



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR

GERALD D. REID
COMMISSIONER

September 3, 2019

Mr. Alan Firpo
SCI, Inc. d/b/a Smugglers Cove Inn
727 Ocean Point Rd.
East Boothbay, ME 04544
Alan@smugglerscoveinmaine.com
Afirpo528@aol.com

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit ME0037150
Maine Waste Discharge License (WDL) Application #W002399-5C-E-R
Final Permit - Renewal and Transfer

Dear Mr. Firpo:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL which was approved by the Department of Environmental Protection. Please read this document and its attached conditions carefully. Compliance with this permit/license will protect water quality.

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. Your Department compliance inspector copied below is also a resource that can assist you with compliance. Please do not hesitate to contact them with any questions.

Thank you for your efforts to protect and improve the waters of the great state of Maine!

Sincerely,

Irene Saumur
Division of Water Quality Management
Bureau of Water Quality

Enc.

cc: William Johnson, DEP/CMRO
Shelly Puleo, USEPA,

Lori Mitchell, DEP/CMRO
Marelyn Vega, USEPA

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

DEPARTMENT ORDER

IN THE MATTER OF

AM FIRPO ENTERPRISES, LLC D/B/A)	MAINE POLLUTANT DISCHARGE
SMUGGLER’S COVE INN, INC.)	ELIMINATION SYSTEM PERMIT
BOOTHBAY, LINCOLN COUNTY, MAINE)	AND
OVERBOARD DISCHARGE)	
ME0037150)	WASTE DISCHARGE LICENSE
W002399-5C-E-R)	RENEWAL & TRANSFER
		APPROVAL

In compliance with the applicable provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, Conditions of Licenses, Maine Law 38 M.R.S. Section 414-A, *et seq.*, and applicable rules of the Department of Environmental Protection (Department) the Department has considered the application of AM FIRPO ENTERPRISES, LLC D/B/A SMUGGLER’S COVE INN, INC. (permittee), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

On April 22, 2019, the Department accepted as complete for processing an application from the permittee for the renewal and transfer of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0037150/Maine Waste Discharge License (WDL) #W002399-5C-D-R (permit) which was issued by the Department on May 6, 2014, for a five-year term. The 5/6/14 permit authorized the seasonal (May 1st– November 15th) daily maximum discharge of 5,500 gallons per day (gpd) of secondary treated waste waters from (Outfall #001) SMUGGLER’S COVE INN, INC to Linekin Bay, Class SB, in East Boothbay, Maine.

PERMIT SUMMARY

This permit is carrying forward all the terms and conditions of the previous permitting action and;

1. Establishing seasonal (May 1st – October 31st) monthly average and daily maximum water quality-based limitations and monitoring requirements for enterococcus bacteria along with a compliance schedule to come into compliance with said limitations.
2. Beginning calendar year 2019, increasing the timeframe when fecal coliform bacteria limits are in effect from May 15th – September 30th to May 1st – November 15th, and establishing more stringent limitations for fecal coliform bacteria based on comments received from the USEPA and the most current revisions to the National Shellfish Sanitation Program.
3. Establishing a 1/Month monitoring and reporting requirement for BOD₅ and TSS percent removal and 1/Year for pH pursuant to 40 CFR §122.44 (i)(2).

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated July 15, 2019, 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. §464(4)(F), will be met, in that:
 - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
 - (c) Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
 - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in Maine law, 38 M.R.S. §414-A(1)(D) and 414-A(1-B).
5. The overboard discharge system was in continuing existence for the 12 months preceding June 1, 1987.
6. A non-discharging sub-surface waste water disposal system can not be installed in compliance with the Maine Subsurface Waste Water Disposal Rules at the time the renewal application was accepted for processing 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.

ACTION

THEREFORE, the Department APPROVES the application of AM FIRPO ENTERPRISES, LLC D/B/A SMUGGLER'S COVE INN, INC. to seasonally (May 1 – November 15) discharge a daily maximum flow of 5,500 gpd of secondary treated sanitary waste water (Outfall #001) from SMUGGLER'S COVE INN to Linekin Bay, Class SB, in Boothbay, Maine, SUBJECT TO ALL APPLICABLE STANDARDS AND REGULATIONS AND THE FOLLOWING CONDITIONS:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits," revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit becomes effective upon the date of signature below and expires at midnight five (5) years after that date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of this permit and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [Maine Administrative Procedure Act, 5 M.R.S. §10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (amended August 25, 2013)]

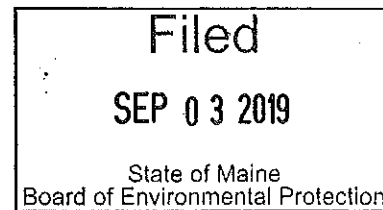
PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 3 DAY OF September, 2019.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: [Signature]
for Gerald D. Reid, Commissioner

Date of initial receipt of application: April 19, 2019
Date of application acceptance: April 22, 2019



Date filed with Board of Environmental Protection: _____

This Order prepared by Irene Saumur, Bureau of Land and Water Quality

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. Beginning the effective date of this permit, the permittee is authorized to discharge secondary treated sanitary waste water from **Outfall #001** to the Linekin Bay, Class SB. Such discharges shall be limited and monitored by the permittee as specified below⁽¹⁾:

May 1st – November 15th of each year.

