



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

August 25, 2015

Mr. Paul Gibbons
P.O. Box 616
Camden, ME. 04843
paul@attorneygibbons.com

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0102857
Maine Waste Discharge License (WDL) Application #W007496-5C-G-R
Proposed Draft Permit

Dear Mr. Gibbons:

Enclosed is a **proposed draft** MEPDES permit and Maine WDL (permit hereinafter) which the Department proposes to issue 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.

All comments must be received in the Department of Environmental Protection office on or before the close of business **Thursday September 24th 2015**. Failure to submit comments in a timely fashion will result in the final document being issued as drafted. Comments in writing should be submitted to my attention at the following address:

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

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

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

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

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

If you have any questions regarding the matter, please feel free to call me at 207-446-1875.

Sincerely,



Rodney Robert
Bureau of Water Quality
Division of Water Quality Management

Enc.

cc: Robert Bialota Jr. Operator
William Johnson, DEP/CMRO
Lori Mitchell, DEP/CMRO
Oliver Cox, DMR
Environmental Review, DMR
Environmental Review, DIFW
Kathleen Leyden, DACF
David Webster, USEPA
David Pincumbe, USEPA
Alex Rosenburg, USEPA
Olga Vergara, USEPA
Ivy Frignoca, CLF
Marelyn Vega USEPA
Richard Carvalho USEPA



DEPARTMENT ORDER

IN THE MATTER OF

LINCOLNVILLE BEACH SANITARY FACILITY, INC.)	MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
LINCOLNVILLE, WALDO COUNTY, ME.)	
OVERBOARD DISCHARGE)	AND
ME0102857)	WASTE DISCHARGE LICENSE
W007496-5C-G-R)	RENEWAL
		APPROVAL

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 LINCOLNVILLE BEACH SANITARY FACILITY INC. (LBSF) with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

On June 1, 2015 the Department accepted as complete for processing an application from LBSF for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0102857/Maine Waste Discharge License (WDL) W007496-5C-F-R which was issued by the Department on August 5, 2010, and expires on August 5, 2015. The WDL authorized seasonal daily maximum flows of 10,655 gallons per day (gpd) from March 1st – November 30th and 4,955 gpd from December 1st – February 28th of secondary treated waste waters to West Penobscot Bay, Class SB, in Lincolnville, Maine.

PERMIT SUMMARY

This permitting action is carrying forward all the terms and conditions of the previous permitting action **with the addition of** a 1/year monitoring frequency for pH.

CONCLUSIONS

BASED on the findings in the attached Draft Fact Sheet dated August 25, 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.

CONCLUSIONS (cont'd)

3. The provisions of the State's antidegradation policy, 38 M.R.S.A. §464(4)(F), will be met, in that:
 - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
 - (c) Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
 - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in Maine law, 38 M.R.S.A., §414-A(1)(D) 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. A subsurface wastewater disposal system can not be installed in compliance with the Maine Subsurface Waste Water Disposal Rules at the time the renewal
7. A publicly owned sewer line is not located on or abutting land owned or controlled by the permittee or is not available for the permittee's use.
8. The discharge is not located within the boundaries of a sanitary district or sewer district and connecting to infrastructure is not practicable as none exists.

ACTION

THEREFORE, the Department APPROVES the above noted application of the LINCOLNVILLE BEACH SANITARY FACILITY INC. to discharge a daily maximum flow of up to 10,655 gpd of secondary treated sanitary waste water to West Penobscot Bay, Class SB, in Lincolnville, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

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 and Services*, 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: _____
For Patricia W. Aho, Commissioner

Date of initial receipt of application __May 22, 2015.

Date of application acceptance _____ June 1, 2015.

Date filed with Board of Environmental Protection _____.

This Order prepared by Rod Robert, Bureau of Water Quality

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge **secondary treated sanitary wastewater from Outfall #001** to West Penobscot Bay, Class SB in Lincolnville, Maine. Such discharges shall be limited and monitored by the permittee as specified below⁽¹⁾
March 1st – November 30th

