

UNITED STATES ENVIRONMENTAL
 PROTECTION AGENCY
 OFFICE OF ECOSYSTEM PROTECTION
 REGION I
 BOSTON, MASSACHUSETTS 02203

PUBLIC NOTICE OF A TENTATIVE DECISION BY THE EPA REGION I ADMINISTRATOR TO DENY APPLICATIONS FOR SECTION 301(h) VARIANCES FROM THE SECONDARY TREATMENT REQUIREMENTS OF THE CLEAN WATER ACT (THE "ACT"), AS AMENDED, FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT PROGRAM.

DATE OF NOTICE: September 27, 2007

NPDES PERMIT NUMBERS		
ME0100747	ME0100111	ME0100404
NAME AND ADDRESS OF APPLICANT:		
Winterport Sewerage District	Bucksport Wastewater	Town of Milbridge
NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:		
Winterport Sewerage District Wastewater Treatment Facility 34 Sampson St, Winterport, Maine 04496	Town of Bucksport Wastewater Treatment Facility Route 1 Bucksport, Maine 04416	Town of Milbridge Wastewater Treatment Facility Mill Street Milbridge, Maine 04658
RECEIVING WATERS:		
Penobscot River Tidal Waters	Penobscot River Tidal Waters	Narraguagus River

PREPARATION OF THE TENTATIVE DECISION:

In 1987 Congress amended Section 301(h) of the Clean Water Act by adding the following prohibition:

No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses.

Each of the above listed wastewater treatment facilities discharge to estuarine waters which the State of Maine has identified as impaired in the State of Maine 2004 Integrated Water Quality Monitoring and Assessment Report. Therefore, Robert W. Varney, the EPA Region I Regional Administrator has made a tentative decision to deny the 301(h) waivers.

INFORMATION ABOUT THE TENTATIVE DECISION:

All those who wish to receive a copy of the tentative Decision or have questions pertaining to the decision may do so by writing or calling EPA's contact person named below:

Doug Corb
US EPA
One Congress Street
Suite 1100 - CMP
Boston, MA 02114-2023
Telephone: (617) 918-1565
E-Mail: corb.doug@epa.gov

The administrative record containing all documents relating to this tentative decision is on file and may be inspected at the EPA Boston office mentioned above between 9:00 a.m. and 5:00 p.m., Monday through Friday, except holidays.

PUBLIC COMMENT AND REQUEST FOR PUBLIC HEARING:

All persons, including applicants, who believe any condition of this tentative is inappropriate, must raise all issues and submit all available arguments and all supporting material for their arguments in full by 10/26/07, to the U.S. EPA, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114-2023. Any person, prior to such date, may submit a request in writing to EPA for a public hearing to consider this tentative decision. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held after at least thirty days public notice whenever the Regional Administrator finds that response to this notice indicates significant public interest.

STEPHEN S. PERKINS, DIRECTOR
OFFICE OF ECOSYSTEM PROTECTION
ENVIRONMENTAL PROTECTION AGENCY – REGION 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
1 Congress Street, Suite 1100
BOSTON, MA 02114-2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Lewis Pinkham
Town Manager
P. O. Box 66
Milbridge, ME 04658

Re: Public Notice of a Tentative Decision to Deny a Clean Water Act Section 301(h) Waiver of Secondary Treatment for NPDES Permit No. ME0100404

Dear Mr. Pinkham:

EPA retains jurisdiction over the Section 301(h) permits in the State of Maine as that portion of the National Pollutant Discharge Elimination System (NPDES) program may not be delegated to the State. The Milbridge POTW discharges to an estuary listed on the State's 303(d) impaired waters list. EPA is required by amendments to the CWA to deny waivers for discharges into impaired estuarine waters.

The EPA Region I Regional Administrator has made a tentative decision to deny the 301(h) waiver. The tentative decision will be public noticed during the period, in accordance with 40 CFR §124.6(b). At the end of the public comment period, the Regional Administrator will issue a final decision.

A final decision to deny the secondary treatment waiver will require the Town of Milbridge to meet secondary treatment requirements when the Maine Department of Environmental Protection issues a new MEDES permit. The Town may discuss with the MEDEP an appropriate schedule of compliance for any construction needed to achieve the new permit limits.

All persons, including the applicant, who believe the tentative decision is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (40 Code of Federal Regulations [C.F.R.] §124.13).

If you have any questions, do not hesitate to contact Doug Corb of my staff at (617) 918-1565.