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]	---	---	5,500 gpd [07]	---	---	---	1/Month [01/30]	Metered [MT]
BOD ₅ [00310]	1.4 lbs/day [26]	2.1 lbs/day [26]	2.3 lbs/day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Month [01/30]	Grab [GR]
BOD ₅ Percent Removal ⁽²⁾ [81010]	---	---	---	85% [23]	---	---	1/Month [01/30]	Calculate [CA]
TSS [00530]	1.4 lbs/day [26]	2.1 lbs/day [26]	2.3 lbs/day [26]	30 mg/L [19]	45 mg/L [19]	50 mg/L [19]	1/Month [01/30]	Grab [GR]
TSS Percent Removal ⁽²⁾ [81011]	---	---	---	85% [23]	---	---	1/Month [01/30]	Calculate [CA]
Settleable Solids [00545]	---	---	---	---	---	0.3 ml/L [25]	1/Month [01/30]	Grab [GR]
Fecal Coliform Bacteria ⁽³⁾ [31616]	---	---	---	14 CFU/100 mL ⁽⁴⁾ [13]	---	31 CFU/100 mL [13]	2/Month ⁽⁶⁾ [02/30]	Grab [GR]
Total Residual Chlorine ⁽⁵⁾ [50060]	---	---	---	---	---	1.0 mg/L [19]	2/Month ⁽⁶⁾ [02/07]	Grab [GR]
Enterococci Bacteria ⁽⁴⁾ [31639] (May 1 st – October 31, beginning 2021)	---	---	---	8 CFU/100 mL ⁽⁴⁾ [13]	---	54 CFU /100 mL [13]	2/Month ⁽⁶⁾ [02/07]	Grab [GR]
pH [00400]	---	---	---	---	---	6.0 – 9.0 SU [12]	1/Year [1/YR]	Grab [GR]

Footnotes See Pages 5 of this permit for applicable footnotes.

SPECIAL CONDITIONS

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

Footnotes

1. **Sampling** – All effluent monitoring must be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. Sampling and analysis must be conducted in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services for waste water testing. Samples that are sent to another POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S. § 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 December 19, 2018). 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 this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report.
2. **Percent Removal** – The treatment facility must maintain a minimum of 85 percent removal of both BOD₅ and TSS for all flows receiving secondary treatment. If required to do so, the percent removal must be calculated based on influent and effluent concentration values whenever possible. If attainment of influent values is not physically possible, the percent removal must be calculated based on an assumed influent value of 286 mg/L and measured effluent concentration values.
3. **Bacteria Limits** – Fecal coliform bacteria limits and monitoring requirements are in effect between May 1st and November 15th of each year. The Department reserves the right to require year-round disinfection to protect the health, safety, and welfare of the public.
4. **Bacteria Reporting** – The monthly average fecal coliform and enterococcus bacteria limitations are geometric mean limitations and sample results must be reported as such. Sampling for enterococcus, fecal coliform bacteria and total residual chlorine must be conducted on the same days of the month.
5. **Total residual chlorine (TRC)** – Limitations and monitoring requirements are applicable whenever elemental chlorine or chlorine based compounds are being used to disinfect the discharge. The permittee must utilize approved test methods that are capable of bracketing the TRC limitation in this permit.
6. **2/Month** – There shall be at least 10 days between sampling events when monitoring is on a 2/Month. Sampling for enterococcus, fecal coliform bacteria and total residual chlorine shall be conducted on the same days of the month.

SPECIAL CONDITIONS

B. ANNUAL DISCHARGE FEES

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

C. NARRATIVE EFFLUENT LIMITATIONS

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

D. TREATMENT PLANT OPERATOR

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

SPECIAL CONDITIONS

E. AUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on April 22, 2019; 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 must be reported in accordance with Standard Condition D(1)(F), *Twenty-four hour reporting*, of this permit.

F. NOTIFICATION REQUIREMENT

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

1. Any substantial change or proposed change in the volume or character of pollutants being introduced into the wastewater collection and treatment system by a source introducing pollutants into the system at the time of permit issuance.
2. For the purposes of this section, notice regarding substantial change must 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.

G. REQUIREMENTS TO ELIMINATE OVERBOARD DISCHARGES

The owners of the overboard discharges subject to this permit are required to install a technologically proven alternative and properly abandon the overboard discharges when any of the following actions are initiated.

