



STATE OF MAINE  
Department of Environmental Protection

JOHN ELIAS BALDACCI  
GOVERNOR

BETH NAGUSKY  
ACTING COMMISSIONER

November 30, 2010

Mr. Gary L. Eckmann  
Treasurer, Crescent Beach Association  
100 Wintergreen Court  
Hampden, ME. 04444

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit ME0036781  
Maine Waste Discharge License (WDL) Application W004110-5B-C-R  
**Final Permit**

Dear Mr. Eckmann:

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

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "G. Wood".

Gregg Wood  
Department of Environmental Protection  
Bureau of Land and Water Quality  
Division of Water Quality Management

Enc.

cc: William Johnson, DEP/CMRO  
Sandy Mojica, USEPA



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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

CRESCENT BEACH ASSOCIATION	)	MAINE POLLUTANT DISCHARGE
OVERBOARD DISCHARGE	)	ELIMINATION SYSTEM PERMIT
OWLS HEAD, KNOX COUNTY	)	AND
ME0036781	)	WASTE DISCHARGE LICENSE
W004110-5B-C-R	)	<b>RENEWAL</b>
<b>APPROVAL</b>	)	

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, §1251, *et seq.*, and Maine law, 38 M.R.S.A., §414-A *et seq.*, and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of the CRESCENT BEACH 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 filed a timely and complete application to the Department to renew combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0036781/ Maine Waste Discharge License (WDL) #W004110-5B-B-R (permit hereinafter), which was issued on November 29, 2005 and is due to expire on November 29, 2010. The permit authorized the daily maximum, year-round discharge of up to 2,700 gallons per day (GPD) of secondary treated sanitary wastewater from a ten-unit condominium complex to the Atlantic Ocean at Fisherman Island Passage, Class SB, in Owls Head, Maine.

**PERMIT SUMMARY**

This permitting action is carrying forward all the terms and conditions of 11/28/05 permitting action.

## CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated October 21 2010, 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) The standards of classification of the receiving water body are met or, 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 could not be installed in compliance with the Maine Subsurface Waste Water Disposal Rules at the time the renewal application was accepted by the Department.
7. A publicly owned sewer line is not located on or abutting land owned or controlled by the permittee or is not available for the permittee's use.
8. The discharge is not located within the boundaries of a sanitary district or sewer district.

**ACTION**

THEREFORE, the Department APPROVES the above noted application of the CRESCENT BEACH ASSOCIATION to discharge a monthly average flow of up to 2,700 gallons per day of secondary treated sanitary wastewater to the Atlantic Ocean at Owls Head, Class SB, in Owls Head, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits," revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit becomes effective upon signature and expires at midnight five (5) years thereafter.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

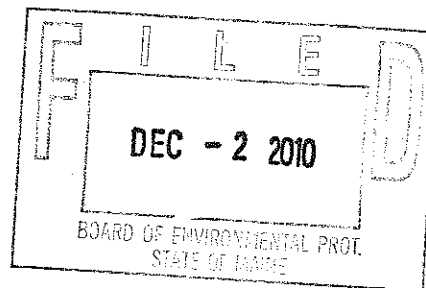
DONE AND DATED AT AUGUSTA, MAINE, THIS 30<sup>th</sup> DAY OF November, 2010.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: [Signature]  
Beth Nagusky, Acting Commissioner

Date of initial receipt of application: October 18, 2010

Date of application acceptance: October 20, 2010



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

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

- Beginning the effective date of this permit, the permittee is authorized to discharge secondary treated sanitary wastewater from Outfall #001A to the Atlantic Ocean at Owls Head. Such discharges shall be limited and monitored by the permittee as specified below<sup>(1)</sup>.  
**Minimum**

Effluent Characteristic	Discharge Limitations					Monitoring Requirements		
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]	as specified 2,700 GPD [07]	as specified --	as specified --	as specified --	as specified --	as specified --	as specified Quarterly <sup>(2)</sup> [01/90]	as specified Metered [MT]
BOD <sub>5</sub> <sup>(3)</sup> [00310]	0.7 lbs./day [26]	1.0 lbs./day [26]	1.1 lbs./day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	Quarterly <sup>(2)</sup> [01/90]	Grab [GR]
BOD <sub>5</sub> Percent Removal <sup>(3)</sup> [81010]	---	---	---	85% [23]	---	---	---	Calculate [CA]
TSS <sup>(3)</sup> [00530]	0.7 lbs./day [26]	1.0 lbs./day [26]	1.1 lbs./day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	Quarterly <sup>(2)</sup> [01/90]	Grab [GR]
TSS Percent Removal <sup>(3)</sup> [81010]	---	---	---	85% [23]	---	---	---	Calculate [CA]
Settleable Solids [00545]	---	---	---	---	---	0.3 ml/L [25]	Quarterly <sup>(2)</sup> [01/90]	Grab [GR]
Fecal Coliform Bacteria <sup>(4)</sup> [31616] May 15-Sept. 30	---	---	---	15/100 ml <sup>(5)</sup> [13]	---	50/100 ml [13]	1/Month <sup>(6)</sup> [01/30]	Grab [GR]
Total Residual Chlorine [50060]	---	---	---	---	---	1.0 mg/L [19]	1/Month <sup>(7)</sup> [01/30]	Grab [GR]
pH [00400]	---	---	---	---	---	6.0 - 9.0 SU [12]	Quarterly <sup>(2)</sup> [01/90]	Grab [GR]

