



STATE OF MAINE
Department of Environmental Protection

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COMMISSIONER

February 12, 2015

Mr. Anthony M. Calcagni, Partner
Verrill Dana LLP
One Portland Square
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e-mail: acalcagni@verrilldana.com

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0023248
Maine Waste Discharge License (WDL) Application #W006931-5C-I-R
Diamond Cove Homeowners Association
Final Permit

Dear Mr. Calcagni:

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

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

If you have any questions regarding the matter, please feel free to call me at 287-7693.

Sincerely,

Gregg Wood
Division of Water Quality Management
Bureau of Land and Water Quality
Enc.

cc: William Johnson, DEP/CMRO
Olga Vergara, USEPA
Cathy L. Ramsdell, Friends of Casco Bay

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

DEPARTMENT ORDER

IN THE MATTER OF

DIAMOND COVE HOMEOWNERS ASSOCIATION) MAINE POLLUTANT DISCHARGE
PORTLAND, CUMBERLAND COUNTY, MAINE) ELIMINATION SYSTEM PERMIT
OVERBOARD DISCHARGE) AND
ME0023248) WASTE DISCHARGE LICENSE
W006931-5C-I-R) RENEWAL
APPROVAL	

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, *et seq.* and Maine Law 38 M.R.S.A. Section 414-A, *et seq.*, and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of the DIAMOND COVE HOMEOWNERS ASSOCIATION (permittee hereinafter), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

The permittee has submitted a timely and complete application to the Department for the renewal of Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0023248/Maine Waste Discharge License (WDL) #W006931-5C-F-R (permit hereinafter) which was issued by the Department on September 15, 2009, for a five-year term. The permit authorized a year-round monthly average discharge of up to 35,000 gallons per day (gpd) of secondary treated waste waters to the Atlantic Ocean (Casco Bay), Class SB, in Portland, Maine.

PERMIT SUMMARY

This permitting action is carrying forward all the terms and conditions of the September 15, 2009, permit except that this permit is:

1. Eliminating Special Condition C, *Disinfection*, from the permit as the Department has reconsidered the need for said condition.
2. Eliminating Special Condition K, *Treatment System Repairs and Maintenance*, as the terms and conditions in the condition have been satisfied.
3. Establishing a requirement to maintain a minimum of 85% removal for biochemical oxygen demand (BOD) and total suspended solids (TSS) pursuant to 06-096 CMR, Chapter 525, §3, sub-§III.

PERMIT SUMMARY (cont'd)

4. Reducing the monitoring frequency for settleable solids from 1/Month to 1/Year as test results submitted to date indicate settleable solids have never been detected in the effluent.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated December 22, 2014, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

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

CONCLUSIONS (cont'd)

7. A publicly owned sewer line is not located on or abutting land owned or controlled by the permittee or is not available for the permittee's use.
8. The discharge is not located within the boundaries of a sanitary district or sewer district.

ACTION

THEREFORE, the Department APPROVES the above noted application of the DIAMOND COVE HOMEOWNERS ASSOCIATION to discharge a monthly average flow of up to 35,000 gpd of secondary treated sanitary waste water to the Atlantic Ocean (Casco Bay), Class SB, in Portland, 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 and the authorization to discharge become effective upon the date of signature below and expire 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 authorization to discharge and the terms and conditions of this permit and all 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) (effective April 1, 2003)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 2ND DAY OF March, 2015.
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:

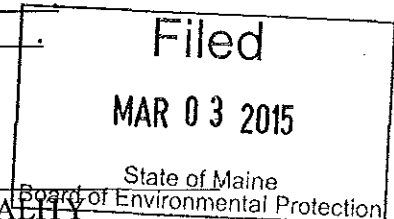
Michael Kuhn
Patricia W. Aho, Commissioner

Date of initial receipt of application: September 2, 2014

Date of application acceptance: September 2, 2014

Date filed with Board of Environmental Protection

This Order prepared by Gregg Wood, BUREAU OF LAND & 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 Atlantic Ocean, Class SB. Such discharges shall be limited and monitored by the permittee as specified below⁽¹⁾:

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]	35,000 gpd [07]	Report gpd [07]	Report gpd [07]	---	---	---	Continuous [99/99]	Recorder [RC]
BOD₅ [00310]	9 lbs/day [26]	13 lbs/day [26]	15 lbs/day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Month [01/30]	Grab [GR]
BOD₅ Percent Removal⁽²⁾ [81010]	---	---	---	85% [23]	---	---	1/Month [01/30]	Calculate [CA]
TSS [00530]	9 lbs/day [26]	13 lbs/day [26]	15 lbs/day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Month [01/30]	Grab [GR]
TSS Percent Removal⁽²⁾ [81011]	---	---	---	85% [23]	---	---	1/Month [01/30]	Calculate [CA]
Settleable Solids [00545]	---	---	---	---	---	0.3 ml/L [25]	1/Year [01YR]	Grab [GR]
Fecal coliform bacteria⁽³⁾ (May 15 – Sept. 30) [31633]	---	---	---	15/100 ml ⁽³⁾ [13]	---	50/100 ml [13]	1/Week [01/07]	Grab [GR]
Total Residual Chlorine⁽⁴⁾ [50060]	---	---	---	---	---	1.0 mg/L [19]	5/Week [05/07]	Grab [GR]
pH [00400]	---	---	---	---	---	6.0 – 9.0 SU[12]	1/Week [01/07]	Measure [MS]
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 pages 5&6 of this permit for applicable footnotes.