1. ***Transfer of Ownership of Property or Significant Action.*** Prior to transfer of ownership of property containing an overboard discharge (*i.e.*, change in the legal entity that owns a property, facility or structure that is the subject of a permit), the parties to the transfer shall determine the feasibility of technologically proven alternatives¹ to the overboard discharge. Prior to completing a significant action (*i.e.*, single construction project performed on a primary residence with an overboard discharge when the total material and labor cost of the construction project exceeds \$50,000), the owner shall determine the feasibility of technologically proven alternatives to the overboard discharge.

¹ Feasibility of technologically proven alternatives are based on determinations by a licensed site evaluator's application of plumbing standards adopted by the Department of Health and Human Services pursuant to Title 22, section 42.

SPECIAL CONDITIONS

G. REQUIREMENTS TO ELIMINATE OVERBOARD DISCHARGES (cont'd)

- a) If an alternative to the overboard discharge is available, the alternative system must be installed within 90 days of property transfer or significant action, unless otherwise provided by *Waste discharge licenses*, 38 M.R.S. § 413(3-A).
 - b) If an alternative to the overboard discharge is not available, the new owner must, no later than two weeks after any transfer of ownership, submit an application to the Department for transfer of this permit.
2. **Permit Renewal.** Waste Discharge Permits for overboard discharges are issued for a five-year term. The permittee must submit a complete application for permit renewal prior to the expiration date of this permit to continue the discharge beyond the expiration date of this permit. If a technologically proven alternative system is available and;
- a) The overboard discharge owner is eligible for grant funding², the alternative system must be installed within 180 days of written notification from the Department, unless otherwise provided by *Conditions of licenses*, 38 M.R.S. § 414-A(1-B); or
 - b) The overboard discharge owner is not eligible for grant funding, the alternative system must be installed prior to the expiration date of this permit.
3. **Abandonment of Overboard Discharge.** When an overboard discharge is no longer necessary or is replaced by technologically proven alternative system, it must be properly abandoned within 90 days following the requirements of *Overboard discharges: licenses and abandonment*, 06-096 CMR 596(8), including submission of Overboard Discharge Abandonment Certification Form #DEPLW0653A.

H. OPERATION & MAINTENANCE (O&M) PLAN

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

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

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

² Grant eligibility is based on the cost-share schedule under *State contribution to residential overboard discharge replacement projects*, 38 M.R.S. § 411-A.

SPECIAL CONDITIONS

I. SEPTIC TANKS

1. Septic tanks and other treatment tanks must be regularly inspected (at least once per calendar year) and maintained to ensure that they are providing best practicable treatment. The permittee must maintain logs of inspections/maintenance that records the date, notes on observations, repairs conducted etc. The logs must be maintained on site at all times and made available to Department personnel upon request.
2. Tank contents should be removed whenever the sludge and scum occupies one-third of the tank's liquid capacity or whenever levels approach maximum design capacity. Following pumping, the tanks shall be checked for damage at key joints and the inlet and outlet baffles, and repaired promptly if damaged. The permittee must keep a pumping log including the date of pumping, quantity of material removed, name and number of licensed contractor, pumping frequency and other relevant observations.

J. MONITORING AND REPORTING

Electronic Reporting

NPDES Electronic Reporting, 40 C.F.R. 127, requires MEPDES permit holders to submit monitoring results obtained during the previous month on an electronic discharge monitoring report to the regulatory agency utilizing the USEPA electronic system.

Electronic Discharge Monitoring Reports (DMRs) submitted using the USEPA NetDMR system, must be:

1. Submitted by a facility authorized signatory; and
2. Submitted no later than **midnight on the 15th day of the month** following the completed reporting period.

Documentation submitted in support of the electronic DMR may be attached to the electronic DMR and must be submitted no later than midnight on the 15th day of the month following the completed reporting period.

SPECIAL CONDITIONS

K. REOPENING OF PERMIT FOR MODIFICATIONS

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

L. SEVERABILITY

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

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

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

A. GENERAL PROVISIONS

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

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

(a) They are not

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

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

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

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

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

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

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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
STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

- (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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STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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 MRS.A, §349.

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STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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 contaminates 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

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

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

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

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

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

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

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

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

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

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

FACT SHEET

Date: **July 15, 2019**

MEPDES PERMIT: **ME0037150**
WASTE DISCHARGE LICENSE: **W002399-5C-E-R**

NAME AND ADDRESS OF APPLICANT:

**AM FIRPO ENTERPRISES, LLC D/B/A SMUGGLER'S COVE INN, INC.
727 Ocean Point Rd
East Boothbay, ME 04544**

COUNTY: **Lincoln County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**727 Ocean Point Road
East Boothbay, Maine**

RECEIVING WATER / CLASSIFICATION: **Linekin Bay/Class SB**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Alan Firpo**
alan@smugglerscoveinmaine.com
afirpo528@aol.com
(207) 633-2800 / (517)317-8124

1. APPLICATION SUMMARY

- a. Application – On April 22, 2019, the Department accepted as complete for processing an application from AM FIRPO ENTERPRISES, LLC D/B/A SMUGGLER'S COVE INN, INC. (permittee) for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0037150/Maine Waste Discharge License (WDL) #W002399-5C-D-R (permit) which was issued by the Department on June 29, 2009, for a five-year term. The 5/6/14 permit authorized the seasonal (May 1st– November 15th) daily maximum discharge of 5,500 gallons per day (gpd) of secondary treated waste waters to Linekin Bay, Class SB, in East Boothbay, Maine. See **Attachment A** of this Fact Sheet for a location map of the facility.

