



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

March 26, 2015

Mr. Stephen Gray  
21 Homestead Road  
146 State Route 32  
Southport, ME 04576

*Sent via electronic mail  
Delivery confirmation requested*

**RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0037176  
Maine Waste Discharge License (WDL) Application #W008061-5C-C-R  
Proposed Draft MEPDES Permit Renewal**

Dear: Mr. Gray:

Enclosed is a proposed draft MEPDES permit and Maine WDL which the Department proposes to issue for your facility as a final document after opportunity for your review and comment. By transmittal of this letter, you are provided with an opportunity to comment on the proposed draft permit and its conditions (special conditions specific to this permit are enclosed; standard conditions applicable to all permits are available upon request). If it contains errors or does not accurately reflect present or proposed conditions, please respond to this Department so that changes can be considered.

By copy of this letter, the Department is requesting comments on the proposed draft permit from various state and federal agencies, as required by our new regulations, and from any other parties who have notified the Department of their interest in this matter. If you have any questions regarding the matter, please feel free to call me.

All comments must be received in the Department of Environmental Protection office on or before the close of business **Friday, April 24, 2015.** Failure to submit comments in a timely fashion will result in the final document being issued as drafted.

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-3901 FAX: (207) 287-3435  
RAY BLDG., HOSPITAL ST.

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

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

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769-2094  
(207) 764-6477 FAX: (207) 764-1507

Comments in writing should be submitted to my attention at the following address:

Maine Department of Environmental Protection  
Bureau of Land & Water Quality  
Division of Water Quality Management  
17 State House Station  
Augusta, ME 04333-0017

If you have any questions regarding the matter, please feel free to call me at (207) 592-7161.

Sincerely,

A handwritten signature in blue ink, appearing to read "Aaron Dumont".

Aaron Dumont  
Division of Water Quality Management  
Bureau of Land and Water Quality

Enclosure

cc: Chris Higgins, Contract Operator  
William Johnson, DEP/CMRO  
Barry Mower, DEP/CMRO  
Lori Mitchell, DEP/CMRO  
Environmental Review, DMR  
Environmental Review, IF&W  
David Pincumbe EPA  
Alex Rosenberg, EPA  
Olga Vergara, EPA  
Ivy Frignoca, CLF



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

## DEPARTMENT ORDER

### IN THE MATTER OF

STEPHEN E. GRAY LODGES & INDUSTRIES, INC.	)	MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
SOUTHPORT, LINCOLN COUNTY, MAINE	)	
OVERBOARD DISCHARGE	)	AND
ME0037176	)	WASTE DISCHARGE LICENSE
W008061-5C-C-R	)	<b>RENEWAL</b>
<b>APPROVAL</b>	)	

In compliance with the provisions of the *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, *Conditions of licenses*, 38 M.R.S.A. § 414-A, and applicable regulations, the Department of Environmental Protection (Department) has considered the application of Stephen E. Gray Lodges & Industries, 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 ME0037176/Maine Waste Discharge License (WDL) W008061-5C-C-R (permit) which was issued by the Department on December 04, 2009, for a five year term. The permit issued on December 04, 2009, authorized the year round average monthly discharge of 4,050 gallons per day (gpd) of secondary treated wastewater from Stephen E. Gray Lodges & Industries, Inc. to Boothbay Harbor, Class SB water, in Southport, Maine.

### PERMIT SUMMARY

a. Terms and conditions

**This permitting action is similar to the December 04, 2009 permit in that it is:**

1. Carrying forward the monthly average flow limitation of 4,050 gallons per day (gpd).
2. Carrying forward the monthly average and daily maximum water quality-based limits for fecal coliform bacteria.
3. Carrying forward the 1/month monitoring frequency for settleable solids.

**PERMIT SUMMARY (cont'd)**

4. Carrying forward the requirement for the permittee to have a site evaluation performed by a licensed site evaluator with experience in designing systems for the replacement of overboard discharge systems.
5. Carrying forward the requirement for the permittee to develop and keep current, an Operations and Maintenance (O&M) plan for the waste treatment system and appurtenances.