SPECIAL CONDITIONS

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

Footnotes:

1. **Monitoring** – All effluent monitoring shall be conducted at a location following the last treatment unit in the treatment process and shall be representative of the effluent discharged to the receiving water. Sampling and analysis must be conducted in accordance with; a) methods approved in 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 Human Services. Samples that are to a POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000).
2. **Percent Removal** - The permittee must achieve a minimum of 85 percent removal of both total suspended solids (TSS) and biochemical oxygen demand (BOD) for all flows receiving secondary treatment. The percent removal is calculated based on influent and effluent concentration values. For influent concentrations an assumed value of 290 mg/L will be used for TSS and BOD.
3. **Fecal coliform bacteria** – The monthly average limitation of 15 colonies/100 mL is a geometric mean limitation and results shall be calculated and reported as such.
4. **Total residual chlorine (TRC) limits and monitoring requirements** – TRC limits and monitoring requirements are applicable whenever elemental chlorine or chlorine-based compounds are being used to disinfect the discharge. TRC shall be tested using an EPA-approved method that is capable of bracketing the TRC concentration limitations in this permit. The Department reserves the right to require disinfection on a year-round basis to protect the health and welfare of the public.

SPECIAL CONDITIONS

B. NARRATIVE EFFLUENT LIMITATIONS

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

C. TREATMENT PLANT OPERATOR

The person who has the management responsibility over the treatment facility must hold a **Maine Grade II** Waste Water Treatment Plant Operator 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.

D. AUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on September 2, 2014; 2) the terms and conditions of this permit; and 3) from Outfall #001 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.

This permit specifically excludes introduction of wastewater directly or indirectly from the redevelopment of the Hospital and the proposed Inn swimming pool. This permit authorizes the inclusion of wastewater resulting from the general practice of hotels and inns to have kitchen facilities to support food and beverage services so long as the food and beverage service provided, and the kitchen facilities used, are customary for a residential hotel condominium and such services are provided to, and the kitchen facilities are used to prepare food and beverages solely for, owners of the units at the Inn and the registered guests at the Inn.

SPECIAL CONDITIONS

E. NOTIFICATION REQUIREMENT

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

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

F. SITE EVALUATION FOR TRANSFERRED AND RENEWED PERMITS

Prior to permit transfer or transfer of the property occupying the permitted overboard discharge system, a site evaluation must be performed by a licensed site evaluator with experience in designing systems for the replacement of overboard discharge systems.

The Department may not grant approval for a **permit transfer** if the site evaluation concludes that a non-discharging wastewater disposal system designed in compliance with the Maine Subsurface Waste Water Disposal Rules administered by the Maine Department of Health and Human Services, Division of Environmental Health can be installed as a replacement system for the overboard discharge.

The Department may not grant approval for a **permit renewal** if the site evaluation concludes that a non-discharging wastewater disposal system can be installed as a replacement system for the overboard discharge and the Department has offered the permittee funding for the removal of the discharge.

G. OPERATION & MAINTENANCE (O&M) PLAN

The permittee shall have a current written comprehensive Operation & Maintenance (O&M) Plan for the waste water treatment facility. 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.

SPECIAL CONDITIONS

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

The permittee shall establish a "Wet Weather Management Plan" as part of the O & M plan. This plan would direct the staff on how to operate the facility effectively during periods of high flow, including operating procedures for a range of intensities, solids handling procedures, and provide written operating and maintenance procedures during the events.

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, the permittee shall submit the updated O&M Plan to their Department inspector for review and comment.

H. SEPTIC TANKS

Septic tanks and other treatment tanks shall be regularly inspected (at least once per year) and maintained to ensure that they are providing best practicable treatment. The permittee 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.

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 permittee 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.

I. 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.

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

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MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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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).

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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

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

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

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

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

5. Bypasses.

(a) Definitions.

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

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

(c) Notice.

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

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

(d) Prohibition of bypass.

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

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

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

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

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

6. Upsets.

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

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

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

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

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

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

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

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

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C. MONITORING AND RECORDS

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

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

3. Monitoring and records.

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

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D. REPORTING REQUIREMENTS

1. Reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Publicly owned treatment works.

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

E. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maximum daily discharge limitation means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FACT SHEET

Date: December 22, 2014

MEPDES PERMIT: **ME0023248**
WASTE DISCHARGE LICENSE: **W006931-5C-I-R**

NAME AND ADDRESS OF APPLICANTS:

DIAMOND COVE HOMEOWNERS ASSOCIATION

c/o Verrill Dana LLP
Attn: Anthony M. Calcagni
One Portland Square
Portland, Maine 04112-0586
(207) 253-4516
acalcagni@verrilldan.com

COUNTY: **Cumberland County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**Great Diamond Island
Portland, ME. 04109**

RECEIVING WATER / CLASSIFICATION: **Atlantic Ocean (Casco Bay)/Class SC**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Aaron Bateman, Agent
(207) 571-3061**
e-mail: abateman@phoenixmanagementcompany.com

1. APPLICATION SUMMARY

- a. Application - The applicant/permittee has submitted a timely and complete application to the Department for the renewal of Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0023248/Maine Waste Discharge License (WDL) #W006931-5C-F-R (permit hereinafter) which was issued by the Department on September 15, 2009, for a five-year term. The permit authorized a year-round monthly average discharge of up to 35,000 gallons per day (gpd) of secondary treated waste waters to the Atlantic Ocean (Casco Bay), Class SB, in Portland, Maine.

