inspector's Signature)

# SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Department of Human Services  
Division of Health Engineering



SOIL DESCRIPTION AND CLASSIFICATION (Location of Observation Holes Shown Above)			
Observation Hole <u>TP-1</u>	<input checked="" type="checkbox"/> Test Pit	<input type="checkbox"/> Boring	
<u>1" HUMUS</u>	Depth of Organic Horizon Above Mineral Soil		
Texture	Consistency	Color	Mottling
<u>FINE SANDY LOAM</u>	<u>FRAGILE</u>	<u>RED BROWN</u>	<u>NONE</u>
0			
6			
10			
15			
20			
30			<u>FLEW/PAINT</u>
40			<u>REFUSAL ON LEDGE</u>
50			
Soil Profile <u>Z</u>	Classification <u>A</u> Condition	Slope <u>6%</u>	Limiting Factor <u>30"</u>
<input type="checkbox"/> Groundwater	<input type="checkbox"/> Restrictive Layer	<input checked="" type="checkbox"/> Bedrock	

SOIL DESCRIPTION AND CLASSIFICATION (Location of Observation Holes Shown Above)			
Observation Hole _____	<input type="checkbox"/> Test Pit	<input type="checkbox"/> Boring	
_____	Depth of Organic Horizon Above Mineral Soil		
Texture	Consistency	Color	Mottling
0			
6			
10			
15			
20			
30			
40			
50			
Soil Profile _____	Classification _____ Condition	Slope _____ %	Limiting Factor _____
<input type="checkbox"/> Groundwater	<input type="checkbox"/> Restrictive Layer	<input type="checkbox"/> Bedrock	

*Deane (Bridshaw)*  
Site Evaluator Signature

#159  
SF #

6/17/93  
Date

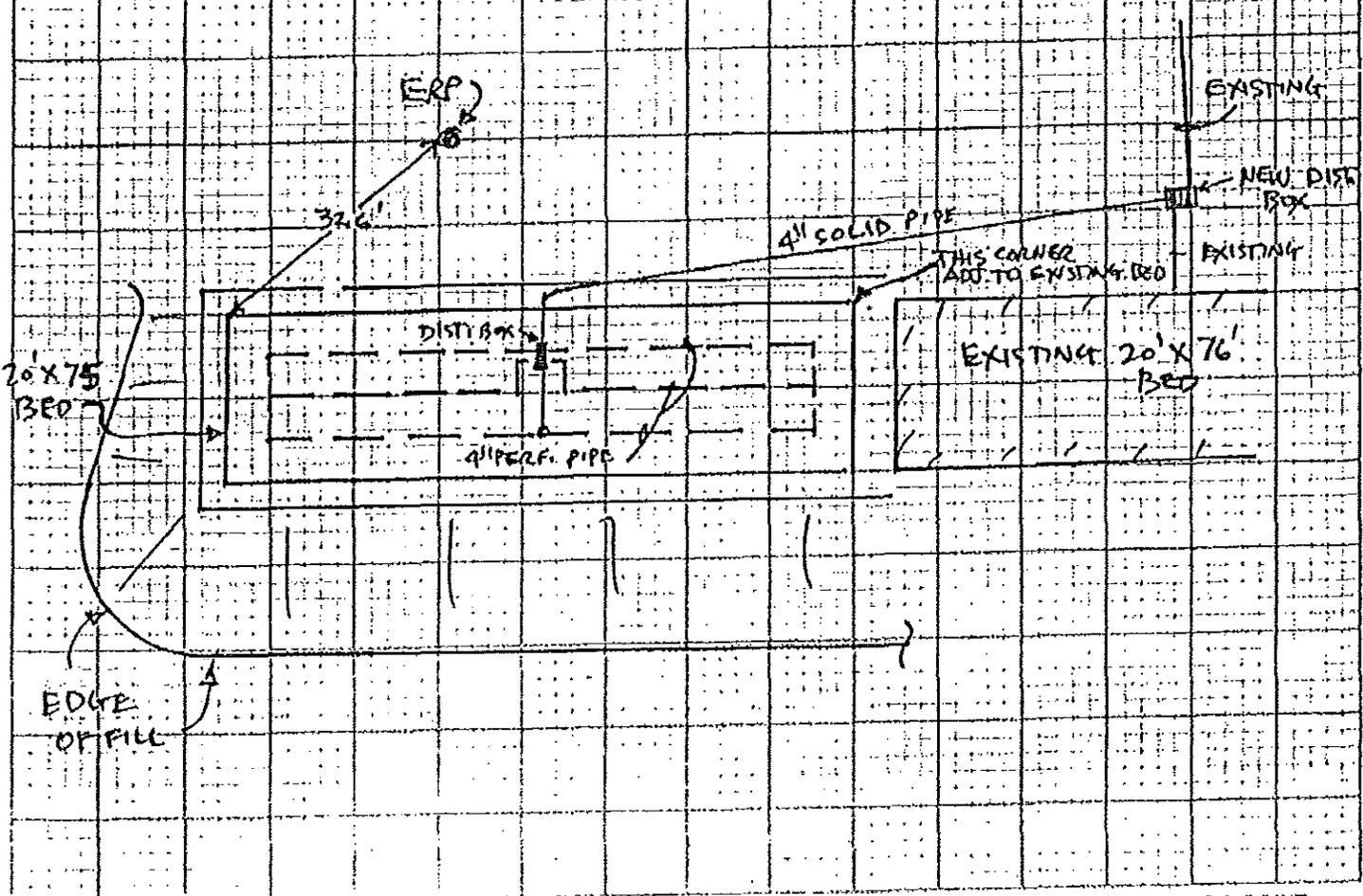
# SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Department of Human Services  
Division of Health Engineering