1. APPLICATION SUMMARY (cont'd)

- b. Source description: The source of waste water treated is generated by a restaurant with seating for 120 people, a 60-unit hotel with a staff of fifteen.
- c. Waste water treatment: The wastewater generated by the facilities described above receives a secondary level of treatment via a mechanical wastewater treatment system. The treated and seasonally disinfected wastewater is discharged to Linekin Bay via a four (4) inch diameter outfall pipe that extends out into the receiving water with approximately 5 feet of water over the crown of the pipe at mean low water and 10 feet of water over the pipe at mean tide.
- d. Replacement Options: In May of 2003, the State Legislature adopted several amendments to the licensing of overboard discharges and the Department revised its rule Chapter 596, *Overboard Discharges: Licensing and Abandonment*, accordingly. One of the amendments in the revised rule required OBD owners that were applying to the Department to renew their OBD license, to hire a licensed site evaluator (LSE) to determine whether there is a technologically feasible replacement of the existing system prior to license renewal and install the replacement system within 180 days if grant money is offered by the Department.

The permittee has provided the Department with a site evaluation, dated 4/13/19, that indicates the LSE could not design a suitable, subsurface alternative to replace the OBD system, at the time this application was submitted. However, the evaluation does indicate there is potential for an engineered system to replace the OBD.

2. PERMIT SUMMARY

- a. Terms and Conditions – This permitting action is carrying forward all the terms and conditions of the 1/17/14 permit except that this permitting action is;
 - 1. Establishing seasonal (May 1st – October 31st) monthly average and daily maximum water quality based limitations and monitoring requirements for enterococcus bacteria along with a compliance schedule to come into compliance with said limitations.
 - 2. Beginning calendar year 2019, increasing the timeframe when fecal coliform bacteria limits are in effect from May 15th – September 30th to May 1st – November 15th, and establishing more stringent limitations for fecal coliform bacteria based on comments received from the USEPA and the most current revisions to the National Shellfish Sanitation Program.
 - 3. Establishing a 1/Month monitoring and reporting requirement for BOD₅ and TSS percent removal and 1/Year for pH pursuant to 40 CFR §122.44 (i)(2).

2. PERMIT SUMMARY (cont'd)

- b. Facility History – This section provides a summary of the most significant historical events for Smugglers Cove Inn, Inc.

January 10, 1990 – The Department issued WDL #W002399-41-A-R to Smuggler's Cove Inc. for a five-year term.

August 4, 1995 – The Department issued WDL #W002399-5C-B-R to Smuggler's Cove Inc., for a ten-year term.

June 29, 2009 – The Department issued combination MEPDES permit ME0037150 / WDL #W002399-5C-C-R to Smugglers Cove, Inc., for a five-year term.

May 6, 2014 – The Department issued combination MEPDES permit ME0037150 / WDL #W002399-5C-D-R to Smugglers Cove Inn, Inc., for a five-year term.

April 19, 2019 – AM Firpo Enterprises, LLC d/b/a Smugglers Cove Inn, Inc. submitted a timely and complete application for renewal and transfer of combination MEPDES permit ME0037150 / WDL #W002399-5C-D-R. The application was accepted for processing on April 22, 2019 and assigned WDL #W002399-5C-E-R.

3. CONDITIONS OF PERMIT

Maine law, 38 M.R.S. 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., Section 420 and Department rule 06-096 CMR Chapter 530, *Surface Water Toxics Control Program*, require the regulation of toxic substances not to exceed levels set forth in Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

4. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S. §469(3-A) classifies Linekin Bay at the point of discharge as a Class SB waterbody. Maine law, 38 M.R.S. §465-B(2) Maine law, 38 M.R.S. §465-B(2) establishes classification standards for Class SB water bodies 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.

4. RECEIVING WATER QUALITY STANDARDS (cont'd)

The dissolved oxygen content of Class SB waters may not be less than 85% of saturation. Between April 15th and October 31st, the number of enterococcus bacteria in these waters may not exceed a geometric mean of 8 CFU per 100 milliliters in any 90-day interval or 54 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval. The number 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 2016 Integrated Water Quality Monitoring and Assessment Report published by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act lists the East point of Sagadahoc Bay, Georgetown to Ocean Point, Boothbay as

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

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

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

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

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 M.R.S. §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 M.R.S. §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) - The Department will find that the discharge meets the requirements of best practicable treatment pursuant to 38 M.R.S. § 414-A(1-B) for purposes of permitting when it finds that there are no technologically proven alternative methods of wastewater disposal consistent with the plumbing code adopted by the Department of Health and Human Services pursuant to Title 22, section 42 that will not result in an overboard discharge. Pursuant to *Overboard Discharges: Licensing and Abandonment*, 06-096 CMR 596(9), *Criteria and Standards for Waste Discharge Licenses* 06-096 CMR 524(2) (effective January 12, 2001) and 06-096 CMR 525(3)(III), BPT for overboard discharges is secondary treatment.