1. APPLICATION SUMMARY (cont'd)

- b. Source Description - Wastewater is generated by Phase I development of Department Site Location Order #L-013160-87/03-A-N. This development, located on a 193.4-acre portion of Great Diamond Island, consists of 44 buildings. Of the buildings, 36 were to be converted to 134 housing units; five were to be commercial uses, and two for recreational uses. To date all but four of the 36 buildings have been renovated: Housing units 83F-690-69 (Devine) and 83F-700-70 (Devine), the Barracks and the Hospital.

The September 15, 2009, permit authorized the introduction of wastewater to the OBD treatment system resulting from the redevelopment of the Barracks into a 46-bedroom hotel/condominium by The Inn at Diamond Cove, LLC (Inn). Both the Barracks and the Hospital were acquired by the City of Portland and then deeded to The Inn at Diamond Cove, LLC per the Purchase and Sales Agreement dated May 4, 2007. Maine law, 38 M.R.S.A. §413.3 requires a Licensed Site Evaluator/Professional Engineer to conduct a site evaluation prior to transfer of a facility served by an OBD. The transferee must replace the OBD using an alternative system if there is a feasible alternative. The Inns' LSE found no alternative to the use of the OBD by the Barracks. Sufficient treatment capacity remains for connection of the Barracks to the existing OBD.

The September 15, 2009, permit prohibited wastewater (including inflow and/or infiltration) from the Hospital from inclusion in the wastewater influent to the existing OBD sand filter treatment system pursuant to Maine law, 38 M.R.S.A. §413.3. There is a feasible alternative to use of the existing OBD treatment and the existing treatment works does not have sufficient treatment capacity to accept wastewater resulting from the future and subsequent redevelopment of the "Hospital."

The September 15, 2009, permit specifically prohibited wastewater from the proposed swimming pool to the existing OBD sand filter treatment system pursuant to Maine law, 38 M.R.S.A. § 464.A.6. The 1986 Site Order did not authorize a second pool. Therefore, connection of the pool to the OBD, would constitute an additional source of discharge and is prohibited.

- c. Waste Water Treatment - The effluent currently receives a secondary level of treatment. The raw sewage is collected from the existing development by a network of approximate 4,200 linear feet of new PVC and 1,900 feet of clay piping, all has been relined in the last ten years. The raw sewage is distributed between six 10,000-gallon settling tanks configured in two rows of three tanks.

Supernatant from the settling tanks is collected in a wet well and distributed amongst three 100-ft. by 115-ft. (11,500 sq. ft.) sand filter beds. The treated wastewater is collected in the underdrain system and conveyed to a disinfection system consisting of liquid sodium hypochlorite disinfection and two 1,000-gallon detention tanks. Dechlorination is accomplished through sodium bisulfate injection. The sanitary treated

1. APPLICATION SUMMARY (cont'd)

wastewater then travels through a V-notch weir-type flowmeter before being discharged to Casco Bay through an eight-inch diameter outfall pipe with diffuser. The outfall pipe extends approximately 250 feet from the shoreline to a point where there is approximately twelve vertical feet of water over the crown of the pipe at mean low water. The wastewater treatment facility is operated by a contractor operator. The treatment capacity for the installed sand filter system is 35,000 gpd.

2. PERMIT SUMMARY

- a. Terms and conditions - This permitting action is carrying forward all the terms and conditions of the September 15, 2009 permit except that this permit is:

1. Eliminating Special Condition C, *Disinfection*, from the permit as the Department has reconsidered the need for said condition.
2. Eliminating Special Condition K, Treatment System Repairs and Maintenance as the terms and conditions in the condition have been satisfied.
3. Establishing a requirement to maintain a minimum of 85% removal for biochemical oxygen demand (BOD) and total suspended solids (TSS) pursuant to 06-096 CMR, Chapter 525, §3, sub-§III.
4. Reducing the monitoring frequency for settleable solids from 1/Month to 1/Year as test results submitted to date indicate settleable solids have never been detected in the effluent.

- b. History – Substantive regulatory actions include the following:

December 10, 1986 – Maine Department of Environmental Protection (MDEP) Site Location Order #L-013160-87/03-A-N approved *Phase I* redevelopment of 193.4 acre Fort McKinley. Of the 44 buildings slated for redevelopment, 34 were to be renovated as 134 housing units, five as commercial uses, two as recreational, and one as maintenance/public safety. Of the 34 buildings, only the Barrack, the Hospital, Units 83F-690-69 and 83F-700-70 have not been rehabilitated to date.

May 17, 1989 - The EPA issued NPDES permit #ME0023248 to McKinley Partners. The permit expired on May 17, 1994.

June 2, 1994 – The Department issued Maine Waste Discharge License #W006931-5C-D-R for a ten-year term. The WDL authorized the discharge of up to 40,000 gpd (as a daily maximum) of secondary treated wastewater.