**This permitting action is different from the December 04, 2009 permit in that it:**

1. Establishes a measurement frequency for BOD<sub>5</sub> Percent Removal and TSS Percent Removal of 1/Month.
2. Establishes a monitoring frequency for pH of 1/month.

**CONCLUSIONS**

BASED on the findings in the attached DRAFT **Fact Sheet** dated March 26, 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, *Classification of Maine waters*, 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;

**CONCLUSIONS (cont'd)**

- (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 *Conditions of licenses*, 38 M.R.S.A. § 414-A(1)(D) and 414-A(1-B).
  5. The overboard discharge system was in continuing existence for the 12 months preceding June 1, 1987.
  6. The Department finds that there are no technologically proven alternative methods of wastewater disposal consistent with the plumbing code adopted by the Department of Health and Human Services pursuant to Title 22, section 42 that will not result in an overboard discharge.
  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 located within the boundaries of a sanitary district or sewer district however connection to the existing infrastructure is not practicable.

**ACTION**

THEREFORE, the Department APPROVES the application of STEPHEN E. GRAY LODGES & INDUSTRIES, INC. to discharge a monthly average of 4,050 gpd of secondary treated sanitary wastewater (Outfall #001A) from the STEPHEN E. GRAY LODGES & INDUSTRIES, INC. to the Atlantic Ocean, Class SB, in Southport, Maine, 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 \_\_\_ DAY OF \_\_\_\_\_ 2015.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
PATRICIA W. AHO, Commissioner

Date of initial receipt of application August 12, 2014

Date of application acceptance August 15, 2014

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

This Order prepared by Aaron Dumont, Bureau of Land and Water Quality

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

- The permittee is authorized to discharge secondary treated sanitary wastewater from **Outfall #001A** to Atlantic Ocean, Class SB. Such discharges are limited and must be monitored by the permittee as specified below<sup>(1)</sup>:  
**With the exception of fecal coliform bacteria, limitations are in effect on a year round basis but sampling and submission of monthly Discharge Monitoring Reports (DMRs) is limited to May – September of each year.**

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Flow [50050]	4,050 gpd [07]	---	Report gpd [07]	---	---	---	1/Month [01/30]	Measure [MS]
BOD <sub>5</sub> [00310]	1.0 lbs/day [26]	1.5 lbs/day [26]	1.7 lbs/day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Month [01/30]	Grab [GR]
BOD <sub>5</sub> Percent Removal <sup>(2)</sup> [81010]	---	---	---	85% [23]	---	---	1/Month [01/30]	Calculate [CA]
TSS [00530]	1.0 lbs/day [26]	1.5 lbs/day [26]	1.7 lbs/day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Month [01/30]	Grab [GR]
TSS Percent Removal <sup>(2)</sup> [81011]	---	---	---	85% [23]	---	---	1/Month [01/30]	Calculate [CA]
Settleable Solids [00545]	---	---	---	---	---	0.3 ml/L [25]	1/Month [01/30]	Grab [GR]
Fecal Coliform Bacteria <sup>(3)</sup> [31616] (May 15 – September 30)	---	---	---	15/100 ml <sup>(4)</sup> [13]	---	50/100 ml [13]	1/Month [01/30]	Grab [GR]
Total Residual Chlorine <sup>(5)</sup> [50060]	---	---	---	0.1 mg/L [19]	---	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 6 of this permit for applicable footnotes.

## **SPECIAL CONDITIONS (cont'd)**

### **A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

#### **Footnotes**

1. **Sampling** – All effluent monitoring shall be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. Sampling and analysis must be conducted in accordance with;
  - a) methods approved by 40 Code of Federal Regulations (CFR) Part 136,
  - b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or
  - c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services.
  
2. **Percent Removal** – The permittee must maintain a minimum of 85 percent removal of both BOD<sub>5</sub> and TSS for all flows receiving secondary treatment. The percent removal must be calculated based on influent and effluent concentration values. The permittee's wastewater treatment system does not contain an influent sampling location that is representative of raw wastewater conditions. Therefore, this permitting action authorizes the permittee to assume an influent BOD<sub>5</sub> and TSS concentration value of 286 mg/L for purposes of calculating the monthly percent removal value. See page 5 of fact sheet for a basis statement.
  