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

- b. Flow: This permitting action is carrying forward the established daily maximum flow limitation of 5,500 (gpd) from Outfall #001 and the established a 1/Month monitoring frequency.

A review of the seasonal daily maximum discharge flow data as reported on the Discharge Monitoring Reports (DMRs) submitted to the Department for the seasonal period May 1st – November 15th for calendar years 2016 - 2018 indicates values have been reported as follows;

Flow (DMRs = 15)

Value	Limit (gpd)	Range (gpd)	Mean (gpd)
Daily maximum	5,500	125 – 4,081	2,137

- c. Dilution Factors – The Department established applicable dilution factors for the discharge in accordance with freshwater protocols established in Department Rule Chapter 530, *Surface Water Toxics Control Program*, October 2005. With a permitted flow of 5,500 gpd, the location and configuration of the outfall structure, the Department has made a best professional judgment that dilution factors are follows:

Acute = 250:1 Chronic = 730:1 Harmonic mean = 2190⁽¹⁾

(1) Pursuant to Department rule Chapter 530, “*Surface Water Toxics Control Program*”, §4(2)(c), the harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by a factor of three (3). This multiplying factor is based on guidelines for estimation of human health dilution presented in the USEPA publication “*Technical Support Document for Water Quality-based Toxics Control*” (Office of Water; EPA/505/2-90-001, page 88), and represents an estimation of harmonic mean flow on which human health dilutions are based in a riverine 7Q10 flow situation.

- d. Biochemical Oxygen Demand (BOD₅) and Total Suspended Solids (TSS): This permitting action carries forward the technology based monthly average, weekly average and daily maximum BOD₅ and TSS concentration limits of 30 milligrams per liter (mg/L), 45 mg/L and 50 mg/L, respectively along with a minimum monitoring frequency requirement of 1/Month. The monthly average and weekly average concentration limits are based on secondary treatment requirements as defined in Department rule, 06-096 CMR Chapter 525(3)(III) and the daily maximum concentration limit of 50 mg/L is based on a best professional judgment by the Department of best practicable treatment (BPT).

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

Also carried forward are the mass limitations for BOD₅ and TSS as required by Department rule Chapter 523, *Waste Discharge License Conditions*, Section 6, *Calculating NPDES permit conditions*, sub-section f(1) which states that, "all pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass...." The monthly average, weekly average and daily maximum BOD₅ and TSS mass limitations must be based on calculations using the daily maximum permitted flow limitation for the facility of 5,500 gpd (0.0055 million gallons per day (MGD) and the applicable concentration limits as follows:

Monthly Average Mass Limit: (30 mg/L)(8.34 lbs./gallon)(0.0055 MGD) = 1.4 lbs/day

Weekly Average Mass Limit: (45 mg/L)(8.34 lbs./day)(0.0055 MGD) = 2.1 lbs/day

Daily Maximum Mass Limit: (50 mg/L)(8.34 lbs./day)(0.0055 MGD) = 2.3 lbs/day

A review of the monthly discharge flow data as reported on the DMR submitted to the Department for the period May 1st – November 15th for calendar years 2016 - 2018 indicates values have been reported as follows:

BOD concentration (DMRs = 14)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	3 – 46	17
Weekly Average	45	3 - 64	20
Daily Maximum	50	3 - 64	20

TSS concentration (DMRs = 15)

Value	Limit (mg/L)	Range (mg/L)	Average (mg/L)
Monthly Average	30	4 – 38	13
Weekly Average	45	4 - 38	13
Daily Maximum	50	4 - 38	13

BOD Mass (DMRs = 14)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	1.4	0.02 – 1.14	0.3
Weekly Average	2.1	0.02 – 1.19	0.4
Daily Maximum	2.3	0.02 – 1.19	0.4

TSS Mass (DMRs = 15)

Value	Limit (lbs/day)	Range (lbs/day)	Average (lbs/day)
Monthly Average	1.4	0.01 – 0.7	0.25
Weekly Average	2.1	0.01 – 0.7	0.27
Daily Maximum	2.3	0.01 – 0.7	0.25

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

This permitting action carries forward the requirement for a minimum of 85% removal of BOD₅ and TSS pursuant to Chapter 525(3)(III)(a)(3) and (b)(3) of the Department's rules and 40 CFR §122.44 (i)(2), which states in part; requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. Therefore, this permitting action is establishing a 1/Month monitoring and reporting requirement for BOD₅ and TSS percent removal to be consistent with monitoring and reporting frequencies for BOD₅ & TSS.