2. PERMIT SUMMARY (cont'd)

October 14, 2005 – The Department issued Maine Waste Discharge License (WDL) #W006931-5C-D-R jointly to McKinley Partners and the Diamond Cove Homeowners Association for a five-year term. WDL #W006931-5C-D-R authorized the year-round discharge of no more than 35,000 gpd (monthly average) of secondary-treated wastewater to Casco Bay. The change recognized that extreme precipitation and snowmelt events were creating violations of the 40,000-gpd daily maximum discharge limit.

September 15, 2009 – The Department issued combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0023248/WDL W006931-5C-F-R for a five-year term.

October 21, 2011 – The Department issued minor revision MEPDES permit #ME0023248/WDL W006931-5C-G-M, modifying a schedule of compliance date in Special Condition K, *Treatment System Repairs and Maintenance*, of the September 15, 2009, permit.

September 12, 2012 - The Department issued minor revision MEPDES permit #ME0023248/WDL W006931-5C-H-M, modifying a schedule of compliance date in Special Condition K, *Treatment System Repairs and Maintenance*, and language in Special Condition E, *Unauthorized Discharges*, of the September 15, 2009, permit.

September 2, 2014 – Diamond Cove Homeowners Association submitted a timely and complete application to the Department to renew the MEPDES permit/WDL last issued for renewal on September 15, 2009. The application was deemed complete for processing on the same date.

3. CONDITIONS OF PERMIT

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

4. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A., Section 469 classifies Casco Bay at the point of discharge as a Class SB waterway. Maine law, 38 M.R.S.A., Section 465-B(2) states Class SB waters shall be suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation and navigation and as habitat for fish and other estuarine and marine life. 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 without detrimental changes in the resident biological community.

5. RECEIVING WATER QUALITY CONDITIONS

The 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, places Western Casco Bay and the Islands from Cape Elizabeth to Falmouth (DMR Area 13) in a category entitled, *Category 4-A: Estuarine and Marine Waters with Impaired Use, TMDL Completed*. The 305b Report indicates 12,828 acres in Area 13 are being impacted by elevated levels of fecal coliform bacteria. The report indicates a total maximum daily load (TMDL) has been completed but there is insufficient new data to determine if attainment has been achieved as bacteria may impair either recreational uses (swimming) or shellfish consumption uses or both.

Given the permittee's excellent compliance record for fecal coliform bacteria, the Department is making the determination the discharge is not causing or contributing to the potential non-attainment of water quality standards.

The 2012 305b report also lists all estuarine and marine waters is in *Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants* as these waters capable of supporting American Lobster are listed in Category 5-D for shellfish consumption due to elevated levels of PCBs and other persistent, bio-accumulating substances such as mercury in tomalley.

Maine law 38 M.R.S.A., §420 and Department Rule, Chapter 519, *Interim Effluent Limitations and Controls For the Discharge of Mercury*, establishes controls of mercury to surface waters of the State and United States through interim effluent limitations and implementation of pollution prevention plans. 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:

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

"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..."

Maine law 38 M.R.S.A., §420 1-B,(B)(1) states that a facility is not in violation of the AWQC for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to Section 413, subsection 11. The Department is not aware of any information nor does the Department have reason to believe that the treated discharges from the permittee's facility contains mercury that causes or contributes to the impairment.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Best Practicable Treatment (BPT) - Overboard discharges may be permitted only where no technologically proven alternative exists. Overboard discharge treatment systems must be capable of meeting secondary treatment standards as described in 06-096 CMR Chapter 525, Section 3 and Chapter 596 section 9, unless the Department finds that alternate limits are appropriate. After accepting a renewal application as complete for processing, the Department shall approve an overboard waste discharge license only if all of the following criteria are met.

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

- (1) A publicly owned sewer line is not located on or abutting land owned or controlled by the applicant or is not available for the applicant's use.
- (2) A subsurface wastewater disposal system cannot be installed in compliance with the Subsurface Rules, 10-144 CMR 241, on land owned or controlled by the applicant. Or, a subsurface wastewater disposal system can be installed on land owned or controlled by the applicant and the applicant is eligible for grant funding pursuant to 38 M.R.S.A § 411-A, but no funding is available.
- (3) The discharge is not located within the boundaries of a sanitary or sewer district and the district has not agreed to service and maintain a holding tank at an annual fee that does not exceed those fees charged to other similar users of the district's services who are physically connected to the sewers of the district.

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

- (4) For a school, the volume or quantity of waste water that is discharged does not exceed;
 - (a) the limit imposed by the previous license.
 - (b) the actual or estimated flow at the time of current application if a license volume increase is necessary.
- (5) The receiving water is not:
 - (a) A Class GPA, AA, A, or SA water;
 - (b) A tributary to Class GPA water; or
 - (c) A waterbody with a drainage area of less than 10 square miles, unless it is demonstrated to the Department's satisfaction that no alternative to the discharge exists.
- (6) The discharge meets the requirements of *Maine's Pollution Control Laws* 38 M.R.S.A. §414-A, and *Maine's Water Classification Laws* 38 M.R.S.A. §§ 464 to 469.
- (7) The discharge receives best practicable treatment consistent with requirements in Section 9 of Department rule Chapter 596.