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 <i>[50050]</i>	---	---	10, 655 GPD <i>[07]</i>	---	---	---	1/Day <i>[01/01]</i>	Meter <i>[MS]</i>
BOD₅ <i>[00310]</i>	2.7 lbs/day <i>[26]</i>	4.0 lbs/day <i>[26]</i>	4.4 lbs/day <i>[26]</i>	30 mg/L <i>[19]</i>	45 mg/L <i>[19]</i>	50 mg/L <i>[19]</i>	1/ Month <i>[01/30]</i>	Grab <i>[GR]</i>
BOD₅ Percent Removal⁽²⁾ <i>[81010]</i>	---	---	---	85% <i>[23]</i>	---	---	---	Calculate <i>[CA]</i>
TSS <i>[00530]</i>	2.7 lbs/day <i>[26]</i>	4.0 lbs/day <i>[26]</i>	4.4 lbs/day <i>[26]</i>	30 mg/L <i>[19]</i>	45 mg/L <i>[19]</i>	50 mg/L <i>[19]</i>	1/ Month <i>[01/30]</i>	Grab <i>[GR]</i>
TSS Percent Removal⁽²⁾ <i>[81011]</i>	---	---	---	85% <i>[23]</i>	---	---	---	Calculate <i>[CA]</i>
Settleable Solids <i>[00545]</i>	---	---	---	---	---	0.3 ml/L <i>[25]</i>	1/Week <i>[01/07]</i>	Grab <i>[GR]</i>
Fecal Coliform Bacteria⁽³⁾ <i>(May 15 – Sept. 30) [31616]</i>	---	---	---	15/100 ml ⁽⁴⁾ <i>[13]</i>	---	50/100 ml <i>[13]</i>	1/Week <i>[01/07]</i>	Grab <i>[GR]</i>
Total Residual Chlorine⁽⁵⁾ <i>[50060]</i>	---	---	---	---	---	1.0 mg/L <i>[19]</i>	1/Week <i>[01/07]</i>	Grab <i>[GR]</i>
pH <i>[00400]</i>	---	---	---	---	---	6.0 – 9.0 SU <i>[12]</i>	1/Yr <i>[01/YR]</i>	Grab <i>[GR]</i>
The italicized numeric values bracketed in the table and in subsequent text are code numbers Department personnel utilize to code the monthly Discharge Monitoring Reports.								

FOOTNOTES: See Page 6 of this permit for applicable footnotes.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. The permittee is authorized to discharge **secondary treated sanitary wastewater from Outfall #001** to West Penobscot Bay, Class SB in Lincolnville, Maine. Such discharges shall be limited and monitored by the permittee as specified below⁽¹⁾:

December 1st – February 28th

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 <i>[50050]</i>	---	---	4,955 GPD <i>[07]</i>	---	---	---	1/ Day <i>[01/01]</i>	Meter <i>[MT]</i>
BOD₅ <i>[00310]</i>	1.2 lbs/day <i>[26]</i>	1.8 lbs/day <i>[26]</i>	2.1 lbs/day <i>[26]</i>	30 mg/L <i>[19]</i>	45 mg/L <i>[19]</i>	50 mg/L <i>[19]</i>	1/ Month <i>[01/30]</i>	Grab <i>[GR]</i>
BOD₅ Percent Removal⁽²⁾ <i>[81010]</i>	---	---	---	85% <i>[23]</i>	---	---	---	Calculate <i>[CA]</i>
TSS <i>[00530]</i>	1.2 lbs/day <i>[26]</i>	1.8 lbs/day <i>[26]</i>	2.1 lbs/day <i>[26]</i>	30 mg/L <i>[19]</i>	45 mg/L <i>[19]</i>	50 mg/L <i>[19]</i>	1/ Month <i>[01/30]</i>	Grab <i>[GR]</i>
TSS Percent Removal⁽²⁾ <i>[81011]</i>	---	---	---	85% <i>[23]</i>	---	---	---	Calculate <i>[CA]</i>
Settleable Solids <i>[00545]</i>	---	---	---	---	---	0.3 ml/L <i>[25]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
pH <i>[00400]</i>	---	---	---	---	---	6.0 – 9.0 SU <i>[12]</i>	---	---

The italicized numeric values bracketed in the table and in subsequent text are code numbers Department personnel utilize to code the monthly Discharge Monitoring Reports

Footnotes: See page 6 of this permit for applicable footnotes.

SPECIAL CONDITIONS

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

Footnotes:

1. **Sampling** – All effluent monitoring must 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 must 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 BOD₅ and TSS for all flows receiving secondary treatment. The percent removal must be calculated based on influent and effluent concentration values.
3. **Bacteria limits** – Fecal coliform bacteria limits and monitoring requirements are seasonal and apply between May 15th and September 30th of each year. The Department reserves the right to impose bacteria limits on a year-round basis 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.
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 must utilize approved test methods that are capable of bracketing the TRC limitation in this permit.

SPECIAL CONDITIONS

B. ANNUAL DISCHARGE FEES

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

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.

D. TREATMENT PLANT OPERATOR

The person who has the management responsibility over the treatment facility must hold a **Grade II** certificate (or higher) or must be a Maine Registered Professional Engineer pursuant to *Sewerage Treatment Operators*, Title 32 M.R.S.A., Sections 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 June 1, 2015, 2) the terms and conditions of this permit; and 3) from Outfall #001A only. Discharges of waste water from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

SPECIAL CONDITIONS

F. NOTIFICATION REQUIREMENT

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

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

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.

