



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

## DEPARTMENT ORDER

### IN THE MATTER OF

THE ISLAND INN	)	MAINE POLLUTANT DISCHARGE
MONHEGAN ISLAND PLANTATION	)	ELIMINATION SYSTEM PERMIT
LINCOLN COUNTY, MAINE	)	AND
OVERBOARD DISCHARGE	)	
ME0037516	)	WASTE DISCHARGE LICENSE
W001369-5C-E-R	)	<b>RENEWAL</b>

**APPROVAL**

In compliance with the provisions of the *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, *Conditions of licenses*, 38 M.R.S. § 414-A, and applicable regulations, the Department of Environmental Protection (Department) has considered the application of THE ISLAND INN (Island Inn/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 of a Maine Waste Discharge License (WDL) W001369-5C-D-R which was issued by the Department on June 11, 2014, for a five-year term. The permit issued on June 11, 2014, authorized the daily maximum seasonal discharge (April 15<sup>th</sup> – November 1<sup>st</sup>) from a commercial overboard discharge of 9,300 gallons per day (gpd) and a daily maximum seasonal discharge (November 2<sup>nd</sup> through April 14<sup>th</sup>) of 300 gpd of secondary treated sanitary wastewater from the Island Inn to Monhegan Harbor, Class SB water, in Monhegan Island Plantation, Maine. This renewal will be the first time that the Island Inn will be permitted under the Maine Pollutant Discharge Elimination System (MEPDES) and has been assigned permit number ME0037516/ Maine Waste Discharge License (WDL) W001369-5C-E-R.

### PERMIT SUMMARY

This permitting action is establishing seasonal (April 15<sup>th</sup>–November 1<sup>st</sup>) monitoring and reporting limits in addition to the following terms and conditions;

1. Establishing limits with monitoring and reporting requirement for daily maximum flows of 9,300 gpd.;
2. Establishing limits with 1/month monitoring and reporting requirements for biochemical oxygen demand (BOD) and total suspended solids (TSS);

**PERMIT SUMMARY (cont'd)**

3. Establishing limits with 1/month monitoring and reporting requirements for BOD & TSS percent removal.
4. Establishing limits with 1/month monitoring and reporting requirements for settleable solids;
5. Establishing limits with 1/month monitoring and reporting requirements for total residual chlorine (TRC);
6. Establishing seasonal limits with 1/month monitoring and reporting requirements for Enterococci bacteria from April 15<sup>th</sup>-October 31<sup>st</sup>; and
7. Establishing limits with 1/month monitoring and reporting requirements for pH.

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## CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated July 18, 2022, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with State law.
3. The provisions of the State's antidegradation policy, *Classification of Maine waters*, 38 M.R.S. §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 waterbody are not met, the discharge will not cause or contribute to the failure of the waterbody to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving waterbody 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 waterbody, 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).
5. The overboard discharge system was in continuing existence for the 12 months preceding June 1, 1987.
6. A non-discharging subsurface wastewater disposal system could not be installed in compliance with the Maine Subsurface Wastewater 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.
8. The discharge is not located within the boundaries of a sanitary district or sewer district.

**ACTION**

THEREFORE, the Department APPROVES the application of THE ISLAND INN to discharge a daily maximum of 9,300 gpd seasonally (all dwellings) from April 15<sup>th</sup> through November 1<sup>st</sup> and a daily maximum of 300 gpd seasonally (two-bedroom, single family dwelling) from November 2<sup>nd</sup> through April 14<sup>th</sup> of secondary treated sanitary wastewater, to the Atlantic Ocean at Monhegan Harbor, Class SB, in Monhegan Island Plantation, 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 and the authorization to discharge become effective upon the date of signature below and expire at midnight five (5) years from the effective date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the authorization to discharge and the terms and conditions of this permit and all modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [Maine Administrative Procedure Act, 5 M.R.S. §10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (last amended June 9, 2018)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 5 DAY OF October, 2022.

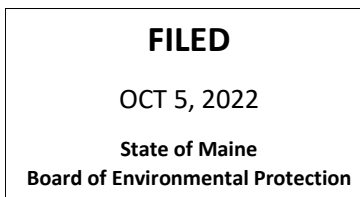
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 

For MELANIE LOYZIM, Commissioner

Date of initial receipt of application: April 18, 2019

Date of application acceptance: April 22, 2019



Date filed with Board of Environmental Protection:

This Order prepared by Rod Robert, BUREAU OF WATER QUALITY

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge secondary treated sanitary wastewater from **Outfall #001** to the Atlantic Ocean at Monhegan Harbor, Class SB. Such discharges are limited and must be monitored by the permittee as specified below<sup>(1)</sup>:

**April 15<sup>st</sup>- November 1<sup>st</sup>**

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
	Monthly Average	Weekly Average	Daily Maximum	Monthly Average	Weekly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow <i>[50050]</i>	Report gpd <i>[07]</i>	---	9,300 gpd <i>[07]</i>	---	---	---	Continuous <i>[99/99]</i>	Metered <i>[MT]</i>
BOD <sub>5</sub> <i>[00310]</i>	2.33 lbs./day <i>[26]</i>	3.49 lbs./day <i>[26]</i>	3.88 lbs./day <i>[26]</i>	30 mg/L <i>[19]</i>	45 mg/L <i>[19]</i>	50 mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
BOD <sub>5</sub> Percent Removal <sup>(2)</sup> <i>[81010]</i>	---	---	---	85% <i>[23]</i>	---	---	1/Month <i>[01/30]</i>	Calculate <i>[CA]</i>
TSS <i>[00530]</i>	2.33 lbs./day <i>[26]</i>	3.49 lbs./day <i>[26]</i>	3.88 lbs./day <i>[26]</i>	30 mg/L <i>[19]</i>	45 mg/L <i>[19]</i>	50 mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
TSS Percent Removal <sup>(2)</sup> <i>[81011]</i>	---	---	---	85% <i>[23]</i>	---	---	1/Month <i>[01/30]</i>	Calculate <i>[CA]</i>
Settleable Solids <i>[00545]</i>						0.3 ml/L <i>[25]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
Fecal Coliform Bacteria <sup>(3)</sup> <i>[31633]</i>	---	---	---	14 CFU/100 mL <sup>(3)</sup> <i>[13]</i>	---	31 CFU/100 ml <i>[13]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
Enterococci Bacteria <sup>(4)</sup> (April 15 – Oct 31,) <i>[31639]</i>				8 CFU/100 mL <sup>(4)</sup> <i>[13]</i>	---	54 CFU /100 mL <i>[13]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
Total Residual Chlorine <sup>(5)</sup> <i>[50060]</i>	---	---	---	---	---	1.0 mg/L <i>[19]</i>	1/Month <sup>(5)</sup> <i>[01/30]</i>	Grab <i>[GR]</i>
pH (Standard Unit) <i>[00400]</i>	---	---	---	---	---	6.0 – 9.0 SU <i>[12]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>

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

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

## SPECIAL CONDITIONS

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 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 wastewater 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 permittee must maintain a minimum of 85 percent removal of both BOD<sub>5</sub> and TSS for all flows receiving secondary treatment. The percent removal must be calculated based on influent and effluent concentration values. The permittee’s wastewater treatment system does not contain an influent sampling location that is representative of raw wastewater conditions. Therefore, this permitting action authorizes the permittee to assume an influent BOD<sub>5</sub> and TSS concentration value of 286 mg/L for purposes of calculating the monthly percent removal value. See page 6 of the Fact Sheet for a basis statement.
3. **Fecal Coliform Bacteria** – The monthly fecal coliform average limitation is a **geometric mean** limitation and results must be calculated and reported as such.
4. **Enterococcus Bacteria Reporting** – Enterococcus bacteria limits are a **geometric mean** and monitoring requirements are seasonal running from April 15<sup>th</sup> – October 31<sup>st</sup>, annually.
5. **Total residual chlorine (TRC)** – Limitations and monitoring requirements are applicable whenever elemental chlorine or chlorine-based compounds are being used to disinfect the discharge. The permittee shall utilize approved test methods that are capable of bracketing the TRC limitation in this permit. There must be at least 14 days between sampling events.

## **SPECIAL CONDITIONS**

### **B. ANNUAL DISCHARGE FEES**

Pursuant to *Annual waste discharge license fees*, 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 permit is grounds for accruing interest charges, penalties or revocation of the permit.

### **C. NARRATIVE EFFLUENT LIMITATIONS**

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

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

The person that has direct responsibility for the operation of the treatment facility must be operated by a person holding a minimum of a **Maine Grade II** certificate (or higher) or must be a Maine Registered Professional Engineer pursuant to *Sewerage Treatment Operators*, 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 and Outfall #002 (Outfall #002 is not a physically separate outfall, it is an administrative label to differentiate different daily maximum flow limits only). Discharges of wastewater from any other point source(s) 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.



## SPECIAL CONDITIONS

### H. SITE EVALUATION FOR TRANSFER OF OWNERSHIP

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 alternatives<sup>1</sup> 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.
  - 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 shall, 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 shall 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 funding<sup>2</sup>, 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.

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<sup>1</sup> 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.

<sup>2</sup> 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**

### **H. SITE EVALUATION FOR TRANSFER OF OWNERSHIP (cont'd)**

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.

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

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

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

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

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

## **SPECIAL CONDITIONS**

### **K. 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. Toxics reporting must be done using the DEP toxsheet reporting form. An electronic copy of the Toxsheet reporting document must be submitted to your Department Compliance Inspector as an attachment to an email. In addition, a hardcopy form of this sheet must be signed and submitted to your compliance inspector, or a copy attached to your NetDMR submittal will suffice. Documentation submitted electronically to the Department in support of the electronic DMR must be submitted no later than midnight on the 15th day of the month following the completed reporting period.

A signed copy of the DMR and all other reports required herein must be submitted to the Department assigned inspector (unless otherwise specified by the Department) at the following address:

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

## **SPECIAL CONDITIONS**

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

In accordance with 38 M.R.S. § 414-A(5) and upon evaluation of the tests results or monitoring requirements specified in Special Conditions of this permitting action, new site-specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at any time and with notice to the permittee, modify this permit to: (1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded; (2) require additional effluent or ambient water quality monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

### **M. SEVERABILITY**

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

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

**FACT SHEET**

Date: **July 18, 2022**

MEPDES PERMIT: **ME0037516**  
WASTE DISCHARGE LICENSE: **W001369-5C-E-R**

NAME AND ADDRESS OF APPLICANT:

**MONHEGAN ISLAND INN, INC.  
71 WHARF HILL ROAD  
MONHEGAN, ME 04852**

COUNTY: **LINCOLN COUNTY**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**THE ISLAND INN  
MONHEGAN ISLAND PLANTATION**

RECEIVING WATER/CLASSIFICATION:

**MONHEGAN HARBOR, ATLANTIC OCEAN/Class SB**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER:

**Michael Brassard**  
**(207) 594-0159**  
[mbrassard@islandinnmonhegan.com](mailto:mbrassard@islandinnmonhegan.com)

**1. APPLICATION SUMMARY**

- a. Application: On April 22, 2019, the Department of Environmental Protection (Department) accepted as complete for processing an application from Monhegan Island Inn, Inc. for the Island Inn for the renewal of a Maine Waste Discharge License (WDL) W001369-5C-D-R which was issued by the Department on June 11, 2014, for a five-year term. The permit issued on June 11, 2014, authorized the seasonal discharge authorized the daily maximum seasonal discharge (April 15<sup>th</sup> – November 1<sup>st</sup>) from a commercial overboard discharge of 9,300 gallons per day (gpd) and a daily maximum seasonal discharge (November 2<sup>nd</sup> through April 14<sup>th</sup>) of 300 gpd of secondary treated sanitary wastewater from the Island Inn to Monhegan Harbor, Class SB water, in Monhegan Island Plantation, Maine.

## 1. APPLICATION SUMMARY (cont'd)

This renewal will be the first time that the Island Inn will be permitted under the Maine Pollutant Discharge Elimination System (MPDES) and has been assigned permit number ME0037516/ Maine Waste Discharge License (WDL) W001369-5C-E-R.

## 2. PERMIT SUMMARY

- a. This permitting action is establishing seasonal (April 15<sup>th</sup>–November 1<sup>st</sup>) monitoring and reporting limits in addition to the following terms and conditions;
  2. Establishing limits with monitoring and reporting requirement for daily maximum flows of 9,300 gpd and 300 gpd, respectively;
  3. Establishing limits with 1/month monitoring and reporting requirements for biochemical oxygen demand (BOD) and total suspended solids (TSS);
  4. Establishing limits with 1/month monitoring and reporting requirements for BOD & TSS percent removal;
  5. Establishing limits with 1/month monitoring and reporting requirements for settleable solids;
  6. Establishing limits with 1/month monitoring and reporting requirements for total residual chlorine (TRC);
  7. Establishing year-round limits with 1/month monitoring and reporting requirements for Fecal Coliform bacteria;
  8. Establishing seasonal limits with 1/month monitoring and reporting requirements for Enterococci bacteria from April 15<sup>th</sup>-October 31<sup>st</sup> beginning April 15, 2022; and
  9. Establishing limits with 1/month monitoring and reporting requirements for pH.

- b. Facility history: This section provides a summary of the most significant regulatory actions:

*January 12, 2001* – The Department began requiring all discharges of domestic wastewater (overboard discharges or OBDs) on Monhegan Island to achieve compliance with the secondary treatment requirements specified at 06-096 CMR 525(3)(III) and the best practicable treatment requirements specified at 06-096 CMR 596(9).

*April 18, 2019* – The permittee submitted a complete application to the Department. The application was accepted for processing on April 22, 2019 and was assigned WDL #W001369-5C-E-R and MEPDES#ME0037516.

## 2. PERMIT SUMMARY (cont'd)

- c. Source description: The discharge is from an inn complex on Monhegan Island Plantation Island consisting of a 60-seat restaurant, one 28-room Inn, one 24-person dormitory, one six-bedroom house (the Pierce House), one duplex (with a 1 and 2-bedroom unit), and a 1-bedroom "Lobster Hut." The permittee's facility operates on a seasonal basis. On or about November 1 of each year commercial operations cease and the facility's discharge is reduced to approximately less than 300 gpd.
- d. Wastewater treatment: From the application materials:  
"Wastewater flows from the facility into one of three 7,000-gallon septic tanks. Two 1,000-gallon aerated grease traps are utilized to enhance grease interception originating from the kitchen, prior to conveyance to the septic tanks. Aerobic treatment consists of a series of six 1,000-gallon aerobic treatment tanks. Following the aerobic treatment, effluent is directed to one of four settling tanks before being routed to a chlorination unit. After disinfection and de-chlorination, effluent is discharged via an outfall pipe in Monhegan Harbor.
- e. Replacement options: Pursuant to 38 M.R.S. §414-A(1-B), the Department finds that the discharge from an OBD meets the requirements of best practicable treatment for purposes of licensing when it finds that there are no technologically proven alternative methods of wastewater disposal consistent with the plumbing code adopted by the Department of Health and Human Services pursuant to Title 22, section 42 that will not result in an overboard discharge. The Department's finding must be based on documentation from a licensed site evaluator (LSE) having experience in designing replacement systems for overboard discharges and provided by the overboard discharge owner.

## 3. CONDITIONS OF PERMIT

*Conditions of licenses*, 38 M.R.S. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require the application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in *Maine's Surface Water Classification System*. In addition, *Certain deposits and discharges prohibited*, 38 M.R.S. § 420 and Department rule *Surface Water Toxics Control Program*, 06-096 CMR 530 (effective March 21, 2012), require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (amended February 16, 2020), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

#### 4. RECEIVING WATER QUALITY STANDARDS

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

#### 5. RECEIVING WATER QUALITY CONDITIONS

*The State of Maine 2022 Integrated Water Quality Monitoring and Assessment Report*, prepared by the Department pursuant to Sections 303(d) and 305(b) of the *Federal Water Pollution Control Act* Monhegan Island Plantation Island:

Category 5-B-1(a): Estuarine and Marine Waters Impaired by Bacteria Only-TMDL Required. The Maine Department of Marine Resources (MEDMR) closes shellfish harvesting areas if there are known sources of discharges with unacceptable bacteria levels (thresholds established in the National Shellfish Sanitation Program) or maintains shellfish harvesting closure areas due to lack of updated information regarding ambient water quality conditions and current shoreline surveys. In addition, the MEDMR prohibits shellfish harvesting in the immediate vicinity of all wastewater treatment outfall pipes as a precautionary measure in the event of a failure in the treatment plant's disinfection system.