The permittee has documented that the existing treatment constitutes BPT. A Licensed Site Evaluator/P.E. had previously determined that there is not a subsurface option for Phase I development because of insufficient area to install subsurface systems to serve the entire facility. Because the Barracks and Hospital had changed hands in 2007, an additional site evaluation was conducted in 2008 and 2009 to look at alternatives to connection to the OBD. The Inn's LSE /PE determined that there is a subsurface option for the Hospital, but not for the Barracks. The LSE/PE also evaluated whether there were sufficient areas of suitable soil to site a subsurface wastewater disposal system proximate to the Hospital or existing treatment works.

The area proximate to the Hospital contains a suitable area for the treatment of less than 2,000 gpd of wastewater; less than half that required to serve the development of the Barracks. The area proximate to the treatment facility lacked any suitable soils. Therefore, pursuant to Maine law, 38 M.R.S.A. §413.3 the Barracks may continue to use the OBD after redevelopment, provided the discharge does not cause or contribute to exceedences of the 35,000 gpd (monthly average) discharge volume limit. The treatment works lacks sufficient capacity for wastewater from the future development of both the Barracks and the Hospital, collectively. Therefore, the discharge from the redevelopment of the Barracks is being permitted for another five-year term.

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

- b. Flow: The previous permitting action established a monthly average discharge flow limitation of 35,000 gallons per day (gpd) based on the design flow for the treatment system and established a continuous monitoring frequency on a year-round basis. A review of the monthly average discharge flow data as reported on the Discharge Monitoring Reports (DMRs) submitted to the Department for the period January 2011 – September 2014 indicates the following;

Flow (DMRs = 45)

Value	Limit (gpd)	Range (gpd)	Mean (gpd)
Monthly average	35,000	2,572 – 18,740	10,190
Daily maximum	Report	3,647 – 81,440	33,960

This permitting action is carrying forward the monthly average discharge flow limit of 35,000 gpd and the year-round requirement to continuously monitor the flow.

- b. Dilution Factors - 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, §D(3)(b) 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 or CORMIX. Using plan and profile information provided by the permittee and an average of both MERGE and CORMIX model runs, the Department has determined the dilution factors for the discharge of 0.035 MGD from the wastewater treatment facility to be as follows:

Acute = 87:1

Chronic = 1,276:1

Harmonic mean ⁽¹⁾ = 3,828:1

Footnote:

- (1) 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 USEPA publication *"Technical Support Document for Water Quality-Based Toxics Control"* (Office of Water; EPA/505/2-90-001, page 88.

- c. Biochemical Oxygen Demand (BOD₅) and Total Suspended Solids (TSS): The previous permitting action established technology based monthly average, weekly average and daily maximum BOD₅ and TSS concentration limits of 30 mg/L, 45 mg/L and 50 mg/L, respectively. The monthly average and weekly average concentration limits are based on secondary treatment requirements as defined in Department rule, 06-096 CMR Chapter 525(3)(III) and the daily maximum concentration limit of 50 mg/L is based on a best professional judgment by the Department of best practicable treatment (BPT). This permitting action is carrying forward all three technology-based concentration limits.

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

The previous permitting action established mass limitations for BOD₅ and TSS pursuant to Department rule Chapter 523, *Waste Discharge License Conditions*, Section 6, *Calculating NPDES permit conditions*, sub-section f(1) states that, "all pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass...." Therefore, this permitting action is carrying forward the monthly average, weekly average and daily maximum BOD₅ and TSS mass limitations based on calculations using the design flow for the facility of 35,000 gpd (0.035 MGD) and the applicable concentration limits as follows:

Monthly Average Limit: $(30 \text{ mg/L})(8.34 \text{ lbs./gallon})(0.035 \text{ MGD}) = 9 \text{ lbs/day}$

Weekly Average Limit: $(45 \text{ mg/L})(8.34 \text{ lbs./day})(0.035 \text{ MGD}) = 13 \text{ lbs/day}$

Daily Maximum Limit: $(50 \text{ mg/L})(8.34 \text{ lbs./day})(0.035 \text{ MGD}) = 15 \text{ lbs/day}$

This permitting action is establishing a requirement for 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.

For BOD₅, a review of the monthly average effluent concentration data as reported on the DMRs submitted to the Department for the period January 2011 – September 2014 indicates the values have been reported as follows:

BOD concentration (DMRs = 45)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	<1 - 13	1.1
Daily Maximum	50	<1 - 13	1.1

TSS concentration(DMRs = 45)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	<1 - 8	1.6
Daily Maximum	50	<1 - 8	1.6

BOD Mass(DMRs = 45)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	9	0.02 - 0.8	0.2
Daily Maximum	15	0.02 - 0.8	0.2

TSS Mass(DMRs = 45)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	9	0.02 - 0.9	0.3
Daily Maximum	15	0.02 - 0.9	0.3

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

- d. Settleable Solids: The previous permitting action established a Department BPT based daily maximum concentration limit of 0.3 ml/L. This permit is reducing the monitoring frequency for settleable solids from 1/Month to 1/Year as test results submitted to date indicate settleable solids have never been detected in the effluent.
- e. Fecal coliform bacteria: The previous permit established seasonal (May 15 – September 30) monthly average and daily maximum fecal coliform bacteria limits of 15 colonies/100 mL and 50 colonies/100 mL, respectively, based on the Water Classification Program criteria for the Class SB waterways and are consistent with the National Shellfish Sanitation Program.