- e. Settleable Solids: This permitting action carries forward the daily maximum BPT concentration limit of 0.3 ml/L along with a 1/Month monitoring frequency.

A review of the monthly discharge flow data as reported on the DMR submitted to the Department for the period May 1st – November 15th for calendar years 2016 - 2018 indicates values were reported as follows:

SS concentration (DMRs = 15)

Value	Limit (ml/L)	Range (ml/L)	Average (ml/L)
Daily Maximum	0.3	0 – 0.10	0.07

- f. Fecal coliform bacteria: The previous permitting action established seasonal (May 15th – September 30th) water quality based monthly average concentration limit for fecal coliform bacteria of 15 colony form units (CFU)/100 ml (geometric mean) and a daily maximum of 50 CFU/100mL (instantaneous level) along with a 2/Month monitoring frequency. The water quality based limits were consistent with the limits associated with the 2003 National Shellfish Sanitation Program (NSSP). This permitting action is reducing the limits to 14 CFU/100 ml as a monthly and 34 CFU/100ml as a daily maximum to be consistent with the 2017 revisions to the NSSP and expanding the timeframe when fecal coliform bacteria limits are in effect from May 15 – September 30 to May 1st – November 15th beginning calendar year 2019. Based on comments received from the USEPA, fecal coliform limitations need to be imposed on a year-round basis to protect the designated use of shellfish harvesting, a year-round use. The Department understands that this facility is limited to seasonal discharge only and not subject to year-round monitoring and reporting.

A review of the seasonal monthly average and daily maximum data for the period May 1st – November 15th for calendar years 2016 - 2018 indicates the monthly (geometric mean) and daily maximum values have been reported as follows and indicates that the facility has only been reporting 1/Month between May – September:

Fecal coliform. Bacteria (DMRs = 13)

Value	Limit (col/100 ml)	Range (col/100 ml)	Mean (col/100ml)
Monthly Average	15	1 - 49	8.9
Daily Maximum	50	1 – 2,419	209

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

- g. Enterococcus bacteria – The previous permit did not establish limitations or monitoring requirements for enterococcus bacteria. Based on comments received from the USEPA, enterococcus bacteria limitations are necessary to protect the designated use of recreation in and on the water, a seasonal use. Pursuant to Maine law 38 M.R.S. §465(3)(B) effective August 2, 2018, monthly and daily maximum water quality-based limits of 8 CFU/100 ml and 54 CFU/100ml, respectively. The limitations are seasonal and apply from May 1st – November 15th of each year and the monitoring frequency is being established at 2/Month to be consistent with the monitoring frequency for fecal coliform bacteria. The Department is granting the permittee a schedule of compliance until April 15, 2021, to come into compliance with these requirements and understands the facility is restricted to seasonal discharge only between May 1st– November 15th and not subject to year-round monitoring and reporting.
- h. Total Residual Chlorine (TRC): This permitting action carries forward the daily maximum technology-based concentration limit of 1.0 mg/L for TRC with 2/Month monitoring requirement. Limitations on TRC are specified to ensure that ambient water quality standards are maintained at all times of the year and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either a water quality-based or BPT-based limit. With dilution factors as determined in section 6(c) of this fact Sheet, end-of-pipe (EOP) water quality-based concentration thresholds for TRC may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A & C Dilution Factors		Calculated	
				Acute Limit	Chronic Limit
0.013 mg/L	0.0075 mg/L	250:1 (A)	730:1 (C)	3.25 mg/L	5.5 mg/L

The Department has established a daily maximum BPT limitation of 1.0 mg/L for facilities that disinfect their effluent with elemental chlorine or chlorine-based compounds. For facilities that need to dechlorinate the discharge in order to meet water quality based thresholds, the Department has established daily maximum and monthly average BPT limits of 0.3 mg/L and 0.1 mg/L, respectively. The permittee does not need to dechlorinate the effluent prior to discharge in order to consistently achieve compliance with the calculated water quality-based thresholds. Therefore, this permitting action carries forward the daily maximum technology based concentration limit of 1.0 mg/L that is applicable whenever elemental chlorine or chlorine based compounds are used as chlorine is toxic year-round and not seasonally.

A review of the daily maximum data as reported on the DMRs submitted to the Department for the period May 1st – November 15th for calendar years 2016 - 2018 indicates the maximum TRC discharged has been as follows and indicates that the facility has only been reporting 1/Month between May – September:

Total residual chlorine (13)

Value	Limit (mg/L)	Range (mg/L)	Mean (mg/L)
Daily Maximum	1.0	0.35 – 0.98	0.78

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

- i. pH: The previous permitting action established a BPT pH range limit of 6.0 – 9.0 standard units (SU), pursuant to Department rule found at Chapter 525(3)(III) (c) but did not establish any monitoring frequency requirements to determine compliance. This permitting action establishes a 1/YR monitoring and reporting frequency pursuant to 40 CFR §122.44 (i)(2), which states in part; requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.
- j. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing: Maine law, 38 M.R.S., §414-A and §420, prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. Department rule, 06-096 CMR Chapter 530, *Surface Water Toxics Control Program* (toxics rule) sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected and narrative and numeric water quality criteria are met. Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, sets forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