Thus, shellfish harvesting area #26-A is closed to the harvesting of shellfish due to elevated fecal indicators. The shellfish closure area can be found at <http://www.maine.gov/dmr/shellfish-sanitation-management/closures/pollution.html>

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

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

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

The secondary treatment regulation establishes technology-based effluent limitations for BOD<sub>5</sub>, TSS, and pH which are discussed in more detail in the individual parameter sections below.

- b. Flow: The previous permitting action established, and this permitting action is carrying forward, a daily maximum flow limitation of 9,300 gallons per day during the period of April 15 through November 1 of each year (all dwellings) and 300 gallons per day during the period of November 2 through April 14 of each year (two-bedroom, single-family dwelling), which is based on the design of the treatment facility, and a daily maximum discharge flow monitoring and reporting requirement.
- c. Dilution Factors: 06-096 CMR 530(4)(A)(2)(a) states that, “*For discharges to the ocean, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model.*” Based on the configuration of the proposed Outfall #001A and daily maximum discharge flow design criterion of 9,300 GPD, the Department has made a best professional judgment that dilution factors are as follows:

Acute = 100:1

Chronic = 150:1

Harmonic mean<sup>3</sup> = 450:1

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

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

- d. Biochemical Oxygen Demand (BOD<sub>5</sub>) and Total Suspended Solids (TSS): This permitting action is establishing monthly average and weekly average technology-based effluent limits (TBELs) of 30 mg/L and 45 mg/L for BOD<sub>5</sub> and TSS pursuant to the secondary treatment regulation at 40 CFR 133.102 and 06-096 CMR 525(3)(III). This permitting action is also establishing a daily maximum TBELs of 50 mg/L for both BOD<sub>5</sub> and TSS based on a Department best professional judgment of best practicable treatment for secondary treated wastewater.

Monthly average, weekly average and daily maximum TBELs established in this permitting action for BOD<sub>5</sub> and TSS are based on the daily maximum flow design criterion of 9,300 gpd (0.0093 MGD) and 300 gpd (0.0003 MGD) for their respective seasonal timeframes.

The mass-based limits are calculated as follows:

Flow Limit = 9,300 gpd (0.0093 MGD)

Monthly Average Mass Limit: (30 mg/L)(8.34 lbs./gallon)(0.0093 MGD) = 2.33 lbs./day

Weekly Average Mass Limit: (45 mg/L)(8.34 lbs./day)(0.0093 MGD) = 3.49 lbs./day

Daily Maximum Mass Limit: (50 mg/L)(8.34 lbs./day)(0.0093 MGD) = 3.88 lbs./day

Flow Limit = 300 gpd (0.0003 MGD)

Monthly Average Mass Limit: (30 mg/L)(8.34 lbs./gallon)(0.0003 MGD) = 0.08 lbs./day

Weekly Average Mass Limit: (45 mg/L)(8.34 lbs./day)(0.0003 MGD) = 0.11 lbs./day

Daily Maximum Mass Limit: (50 mg/L)(8.34 lbs./day)(0.0003 MGD) = 0.13 lbs./day

This permitting action is establishing the minimum monitoring frequency requirement of 1/Month for BOD<sub>5</sub> and TSS. This permitting action carries forward the requirement for a minimum of 85% removal of BOD<sub>5</sub> and TSS pursuant to 06-096 CMR 525(3)(III)(a)(3) and (b)(3). This permitting action establishes a minimum monitoring frequency requirement of once per month for percent removal. The permittee's wastewater treatment system does not contain an influent sampling location that is representative of raw wastewater conditions.

According to the USEPA's *Onsite Wastewater Treatment Systems Manual*, dated February 2002, table 3-7 entitled "Constituent Mass Loadings and Concentrations in Typical Residential Wastewater" high end range of values, influent values for BOD<sub>5</sub> and TSS may be assumed to be 286 mg/L. This permitting action also is carrying forward authorization for the Island Inn to assume a midrange influent BOD<sub>5</sub> and TSS concentration value of 286 mg/L for the purpose of calculating the monthly percent removal value until such time that the infrastructure is modified or replaced such that collection of a representative raw influent sample is practical.

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

- e. Fecal Coliform Bacteria: This permitting action is establishing a seasonal monthly average and daily maximum concentration limits of 14 colonies/100 ml and 31 colonies/100 ml, respectively, for fecal coliform bacteria, which are consistent with the National Shellfish Sanitation Program. Fecal coliform bacteria limits apply whenever discharge occurs. An explanation of the Department’s position on Bacteria Limitations is included as Attachment A of this Fact Sheet.
  
- g. Total Residual Chlorine (TRC): This permitting action is establishing a daily maximum water quality-based concentration limit of 1.0 mg/L for TRC with 1/Month monitoring requirement. Limitations on TRC are specified to ensure that ambient water quality standards are maintained at all times of the year and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either a water quality-based or BPT-based limit. With dilution factors as determined in Section 6(c) of this Fact Sheet, end-of-pipe (EOP) water quality-based concentration thresholds for TRC may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A & C Dilution Factors	Calculated	
			Acute Limit	Chronic Limit
0.013 mg/L	0.0075 mg/L	100:1(A) 150:1(C)	1.3 mg/L	1.12 mg/L

The water quality-based acute threshold of 1.0 mg/L is more stringent than either calculated water quality-based threshold and is therefore being established in this permitting action. The Department is identifying that dechlorination may be required to comply with this water quality-based threshold. The permittee includes dichlorination as part of their treatment process.