Town, City, Plantation: **BEALS** Street, Road, Subdivision: **BLACK DUCK CREEK RD** Owners Name: **ALBERT CARVER**

## SUBSURFACE WASTEWATER DISPOSAL PLAN

Scale 1" = 20' Ft.



**FILL REQUIREMENTS**

Depth of Fill (Upslope)	21"
Depth of Fill (Downslope)	39"

**CONSTRUCTION ELEVATIONS**

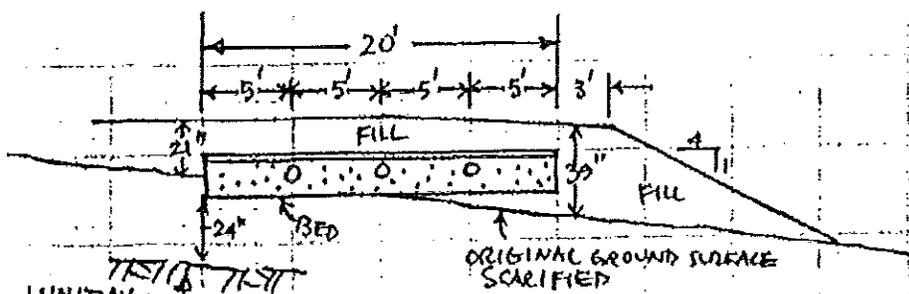
Reference Elevation Is	00"
Bottom of Disposal Area	-51"
Top of Distribution Lines or Chambers	-40"

**ELEVATION REFERENCE POINT**  
LOCATION & DESCRIPTION  
FLAGGED NAIL ON BIRCH TREE  
(IN LOCATION SHOWN)

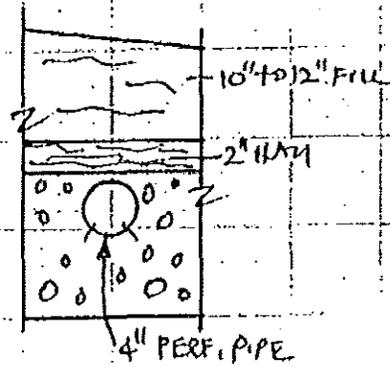
### DISPOSAL AREA CROSS SECTION

Scale:  
Vertical: 1 Inch = 5 Ft.  
Horizontal: 1 Inch = 10 Ft.

### CROSS SECTION



### SECTION ENLARGED (NOT TO SCALE)



**NOTES** FILL TO BE SHARP LOAMY SAND OR COARSE  
SCARIFY UNDER BED AND FILL EXTENSION

Dean Blackshaw

#159

6/17/93

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

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MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

---

**A. GENERAL PROVISIONS**

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

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

(a) They are not

- (i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
- (ii) Known to be hazardous or toxic by the licensee.

(b) The discharge of such materials will not violate applicable water quality standards.

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

**B. OPERATION AND MAINTENANCE OF FACILITIES**

**1. General facility requirements.**

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

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STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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maximize removal of pollutants unless authorization to the contrary is obtained from the Department.

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

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

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

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

**5. Bypasses.**

(a) Definitions.

- (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.

(c) Notice.

- (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

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(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D(1)(f), below. (24-hour notice).

(d) Prohibition of bypass.

(i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (c) of this section.

(ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (d)(i) of this section.

6. Upsets.

(a) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph D(1)(f), below. (24 hour notice).

(iv) The permittee complied with any remedial measures required under paragraph B(4).

(d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

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**C. MONITORING AND RECORDS**

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

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

**3. Monitoring and records.**

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

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**D. REPORTING REQUIREMENTS**

**1. Reporting requirements.**

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

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

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

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit.

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

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

(g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this section.

(h) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

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

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

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

(a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) One hundred micrograms per liter (100 ug/l);

(ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or

(iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

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

**5. Publicly owned treatment works.**

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

**E. OTHER REQUIREMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

### SUMMARY

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

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

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

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### LEGAL REFERENCES

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

#### HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

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

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

#### WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

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

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

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

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

## II. JUDICIAL APPEALS

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

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

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

### ADDITIONAL INFORMATION

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

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

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