SPECIAL CONDITIONS

H. OPERATION & MAINTENANCE (O&M) PLAN

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

By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades, the permittee shall evaluate and modify the O&M Plan including site plan(s) and schematic(s) for the wastewater treatment facility to ensure that it is up-to-date. The O&M Plan shall be kept on-site at all times and made available to Department and EPA personnel upon request.

Within 90 days of completion of new and or substantial upgrades of the waste water treatment facility (excepting the current yet to be completed substantial upgrade), the permittee shall submit the updated O&M Plan to their Department inspector for review and comment.

I. SEPTIC TANKS AND GREASE TRAPS

1. Septic tanks, grease traps and other treatment tanks shall be regularly inspected (at least once per calendar year) and maintained to ensure that they are providing best practicable treatment. The licensee shall maintain logs of inspections/maintenance that records the date, notes on observations, repairs conducted etc. The logs shall be maintained on site at all times and made available to Department personnel upon request.
2. Tank contents should 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 shall be checked for damage at key joints and the inlet and outlet baffles, and repaired promptly if damaged. The licensee shall keep a pumping log including the date of pumping, quantity of material removed, name and number of licensed contractor, pumping frequency and other relevant observations.

SPECIAL CONDITIONS

J. MONITORING AND REPORTING

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

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

K. REOPENING OF PERMIT FOR MODIFICATIONS

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

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.

- - -

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

FACT SHEET

Date: **August 25, 2015**

MEPDES PERMIT: **ME0102857**
WASTE DISCHARGE LICENSE: **W007496-5C-G-R**

NAME AND ADDRESS OF APPLICANT:

**LINCOLNVILLE BEACH SANITARY FACILITY, INC.
P.O. Box 616
Lincolntonville, ME. 04849**

COUNTY: **Waldo County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**U.S. Route #1
Lincolntonville, ME. 04849**

RECEIVING WATER / CLASSIFICATION: **West Penobscot Bay/Class SB**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Paul L. Gibbons
Attorney (207) 235-3325
paul@attorneygibbons.com**

OPERATOR: **Mr. Robert Bialota lic# C-2548
(207)-338-1956**

1. APPLICATION SUMMARY

- a. Application - On June 1, 2015 the Department accepted as complete for processing an application from LBSF for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0102857/Maine Waste Discharge License (WDL) W007496-5C-F-R which was issued by the Department on August 5, 2010, and expires on August 5, 2015. The WDL authorized seasonal daily maximum flows of 10,655 gallons per day (gpd) from March 1st – November 30th and 4,955 gpd of from December 1st – February 28th of secondary treated waste waters to West Penobscot Bay, Class SB, in Lincolntonville, Maine. See Attachment A of this Fact Sheet for a location map of the facility.

1. APPLICATION SUMMARY (cont'd)

- b. Source Description and Waste Water Treatment – The LBSF treats waste water from a cluster of ten commercial entities along the beach on Route #1 in Lincolnville. Sources include restaurants, the fire station, antique and glass shops as well as the State of Maine DOT ferry terminal. Waste water generated receives a secondary level of treatment via a mechanical treatment facility. The treated waste water is seasonally disinfected (May 15 – September 30) and dechlorinated via tablet chlorinators/dechlorinators and discharges to West Penobscot Bay, Class SB, via a pipe measuring 6 inches in diameter. The outfall pipe extends out into the receiving water with approximately ten (10) feet of water over the crown of the pipe at mean low tide.

2. PERMIT SUMMARY

This permitting action is carrying forward all the terms and conditions of the previous permitting action with the addition of a 1/year monitoring frequency for pH.

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

Maine law, 38 M.R.S.A., Section 469 classifies West Penobscot Bay at the point of discharge as a Class SB waterway. Maine law, 38 M.R.S.A., Section 465(B)(2) describes the standards for Class SB waters.

5. RECEIVING WATER QUALITY CONDITIONS

The 2012 Integrated Water Quality Monitoring and Assessment Report published by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act lists the location of the discharge as Waterbody ID #722- 21, Rockport Harbor to Ducktrap Harbor, Lincolnville. This location is listed under the following categories:

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

Category 4-A: Estuarine and Marine Waters with Impaired Use – TMDL Completed. This classification is due to elevated fecal levels.

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 for shellfish consumption due to elevated levels of PCBs and other persistent, bioaccumulating substances in tomalley.