3. **Bacteria Limits** – Fecal coliform bacteria limits and monitoring requirements are in effect between May 15<sup>th</sup> and September 30<sup>th</sup> of each year. The Department reserves the right to require year-round disinfection to protect the health, safety, and welfare of the public.
  
4. **Bacteria Reporting** – The monthly average fecal coliform bacteria limitation is a geometric mean limitation and sample results must be reported as such.

## **SPECIAL CONDITIONS (cont'd)**

### **A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

#### **Footnotes**

5. **Total residual chlorine (TRC)** – 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 *Annual waste discharge license fees*, 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 permittee must not discharge effluent that contains a visible oil sheen, foam or floating solids at any time which would impair the uses designated for the classification of the receiving waters.
2. The permittee must not discharge effluent that contains materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the uses designated for the classification of the receiving waters.
3. The permittee must not discharge effluent that causes visible discoloration or turbidity in the receiving waters that causes those waters to be unsuitable for the designated uses and characteristics ascribed to their class.
4. The permittee must not discharge effluent that lowers the quality of any classified body of water below such classification, or lowers the existing quality of any body of water if the existing quality is higher than the classification.

## **SPECIAL CONDITIONS (cont'd)**

### **D. TREATMENT PLANT OPERATOR**

The treatment facility must be operated by a person holding a minimum of a **Grade II** certificate (or higher) or must be a Maine Registered Professional Engineer pursuant to *Sewerage Treatment Operators*, 32 M.R.S.A. § 4171-4182 and *Regulations for Wastewater Operator Certification*, 06-096 CMR 531 (effective May 8, 2006). All proposed contracts for facility operation by any person must be approved by the Department before the permittee may engage the services of the contract operator.

### **E. 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 on August 15, 2014; 2) the terms and conditions of this permit; and 3) only from Outfall #001A. Discharges of wastewater from any other point source are not authorized by this permit, and must be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

### **F. NOTIFICATION REQUIREMENT**

In accordance with Standard Condition D, the permittee must 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.
2. For the purposes of this section, adequate notice must include information on:
  - (a) The quality and quantity of wastewater introduced to the waste water collection and treatment system; and
  - (b) Any anticipated impact of the change in the quantity or quality of the wastewater to be discharged from the treatment system.

## **SPECIAL CONDITIONS (cont'd)**

### **G. SITE EVALUATION FOR TRANSFER OF OWNERSHIP**

Pursuant to 38 M.R.S.A. § 413(3-A)(B)(1), except when it has been demonstrated within 5 years prior to a transfer of ownership of the property containing an overboard discharge, or some other time period acceptable to the Department, that there is no technologically proven alternative to an overboard discharge, prior to transfer of ownership of property containing an overboard discharge, the parties to the transfer must determine the feasibility of technologically proven alternatives to the overboard discharge that are consistent with the plumbing standards adopted by the Department of Health and Human Services pursuant to Title 22, section 42.

Notwithstanding other applicable provisions of 38 M.R.S.A. § 413(3-A), if an alternative to the overboard discharge is identified, the alternative system must be installed within 180 days of property transfer, except that, if soil conditions are poor due to seasonal weather, the alternative may be installed as soon as soil conditions permit.

### **H. OPERATION & MAINTENANCE (O&M) PLAN**

The permittee must have a current written comprehensive Operation & Maintenance (O&M) Plan. The plan shall provide a systematic approach by which the permittee must 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 must 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. The O&M Plan must be kept on site at all times and made available to Department and USEPA personnel upon request.

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

### **I. SEPTIC TANKS**

1. Septic tanks and other treatment tanks must be regularly inspected (at least once per calendar year) and maintained to ensure that they are providing best practicable treatment. The permittee must maintain logs of inspections/maintenance that records the date, notes on observations, repairs conducted etc. The logs must be maintained on site at all times and made available to Department personnel upon request.

## **SPECIAL CONDITIONS (cont'd)**

2. Tank contents must be removed whenever the sludge and scum occupies one-third of the tank's liquid capacity or whenever levels approach maximum design capacity. Following pumping, the tanks must be checked for damage at key joints and the inlet and outlet baffles, and repaired promptly if damaged. The permittee must keep a pumping log including the date of pumping, quantity of material removed, name and number of licensed contractor, and pumping frequency.