Sincerely,

/S/ SIGNATURE ON FILE

Roger Janson, Chief
NPDES Municipal Permits Branch
Office of Ecosystem Protection

Enclosures: Tentative Denial

cc: Gregg Wood, Maine DEP

In Re:

TOWN OF MILBRIDGE, MAINE
PUBLICLY OWNED TREATMENT WORKS,
APPLICATION FOR SECTION 301(h)
VARIANCE FROM THE SECONDARY
TREATMENT REQUIREMENTS OF THE
CLEAN WATER ACT

TENTATIVE DECISION
OF THE REGIONAL
ADMINISTRATOR PURSUANT TO
40 CFR PART 125, SUBPART G

On December 28, 1982, the Town of Milbridge, ME submitted a waiver application pursuant to Section 301(h) of the Clean Water Act (CWA), as amended by the Water Quality Act (WQA) of 1987. EPA reviewed the application and on May 9, 1985, made a "tentative approval" decision regarding the Section 301(h) modified permit application. EPA issued a final permit based on primary treatment on December 31, 1985.

Since the December 31, 1985 National Pollution Discharge Elimination System (NPDES) permit was issued, the State of Maine has been authorized to run the NPDES program in Maine, with the noted exception of the 301(h) waiver program, which may not be delegated. Additionally, amendments have been made to Section 301(h) of the Clean Water Act which affect the issuance of 301(h) waivers.

Specifically, in 1987 Congress amended Section 301(h) of the Clean Water Act by adding the following prohibition:

No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge.

Federal regulations regarding the "Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act" were modified in 1994 (published in the Federal Register August 9, 1994) to incorporate the requirements of the 1987 Amendments (see 40 CFR Part 125, Subpart G). The discharge from the Milbridge Publicly Owned Treatment Works (POTW) is into "saline estuarine waters" as defined by these regulations (see definition at 40 CFR Section 125.58 (v)).

Pursuant to the 1987 Amendments and regulations found at 40 CFR Part 125.59(b)(4), the Town of Milbridge is ineligible for authorization to discharge pollutants under section 301(h) of the CWA into the Narraguagus River if the river “does not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or exhibits ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses.” EPA’s decision on the 301(h) permit application must also be made without regard to the presence or absence of a causal relationship between such characteristics and the applicant’s current or proposed discharge. “No permits may be issued for discharges into estuarine waters which exhibit certain specified stressed conditions, without regard to whether the applicant’s discharge is causing or will cause those conditions.”

The State of Maine 2004 Integrated Water Quality Monitoring and Assessment Report includes a listing for the Narraguagus River Estuary. This listing was developed pursuant to section 303(d) of the Clean Water Act, which requires that States develop lists of waters where existing, required pollution controls are not stringent enough to allow the waters to attain their designated uses and all applicable water quality standards. The list identifies each impaired waterbody segment and the pollutants causing or expected to cause excursions of applicable water quality standards.

The Milbridge POTW discharges directly into the assessment unit designated as the Narraguagus River Estuary. The section 303(d) list identifies the Narraguagus River Estuary as being in non-attainment of water quality standards. The Narraguagus River Estuary is listed in several categories indicating impairment of water quality standards. The categories are as follows:

Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants. The description indicates all marine and estuarine waters are listed in Category 5-D as partially supporting fishing (fish and shellfish consumption) due to elevated levels of PCBs in tissues of fish and as well as other persistent bioaccumulating substances in lobster tomalley.

Category 5-B-1: Estuarine and Marine Waters Impaired only by Bacteria (TMDL required). The table lists Waterbody ID #705-3, DMR Area #53-G, Narraguagus River, Class SB as being prohibited from the harvesting of shellfish due to elevated bacteria levels caused by the discharge of waste water overboard discharges, and non-point sources.

The Maine Department of Marine Resources (DMR) assesses information on shellfish growing areas to ensure that shellfish harvested are safe for consumption. The Maine Department of Marine Resources has authority to close shellfish harvesting areas wherever there is a pollution source, a potential pollution threat, or poor water quality.

The DMR traditionally closes shellfish harvesting areas if there are known sources of discharges with unacceptable bacteria levels (in-stream thresholds established in the National Shellfish Sanitation Program) or maintains shellfish harvesting closure areas due to lack of updated information regarding ambient water quality conditions. In addition, the DMR prohibits shellfish harvesting in the immediate vicinity of all wastewater treatment outfall pipes as a precautionary measure in the event of a failure in the POTW's disinfection system. Thus, shellfish harvesting area #53-G is closed to the harvesting of shellfish.

Based on the preceding, it is my tentative decision that the Town of Milbridge be denied a 301(h) waiver from secondary treatment standards.

Pursuant to the procedures of the NPDES Permit Regulations, 40 CFR Part 124, a public notice will be issued including the comment procedures that are available to interested persons in regard to this decision.