Currently, the Maine Department of Marine Resources (MDMR) shellfish harvesting Area 31-A, Rockport to Northport is closed to the harvesting of shellfish. **See Attachment B of this Fact Sheet for Area 31-A.**

The 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 waste water discharges in the event of a failure of the disinfection system. Therefore, Area 31-A remains closed as of the date of this permitting action. Compliance with the seasonal fecal coliform bacteria limits in this permitting action will ensure that the discharge from the permittee's facility will not cause or contribute to the shellfish harvesting closure. Department rule Chapter 519, *Interim Effluent Limitations and Controls for the Discharge of Mercury*, establishes controls on the discharge of mercury to the surface waters of the State through interim effluent limits and implementation of pollution prevention plans. However, Section 1(A)(1) of the Chapter 519 rule states in part:

“This rule applies to all persons licensed or permitted pursuant to 38 MRSA §413 to discharge pollutants to the surface waters of the State except as described below. For the purposes of this rule, the term licensee also means permittee.

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

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 *Effluent Guidelines and Standards*, 06-096 CMR 525(3)(III) (effective date January 12, 2001), BPT for overboard discharges is secondary treatment. The secondary treatment regulation establishes technology-based effluent limitations for BOD₅, TSS, and pH which are discussed in more detail in the individual parameter sections below.

- b. Flow: The previous licensing action authorized daily maximum discharge flow limitations. From March 1 – November 30 the discharge was limited to 10,655 gpd, and from December 1 – February 28 the discharge was limited to 4,955 gpd. The limitations are reflective of the seasonal natural of the waste water generated as the largest generator of waste water (restaurant, 5,000 gpd) is closed during the winter months. This permitting action is carrying forward both daily maximum discharge flow limitations for the facility.

Department rule, 06-096 CMR Chapter 523 Section 6(b)(1), specifies, “*effluent limitations, standards, or prohibitions shall be calculated based on design flow.*” A review of the daily maximum discharge flow data as reported on the Discharge Monitoring Reports (DMRs) submitted to the Department for the period September 2010 through June 2015 indicates the following;

Flow (March 1 – November 30)

Value	Limit (gpd)	Range (gpd)	Mean (gpd)
Daily Maximum	10,665	2378–15,225	6108 (n=42)

Flow (December 1 – February 28)

Value	Limit (gpd)	Range (gpd)	Mean (gpd)
Daily Maximum	4,955	1711-9653	4164 (n=15)

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

- c. Dilution Factors – Department rule 06-096 CMR, Chapter 530, Surface Water Toxics Control Program, §4(A)(2) states,

(2) For estuaries where tidal flow is dominant and marine discharges, dilution factors are calculated as follows. These methods may be supplemented with additional information such as current studies or dye studies.

(a) 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.

(b) For discharges to estuaries, dilution must be calculated using a method such as MERGE, CORMIX or another predictive model determined by the Department to be appropriate for the site conditions.

(c) In the case of discharges to estuaries where tidal flow is dominant and marine waters, the human health criteria must be analyzed using a dilution equal to three times the chronic dilution factor.

With a permitted flow of 10,655 gpd, the location and configuration of the outfall structure, the Department has made a best professional judgment that dilution factors are follows:

Acute = 125:1 Chronic = 365:1 Harmonic mean = 1,095⁽¹⁾

- (1) Pursuant to Department rule Chapter 530, “*Surface Water Toxics Control Program*”, §4(2)(c), the harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by a factor of three (3). This multiplying factor is based on guidelines for estimation of human health dilution presented in the USEPA 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 (BOD₅) and Total Suspended Solids (TSS): This permitting action carries forward the technology-based monthly average and daily maximum BOD₅ and TSS concentration limits of 30 mg/L and 50 mg/L, respectively. The monthly average concentration limit is based on secondary treatment requirements as defined in Department rule, 06-096 CMR Chapter 525(3)(III). The daily maximum BOD₅ and TSS concentration limits of 50 mg/L were based on a Department best professional judgment (BPJ) of best practicable treatment (BPT). This permitting action is carrying forward both technology based concentration limitations and the weekly average BPT concentration limit of 45 mg/L which was established in the previous permitting action, pursuant to Department rule, 06-096 CMR Chapter 525(3)(III),.