## **J. MONITORING AND REPORTING**

Monitoring results obtained during the previous month must 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 the Department's Regional Office such that the DMRs 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 must be submitted to the Department assigned inspector (unless otherwise specified by the Department) at the following address:

Overboard Discharge Compliance Inspector  
Department of Environmental Protection  
Bureau of Land and Water Quality  
Division of Water Quality Management  
17 State House Station  
Augusta, Maine 04333-0017

Alternatively, if submitting an electronic DMR (eDMR), the completed eDMR must be electronically submitted to the Department by a facility authorized DMR Signatory not later than close of business on the 15<sup>th</sup> day of the month following the completed reporting period. Hardcopy 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.

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

In accordance with 38 M.R.S.A. § 414-A(5) and 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

**SPECIAL CONDITIONS (cont'd)**

monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

**L. 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.

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

**FACT SHEET**

Date: **March 26, 2015**

MEPDES PERMIT: **ME0037176**  
WASTE DISCHARGE LICENSE: **W008061-5C-C-R**

NAME AND ADDRESS OF APPLICANT:

**STEPHEN E. GRAY LODGES & INDUSTRIES, INC.  
21 HOMESTEAD ROAD  
SOUTHPORT, ME 04576**

COUNTY: **LINCOLN COUNTY**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**Stephen E. Gray Lodges & Industries, Inc.  
21 Homestead Road  
Southport, Maine, 04576**

RECEIVING WATER / CLASSIFICATION: **Boothbay Harbor/Class SB**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Stephen Gray**  
**(207)-633-4612**  
[gray's@gwi.net](mailto:gray's@gwi.net)

**1. APPLICATION SUMMARY**

- a. Application: On August 15, 2014, the Department of Environmental Protection (Department) accepted as complete for processing an application from the permittee for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0037176/Maine Waste Discharge License (WDL) W008061-5C-C-R (permit) which was issued by the Department on December 04, 2009, for a five year term. The permit issued on December 04, 2009, authorized the year round average monthly discharge of 4,050 gallons per day (gpd) of secondary treated wastewater from Stephen E. Gray Lodges & Industries, Inc. to Boothbay Harbor, Class SB water, in Southport, Maine.

## 2. PERMIT SUMMARY

### a. Terms and conditions

**This permitting action is similar to the December 04, 2009 permit in that it is:**

1. Carrying forward the monthly average flow limitation of 4,050 gallons per day (gpd).
2. Carrying forward the monthly average and daily maximum water quality limits for fecal coliform bacteria.
3. Carrying forward the 1/month monitoring frequency for settleable solids.
4. Carrying forward the requirement for the permittee to have a site evaluation performed by a licensed site evaluator with experience in designing systems for the replacement of overboard discharge systems.
5. Carrying forward the requirement for the permittee to develop and keep current, an Operations and Maintenance (O&M) plan for the waste treatment system and appurtenances.

**This permitting action is different from the December 04, 2009 permit in that it:**

1. Establishes a measurement frequency for BOD<sub>5</sub> Percent Removal and TSS Percent Removal of 1/Month.
  2. Establishes a monitoring frequency for pH of 1/month.
- b. Source description: The source of treated wastewater is a three bedroom house, 7 apartment units, and a seasonal campground located in Southport, Maine. See **Attachment A** of this Fact Sheet for a location map.
- c. Wastewater treatment: The wastewater generated by the facility described above receives a secondary level of treatment via a mechanical treatment system and effluent disinfection with sodium hypochlorite. The treated and seasonally-disinfected wastewater is discharged to the Atlantic Ocean at Boothbay Harbor via a 2-inch diameter outfall pipe that has approximately 1 foot of water over the crown of the pipe at mean low water.
- d. Replacement options: Pursuant to 38 M.R.S.A. § 414-A(1-B), the Department will find that the discharge from an OBD meets the requirements of best practicable treatment for purposes of licensing when it finds that there are no technologically proven alternative methods of wastewater disposal consistent with the plumbing code adopted by the Department of Health and Human Services pursuant to Title 22, section 42 that will not result in an overboard discharge. The Department's finding must be based on documentation from a licensed site evaluator (LSE) having experience in designing

replacement systems for overboard discharges and provided by the overboard discharge owner.