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

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

## SPECIAL CONDITIONS

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

#### FOOTNOTES:

1. **Monitoring** – Effluent monitoring shall be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. **Effluent monitoring shall be conducted at the secondary effluent chamber following the chlorination unit.**, or other location specified by the Department. Any change in sampling location must be approved by the Department in writing.

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 sent to another POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 or laboratory facilities that analyze compliance samples in-house 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).

All analytical test results shall be reported to the Department including results which are detected below the respective reporting limits (RLs) specified by the Department or as specified by other approved test methods. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the detection limit achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL is not acceptable and will be rejected by the Department. For mass, if the analytical result is reported as <Y or if a detectable result is less than a RL, report a <X lbs/day, where X is the parameter specific limitation established in the permit.

2. **Quarterly Monitoring** – Quarterly monitoring is required for all parameters (except bacteria) during the months of **March, June, September and December**. The permittee shall also conduct effluent monitoring during the months of **July and August**. For the purposes of Discharge Monitoring Report (DMR) reporting during months when effluent monitoring is not required, enter "**NODI-9**" indicating "**monitoring not required this monitoring period.**"
3. **Percent Removal** – The treatment facility shall maintain a minimum of 85 percent removal of both biochemical oxygen demand and total suspended solids for all flows receiving secondary treatment. The percent removal shall be calculated based on influent and effluent concentration values. The percent removal shall be calculated based on assumed BOD<sub>5</sub> and TSS influent values of 300 mg/L and actual effluent concentration values.
4. **Bacteria Limits** – Fecal coliform bacteria limits and monitoring requirements are seasonal and apply between May 15 and September 30 of each year. The Department reserves the right to require year-round disinfection to protect the health, safety and welfare of the public.

## SPECIAL CONDITIONS

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

#### FOOTNOTES:

5. **Bacteria Reporting** – The monthly average fecal coliform bacteria limitation is a geometric mean limitation and sample results shall be reported as such.
6. **Bacteria Monitoring Period** – Monthly monitoring for fecal coliform bacteria is required during the months of **May, June, July, August and September** only.
7. **TRC Monitoring** – Monthly monitoring for total residual chlorine is required during the months of **May, June, July, August and September** only, or any time when elemental chlorine or chlorine-based compounds are in use for effluent disinfection. For instances when a facility has not disinfected with chlorine-based compounds for an entire reporting period, the facility shall report **“NODI-9” for this parameter on the monthly DMR.**

### B. ANNUAL DISCHARGE FEES

Pursuant to Maine law, 38 M.R.S.A. §353-B, the permittee is required to pay an applicable annual fee for discharges authorized by this permit. Failure to pay an annual fee within 30 days of the anniversary date of a license/permit is sufficient grounds for revocation of the license, permit or privilege under Maine law, 38 M.R.S.A. §341-D, subsection 3.

### C. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time which would impair the usages designated by 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 by 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 by the classification of the receiving waters.
4. Notwithstanding specific conditions of this permit the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

## SPECIAL CONDITIONS

### D. AUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on October 20, 2010; 2) the terms and conditions of this permit; and 3) only from Outfall #001. Discharges of waste water from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5)(*Bypass*) of this permit.

### E. NOTIFICATION REQUIREMENT

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

1. Any substantial change 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

The Department may not grant approval for a **permit transfer** if a 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.



## SPECIAL CONDITIONS

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

The permittee shall maintain a current written comprehensive Operation & Maintenance (O&M) Plan. The plan shall provide a systematic approach by which the permittee shall, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. The plan shall also provide a systematic approach by which the permittee shall, during periods of wet weather events, ensure proper operation and maintenance of the treatment system.