- h. pH: This permitting action is establishing a technology-based pH limit of 6.0 – 9.0 standard units (SU), which is based on 06-096 CMR 525(3)(III). This permitting action is establishing a monitoring frequency of 1/month for pH.
  
- i. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing: 38 M.R.S. § 414-A and 38 M.R.S. § 420 prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. 06-096 CMR 530 sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected, and narrative and numeric water quality criteria are met. 06-096 CMR 584 sets forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

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

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

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

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

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

- j. Nitrogen: The USEPA requested the Department evaluate the reasonable potential for the discharge of total nitrogen to cause or contribute to non-attainment of applicable water quality standards in marine waters, namely dissolved oxygen (DO) and marine life support. To date, the permittee has not conducted total nitrogen testing on its discharge. As of March 2020, the Department has 186 total nitrogen effluent values with an arithmetic mean of 19.9 mg/L collected from various municipally owned treatment works that discharge to marine waters of the State. None of the facilities whose effluent data were used are specifically designed to remove total nitrogen. For the MEPDES permitting program, the Department considers 19.9 mg/L to be representative of total nitrogen discharge levels for all facilities providing secondary treatment that discharge to marine waters in the absence of facility specific data, and therefore 19.9 mg/L is being used as the total nitrogen discharge concentration from The Island Inn's facility.

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

As of the date of this permitting action, the State of Maine has not promulgated numeric ambient water quality criteria for total nitrogen. According to several studies in USEPA's Region 1, numeric total nitrogen criteria have been established for relatively few estuaries, but the criteria that have been set typically fall between 0.35 mg/L and 0.50 mg/L to protect marine life using dissolved oxygen as the indicator. While the thresholds are site-specific, nitrogen thresholds set for the protection of eelgrass habitat range from 0.30 mg/L to 0.39 mg/L. Based on studies in USEPA's Region 1 and the Department's best professional judgment of thresholds that are protective of Maine water quality standards, the Department is utilizing a threshold of 0.45 mg/L for the protection of aquatic life in marine waters using dissolved oxygen as the indicator, and 0.32 mg/L for the protection of aquatic life using eelgrass as the indicator.

No known eelgrass surveys have been completed surrounding Monhegan Island. Portions of Monhegan Harbor are of suitable depth to host eelgrass, though given the distance from the mainland, any eelgrass present would have needed to be planted or accidentally introduced by hitchhiking seeds. Aerial imagery of Monhegan Harbor is not sufficient to determine eelgrass presence with any level of certainty. For the purpose of this reasonable potential evaluation, the use of 0.32 mg/L as a threshold value for protection of eelgrass is not appropriate for this receiving water, and the Department is using the total nitrogen threshold concentration of 0.45 mg/L for the protection of aquatic life using dissolved oxygen as the indicator.

With the exception of ammonia, nitrogen is not acutely toxic; thus, the Department is considering a far-field dilution to be more appropriate when evaluating impacts of total nitrogen to the marine environment. Far field dilutions are significantly higher than the near-field dilution, ranging from 10 – 10,000 times higher depending on the location of the outfall pipe. The permittee's facility has a chronic near-field dilution of 150:1, therefore, and the far-field dilution is conservatively estimated to be 1,200:1, which limits the increase in the ambient total nitrogen to 0.017 mg/L based on the following calculation:

Total nitrogen concentrations in effluent = 19.9 mg/L

Chronic dilution factor = 1,200:1

In-stream concentration after dilution:  $\frac{19.9 \text{ mg/L}}{1,200} = 0.017 \text{ mg/L}$

The Department and external partners have been collecting ambient total nitrogen data along Maine's coast. No total nitrogen data are known to exist from Monhegan Island, and very few data points are available for offshore Maine islands where only minor discharges are permitted and upland land use is minimal. For perspective, the ambient mean total nitrogen value calculated for Vinalhaven is  $0.17 \pm 0.04 \text{ mg/L}$  (n=10). Monhegan Harbor's ambient total nitrogen average is not expected to deviate notably from a concentration like 0.17 mg/L, which is well below the total nitrogen threshold value of 0.45 mg/L even with the addition of the effluent in the far field ( $0.17 \text{ mg/L} + 0.017 \text{ mg/L} = 0.187 \text{ mg/L}$ ).

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

The in-stream concentration value of 0.187 mg/L is less than the Department and USEPA's best professional judgment based total nitrogen threshold of 0.45 mg/L for the protection of aquatic life using dissolved oxygen as an indicator. Using the reasonable potential calculations above and in the absence of any information that the receiving water is not attaining standards, the Department is making a best professional judgment determination that the discharge of total nitrogen from The Island Inn does not exhibit a reasonable potential to exceed applicable water quality standards for Class SB waters. This permitting action is not establishing limitations or monitoring requirements for total nitrogen.

## 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 waterbody to meet standards for Class SB waters.

## 8. PUBLIC COMMENTS

Public notice of this application was made available in the *Currier-Gazette Newspaper* on or about April 11, 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 must have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, CMR 522 (effective January 12, 2001).

## 9. DEPARTMENT CONTACTS

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

Rodney Robert  
Division of Water Quality Management  
Bureau of Water Quality  
Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017 Telephone: (207) 680-0576  
e-mail: [rodney.robert@maine.gov](mailto:rodney.robert@maine.gov)

## 10. RESPONSE TO COMMENTS

During the period of July 18, 2022, through the issuance of the permit the Department solicited comments from the public and interested parties. Comments from interested parties and the Department's responses are listed below.