Date:

Robert W. Varney
Regional Administrator
Environmental Protection Agency
Region I



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
1 Congress Street, Suite 1100
BOSTON, MA 02114-2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Roger Raymond
Town Manager
P.O. Drawer X
Bucksport, ME 04416

Re: Public Notice of a Tentative Decision to Deny a Clean Water Act Section 301(h) Waiver of Secondary Treatment for NPDES Permit No. ME0100111

Dear Mr. Raymond:

EPA retains jurisdiction over the Section 301(h) permits in the State of Maine as that portion of the National Pollutant Discharge Elimination System (NPDES) program may not be delegated to the State. The Bucksport POTW discharges to an estuary listed on the State's 303(d) impaired waters list. EPA is required by amendments to the CWA to deny waivers for discharges into impaired estuarine waters.

The EPA Region I Regional Administrator has made a tentative decision to deny the 301(h) waiver. The tentative decision will be public noticed during the period, _____ in accordance with 40 CFR §124.6(b). At the end of the public comment period, the Regional Administrator will issue a final decision.

A final decision to deny the secondary treatment waiver will require the Town of Bucksport to meet secondary treatment requirements when the Maine Department of Environmental Protection issues a new MEPDES permit. The Town may discuss with the MEDEP an appropriate schedule of compliance for any construction needed to achieve the new permit limits.

All persons, including the applicant, who believe the tentative decision is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (40 Code of Federal Regulations [C.F.R.] §124.13).

If you have any questions, do not hesitate to contact Doug Corb of my staff at (617) 918-1565.

Sincerely,

/S/ SIGNATURE ON FILE

Roger Janson, Chief
NPDES Municipal Permits Branch
Office of Ecosystem Protection

Enclosures: Tentative Denial

cc: Gregg Wood, Maine DEP

On In Re:

TOWN OF BUCKSPORT, MAINE
PUBLICLY OWNED TREATMENT WORKS,
APPLICATION FOR SECTION 301(h)
VARIANCE FROM THE SECONDARY
TREATMENT REQUIREMENTS OF THE
CLEAN WATER ACT

TENTATIVE DECISION
OF THE REGIONAL
ADMINISTRATOR PURSUANT
TO 40 CFR PART 125, SUBPART G

The Town of Bucksport submitted a waiver application pursuant to Section 301(h) of the Clean Water Act (CWA), as amended by the Water Quality Act (WQA) of 1987. EPA reviewed the application and on December 31, 1985, made a "tentative approval" decision regarding the Section 301(h) modified permit application. EPA issued a final permit based on primary treatment on December 31, 1985. The permit was reissued with the 301(h) waiver on October 27, 1994 and again on May 13, 2002.

Since the May 13, 2002 National Pollution Discharge Elimination System (NPDES) permit was issued, the State of Maine has been authorized to run the NPDES program in Maine, with the noted exception of the 301(h) waiver program, which may not be delegated. Additionally, amendments have been made to Section 301(h) of the Clean Water Act which affect the issuance of 301(h) waivers.

Specifically, in 1987 Congress amended Section 301(h) of the Clean Water Act by adding the following prohibition:

No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge.

Federal regulations regarding the "Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act" were modified in 1994 (published in the Federal Register August 9, 1994) to incorporate the requirements of the 1987 Amendments (see 40 CFR Part 125, Subpart G). The discharge from the Bucksport Publicly Owned Treatment Works (POTW) is into "saline estuarine waters" as defined by these regulations (see definition at 40 CFR Section 125.58 (v)).

Pursuant to the 1987 Amendments and regulations found at 40 CFR Part 125.59(b)(4), the Town of Bucksport is ineligible for authorization to discharge pollutants under section 301(h) of the CWA into the Lower Penobscot River if the river “does not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or exhibits ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses.” EPA’s decision on the 301(h) permit application must also be made without regard to the presence or absence of a causal relationship between such characteristics and the applicant’s current or proposed discharge. “No permits may be issued for discharges into estuarine waters which exhibit certain specified stressed conditions, without regard to whether the applicant’s discharge is causing or will cause those conditions.”

The State of Maine 2004 Integrated Water Quality Monitoring and Assessment Report includes a listing for the Penobscot River Estuary. This listing was developed pursuant to section 303(d) of the Clean Water Act, which requires that States develop lists of waters where existing, required pollution controls are not stringent enough to allow the waters to attain their designated uses and all applicable water quality standards. The list identifies each impaired waterbody segment and the pollutants causing or expected to cause excursions of applicable water quality standards.