**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 USEPA personnel upon request.

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

### H. MONITORING AND REPORTING

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

Department of Environmental Protection  
Central Maine Regional Office  
Bureau of Land and Water Quality  
Division of Water Quality Management  
17 State House Station  
Augusta, Maine 04333

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

**SPECIAL CONDITIONS**

**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.

**J. SEVERABILITY**

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

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

**FACT SHEET**

Date: **October 21, 2010**

MEPDES PERMIT: **ME0036781**  
WASTE DISCHARGE LICENSE: **W004110-5B-C-R**

NAME AND ADDRESS OF APPLICANT:

**CRESCENT BEACH ASSOCIATION  
Attn: Mr. Gary Eckmann, Treasurer  
103 Wintergreen Court  
Hampden, Maine 04444**

COUNTY: **Knox County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**CRESCENT BEACH ASSOCIATION  
Bellevue Street  
Owls Head, ME. 04854**

RECEIVING WATER / CLASSIFICATION: **Crescent Beach / Class SB  
(Atlantic Ocean at Owls Head)**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER:

**Mr. Gary Eckmann, Treasurer  
(207) 862-2798  
e-mail: [glencd@midmaine.com](mailto:glencd@midmaine.com)**

**1. APPLICATION SUMMARY**

- a. Application: The Crescent Beach Association (permittee hereinafter) has filed a timely and complete application to the Department to renew combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0036781/ Maine Waste Discharge License (WDL) #W004110-5B-B-R (permit hereinafter), which was issued on November 29, 2005 and is due to expire on November 29, 2010. The permit authorized the daily maximum, year-round discharge of up to 2,700 gallons per day (GPD) of secondary treated sanitary wastewater from a ten-unit condominium complex to the Atlantic Ocean at Fisherman Island Passage, Class SB, in Owls Head, Maine.

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

- b. Source Description: The Crescent Beach Association consists of a ten-unit condominium complex and two single-family dwellings. Each of the ten condo units contain two units (20 total bedrooms) and are located on a parcel of land referred to as Lot # 6 of local tax map #7. The two single-family dwellings contain a total of 3 bedrooms each and are located on separate parcels referred to as Lots 2 and 4 on tax map #7. All three parcels are located on Bellevue Avenue in Owls Head. The Crescent Beach Association owns and operates the sanitary wastewater collection and treatment system on Lot #6. All wastewater generated by these residential properties is conveyed to the treatment system to receive a secondary level of treatment. There are no industrial or commercial users connected to the Crescent Beach Association's collection and treatment systems.

The residences and treatment system are occupied intermittently and seasonally such that little to no wastewater flows are conveyed to the treatment system between October and April of each year. Therefore, effluent monitoring is not required between October 1 and April 30 of each year. The Department reserves the right to reopen this permit in accordance with Special Condition N to require year-round effluent monitoring if determined to be necessary.

A map showing the location of the Crescent Beach Association properties and the approximately location of the outfall (#001A) associated with the wastewater treatment system is included as Fact Sheet **Attachment A**.

- c. Waste Water Treatment: Crescent Beach Association provides a secondary level of wastewater treatment via a sand filtration system which was installed in 1959. Raw wastewater is conveyed by gravity to a 3,000-gallon septic tank for primary settling of solids. The permittee indicated the septic tank is pumped once every three years to prevent excessive solids accumulation. Septic tank supernatant flows to an adjacent tank (primary effluent chamber) and is then pumped via a 2-inch diameter polyvinyl chloride (PVC) force main to an outlet distribution box and four (4) 4-inch diameter PVC distribution pipes. Wastewater is distributed to a 32-foot wide by 40-foot long (1,280 square foot) sand filter bed, which is designed to provide a secondary level of treatment through biological decomposition and physical filtration. Wastewater flows down through the filter media and is collected in a 4-inch diameter, perforated PVC collection pipe. Filtered wastewater is conveyed to a chamber containing a wastewater disinfection tablet feed system for seasonal (May through September) disinfection using chlorine tablets. Final effluent flows to a secondary effluent chamber from which effluent samples shall be collected for compliance demonstration purposes.

Final effluent is conveyed for discharge to the Atlantic Ocean at Owls Head via a 4-inch diameter outfall pipe that extends out into the receiving water approximately 300 feet to a depth of approximately 3 feet below the water surface at mean low water.

A schematic of the wastewater treatment process is included as Fact Sheet **Attachment B**.

## 2. PERMIT SUMMARY

- a. Terms and conditions: - This permitting action is carrying forward all the terms and conditions of 11/28/05 permitting action.
- b. Facility History: This section provides a summary of significant licensing/permitting actions that have been completed for the Crescent Beach Association.

*September 18, 1990* – The Department issued WDL #W004110-40-A-R to the Crescent Beach Association for the daily maximum discharge of up to 2,700 GPD of secondary treated sanitary wastewater to tidewaters of Owls Head. It is noted that the previous license referred to the receiving water as Fisherman Island Passage, which is an area of the Atlantic Ocean at Owls Head. The 9/18/90 WDL superseded WDL #4110 issued on October 19, 1982.