Comments from Andrea Dickenson, Project Manager, Project Engineer at Haley Ward Inc.

1. We request for the Department to eliminate the off-season monitoring and reporting requirements associated with Outfall #002. These off-season monitoring requirements (November 2nd – April 14th) are not feasible given the freezing conditions throughout the winter and the unreliable ferry transportation to and from the island during that time of year. Chlorination and flow monitoring during this time along with the collection of samples for analytical laboratory analysis within hold times would be impossible. The flow meter must be removed prior to the onset of freezing conditions to preserve it for the next operating season. Additionally, the off-season monitoring requirements for Outfall #002 are associated with a modest discharge volume from a residential source. Several residential properties on Monhegan and other coastal Maine islands have similar discharges, of equal or greater volume, without the associated monitoring and reporting requirements.

Response:

The Department notes that testing during the off season is not feasible due to freezing weather conditions and unreliable ferry transportation during the winter months. It is also noted that as commercial operations cease on or about Nov 1 the discharge from the Inn is greatly reduced to an approximate daily discharge of 300 gpd or less, consisting of residential wastewater. Therefore, the Department is removing testing requirements for Outfall #002 from Nov 2<sup>nd</sup> through April 14<sup>th</sup> from the 2022 permit. However, all domestic wastewater generated by the facility that is conveyed to surface waters for discharge must comply with the secondary treatment requirements specified at 06-096 CMR 525(3)(III) and the best practicable treatment requirements of 06-096 CMR 596(9).

2. The effluent limitations for fecal coliform that were established in the Inn's 2014 WDL are sufficient to meet current National Shellfish Sanitation Program (NSSP) bacteriological criteria. Accordingly, Haley Ward, Inc. (Haley Ward) requests that the MDEP amend fecal coliform discharge requirements identified in the Monhegan Island Inn's 2022 Preliminary Draft WDL, as follows:

Effluent Characteristic Discharge Limitations

Fecal Coliform

Monthly Average =15 col/100 mL

Daily Maximum =50 col/100 mL

## 10. RESPONSE TO COMMENTS (cont'd)

38 M.R.S.A. 465-B states that the number of “coliform bacteria... in shellfish harvesting areas may not exceed the criteria recommended under the [NSSP], United States Food and Drug Administration.”<sup>1</sup> It is therefore understood that the MDEP used NSSP bacteriological criteria to establish the monthly average and daily maximum discharge requirements for fecal coliform identified in the Inn’s 2014 WDL (#W001369-5C-D-R). NSSP criteria are published in the NSSP Guide for the Control of Molluscan Shellfish (Guide). Although the Guide has been revised over time, the microbiological standards associated with fecal coliform in shellfish growing areas have remained unchanged for at least the past decade.

Given that the Inn’s 2014 WDL (#W001369-5C-D-R) was written to comply with State law and NSSP criteria and that the bacteriological requirements established by the Guide have not changed since issuance of the 2014 WDL, we request that MDEP carry 2014 Fecal Coliform discharge requirements into the 2022 permit.

### Response:

On 5/7/2019 the Department issued to Maine Pollutant Discharge Elimination System / Waste Discharge License (MEPDES/WDL) dischargers in marine waters, Class SB/SC, a letter providing background information for the Department’s decision and outlining the summary of changes to bacteria limits for both Fecal Coliform and Enterococcus Bacteria. The Department notes that this is the first time the permittee’s facility as been included in the MEPDES Program and has included the letter as Attachment A of this Fact Sheet.

3. The Discharge Limitations associated with Outfall #001 and Outfall #002 are listed as Daily Maximum values. We request for these flows to be “Report Only” given the nature of the discharge and the inability to regulate the amount of flow discharged on a given day from the Inn.

### Response:

Daily Maximum values are based in part on the design of a facility’s treatment system. These values provide a check for the Department to ensure that systems are not exceeding their capability to meet secondary treatment standards and unintentionally degrading Water Quality Standards. The Department has removed testing requirements from Outfall #002 (Nov 2-April 14), However, the facility must provide Daily Maximum data for Outfall #001 during the Inn’s operational season (April 15-Nov1).

4. Page five of the Proposed Draft WDL, describes the Effluent Limitations and Monitoring Requirements for Outfall #001. Total Residual Chlorine is listed with a measurement frequency of “1/month” and “02/30”. We request clarification on which measurement frequency was intended for this parameter.

### Response:

The Departments notes this typographical error and has corrected the parameter to read 1/30.



**10. RESPONSE TO COMMENTS (cont'd)**

5. Special Condition K of the Proposed Draft WDL describes the Monitoring and Reporting requirements. We request clarification on whether the eDMR system is synonymous with the NetDMR system.

Response:

The Proposed Draft included outdated boilerplate language referring to the eDMR system. The updated language describing the process to submit testing results electronically via the NetDMR system has been included in the final permit.

6. The Fact Sheet identifies John Pond of (Haley Ward) as a Cognizant official. We request for this to reflect only the Island Inn's owner, Mr. Michael Brassard.

Response:

The Department has made the correction identifying Mr. Michael Brassard as the cognizant official.

7. Section 2. Permit Summary of the Fact Sheet describes the Wastewater Treatment as a "community outfall pipe." The outfall is not a community outfall pipe and we request for the language to be updated accordingly.

Response:

The Department has made the correction.