It is noted that in 2009 a site evaluation performed by an LSE that determined there were no technologically feasible replacement options for the existing system, preliminary plans were developed for a large single leach field to service the facility. However, due to substantial cost associated with the technologically proven alternative methods of wastewater disposal, the Department concludes that installation of the system is not practicable at this time.

### **3. CONDITIONS OF PERMIT**

*Conditions of licenses*, 38 M.R.S.A. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require the application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, *Certain deposits and discharges prohibited*, 38 M.R.S.A. § 420 and Department rule *Surface Water Toxics Control Program*, 06-096 CMR 530 (effective March 21, 2012), require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective July 29, 2012), 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**

*Classification of estuarine and marine waters*, 38 M.R.S.A. § 469(3-A) classifies all estuarine and marine waters lying within the boundaries of Lincoln County and that are not otherwise classified, which includes Southport at the point of discharge, as Class SB waters. *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. § 465(B)(2) establishes classification standards for Class SB waters as follows:

*Class SB waters must be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat must be characterized as unimpaired.*

*The dissolved oxygen content of Class SB waters must be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. In determining human and domestic animal origin, the department shall assess licensed and unlicensed sources using available diagnostic procedures. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration.*

*Discharges to Class SB waters may not cause adverse impact to estuarine and marine life in that the receiving waters must be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There may be no new discharge to Class SB waters that would cause closure of open shellfish areas by the Department of Marine Resources. For the purpose of allowing the discharge of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety, the department may find that the discharged effluent will not cause adverse impact to estuarine and marine life as long as the materials and methods used provide protection for nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this paragraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.*

## **5. RECEIVING WATER QUALITY CONDITIONS**

*The State of Maine 2012 Integrated Water Quality Monitoring and Assessment Report*, prepared by the Department pursuant to Sections 303(d) and 305(b) of the *Federal Water Pollution Control Act* lists Southwestern Southport Island (Southport) and Boothbay as:

*Category 2: Estuarine and Marine Waters Attaining Some Designated Uses, Insufficient Information for Other Uses.* Impairment in this context is in regard to the designated use of harvesting of shellfish which is prohibited due to overboard discharges.

Currently, the Maine Department of Marine Resources (DMR) shellfish harvesting Area 22, Boothbay and vicinity (Southport, Boothbay Harbor, Boothbay) is closed to the harvesting of shellfish. See **Attachment B** of this Fact Sheet for Area 22. DMR closes or restricts areas based on ambient water quality data that indicate the area did not meet or marginally met the standards in the National Shellfish Sanitation Program. In addition, DMR closes areas by default in the vicinity of outfall pipes associated with treated sanitary wastewater discharges in the event of a failure of the disinfection system. Therefore, Area 22 remains closed as of the date of this permitting action.

*Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants.* All estuarine and marine waters capable of supporting American lobster are listed in Category 5-D, partially supporting fishing ("shellfish" consumption) due to elevated levels of PCBs and other persistent, bioaccumulating substances in lobster tomalley.

**The Department has no information that the discharge from the permittee, as conditioned, causes or contributes to non-attainment of applicable Class SB water quality standards.**

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Best Practicable Treatment (BPT) The Department will find that the discharge meets the requirements of best practicable treatment pursuant to 38 M.R.S.A. § 414-A(1-B) for purposes of licensing when it finds that there are no technologically proven alternative methods of wastewater disposal consistent with the plumbing code adopted by the Department of Health and Human Services pursuant to Title 22, section 42 that will not result in an overboard discharge. Pursuant to *Overboard Discharges: Licensing and Abandonment*, 06-096 CMR 596(9), *Criteria and Standards for Waste Discharge Licenses* 06-096 CMR 524(2) (effective January 12, 2001) and 06-096 CMR 525(3)(III), BPT for overboard discharges is secondary treatment. The secondary treatment regulation establishes technology-based effluent limitations for BOD<sub>5</sub>, TSS, and pH which are discussed in more detail in the individual parameter sections below.
- b. Flow: The previous permitting action established, and this permitting action is carrying forward, a monthly average discharge flow limitation of 4,050 gallons per day (GPD), which is based on the design of the treatment facility, and a daily maximum discharge flow monitoring and reporting requirement.
- c. 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 the proposed Outfall #001A and a monthly average discharge flow design criterion of 4,050 GPD, the Department has made a best professional judgment that dilution factors are as follows:

Acute = 65:1

Chronic = 195:1

Harmonic mean<sup>1</sup> = 585:1

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<sup>1</sup>The harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by three (3). This multiplying factor is based on guidelines for estimation of human health dilution presented in the U.S. EPA publication, “*Technical Support Document for Water Quality-Based Toxics Control*” (Office of Water; EPA/505/2-90-001, page 88), and represents an estimation of harmonic mean flow on which human health dilutions are based in a riverine 7Q10 flow situation.

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

d. Biochemical Oxygen Demand (BOD<sub>5</sub>) and Total Suspended Solids (TSS):

The previous permitting action established, and this permitting action is carrying forward, monthly average and weekly average technology-based effluent limits (TBELs) of 30 mg/L and 45 mg/L, respectively, for BOD<sub>5</sub> and TSS pursuant to the secondary treatment regulation at 40 CFR 133.102 and 06-096 CMR 525(3)(III). The previous permit also established daily maximum TBELs of 50 mg/L for both BOD<sub>5</sub> and TSS based on a Department best professional judgment of best practicable treatment for secondary treated wastewater. Monthly average, weekly average and daily maximum TBELs of 1.0 lbs./day, 1.5 lbs./day, and 1.7 lbs./day, respectively, established in the previous permitting action for BOD<sub>5</sub> and TSS were based on the monthly average flow design criterion of 4,050 GPD (same as 0.003 million gallons per day, MGD) and the applicable concentration limits.

The mass-based limits were calculated as follows:

Monthly Average Mass Limit: (30 mg/L)(8.34 lbs./gallon)(0.004050 MGD) = 1.0 lbs./day

Weekly Average Mass Limit: (45 mg/L)(8.34 lbs./day)(0.004050 MGD) = 1.5 lbs./day

Daily Maximum Mass Limit: (50 mg/L)(8.34 lbs./day)(0.004050 MGD) = 1.7 lbs./day

A summary of BOD<sub>5</sub> and TSS data as reported on the DMRs submitted to the Department for the period of May 2010 - September 2014 is as follows:

**BOD<sub>5</sub> concentration (DMRs = 25)**

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Monthly Average	30	2 – 26	11.56
Weekly Average	45	2 – 26	11.56
Daily Maximum	50	2 – 38	12.48

**TSS concentration (DMRs = 25)**

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Monthly Average	30	3 – 30	13.08
Weekly Average	45	3 – 30	13.08
Daily Maximum	50	3 – 41	14.76

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

**BOD<sub>5</sub> Mass (DMRs = 25)**

Value	Limit (lbs./day)	Range (lbs./day)	Mean (lbs./day)
Monthly Average	1.0	0.0025 – 0.630	0.19
Weekly Average	1.5	0.0025 – 0.630	0.19
Daily Maximum	1.7	0.0025 – 0.630	0.21

**TSS Mass (DMRs = 25)**

Value	Limit (lbs./day)	Range (lbs./day)	Mean (lbs./day)
Monthly Average	1.0	0.003 – 0.698	0.24
Weekly Average	1.5	0.003 – 0.698	0.24
Daily Maximum	1.7	0.003 – 0.698	0.27

This permitting action carries forward the minimum monitoring frequency requirement of 1/Month for BOD<sub>5</sub> and TSS.

This permitting action carries forward the requirement for a minimum of 85% removal of BOD<sub>5</sub> and TSS pursuant to 06-096 CMR 525(3)(III)(a)(3) and (b)(3). This permitting action establishes a minimum monitoring frequency requirement of once per month for percent removal. The permittee’s wastewater treatment system does not contain an influent sampling location that is representative of raw wastewater conditions. According to the USEPA’s *Onsite Wastewater Treatment Systems Manual*, dated February 2002, table 3-7 entitled “Constituent Mass Loadings and Concentrations in Typical Residential Wastewater” high end range of values, influent values for BOD<sub>5</sub> and TSS may be assumed to be 286 mg/L and 300 mg/L, respectively. Therefore, this permitting action authorizes the permittee to assume an influent BOD<sub>5</sub> and TSS concentration value of 286 mg/L for purposes of calculating the monthly percent removal value.