*July 8, 1997* – The Crescent Beach Association submitted a General Application for renewal of WDL #W004110-40-A-R. The application was accepted for processing on July 8, 1997, and assigned WDL #W004110-5B-B-R / MEPDES permit #ME0036781.

*April 2, 2004* – The permittee submitted a letter, as addendum to their renewal application, from Charles B. Dolham, P.E. Soil Testing & Septic Design, dated March 26, 2004, which states that an evaluation of the property indicates that there is insufficient space for the installation of a subsurface wastewater disposal system on the site.

*November 29, 2005* – The Department issued WDL #W004110-5B-B-R for a five-year term to the Crescent Beach Association for the daily maximum discharge of up to 2,700 GPD of secondary treated sanitary waste water to tide waters of Owls Head

*October 18, 2010* – The permittee submitted a timely and complete application to the Department to renew the 11/28/05 MEPDES permit.

## 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., §420 and Department rule 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, require the regulation of toxic substances not to exceed levels set forth in Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

#### 4. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A. §469 classifies all estuarine and marine waters lying within the boundaries of the State and which are not otherwise classified, which includes the Atlantic Ocean at the point of discharge in Owls Head, as Class SB waters. Maine law, 38 M.R.S.A. §465-B(2) describes the standards for Class SB waters. The standards for Class SB waters are as follows;

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

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

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

#### 5. RECEIVING WATER QUALITY CONDITIONS

*The State of Maine 2008 Integrated Water Quality Monitoring and Assessment Report, prepared pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists Owls Head (Waterbody # 722-9, Area #C-29-A) as, "Category 2: Estuarine and Marine Waters Attaining Some Designated Uses – Insufficient Information for Other Uses." "Insufficient information for other uses" in this context refers to the designated use of shellfish harvesting.*

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

## 5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

Program) or maintains shellfish harvesting closure areas due to lack of updated information regarding ambient water quality conditions. In addition, the DMR prohibits shellfish harvesting in the immediate vicinity of all wastewater treatment outfall pipes as a precautionary measure in the event of a failure in the treatment plant's disinfection system. Thus, shellfish harvesting area #C29-A is closed to the harvesting of shellfish due to insufficient or limited ambient water quality data to determine that the area meets the standards in the National Shellfish Sanitation Program. The shellfish closure area is identified on the map included as Fact Sheet **Attachment A**. The Department is making the determination that compliance with the fecal coliform bacteria and other secondary wastewater treatment limits established in this permitting action ensure that the discharge of secondary treated wastewater from the Crescent Beach Association will not cause or contribute to the failure of the receiving waters to meet the standards of its designated classification.

The 2008 305(b) report also lists all estuarine and marine waters in a category entitled, *Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants*. The waters are listed as partially supporting fishing (shellfish consumption) due to elevated levels of PCBs and other persistent, bioaccumulating substances in lobster tomally. Department rule Chapter 519, *Interim Effluent Limitations and Controls for the Discharge of Mercury*, establishes controls on the discharge of mercury to the surface waters of the State through interim effluent limits and implementation of pollution prevention plans. However, Section 1(A)(1) of the Chapter 519 rule states in part:

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

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

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. 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.
  - (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.

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

- (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.
- (4) For a school such as the permittee's facility, 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 discharge from the permittee's facility meets all the aforementioned criteria as a licensed site evaluator has determined (letter dated September 17, 2010) that there are no viable alternatives to the overboard discharge system. Therefore, the discharge 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 2,700 gallons per day (GPD) (equivalent to 0.0027 million gallons per day, MGD) based on a hydraulic sand filter loading rate of 2 gallons per day per square foot filter area. Discharge flow limitations and monitoring requirements are in effect on a year-round basis; however, compliance monitoring is required quarterly during the months of **March, June, September and December**. The permittee shall also conduct effluent monitoring during the months of **July and August** when sanitary flows to the system are expected to be highest.

A review of the monthly Discharge Monitoring Report (DMR) data for the period June 2006-March 2010 indicates the permittee has been in compliance with said limits 100% of the time as values have been reported as follows:

**Flow (DMRs=16)**

Value	Limit (gpd)	Range (gpd)	Mean (gpd)
Monthly Average	2,700	42 – 1,071	308

- c. Dilution Factors: Department rule, 06-096 CMR Chapter 530(4)(A)(2)(a), *Surface Water Toxics Control Program*, states that, "For discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model." Based on the configuration of the outfall structure and a discharge flow limit of 2,700 gpd, dilution factors associated with the discharge have been estimated by the Department to be as follows:

Acute: 662:1      Chronic: 3,014:1      Harmonic Mean: 9,042:1

- d. Biochemical Oxygen Demand (BOD<sub>5</sub>) and Total Suspended Solids (TSS): The previous permitting action established monthly average and weekly average concentration limits of 30 mg/L and 45 mg/L, respectively, for BOD and TSS, which are based on secondary treatment requirements of Department rule, 06-096 CMR Chapter 525(3)(III). The previous permitting action also established a daily maximum BOD<sub>5</sub> and TSS concentration limits of 50 mg/L based on a Department best professional judgment (BPJ) of best practicable treatment (BPT). This permitting action is carrying forward all three concentration limits for BOD<sub>5</sub> and TSS respectively.