# ATTACHMENT A



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



GERALD D. REID  
COMMISSIONER

May 7, 2019

**RE: Maine Pollutant Discharge Elimination System/Waste Discharge License (MEPDES/WDL) Permit Limits for Marine Dischargers - Fecal coliform & Enterococcus bacteria**

To all MEPDES/WDL marine discharges,

On January 30, 2018, the Department of Environmental Protection (Department) issued a letter to the Maine Rural Water Association (MRWA) and the Maine Water Environment Association (MeWEA) informing the associations of updates to then proposed revisions to Maine water quality standards. The letter (attached) provided information on potential changes to bacteria standards for fresh waters and marine waters as well as how the Department would implement those changes in future MEPDES/WDL permit renewals. Changes to the water quality standards were formally promulgated into State law (38 M.R.S. §465 and §465-B) in the fall of 2018. This letter provides more information on how and why the Department is incorporating bacteria limits into MEPDES/WDL for dischargers to marine waters. This letter also provides information related to changes for the establishment of bacteria limits based on recent comments from the Environmental Protection Agency (EPA) that are unrelated to the statutory changes noted above.

**Summary of Changes:**

Future MEPDES/WDL will now contain limits for both fecal coliform (as is current practice) to protect the designated use of “propagation and harvesting of shellfish”, and newly established limits for enterococcus bacteria, based on current Maine criteria, to protect the designated use of “recreation in and on the water”. The seasonality of these limits may be different than previous permits as noted below.

**Background Information on Bacteria:**

Specific types of non-pathogenic bacteria, such as enterococcus bacteria and fecal coliform, are indicator organisms, or surrogates, for waterborne pathogens (bacteria, viruses, etc.) which enter surface waters from a variety of sources, including human sewage and the feces of warm-blooded wildlife. These pathogens can pose a risk to human health due to gastrointestinal illness through different exposure routes, including contact with and ingestion of waters and consumption of shellfish. These indicator bacteria also highlight the efficacy of disinfection of wastewater.

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**Recent EPA Decisions:**Enterococcus bacteria

The EPA is reissuing NPDES permits for eight-primary treatment [301(h)] wastewater treatment plants in Maine.<sup>1</sup> These permits will include seasonal monthly average (geometric mean) and daily maximum limitations and monitoring requirements for enterococcus bacteria based on current Maine criteria. Within these permits, the EPA takes the position that for discharges to Class SB and SC waters, in addition to fecal coliform limits to protect the designated use of “propagation and harvesting of shellfish”, it is appropriate to require end-of-pipe limits for enterococcus bacteria, based on current Maine criteria, to protect the designated use of “recreation in and on the water”.

The EPA is establishing permit limits as follows:

<b>Class SB: (38 M.R.S. §465-B, sub-§2(B))</b>		
<b>enterococcus bacteria</b>		
<b>Monthly Average</b>	<b>Daily Maximum</b>	<b>Season</b>
8 CFU/100 ml	54 CFU/100 ml	April 15 <sup>th</sup> – October 31 <sup>st</sup>

<b>Class SC: (38 M.R.S. §465-B, sub-§3(B))</b>		
<b>enterococcus bacteria</b>		
<b>Monthly Average</b>	<b>Daily Maximum</b>	<b>Season</b>
14 CFU/100 ml	94 CFU/100 ml	April 15 <sup>th</sup> – October 31 <sup>st</sup>

The EPA is establishing a deadline of April 15, 2020, for compliance with the enterococcus limitations and monitoring requirements in the eight NPDES permits for the 301(h) facilities.

The effective date of the enterococcus bacteria limits has been delayed to April 15, 2020 due to the limited number of laboratories capable of evaluating enterococcus bacteria in Maine. The Department has submitted a bill (currently pending) to the state legislature to include enterococcus bacteria to the list of exceptions in Maine law at 22 M.R.S. §567, sub (1). This change will allow laboratories operated by wastewater discharge facilities licensed pursuant to *Waste Discharge Licenses*, 38 M.R.S. §413, to test for enterococcus bacteria. If passed, the law will become effective 90 days after the close of the legislative session (approximately late September/early October 2019.)

EPA has informed the Department that we must also include the above enterococcus bacteria limits in MEPDES/WDL to Class SB and SC waters upon renewal. The Department intends to do so.

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<sup>1</sup> Although Maine is authorized to implement Clean Water Act requirements, EPA retains permitting authority for these 301h waiver facilities.

Fecal coliform bacteria

Also included in the pending renewal NPDES permits for the eight-primary treatment [301(h)] wastewater treatment plants, the EPA takes the position that for discharges to Class SB and SC waters, it is appropriate to require year-round disinfection for the protection of the designated use of “propagation and harvesting of shellfish”. The EPA is establishing permit limits in accordance with the most current National Shellfish Sanitation Program guidelines (2017) as follows:

<b>Class SB &amp; SC</b>		
<b>fecal coliform bacteria</b>		
<b>Monthly Average</b>	<b>Daily Maximum</b>	<b>Season</b>
14 CFU/100 ml	31 CFU/100 ml	Year round

These limits differ slightly from the limits currently used in MEPDES/WDL of 15 CFU/100 mL as a monthly average (geometric mean) and 50 CFU/100 ml as a daily maximum. EPA has informed the Department that we must also include the above limits in MEPDES/WDL to Class SB and SC waters upon renewal. The Department intends to do so consistent with Maine law.<sup>2</sup>

It is noted that shellfish areas around regulated outfalls are closed by the Maine Department of Marine Resources as a precaution regardless of the bacteria levels in the discharge. These closures are based on the requirements of the National Shellfish Sanitation Program (NSSP). The EPA takes the position that states have a responsibility to set fecal coliform bacteria limits in the permits to protect the designated use of “propagation and harvesting of shellfish” regardless of the closure status and that establishment of year-round fecal coliform limits to protect the designated use is appropriate. EPA has informed the Department that we must also include the above limits year-round in MEPDES/WDL to Class SB and SC waters upon renewal. The Department intends to do so.