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

Chapter 530 Section 2.A specifies the criteria for exemption of certain discharges from toxics testing as follows:

- (1) *Discharges from individual discharge points licensed to discharge less than 50,000 gallons per day of solely domestic wastewater and with a chronic dilution factor of at least 50 to 1, provided no holding tank wastes containing chemicals are accepted by the facility;*
- (2) *Discharges from residential overboard discharge systems; or*
- (3) *Discharges from combined sewer overflow discharge points, provided the owner of the sewerage system is conducting or participating in a discharge abatement program.*

The permittee's facility is exempt from the Chapter 530 requirements as it permitted to discharge less than 50,000 gpd, the chronic dilution factor is greater than 50:1 (Department BPJ) and the waste water has domestic-like characteristics. However, should there be a substantial change in the characteristics of the discharge in the future; the Department may reopen this permit pursuant to Special Condition K, *Reopening of Permit for Modifications*, to incorporate the applicable whole effluent toxicity (WET), priority pollutant or analytical testing requirements cited above.

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

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

8. PUBLIC COMMENTS

Public notice of this application was made in the Boothbay Register newspaper on or about April 15, 2019. 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:

Irene Saumur
Division of Water Quality Management
Bureau of Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone: (207) 485-2404
e-mail: irene.saumur@maine.gov

10. RESPONSE TO COMMENTS

During the period of June 13, 2019 through issuance of the permit, the Department solicited comments from the permittee, state and federal agencies and interested parties on the proposed draft MEPDES permit and Maine WDL to be issued for the proposed discharge from Smuggler's Cove Inn, Inc. The Department did not receive any substantial comments from any party. It is noted that minor typographical and grammatical errors identified in comments were not summarized in this section, but were corrected, where necessary, in the final permit.

ATTACHMENT A

Attachment A – Location of Smuggler’s Cove Inn INC.



ATTACHMENT B

NOTICE OF EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources
STATUTORY AUTHORITY: 12 M.R.S.A. §§6172, 6192, & 6193
Struck text is being removed, and underlined text is being added

BASIS STATEMENT

The Commissioner of the Maine Department of Marine Resources amends the emergency DMR Chapter 95.06(C), Closed Area No. 23, Boothbay Harbor, Damariscove Island Area, amended on May 5, 2006. This amendment changes the title of the rule to Area No. 22, Booth Bay and vicinity (Southport, Boothbay Harbor, Boothbay); and moves part of the area previously described in this rule to Area No. 23-C. There are no classification changes in this rule. As authorized by 12 M.R.S.A. §§6172, 6192, 6193 the Commissioner of Marine Resources adopts emergency amendments to Chapter 95.06(C).

RULE TITLE AND SUBJECT: DMR Chapter 95.06(C), Closed Area No. 23, Boothbay Harbor, Damariscove Island Area, amended on May 5, 2006, is amended as follows:

TITLE & TEXT OF RULE: ~~DMR Chapter 95.06(C) Closed Area No. 23, Boothbay Harbor, Damariscove Island Area~~ Area No. 22, Booth Bay and vicinity (Southport, Boothbay Harbor, Boothbay)

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

- A. Booth Bay, inside the area described by the following lines: (1) east of a line beginning at the north end of Landing Road (Southport), then extending north to the south tip of Oak Point (Boothbay Harbor); (2) east and north of a line beginning at the southeast tip of Cape Newagen, then running south to the east tip of 'The Ark,' then continuing south to the southeast tip of Cape Island (Southport); then running northeast, to the southeast tip of Squirrel Island (Southport), then running east to the southeast tip of Green Island (Boothbay), then continuing northeast to the southeast tip of Ocean Point (Boothbay).
- B. Ram Island, Fisherman Island, and Damariscove Island (Boothbay): within 500 feet of the shoreline.
- A. ~~Effective immediately, because of pollution, it shall be unlawful to dig, take or possess any clams, quahogs, oysters or mussels taken from the shores, flats and waters of the Boothbay Harbor – Damariscove Island area north of a line beginning at the southwest tip of Southport Island and extending south to the west side of Hunting Island; continuing southeast to the south end of Cape Island; continuing northeast to the southeast tip of Squirrel Island; continuing northeast to the south tip of Green Island; continuing northeast to Dry Point on Reeds Island; AND east of a line beginning at the north end of Landing Point Road, Southport, and extending north to Oak Point, Boothbay Harbor.~~
- B. ~~Effective immediately, because of pollution, it shall be unlawful to dig, take or possess any clams, quahogs, oysters or mussels taken from the shores, flats and waters of the Boothbay Harbor – Damariscove Island area within 500 feet of Ram and Fisherman's Islands and Damariscove Island.~~