Department rule 06-096 CMR Chapter 523 Section 6.f. states that all pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass. With a monthly average discharge flow limit of 2,700 GPD (0.0027 million gallons per day, MGD), this permitting action is carrying forward monthly average, weekly average and daily maximum technology-based mass limits for BOD<sub>5</sub> and TSS, which were derived as follows:

Monthly Average Mass Limit: (30 mg/L)(8.34 lbs./gallon)(0.0027 MGD) = 0.7 lbs./day  
 Weekly Average Mass Limit: (45 mg/L)(8.34 lbs./day)( 0.0027 MGD) = 1.0 lbs./day  
 Daily Maximum Mass Limit: (50 mg/L)(8.34 lbs./day)( 0.0027 MGD) = 1.1 lbs./day

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

A review of the monthly Discharge Monitoring Report (DMR) data for the period June 2006 – March 2010 indicates the permittee has been in compliance with said limit(s) as values have been reported as follows:

**BOD Mass (DMRs=16)**

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	0.7	0.00077 – 0.0197	0.007
Weekly Average	1.0	0.00077 – 0.0197	0.007
Daily Maximum	1.1	0.00077 – 0.0197	0.007

**BOD Concentration (DMRs=16)**

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	<2.0 – 7.0	1.4
Weekly Average	45	<2.0 – 7.0	1.4
Daily Maximum	50	<2.0 – 7.0	1.4

**TSS mass (DMRs=16)**

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	0.7	<0.00035 – 0.0739	0.006
Weekly Average	1.0	<0.00035 – 0.0739	0.006
Daily Maximum	1.1	<0.00035 – 0.0739	0.006

**TSS concentration (DMRs=16)**

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	<1.0 – 3.1	0.8
Weekly Average	45	<1.0 – 3.1	0.8
Daily Maximum	50	<1.0 – 3.1	0.8

This permitting action is also carrying forward a requirement for a minimum of 85% removal of BOD<sub>5</sub> and TSS pursuant to Chapter 525(3)(III)(a)(3) and (b)(3) of the Department's rules. The existing treatment system is not equipped with a representative sampling port prior to primary settling in the septic tank. Thus, the Crescent Beach wastewater treatment system does not contain an influent sampling location that is representative of raw wastewater conditions. According to the USEPA's *Onsite Wastewater Treatment Systems Manual*, dated February 2002, table 3-7 entitled "Constituent Mass Loadings and Concentrations in Typical Residential Wastewater" high end range of values, influent values for BOD<sub>5</sub> and TSS may be assumed to be 300 mg/L. Therefore, this permitting action authorizes Crescent Beach Association to assume an influent BOD<sub>5</sub> and TSS concentration value of 300 mg/L for purposes of calculating the monthly percent removal value until such time that the infrastructure is modified or replaced such that collection of a representative raw influent sample is practical.

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

This permitting action is carrying forward a “grab” sample type based on Department guidance for overboard discharge systems permitted to discharge between 2,000 and 4,999 GPD, and is revising the minimum monitoring frequency requirement from once per month to once per quarter during the months of **March, June, September and December**. The permittee shall also conduct effluent monitoring during the months of **July and August** when sanitary flows to the system are expected to be highest. Monitoring frequencies are based on a Department BPJ determination of the appropriate monitoring frequency for this facility.

- d. Settleable Solids: The previous permitting action established a daily maximum technology-based concentration limit of 0.3 ml/L for settleable solids that is being carried forward in this permitting action.

This permitting action is carrying forward the “grab” sample type and the minimum monitoring frequency requirement from once per month to once per quarter during the months of **March, June, September and December**. The permittee shall also conduct effluent monitoring during the months of **July and August** when sanitary flows to the system are expected to be highest. Monitoring frequencies are based on a Department BPJ determination of the appropriate monitoring frequency for this facility.

A review of the monthly Discharge Monitoring Report (DMR) data for the period June 2006 – March 2010 indicates the permittee has been in compliance with said limit(s) as values have been reported as <0.1 ml/L for the entire reporting period.