This permitting action also carries forward the previously established monthly average, weekly average and daily maximum BOD₅ and TSS mass limitations which were based on calculations using the flows of 10,655 gpd (0.010655 MGD) and 4,955 gpd (0.004955 MGD), pursuant to Department rule Chapter 523, *Waste Discharge License Conditions*, Section 6, *Calculating NPDES permit conditions*, sub-section f(1) which states that, "all pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass...." The applicable concentration limits are as follows:

March 1 – November 30

Monthly Average Limit: $(30 \text{ mg/L})(8.34 \text{ lbs./gallon})(0.010655 \text{ MGD}) = 2.7 \text{ lbs/day}$
Weekly Average Limit: $(45 \text{ mg/L})(8.34 \text{ lbs./day})(0.010655 \text{ MGD}) = 4.0 \text{ lbs/day}$
Daily Maximum Limit: $(50 \text{ mg/L})(8.34 \text{ lbs./day})(0.010655 \text{ MGD}) = 4.4 \text{ lbs/day}$

December 1 – February 28

Monthly Average Limit: $(30 \text{ mg/L})(8.34 \text{ lbs./gallon})(0.004955 \text{ MGD}) = 1.2 \text{ lbs/day}$
Weekly Average Limit: $(45 \text{ mg/L})(8.34 \text{ lbs./day})(0.004995 \text{ MGD}) = 1.8 \text{ lbs/day}$
Daily Maximum Limit: $(50 \text{ mg/L})(8.34 \text{ lbs./day})(0.004995 \text{ MGD}) = 2.1 \text{ lbs/day}$

This permitting action is also carrying forward the requirement for the LBSF to maintain a minimum of 85% removal of BOD₅ and TSS pursuant to Chapter 525(3)(III)(a)(3) and (b)(3) of the Department's rules.

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

For BOD₅ and TSS, a review of the monthly average effluent concentration data as reported on the DMRs submitted to the Department for the period September 2010 through June 2015 indicates the following:

BOD Concentration(n=57)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Monthly Average	30	2.8 – 19	7.7
Daily Maximum	50	2.8 - 19	7.7

TSS Concentration(n=57)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Monthly Average	30	3 – 39	14.8
Daily Maximum	50	3 - 39	15.0

The facility has been in compliance with the monthly average and daily maximum concentration limitations for both BOD and TSS greater than 90% of the time during the reporting period. The previously established minimum year-round monitoring frequency requirement of 1/Month for BOD₅ and TSS is being carried forward in this permitting action.

- e. Settleable Solids: Monthly DMR data for the period September 2010 through June 2015 indicates the permittee has been in compliance 100% of the time (N=57) for both monthly average and daily maximum values.

This permitting action is carrying forward the daily maximum BPT concentration limit of 0.3 ml/L and the 1/Month monitoring frequency.

- f. Fecal coliform bacteria: The previous licensing action established seasonal (May 15th – September 30th) water quality based monthly average concentration limit for fecal coliform bacteria of 15 colonies/100 ml (geometric mean) and a daily maximum concentration limit of 50 colonies/100mL (instantaneous level) along with a 1/week monitoring frequency. This permitting action is carrying both limitations forward to be consistent with the limits associated with the National Shellfish Sanitation Program. The season in which the limits are applicable is consistent with the time frame in Maine law 38 M.R.S.A., §465-B(2). A review of the monthly average and daily maximum data as reported on the DMRs submitted to the Department for the period September 2010 through June 2015 indicates the monthly (geometric mean) and daily maximum *E. coli* bacteria discharged as follows;

Fecal coliform bacteria (n=22)

Value	Limit (col/100 ml)	Range (col/100 ml)	Mean (col/100 ml)
Monthly Average	15	2 – 6.0	2.5
Daily Maximum	50	0.4– 96	8.8

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

- f. Total Residual Chlorine (TRC): Limitations on TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either a water quality-based or BPT-based limit. With dilution factors calculated 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	125:1 (A)	365:1 (C)	1.6 mg/L	2.7 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 unless the water quality based thresholds calculated are lower than the BPT limits. The permittee’s facility does not need to dechlorinate the effluent prior to discharge in order to consistently achieve compliance with the calculated acute water quality-based threshold. Therefore, this permitting action is carrying forward a daily maximum technology based concentration limit of 1.0 mg/L from the previous licensing action that is applicable seasonally.

A review of the daily maximum data as reported on the DMRs submitted to the Department for the period September 2010 through June 2015 indicates the maximum TRC discharged has been as follows;

Total residual chlorine(N=19)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Daily Maximum	1.0	0.01 –0.97	0.56

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

- g. 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) and 06-096 CMR 523(5)(i)(5), this permitting action is establishing a requirement to sample pH once per year to be conducted between March 1st and November 30th.
- h. 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. *Surface Water Quality Criteria for Toxic Pollutants*, 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;
 - (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 it permitted to discharge less than 50,000 gpd or 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.