A review of the monthly average and daily maximum data as reported on the DMRs submitted to the Department for the period May 2011 – September 2014 indicates the monthly (geometric mean) and daily maximum fecal coliform bacteria discharged as follows:

Fecal coliform bacteria (DMRs=20)

Value	Limit (col/100 ml)	Range (col/100 ml)	Mean (col/100 ml)
Monthly Average	15	<1 - 150	8
Daily Maximum	50	<1 - 592	30

- f. Total Residual Chlorine (TRC): The previous permitting action established a BPT based concentration limit of 1.0 mg/L for TRC with a monitoring frequency of 5/Week that are being carried forward in this permitting action. 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(b) 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	87:1 (A) 1276:1 (C)	1.1 mg/L	9.7 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

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

permitting action is carrying forward a daily maximum technology based concentration limit of 1.0 mg/L from the previous permitting action that is applicable on a year-round basis as chlorine is toxic year-round and not seasonally.

A review of the daily maximum data as reported on the DMRs submitted to the Department for the period May 2011 – September 2014 indicates the maximum TRC discharged has been as follows;

Total residual chlorine (DMRs=25)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Daily Maximum	1.0	0.49 – 0.93	0.80

- g. pH: The previous permitting action established a technology based pH range limit of 6.0 – 9.0 standard units (SU), pursuant to Department rule found at 06-096 CMR Chapter 525(3)(III)(c). The permit established a monitoring frequency of 1/Week. A review of the monthly DMR data for the period December 2011 – June 2014 indicates the following:

pH (DMRs = 45)

Value	Limit (su)	Minimum (su)	Maximum (su)
Range	6.0 – 9.0	6.0	7.4

- h. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing: Maine law, 38 M.R.S.A., §414-A and §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. Department rule, 06-096 CMR Chapter 530, *Surface Water Toxics Control Program* (toxics rule) 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. Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, sets forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

Chapter 530 Section (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 exceedences of narrative or numerical water quality criteria.”

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

Chapter 530 Section 2.A specifies the criteria for 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 Chapter 530 requirements as it permitted to discharge less than 50,000 gpd, the chronic dilution factor is greater than 50:1 and the waste water has domestic-like characteristics. 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 I, *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 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 data results with an arithmetic mean of 14.3 mg/L collected on effluent from five municipally-owned treatment works and one industrial facility that discharge to Casco Bay. 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.

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

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 present in the vicinity of the permittees outfall pipe and along the shores of Great Diamond Island.

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. The permittee's facility has a chronic near field dilution factor of 1,276:1. 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 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. With open ocean discharges, far field dilutions would tend to be 1,000 – 10,000 times higher. The discharge from the permittee's facility is considered an embayment setting as it discharges to Casco Bay thus, the far field dilution would likely be on 100 times higher. Using the most protective far field dilution multiplier of 100 times, the near field dilution factor results in the far-field dilution factor of 127,600:1. 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 = 127,600:1

In-stream concentration after dilution: $\frac{14.3 \text{ mg/L}}{127,600} = 0.0001 \text{ mg/L}$

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 0.29 mg/l based on ambient data collected in Casco Bay. As a result, after reasonable opportunity for far field mixing, the increase in the concentration of total nitrogen in the receiving water due to the discharge from the permittee's facility will not be measureable thus, the instream concentration of total nitrogen will remain at 0.29 mg/L. This concentration is lower than the Department's and EPA's best professional judgment of a critical threshold of 0.32 mg/L to protect 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.

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

In order to obtain more accurate effluent total nitrogen data for the permittee's facility to assess the potential impact (or lack thereof) of the discharge, the Department will be requesting in writing, that the permittee conduct effluent monitoring (outside of this permit) for nitrate, nitrite, and total kjeldahl nitrogen at a frequency of once per month from May 1st through October 31st during calendar year 2015. Once the testing is completed, the Department will again evaluate the discharge's reasonable potential exceed applicable water quality standards, the necessity to establish water quality based limits and the appropriate monitoring requirements for the remainder of the term of the permit.

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 will be made in the Portland Press Herald newspaper on or about November 26, 2014. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

9. DEPARTMENT CONTACTS

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

Gregg Wood
Division of Water Quality Management
Bureau of Land & Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone: (207) 287-7693
e-mail: gregg.wood@maine.gov

10. RESPONSE TO COMMENTS

Beginning on December 22, 2014, the Department solicited comments on the proposed draft permit/license to be issued for the discharge from the permittee's facility. The Department received written comments from the permittee's legal counsel in an electronic mail message dated January 7, 2015, and Friends of Casco Bay/Casco Baykeeper (FOCB) in a letter dated January 20, 2015. The Department has prepared a Response to Comments as follows:

Comment #1: Both parties indicate the draft permit has references to the classification of Casco Bay at the point of discharge as being both Class SB and SC. FOCB states the classification is Class SB pursuant to Maine law 38 M.R.S.A. §469(1) and §469(1)(E)(2) and the permittee requests confirmation of the classification of the waterbody.

Response #1: The FOCB are correct in that Maine law, 38 M.R.S.A. §469(1) and §469(1)(E)(2) classify the waterbody as Class SB. Maine law, 38 M.R.S.A. §469(1) states "All estuarine and marine waters lying within the boundaries of Cumberland County and that are not otherwise classified are Class B waters." Maine law, 38 M.R.S.A. §469(1)(E)(2) states "Tidal waters of the City of Portland lying northwesterly of a line beginning at Spring Point Light in South Portland to the easternmost point of Fort Gorges Island, then running northerly to the southernmost point of Mackworth Island – Class SC." See the annotated map included as Attachment A of this Fact Sheet. As a result, Section 4, Receiving Water Quality Standards of this Fact Sheet has been reworded to clarify that the waterbody at the point of discharge from the permittee's facility is classified as a Class SB waterbody.