- e. Fecal Coliform Bacteria: The previous permitting action established a seasonal (May 15 – September 30) monthly average limit of 15 colonies/100 ml and a daily maximum limit of 50 colonies/100 ml (instantaneous level) which are consistent with the National Shellfish Sanitation Program. The limitations are being carried forward in this permitting action.

A review of the monthly DMR data for the period May 2006 – May 2010 indicates the permittee has been in compliance with the bacteria limits 100% of the time as values have been reported as follows:

**Fecal coliform bacteria (DMRs=20)**

Value	Limit (col/100 ml)	Range (col/100 ml)	Mean (col/100 ml)
Monthly Average	15	0 – 24	3
Daily Maximum	50	0 - 24	3

This permitting action is carrying forward the “grab” sample type and is revising the minimum monitoring frequency requirement from once per month to monthly during the months of **May, June, July, August and September** only. Monitoring frequencies are based on a Department BPJ determination of the appropriate monitoring frequency for this facility.

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

- f. Total Residual Chlorine (TRC): The previous licensing action established a technology-based daily maximum concentration limit of 1.0 mg/L for TRC. Limitations on TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either a water quality-based or BPT-based limit. With dilution factors as determined above, end-of-pipe (EOP) water quality-based concentration thresholds for TRC may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	Modified A & C Dilution Factors	Calculated	
			Acute Threshold	Chronic Threshold
0.013 mg/L	0.0075 mg/L	662:1 (A) 3,014:1 (C)	8.6 mg/L	22.6 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 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. Crescent Beach Association currently does not dechlorinate the effluent prior to discharge. The technology-based daily maximum concentration limit of 1.0 mg/L is more stringent than either the calculated acute or chronic water quality-based thresholds and is therefore being carried forward in this permitting action.

A review of the daily maximum data as reported on the DMRs submitted to the Department for the period May 2006 – May 2010 indicates TRC values have been reported as follows;

**Total residual chlorine (DMRs=20)**

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Daily Maximum	1.0	0.5 – 2.5	0.5

This permitting action is carrying forward the “grab” sample type and the minimum monitoring frequency requirement from once per month to monthly during the months of **May, June, July, August and September** only. Monitoring frequencies are based on a Department BPJ determination of the appropriate monitoring frequency for this facility.

It is noted that TRC monitoring is required any time chlorine-based compounds are in use for effluent disinfection. For instances when the chlorine-based compounds have not been utilized for effluent disinfection for an entire reporting period, the permittee shall report “NODI-9” for this parameter on the monthly discharge monitoring report (DMR).

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

- g. pH: The previous permitting action established a pH range limit of 6.0 – 9.0 standard units (SU), which was based on a Department rule found at Chapter 525(3)(III)(c) and is being carried forward in this permitting action. A review of the DMR data for the period June 2006 – Marc 2010 indicates the facility has been in compliance with said limit range 100% of the time. This permitting action is carrying forward the “grab” sample type and is revising minimum monitoring frequency requirement from once per month to once per quarter during the months of **March, June, September and December**. The permittee shall also conduct effluent monitoring during the months of **July and August** when sanitary flows to the system are expected to be highest.
- h. Whole Effluent Toxicity (WET) and Chemical Specific 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.

The previous licensing action neither established nor addressed WET or chemical-specific testing requirements of the toxics rule. Chapter 530(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.*

Based on these criteria and a permitted discharge flow limit of 2,700 gallons per day, the Department concludes that the discharge from the Crescent Beach Association wastewater treatment system qualifies for exemption from Chapter 530 testing requirements. This permitting action is not establishing WET or chemical-specific testing requirements at this time.

## 7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

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

## 8. PUBLIC COMMENTS

Public notice of this application was made in a local newspaper on or about October 15, 2010. 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