EFFECTIVE DATE: March 27, 2008

EFFECTIVE TIME: 12:25 PM

AGENCY CONTACT PERSON: Amy M. Fitzpatrick, Department of Marine Resources,
194 McKown Point Road, W. Boothbay Harbor, Maine 04575
http://www.maine.gov/dmr/rm/public_health/closures/closedarea.htm

PORTLAND PRESS HERALD - March 31, 2008

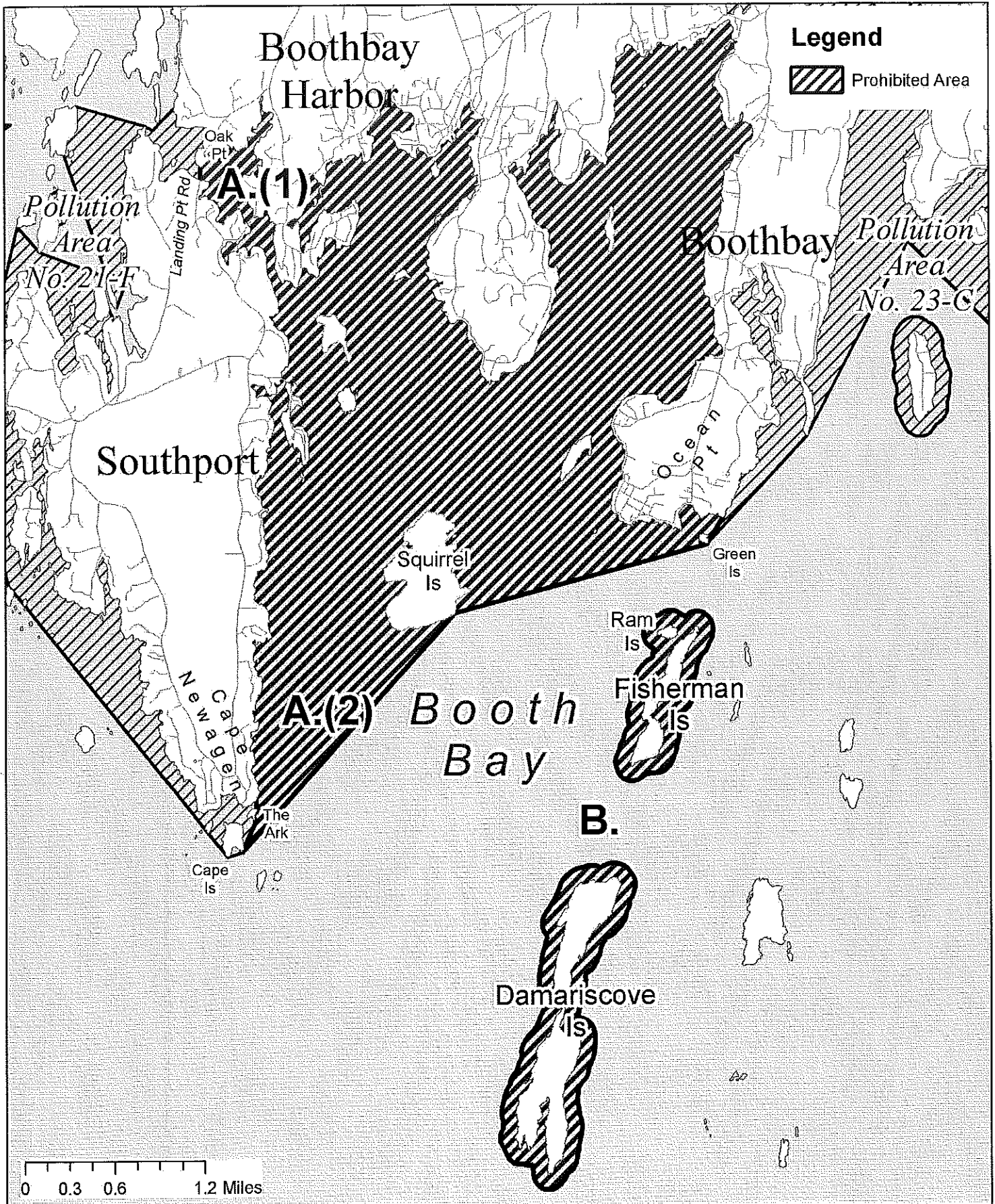


Maine Department of Marine Resources Pollution Area No. 22



Booth Bay and vicinity (Southport, Boothbay Hbr, Boothbay)

3/27/08





DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: November 2018

Contact: (207) 287-2452

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) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

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

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

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

INFORMATION APPEAL PAPERWORK MUST CONTAIN

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

1. *Aggrieved Status.* The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing requirements that the appellant believes were not properly considered or fully addressed.
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 matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an 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 general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a license holder may proceed with a project pending the outcome of an appeal, but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

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

The Board will formally acknowledge receipt of an appeal, and will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see 38 M.R.S. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

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

ADDITIONAL INFORMATION

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

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