Comment #2: The FOCB state that elimination of Special Conditions in the permit will likely result in Casco Bay not being able to meet its designated Class SB water quality standards and the elimination of Special Condition C, *Disinfection*, of the previous permit sets a precedent for all overboard discharges to be granted the same exemption and risks conflict with recreational and harvesting activity in the region.

Response #2: Special Condition C, *Disinfection*, of the previous permit is as follows:

"An approved chlorine contact tank providing the proper detention time consistent with good engineering practice must be utilized, followed by a dechlorination system if the total residual chlorine (TRC) cannot be met by dissipation in the detention tank. At no time may the TRC in the effluent shall cause any demonstrable harm to aquatic life in the receiving waters. The dose of chlorine applied shall be sufficient to leave a TRC concentration that will effectively reduce bacteria to levels below those specified in Special Condition A, *"Effluent Limitations and Monitoring Requirements."*

10. RESPONSE TO COMMENTS (cont'd)

Eliminating Special Condition C from the previous permit does not exempt the permittee from meeting ambient water quality standards, more specifically, seasonal numeric fecal coliform bacteria limitations. The permit requires the permittee to limit monthly average and daily maximum fecal coliform bacteria counts to 15 colonies/100 ml and 50 colonies/100 ml respectively. As section 6(e) of the Fact Sheet states, these limits are consistent with the National Shellfish Sanitation Program. These limitations are end of pipe limitations and do not take into consideration dilution associated with the discharge mixing with the receiving water. If dilution is considered, the increase in the near field ambient fecal coliform bacteria counts would be less than 1 colony/100 ml/L. As a result, the discharge will not cause or contribute to the failure of the receiving water to meet the assigned classification standards provided the permittee maintains compliance with the terms and conditions of the permit as drafted.

Comment #3: The FOCB would like the Department to reconsider the cumulative impact of nitrogen releases into Casco Bay.

Response #3: Section 6(j) of this Fact Sheet contains a discussion on the cumulative total nitrogen loading to Casco Bay. The Department has over 50 total nitrogen data results collected on effluent from five municipally owned and one industrial waste water treatment facility that discharge to Casco Bay and the Department has calculated a mean ambient total nitrogen concentration of 0.29 mg/L. The ambient data reflects the cumulative impact from all discharges to Casco Bay, including non-point sources. The increase in the ambient total nitrogen due to the discharge from the permittee's facility is 0.0001 mg/L which is not measurable. The ambient concentration of 0.29 mg/L is less than both the 0.32 mg/L critical threshold to protect eelgrass and the 0.45 mg/L critical threshold to protect aquatic life. As a result, the discharge will not cause or contribute to the failure of the receiving water to meet the assigned classification standards.

Comment #4: The permittee states the requirement for weekly testing for fecal coliform is significantly greater than other facilities of similar size and requests the Department reduce the frequency to be consistent with other facilities of similar size.

Response #4: The Department has reviewed the monitoring frequency for bacteria testing in the MEPDES permits for overboard discharges with flow limitations of 20,000 gpd and higher. After reviewing ten permits, five of the permits had a monitoring frequency of 2/Month and five had a monitoring frequency of 1/Week. There are no rules or regulations pertaining to the establishment of monitoring frequencies for any parameter limited in MEPDES permits. The Department does have guidance established in 1992 that was used to establish monitoring frequencies for BOD, TSS, bacteria, settleable solids and pH on a case-by-case basis in National Pollutant Discharge Elimination System (NPDES) permits issued by the USEPA prior to delegation of the MEPDES program to Maine in calendar year 2001. The 1992 guidance recommended a bacteria monitoring frequency of 2/Month for facilities with a flow limitation from 1 gpd – 100,000 gpd and 1/Week for facilities with a flow

10. RESPONSE TO COMMENTS (cont'd)

limitation of 100,000 gpd – 500,000 gpd. Department files indicate a 1/Week monitoring frequency was originally established in a 1987 draft NPDES permit after extensive debate between the Department, EPA and non-governmental organizations regarding which discharges were responsible for non-attainment of bacteria standards in Casco Bay at that time. The 1/Week monitoring frequency was deemed to be appropriate at that time and has been carried forward in both state and federal permitting actions since 1987.