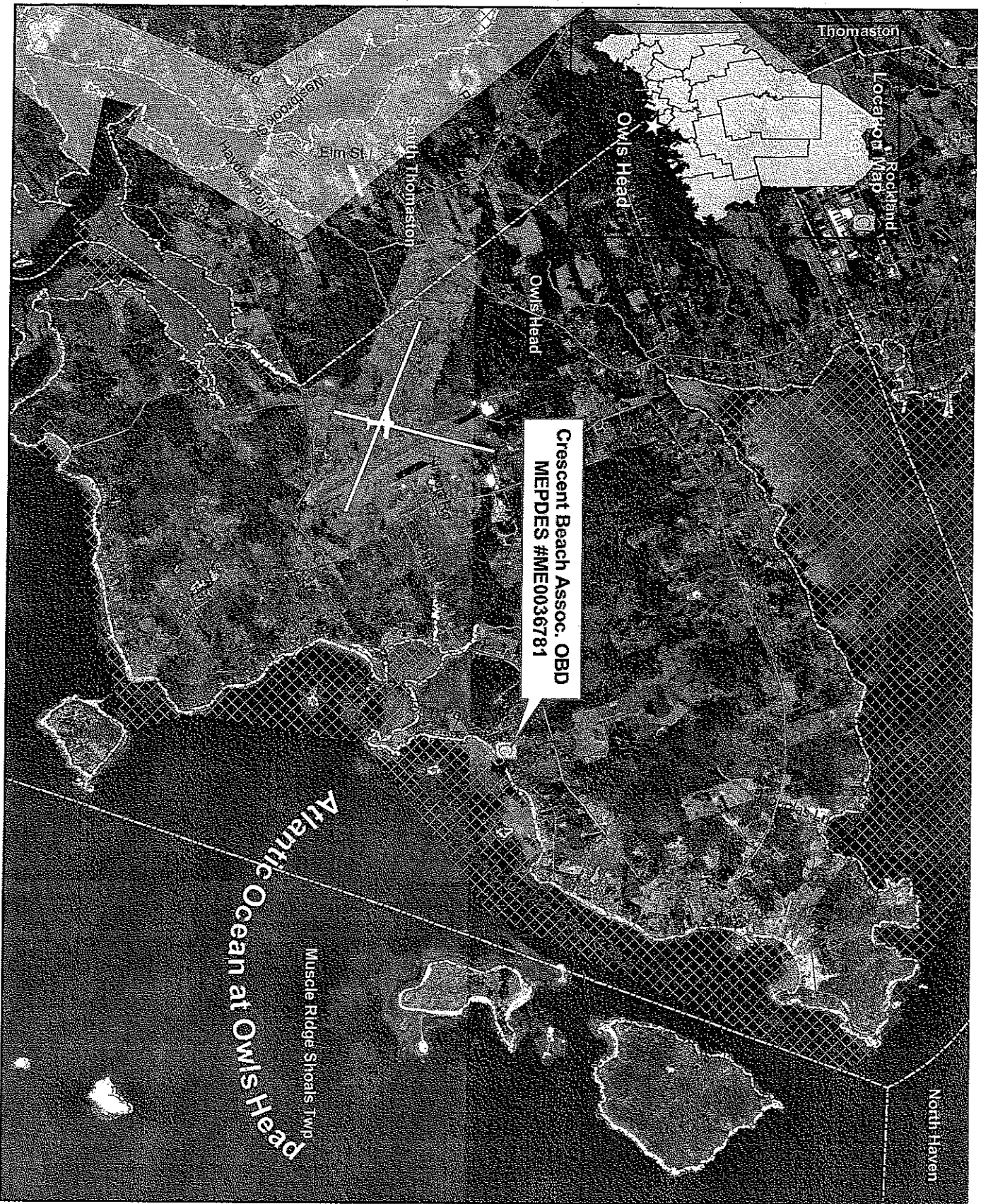
Additional information concerning this permitting action may be obtained from, and written comments sent to:

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](mailto:gregg.wood@maine.gov)

## 10. RESPONSE TO COMMENTS

During the period of October 21, 2010 through the date of issuance of this permit, the Department solicited comments on the proposed draft MEPDES permit/WDL for the discharge from the permittee's facility. The Department did not receive comments from the permittee, state or federal agencies, or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

# ATTACHMENT A



# Owls Head, Maine



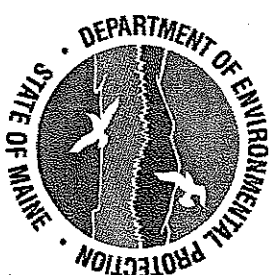
Crescent Beach Assoc. OBD  
MEPPDES #ME0036781