**Compliance schedules to meet new bacteria and/or extended season bacteria limits:**

The Department is aware these new requirements may not be able to be implemented by permittee’s immediately due to the need for new analytical equipment and/or complications with dechlorination associated with cold weather operations.

If a permittee believes that a compliance schedule is necessary to make modifications to the facility, the Department will work with each permittee independently to determine an appropriate schedule that is as short as possible, based on consideration of the

<sup>2</sup> 38 M.R.S. §465-B, sub-§2(B) & 38 M.R.S. §465-B, sub-§3(B) both state in part, “The number of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas may not exceed the criteria recommended under the NSSP, United States Food and Drug Administration.”

technological, economic and environmental impact of the steps necessary to come into compliance with the requirements.<sup>3</sup>

**Closing Summary:**

Upon renewal of MEPDES/WDL for SB and SC waters:

- Numerical limits for both enterococcus and fecal coliform bacteria will be established as noted above.
- Enterococcus limits will be in effect from April 15 to October 30 unless otherwise specified.
- Fecal coliform limits will be in effect year-round.
- Compliance schedules may be granted as noted above.

If you have questions regarding these matters feel free to contact permit writers Gregg Wood at 287-7693, [gregg.wood@maine.gov](mailto:gregg.wood@maine.gov), or Cindy Dionne at 287-7823, [cindy.l.dionne@maine.gov](mailto:cindy.l.dionne@maine.gov).

As always, thank you for your good work to protect and improve the waters of the great State of Maine.

Sincerely,



BRIAN KAVANAH  
Director, Bureau of Water Quality

Cc: Sterling Pierce, Pam Parker, John True, Don Witherill, Susanne Meidel – DEP  
Kohl Kanwit – DMR  
Stacy Thompson – MeWEA  
Kirsten Hebert - MRWA

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<sup>3</sup> 38 M.R.S. §414(2) *Schedules of Compliance*, and Department Regulation, Ch. 523, Sec. 7.

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

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**A. GENERAL PROVISIONS**

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

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

- (a) They are not
  - (i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
  - (ii) Known to be hazardous or toxic by the licensee.
- (b) The discharge of such materials will not violate applicable water quality standards.

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

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

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

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

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



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

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

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

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

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

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

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

**B. OPERATION AND MAINTENANCE OF FACILITIES**

**1. General facility requirements.**

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

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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

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

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

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

**5. Bypasses.**

- (a) Definitions.
  - (i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
  - (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.
- (c) Notice.
  - (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

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- (ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D(1)(f), below. (24-hour notice).
- (d) Prohibition of bypass.
  - (i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:
    - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
    - (C) The permittee submitted notices as required under paragraph (c) of this section.
  - (ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (d)(i) of this section.

**6. Upsets.**

- (a) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- (c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
  - (ii) The permitted facility was at the time being properly operated; and
  - (iii) The permittee submitted notice of the upset as required in paragraph D(1)(f) , below. (24 hour notice).
  - (iv) The permittee complied with any remedial measures required under paragraph B(4).
- (d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

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**C. MONITORING AND RECORDS**

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

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

**3. Monitoring and records.**

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

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**D. REPORTING REQUIREMENTS**

**1. Reporting requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**5. Publicly owned treatment works.**

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

**E. OTHER REQUIREMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

**Maximum daily discharge limitation** means the highest allowable daily discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: August 2021**

**Contact: (207) 314-1458**

### SUMMARY

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner.

Except as provided below, there are two methods available to an aggrieved person seeking to appeal a licensing decision made by the 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.

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

A person filing an appeal with the Board should review Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); the Maine Administrative Procedure Act, 5 M.R.S. § [11001](#); and the DEP's [Rule 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**

Not more than 30 days following the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The filing of an appeal with the Board, in care of the Board Clerk, is complete when the Board receives the submission by the close of business on the due date (5:00 p.m. on the 30<sup>th</sup> calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30<sup>th</sup> calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

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

An appeal to the Board may be submitted via postal mail or electronic mail and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection  
c/o Board Clerk  
17 State House Station  
Augusta, ME 04333-0017  
[ruth.a.burke@maine.gov](mailto:ruth.a.burke@maine.gov)

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee; and if a hearing was held on the application, (3) any intervenors in that hearing proceeding. **Please contact the DEP at 207-287-7688 with questions or for contact information regarding a specific licensing decision.**

#### **REQUIRED APPEAL CONTENTS**

A complete appeal 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 bring the 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 of 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 criteria 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 to changes in specific license 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 hearing must be filed as part of the notice of appeal, and it must include an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any witnesses would testify. 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 supplemental evidence must be submitted with the appeal. The Board may allow new or additional evidence to be considered in an appeal only under limited circumstances. The proposed supplemental 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. Requirements for supplemental evidence are set forth 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 accessible by the DEP. Upon request, the DEP will make application materials available to review and photocopy during normal working hours. There may be 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 the appeal.* DEP staff will provide this information upon 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 licensee may proceed with a project pending the outcome of an appeal, but the licensee 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 acknowledge receipt of an appeal, and it will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials admitted by the Board as supplementary evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the application, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant, the licensee, and parties of record are notified in advance of the date set for the Board's consideration of an appeal or request for a hearing. The appellant and the licensee will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding the merits of the appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the licensee, and parties of record of its decision on appeal.

## **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 Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov), or for judicial appeals contact the court clerk's office in which the appeal will be filed.

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**Note: This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. The DEP provides this information sheet for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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