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

- i. Nitrogen - The permittee has not been conducting total nitrogen testing on its discharge to date. However, the USEPA requested the Department evaluate the reasonable potential for the discharge of total nitrogen to cause or contribute to non-attainment of applicable water quality standards in marine waters, namely dissolved oxygen (DO) deficiencies and cultural eutrophication caused by algal blooms or impacts to eelgrass beds. The Department has 50 total nitrogen effluent values with an arithmetic mean of 14.3 mg/L collected from various municipally-owned treatment works that discharge to marine waters of the State. None of the facilities are specifically designed to remove total nitrogen. For the MEPDES permitting program, the Department considers 14.3 mg/L be representative of total nitrogen discharge levels for all facilities discharging to marine waters in the absence of facility specific data.

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. According to several studies in EPA's Region I, numeric nutrient criteria have been established for relatively few estuaries but the criteria that have been set typically fall between 0.35 mg N/L and 0.50 mg N/L to protect aquatic life in marine waters using dissolved oxygen as the indicator and to control cultural eutrophication effects namely diurnal DO swings and supersaturated DO levels. While the thresholds are site-specific, many of the nitrogen thresholds set for the protection of eelgrass habitat are similar and fall between 0.30 mg N/L and 0.39 mg N/L.

Extrapolating estuarine criteria to an exposed coastal marine environment may result in thresholds that are not appropriate given the lower ambient nutrient concentrations expected in the open ocean. Based on studies in EPA Region I and the Department's best professional judgment of thresholds that are protective of Maine water quality standards, the Department is utilizing a threshold of 0.45 mg/L for the protection of aquatic life in marine waters using dissolved oxygen as the indicator and 0.32 mg/L for the protection of eelgrass beds in the vicinity of discharge outfalls. There are eelgrass beds have historically been present in the vicinity of the permittee's outfall pipe.

Except for ammonia other nitrogen species are 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. The permittee's facility has a chronic near field dilution factor of 365:1. 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 open ocean discharges, far field dilutions would tend to be 1,000 – 10,000 times higher.

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

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 times higher. The discharge pipe from the permittee's facility is located approximately ten below mean low water and is fitted with a 3-port diffuser. The diffuser is located in open water with significant tidal flushing, thus, the far field dilution factor would likely be not less than 1,000 times higher. Applying this most protective far field dilution multiplier of 1,000 times to the near field dilution factor of 365:1 results in a far-field dilution factor of 365,000:1. By this analysis, the increase in the ambient total nitrogen due to permittee's effluent discharge is as follows:

Total nitrogen concentrations in effluent = 14.3 mg/L
Chronic dilution factor = 365,000:1

In-stream concentration after dilution: $\frac{14.3 \text{ mg/L}}{365,000} = 0.00004 \text{ mg/L}$

The Department has been collecting ambient total nitrogen data in close proximity to the Maine coastline to support an effort to develop statewide nutrient criteria for marine waters. For the permittee's facility, the Department calculated a mean background concentration of 0.22 mg/l based on the ambient data collected to date. As a result, after reasonable opportunity for far field mixing, the increase in the concentration of total nitrogen in the receiving water due to the discharge from the permittee's facility will not be measureable thus, the instream concentration of total nitrogen will remain at 0.22 mg/L. This concentration is lower than the Department's and EPA's best professional judgment of a critical threshold of 0.32 mg/L for the protection of eelgrass beds in the vicinity of the permittee's outfall pipe. 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 Camden Herald on or about April 30, 2015. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