The Bucksport POTW discharges directly into the assessment unit designated as the Penobscot River Estuary. The section 303(d) list identifies the Penobscot River Estuary as being in non-attainment of water quality standards. The Penobscot River Estuary is listed in several categories indicating impairment of water quality standards. The categories are as follows:

Category 5-B-2: Estuarine and Marine Waters Impaired by Bacteria from Combined Sewer Overflows (TMDL Required only if Control Plans are Insufficient) lists Waterbody ID 722-42, Bucksport. The table indicates separation of sanitary and storm water sewers as being the long term control plan to be completed by 2012.

Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants. The description indicates all marine and estuarine waters are listed in Category 5-D as partially supporting fishing (fish and shellfish consumption) due to elevated levels of PCBs in tissues of fish and as well as other persistent bioaccumulating substances in lobster tomalley.

Category 5-B-1: Estuarine and Marine Waters Impaired only by Bacteria (TMDL required). The table lists Waterbody ID #722-25, DMR Area #35, Penobscot River, 12,743 acres, Class SB and SC as being prohibited from the harvesting of shellfish due to elevated bacteria levels caused by the discharge of waste water treatment facilities, overboard discharges, boats and non-point sources.

The Maine Department of Marine Resources (DMR) assesses information on shellfish growing areas to ensure that shellfish harvested are safe for consumption. The Maine Department of Marine Resources has authority to close shellfish harvesting areas wherever there is a pollution source, a potential pollution threat, or poor water quality. The DMR traditionally closes shellfish harvesting areas if there are known sources of discharges with unacceptable bacteria levels (in-stream thresholds

established in the National Shellfish Sanitation Program) or maintains shellfish harvesting closure areas due to lack of updated information regarding ambient water quality conditions. In addition, the DMR prohibits shellfish harvesting in the immediate vicinity of all wastewater treatment outfall pipes as a precautionary measure in the event of a failure in the POTW's disinfection system. Thus, shellfish harvesting area #35 is closed to the harvesting of shellfish due to insufficient or limited ambient water quality data to determine that the area meets the standards in the National Shellfish Sanitation Program.

Based on the preceding, it is my tentative decision that the Town of Bucksport be denied a 301(h) waiver from secondary treatment standards.

Pursuant to the procedures of the NPDES Permit Regulations, 40 CFR Part 124, a public notice will be issued including the comment procedures that are available to interested persons in regard to this decision.

Date:

Robert W. Varney
Regional Administrator
Environmental Protection Agency
Region I



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
1 Congress Street, Suite 1100
BOSTON, MA 02114-2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stephen Long, Chairman
Winterport Sewer District
P.O. Box 128
Winterport, ME 04496

Re: Public Notice of a Tentative Decision to Deny a Clean Water Act Section 301(h) Waiver of Secondary Treatment for NPDES Permit No. ME0100749

Dear Mr. Long:

EPA retains jurisdiction over the Section 301(h) permits in the State of Maine as that portion of the National Pollutant Discharge Elimination System (NPDES) program may not be delegated to the State. The Winterport POTW discharges to an estuary listed on the State's 303(d) impaired waters list. EPA is required by amendments to the CWA to deny waivers for discharges into impaired estuarine waters.

The EPA Region I Regional Administrator has made a tentative decision to deny the 301(h) waiver. The tentative decision will be public noticed during the period, _____ in accordance with 40 CFR §124.6(b). At the end of the public comment period, the Regional Administrator will issue a final decision.

A final decision to deny the secondary treatment waiver will require the Town of Winterport to meet secondary treatment requirements when the Maine Department of Environmental Protection issues a new MEPDES permit. The Town may discuss with the MEDEP an appropriate schedule of compliance for any construction needed to achieve the new permit limits.

All persons, including the applicant, who believe the tentative decision is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (40 Code of Federal Regulations [C.F.R.] §124.13).

If you have any questions, do not hesitate to contact Doug Corb of my staff at (617) 918-1565.

Sincerely,

/S/ SIGNATURE ON FILE

Roger Janson, Chief
NPDES Municipal Permits Branch
Office of Ecosystem Protection

Enclosures: Tentative Denial

cc: Gregg Wood, Maine DEP

In Re:

TOWN OF WINTERPORT, MAINE
PUBLICLY OWNED TREATMENT WORKS,
APPLICATION FOR SECTION 301(h)
VARIANCE FROM THE SECONDARY
TREATMENT REQUIREMENTS OF THE
CLEAN WATER ACT

TENTATIVE DECISION
OF THE REGIONAL
ADMINISTRATOR PURSUANT TO
40 CFR PART 125, SUBPART G

On December 28, 1982, the Town of Winterport, ME submitted a waiver application pursuant to Section 301(h) of the Clean Water Act (CWA), as amended by the Water Quality Act (WQA) of 1987. EPA reviewed the application and on May 9, 1985, made a "tentative approval" decision regarding the Section 301(h) modified permit application. EPA issued a final permit based on primary treatment on December 31, 1985.