Atlantic Ocean at Owls Head

Muscle Ridge Shoals Twp

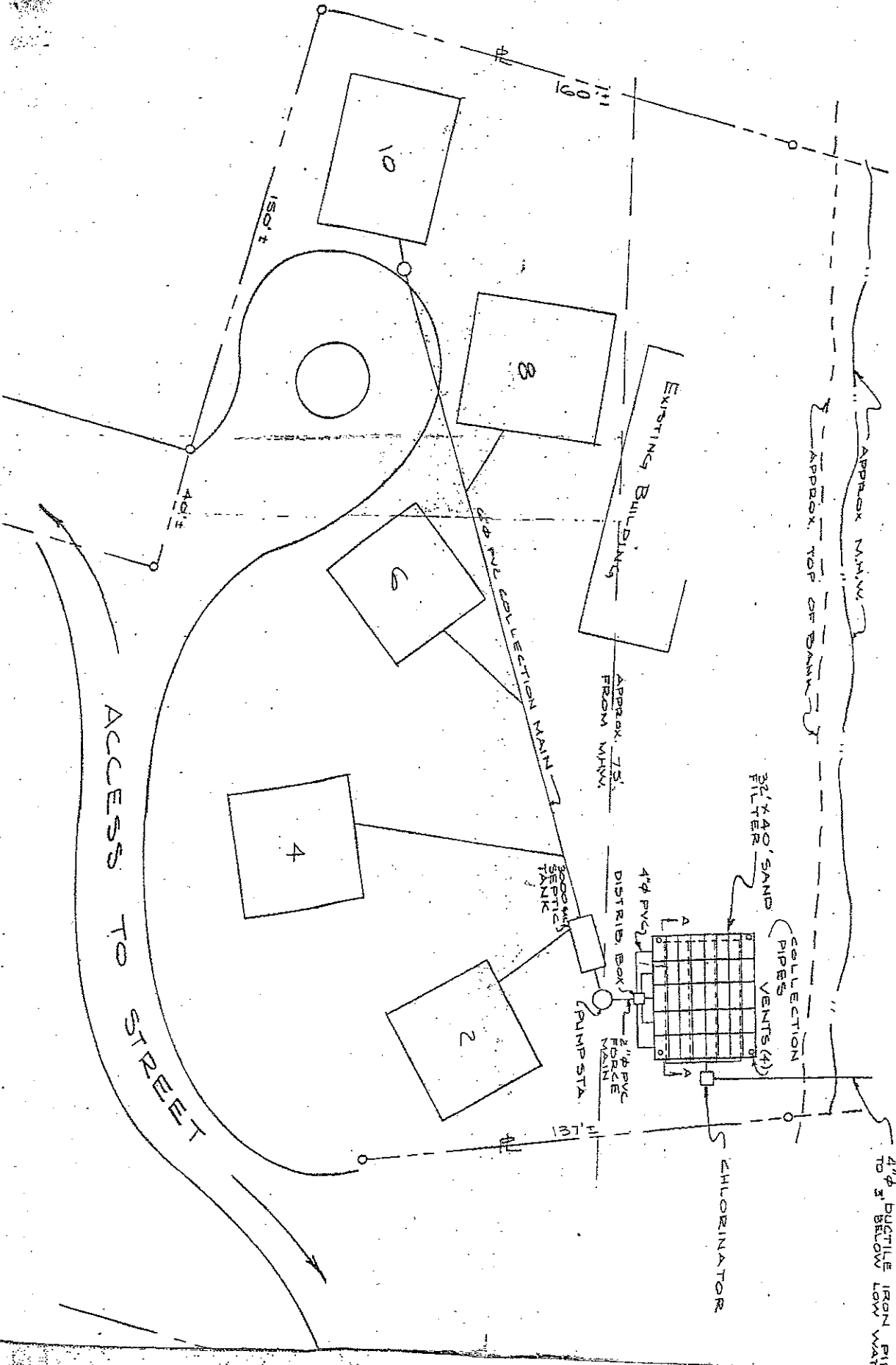
Map created by Bill Hinkel  
Division of Water Resource Regulation  
Maine Department of Environmental Protection  
September 29, 2005

Legend	
	Wastewater_Facilities
	Wastewater_Outfalls
	Ponds_and_Lakes
	Stream Class
	AA
	A
	B
	C
	Shellfish_Bed_Closures
	Approved (within another classification)
	Conditionally Approved
	Restricted
	Conditionally Restricted
	Prohibited
	Town Lines
	Airports





# **ATTACHMENT B**



ACCESS TO STREET

EXISTING BUILDING

APPROX. 75' FROM MHW

3000 GALLON SEPTIC TANK

PUMP STA.

4\" PVC DISTRIBUTION BOX

2\" PVC FORCE MAIN

30\" x 40\" SAND FILTER

COLLECTION PIPES VENTS (4)

CHLORINATOR

4\" DUCTILE IRON PIPE TO 3\" BELOW LOW WATER

APPROX. TOP OF BANK

APPROX. MHW

1:1

10:1

150'±

45'±

11'±

41'

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**A. GENERAL PROVISIONS**

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

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

(a) They are not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**B. OPERATION AND MAINTENANCE OF FACILITIES**

**1. General facility requirements.**

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

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.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

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

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



# DEP INFORMATION SHEET

## Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

### SUMMARY

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

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### **LEGAL REFERENCES**

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

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

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

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

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

#### **WHAT YOUR APPEAL PAPERWORK MUST CONTAIN**

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

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

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

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

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

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

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

#### **II. APPEALS TO MAINE SUPERIOR COURT**

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

#### **ADDITIONAL INFORMATION**

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

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

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