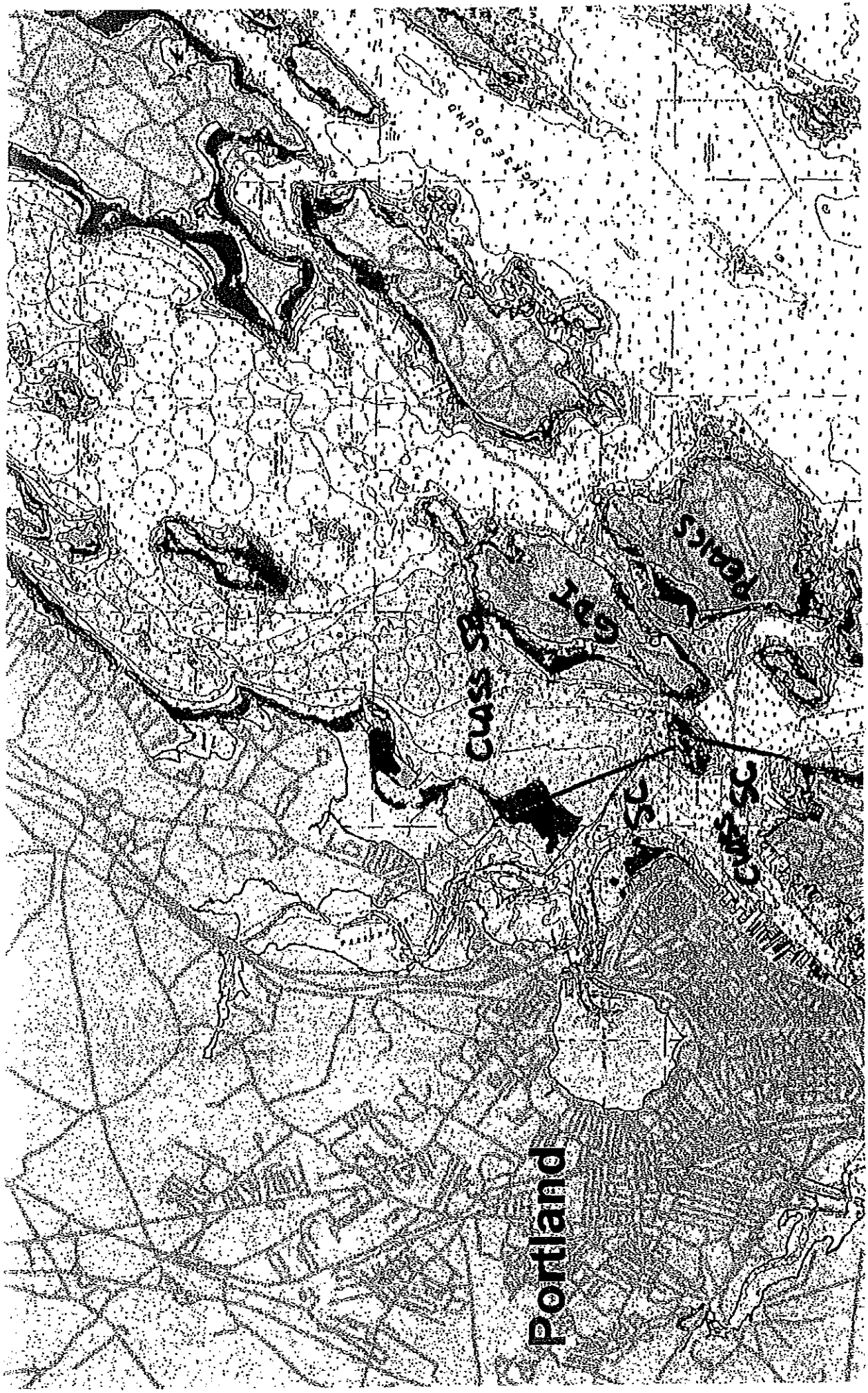
To address the permittee's request, the Department has considered a guidance document published by the EPA entitled, *Interim Guidance for Performance Based Reductions of NPDES Permit Monitoring Frequencies* (USEPA Guidance April 1996). In addition, the Department has supplemented the EPA guidance with its own guidance entitled, *Performance Based Reduction of Monitoring Frequencies - Modification of EPA Guidance Released April 1996* (Maine DEP May 22, 2014). Both documents are being utilized to evaluate the compliance history for fecal coliform bacteria to determine if a reduction in the monitoring frequency is justified.

Although EPA's 1996 Guidance recommends evaluation of the most current two-years of effluent data for a parameter, the Department is considering 20 seasonal months of data (May 2011 – September 2014). A review of the monitoring data for fecal coliform bacteria indicates the ratios (expressed in percent) of the long term effluent average (8 colonies/100 ml) to the monthly average limit (15 colonies/100 ml) can be calculated as 53%. According to Table I of the EPA Guidance, a 1/Week monitoring requirement may not be reduced. Therefore, this permitting action is carrying forward the monitoring frequency of 1/Week for fecal coliform bacteria.

Comment #5: The permittee is questioning the date on which the application was received and accepted for processing by the Department. The preliminary draft MEPDES permit issued for comment on November 28, 2014, indicated the application was received and accepted for processing on September 2, 2014. The proposed draft MEPDES permit issued for a formal 30-day public comment period on December 22, 2014, indicated the application was received and accepted for processing on November 26, 2014. The permittee believes that the September 2, 2014, date is the appropriate date.

Response #5: The Department did receive and accept for processing an application submitted by the permittee on September 2, 2014. The Department notified the permittee that it had failed to notify the abutting landowners and publish a public notice in the newspaper as required by Department rule 06-096 CMR Chapter 2. On December 2, 2014, the Department received additional information from the permittee confirming that the abutting landowners were notified by certified mail on November 25, 2014 and public notice of the application was published in the Portland Press Herald on November 26, 2014.

The November 26, 2014, date in the proposed draft MEPDES permit was incorrect. The date the application was received and accepted for processing was September 2, 2014. The final permit has been revised accordingly.



Portland



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.