- e. **Settleable Solids:** The previous permitting action established, and this permitting action is carrying forward, a technology-based daily maximum concentration limit of 0.3 ml/L for settleable solids, which is considered a best practicable treatment limitation (BPT) for secondary treated wastewater.

The fact sheet associated with the previous permitting action specified that a minimum monitoring frequency requirement of once per month was being established, however, the limit was not properly included in Special Condition A, *Effluent Limitations and Monitoring Requirements*, of the permit. In consideration of the compliance history with settleable solids, this permitting action is carrying forward the minimum monitoring frequency requirement of once per month for settleable solids intended to be established in the previous permitting action.

- f. **Fecal Coliform Bacteria:** The previous permitting action established, and this permitting action is carrying forward, seasonal monthly average and daily maximum concentration limits of 15 colonies/100 ml and 50 colonies/100 ml, respectively, for fecal coliform bacteria, which are consistent with the National Shellfish Sanitation Program. Bacteria

limits are seasonal and apply between May 15 and September 30 of each year, however, the Department reserves the right to require year-round disinfection to protect the health, safety and welfare of the public.

A summary of effluent fecal coliform bacteria data as reported on the DMRs for the period January 2008 through January 2012 (applicable months only) follows:

**Fecal coliform bacteria (DMR = 15)**

Value	Limit (col/100 mL)	Range (col/100 mL)	Mean (col/100 mL)
Monthly Average	15	1 – 16	3.0
Daily Maximum	50	1 – 558	35.84

During this time period, the permittee reported a total of 3 excursions from the numeric bacteria limits.

- g. **Total Residual Chlorine (TRC):** The previous permitting action established, and this permitting action is carrying forward, a daily maximum technology-based concentration limit of 1.0 mg/L for TRC with 1/Month monitoring requirement. Limitations on TRC are specified to ensure that ambient water quality standards are maintained at all times of the year and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either a water quality-based or BPT-based limit. With dilution factors as determined in Section 6(c) of this Fact Sheet, end-of-pipe (EOP) water quality-based concentration thresholds for TRC may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A & C Dilution Factors	Calculated Acute Limit	Chronic Limit
0.013 mg/L	0.0075 mg/L	65:1(A) 195:1(C)	0.85 mg/L	1.5 mg/L

The Department has established a daily maximum BPT limitation of 1.0 mg/L for facilities that disinfect their effluent with elemental chlorine or chlorine-based compounds. For facilities that need to dechlorinate the discharge in order to meet water quality based thresholds, the Department has established daily maximum and monthly average BPT limits of 0.3 mg/L and 0.1 mg/L, respectively. The water quality-based acute threshold of 0.85 mg/L is more stringent than the daily maximum BPT limitation of 1.0 mg/L. The Department is identifying that dechlorination may be required to comply with this water quality-based threshold. Therefore, this permitting action is revising the daily maximum technology-based concentration limit of 1.0 mg/L to 0.3 mg/L and establishing a monthly average technology-based limit of 0.1 mg/L.

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

A summary of the effluent TRC data as reported on the DMRs submitted to the Department for the period of June - September for calendar years 2010 - 2014 is as follows;

**Total residual chlorine (DMRs = 19)**

<b>Value</b>	<b>Limit (mg/L)</b>	<b>Range (mg/L)</b>	<b>Mean (mg/L)</b>
Daily Maximum	1.0	0.10 – 0.71	0.26

- h. **pH:** The previous permitting action established, and this permitting action is carrying forward, a technology-based pH limit of 6.0 – 9.0 standard units (SU), which is based on 06-096 CMR 525(3)(III).

The previous permitting action did not require submittal of pH monitoring results. Pursuant to 06-096 CMR 523(5)(i)(2), this permitting action is requiring the permittee to report pH monitoring results and is establishing a minimum monitoring frequency requirement of once per month based on best professional judgment.