Since the December 31, 1985 National Pollution Discharge Elimination System (NPDES) permit was issued, the State of Maine has been authorized to run the NPDES program in Maine, with the noted exception of the 301(h) waiver program, which may not be delegated. Additionally, amendments have been made to Section 301(h) of the Clean Water Act which affect the issuance of 301(h) waivers.

Specifically, in 1987 Congress amended Section 301(h) of the Clean Water Act by adding the following prohibition:

No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge.

Federal regulations regarding the "Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act" were modified in 1994 (published in the Federal Register August 9, 1994) to incorporate the requirements of the 1987 Amendments (see 40 CFR Part 125, Subpart G). The discharge from the Winterport Publicly Owned Treatment Works (POTW) is into "saline estuarine waters" as defined by these regulations (see definition at 40 CFR Section 125.58 (v)).

Pursuant to the 1987 Amendments and regulations found at 40 CFR Part 125.59(b)(4), the Town of Winterport is ineligible for authorization to discharge pollutants under section 301(h) of the CWA into the Penobscot River if the river “does not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or exhibits ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses.” EPA’s decision on the 301(h) permit application must also be made without regard to the presence or absence of a causal relationship between such characteristics and the applicant’s current or proposed discharge. “No permits may be issued for discharges into estuarine waters which exhibit certain specified stressed conditions, without regard to whether the applicant’s discharge is causing or will cause those conditions.”

The State of Maine 2004 Integrated Water Quality Monitoring and Assessment Report includes a listing for the Penobscot River Estuary. This listing was developed pursuant to section 303(d) of the Clean Water Act, which requires that States develop lists of waters where existing, required pollution controls are not stringent enough to allow the waters to attain their designated uses and all applicable water quality standards. The list identifies each impaired waterbody segment and the pollutants causing or expected to cause excursions of applicable water quality standards.

The Winterport POTW discharges directly into the assessment unit designated as the Penobscot River Estuary. The section 303(d) list identifies the Penobscot River Estuary as being in non-attainment of water quality standards. The Penobscot River Estuary is listed in several categories indicating impairment of water quality standards. The categories are as follows:

Category 5-B-2: Estuarine and Marine Waters Impaired by Bacteria from Combined Sewer Overflows (TMDL Required only if Control Plans are Insufficient) lists Waterbody ID 722-43, Winterport. The table indicates separation of sanitary and storm water sewers as being the long term control plan to be completed by 2009.

Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants. The description indicates all marine and estuarine waters are listed in Category 5-D as partially supporting fishing (fish and shellfish consumption) due to elevated levels of PCBs in tissues of fish and as well as other persistent bioaccumulating substances in lobster tomalley.

Category 5-B-1: Estuarine and Marine Waters Impaired only by Bacteria (TMDL required). The table lists Waterbody ID #722-25, DMR Area #35, Penobscot River, 12,743 acres, Class SB and SC as being prohibited from the harvesting of shellfish due to elevated bacteria levels caused by the discharge of waste water treatment facilities, overboard discharges, boats and non-point sources.

The Maine Department of Marine Resources (DMR) assesses information on shellfish growing areas to ensure that shellfish harvested are safe for consumption. The Maine Department of Marine Resources has authority to close shellfish harvesting areas wherever there is a pollution source, a potential pollution threat, or poor water quality. The DMR traditionally closes shellfish harvesting areas if there are known sources of discharges with unacceptable bacteria levels (in-stream thresholds established in the National Shellfish Sanitation Program) or maintains shellfish harvesting closure areas due to lack of updated information regarding ambient water quality conditions. In addition, the DMR prohibits shellfish harvesting in the immediate vicinity of all wastewater treatment outfall pipes as a precautionary measure in the event of a failure in the POTW's disinfection system. Thus, shellfish harvesting area #35 is closed to the harvesting of shellfish due to insufficient or limited ambient water quality data to determine that the area meets the standards in the National Shellfish Sanitation Program

Based on the preceding, it is my tentative decision that the Town of Winterport be denied a 301(h) waiver from secondary treatment standards.

Pursuant to the procedures of the NPDES Permit Regulations, 40 CFR Part 124, a public notice will be issued including the comment procedures that are available to interested persons in regard to this decision.

Date:

Robert W. Varney
Regional Administrator
Environmental Protection Agency
Region I