9. DEPARTMENT CONTACTS

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

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

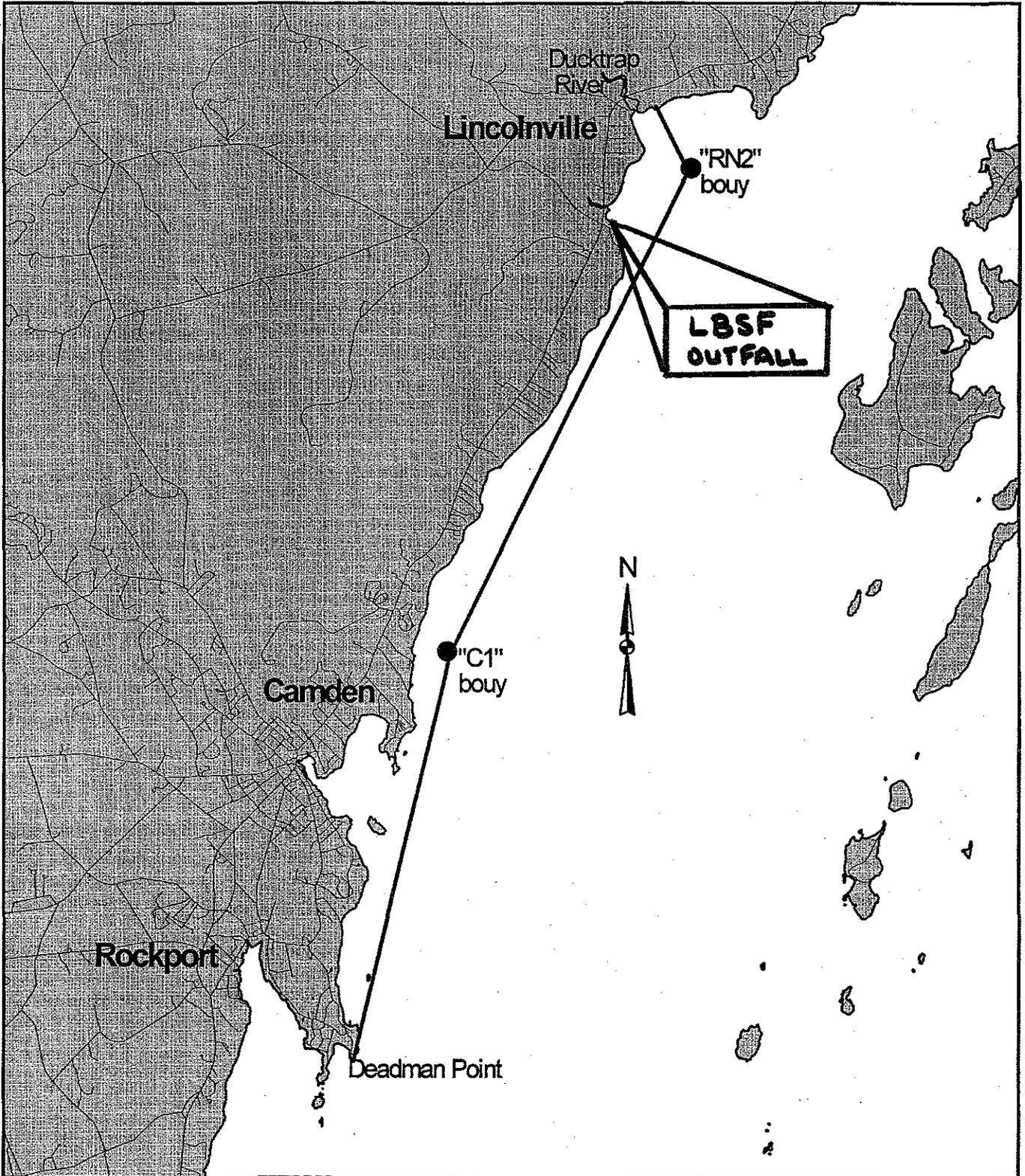
10. RESPONSE TO COMMENTS

Reserved until the end of the formal 30 day comment period.

ATTACHMENT A

Maine Department of Marine Resources

Legal Notice of Shellfish Closure Area 31-A, Rockport Harbor,
to the Ducktrap River, Lincolnville





PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PATRICK C. KELIHER
COMMISSIONER

Shellfish Harvesting Area Classification-Notification of Changes

May 15, 2014

Ladies and Gentlemen:

Under the authority of Maine statute 12 M.R.S.A., Chapter 607, Section 6172; the Commissioner has made the following classification change to Area No. 31-A, Rockport to Northport. This notice lowers the northern boundary of the existing Prohibited area due to an updated shoreline survey and water quality meeting approved standards. All existing pollution and red tide/psp closures remain in effect.

The boundary descriptions of the area are as follows (struck text is being removed and underlined text is being added):

A. Effective immediately, because of pollution, it shall be unlawful to dig, take or possess any clams, quahogs, oysters or mussels taken from the shores, flats, and waters of the following areas:

1. Rockport, Camden and Lincolnville Shore: west ~~and shoreward~~ of a line beginning at the southeastern end of Deadman Point, Rockport, and running northeasterly ~~about~~ approximately 7,000 yards to the "C1" navigation aid located at Dillingham Ledge, Camden; then running northeasterly ~~about~~ approximately 8,000 yards to the RN"2" navigation marker located at Haddock Ledge, Lincolnville; ~~then running northwesterly (about 1500 yards) to a red painted post located on the northern mouth of the Ducktrap River in the town of Lincolnville then running northwest to the prominent pier on the eastern tip of an unnamed point, approximately 102 yards from the end of Harbor Drive, Lincolnville.~~

If you have questions, please contact Kohl Kanwit, Department of Marine Resources, 194 McKown Point Road, West Boothbay Harbor, Maine 04575-0008, Tel: (207) 633-9535, Email: Kohl.Kanwit@maine.gov. During **weekends/holidays**, contact the appropriate State Police barracks: from New Hampshire border to Brunswick, barracks 1-800-228-0857; from Cushing/Boothbay to Lincolnville/Belfast area, barracks 1-800-452-4664; from Belfast to Canadian border, barracks 1-800-432-7381. This notice can be viewed on the Department's website at: http://www.maine.gov/dmr/rm/public_health/closures/closedarea.htm . This information is also recorded on our HOTLINE (207-624-7727 OR 1-800-232-4733).