- i. **Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing:** 38 M.R.S.A. § 414-A and 38 M.R.S.A. § 420 prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. 06-096 CMR 530 sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected and narrative and numeric water quality criteria are met. 06-096 CMR 584 sets forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

06-096 CMR 530(2)(A) specifies the dischargers subject to the rule as, “...all licensed dischargers of industrial process wastewater or domestic wastes discharging to surface waters of the State must meet the testing requirements of this section. Dischargers of other types of wastewater are subject to this subsection when and if the Department determines that toxicity of effluents may have reasonable potential to cause or contribute to exceedances of narrative or numerical water quality criteria.”

06-096 CMR 530(2)(A) further specifies the criteria for the exemption of certain discharges from toxics testing as follows:

- (1) *Discharges from individual discharge points licensed to discharge less than 50,000 gallons per day of solely domestic wastewater and with a chronic dilution factor of at least 50 to 1, provided no holding tank wastes containing chemicals are accepted by the facility;*

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

- (2) *Discharges from residential overboard discharge systems; or*
- (3) *Discharges from combined sewer overflow discharge points, provided the owner of the sewerage system is conducting or participating in a discharge abatement program.*

The permittee's facility is exempt from the 06-096 CMR 530 requirements as the characteristics of the wastewater are considered to be similar to that of a residential overboard discharge. Additionally, the permit authorizes a discharge of less than 50,000 gpd of solely domestic wastewater and the chronic dilution factor is greater than 50:1. However, should there be a substantial change in the characteristics of the discharge in the future; the Department may reopen this permit pursuant to Special Condition K, *Reopening of Permit for Modifications*, to incorporate the applicable whole effluent toxicity (WET), priority pollutant or analytical testing requirements cited above.

- j. **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 collected on effluent from five municipally-owned treatment works and one industrial facility that discharge to Casco Bay. The mean discharge concentration was calculated to be 14.3 mg/L and is being considered by the Department as being representative of the total nitrogen concentration from a municipal wastewater treatment facility in the absence of facility specific effluent data. Therefore, with an arithmetic mean total nitrogen discharge concentration of 14.3 mg/L and a near field dilution factor of 65:1 for the Stephen E. Gray Lodges & Industries, Inc. facility, an in-stream concentration can be calculated as follows:

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

Total nitrogen concentrations in effluent = 14.3 mg/L  
Chronic dilution factor = 65:1

In-stream concentration after dilution:  $\frac{14.3 \text{ mg/L}}{65} = 0.22 \text{ mg/L}$

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 small 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.

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

The discharge from the permittee's facility to Atlantic Ocean in Southport would be considered a discharge to the open ocean. Thus, the far field dilution would likely be 1,000 – 10,000 times higher. As a result, the far-field dilution may be as high as 65,000:1, thereby limiting the increase in the ambient total nitrogen to 0.00022 mg/L based on the following calculation:

Total nitrogen concentrations in effluent = 14.3 mg/L  
Chronic dilution factor = 65,000:1

In-stream concentration after dilution:  $\frac{14.3 \text{ mg/L}}{65,000} = 0.00022 \text{ mg/L}$

The in-stream concentration is less than the Department and USEPA's best professional judgment based total nitrogen threshold of 0.45 mg/L considered necessary to protect aquatic life in the receiving water, using dissolved oxygen as the indicator of whether this designated use is achieved. 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. 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.

## 8. PUBLIC COMMENTS

Public notice of this application was made in the *Boothbay Register* newspaper on or about August 14, 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 *Application Processing Procedures for Waste Discharge Licenses*, CMR 522 (effective January 12, 2001).

## 9. DEPARTMENT CONTACTS

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

Aaron Dumont  
Division of Water Quality Management  
Bureau of Land & Water Quality

Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 592-7161  
e-mail: [Aaron.A.Dumont@maine.gov](mailto:Aaron.A.Dumont@maine.gov)

## **10. RESPONSE TO COMMENTS**

*Reserved until the end of the comment period.*

# ATTACHMENT A



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

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**A. GENERAL PROVISIONS**

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

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

(a) They are not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**B. OPERATION AND MAINTENANCE OF FACILITIES**

**1. General facility requirements.**

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

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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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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 Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

### SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

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

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

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

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

#### WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

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

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

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

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

#### II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

#### ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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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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