Sincerely,

Kohl Kanwit
Commissioner's Designee – Director, Bureau of Public Health

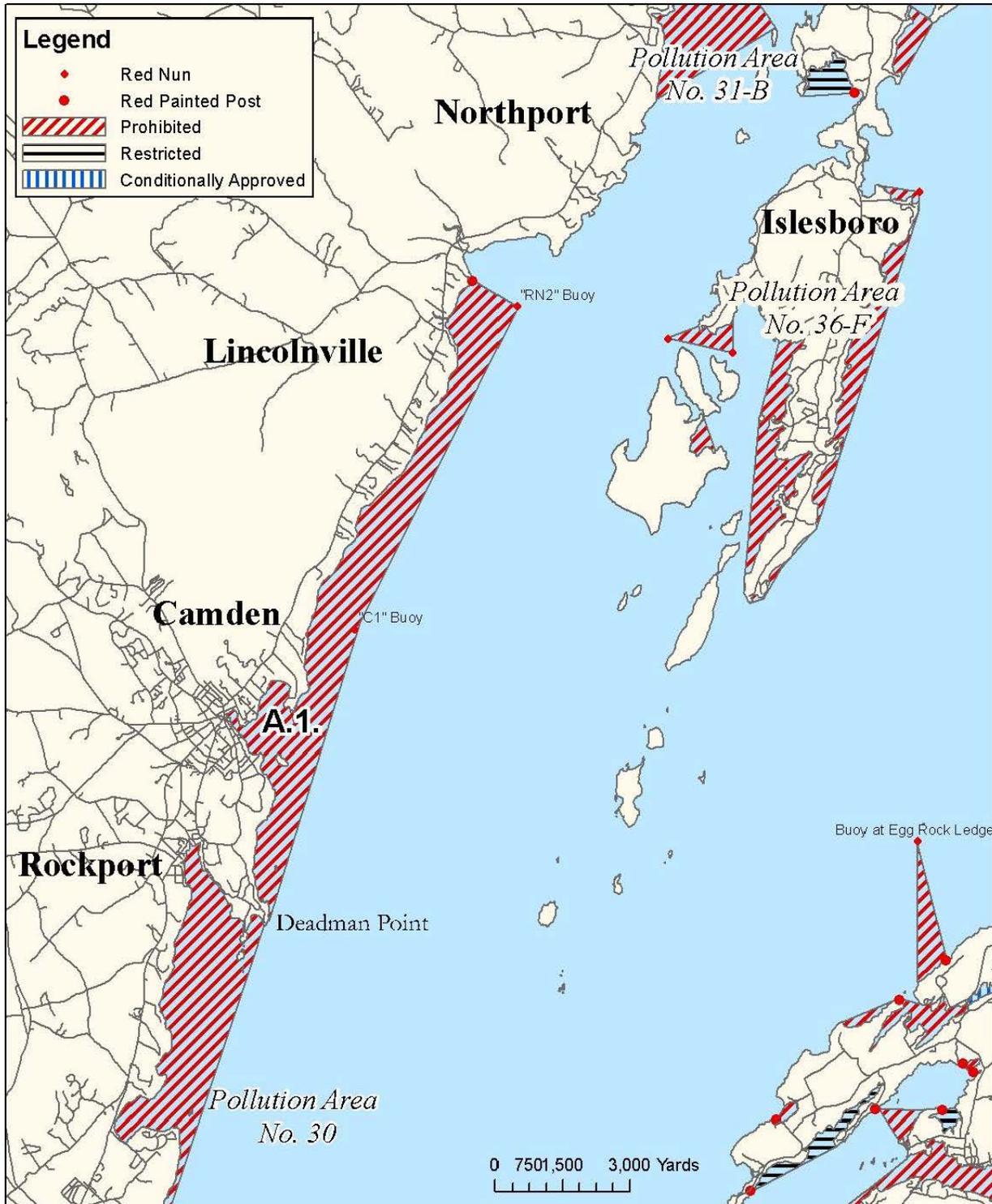
2:00 PM
(Effective Time)



Maine Department of Marine Resources

Pollution Area No. 31-A

Rockport to the Wales Beach, Northport



OFFICES AT 2 BEECH ST., BAKER BUILDING, HALLOWELL, MAINE
<http://www.Maine.gov/dmr>

PHONE: (207) 624-6550

FAX: (207) 624-6024



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

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

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

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

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

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

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

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