



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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

CARVER SHELLFISH INC.	)	MAINE POLLUTANT DISCHARGE
BEALS, WASHINGTON COUNTY, MAINE	)	ELIMINATION SYSTEM PERMIT
SEAFOOD PROCESSING FACILITY	)	AND
ME0110442	)	WASTE DISCHARGE LICENSE
W007803-5P-H-R	)	<b>RENEWAL</b>
<b>APPROVAL</b>		

In compliance with the applicable provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et seq. and *Condition of Licenses* 38 M.R.S Section 414-A, *et seq.*, and applicable rules, the Department of Environmental Protection (Department) has considered the application of CARVER SHELLFISH, INC., (permittee), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

On November 8, 2019, the Department accepted as complete for processing an application from the permittee for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0110442/Maine Waste Discharge License (WDL) #W007803-5P-G-R (permit) which was issued by the Department on February 4, 2015, for a five-year term. The 02/04/2015 permit authorized the year-round monthly average discharge of 7,600 gallons per day (GPD) of treated clam processing and clean up wastewater (Outfall #001A) to Western Bay, Class SB, in Beals, Maine.

**PERMIT SUMMARY**

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

## CONCLUSIONS

BASED on the findings in the attached FACT SHEET dated November 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, 38 M.R.S §464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
  - (c) Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in 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 sub-surface 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 CARVER SHELLFISH, INC., to discharge a year-round, monthly average of 7,600 gallons per day of treated clam and lobster processing and clean up wastewater (Outfall #001A) to Western Bay, Class SB, in Beals, Maine, as described above, SUBJECT TO ALL APPLICABLE STANDARDS AND REGULATIONS AND THE FOLLOWING CONDITIONS:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits," revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit becomes effective upon the date of signature below and expires at midnight five (5) years after that date. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of this permit and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [Maine Administrative Procedure Act, 5 M.R.S §10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (last amended June 9, 2018)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 21 DAY OF November \_\_\_\_\_, 2022.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
for Melanie Loyzim, Commissioner

Date of initial receipt of application: November 7, 2019

Date of application acceptance: November 8, 2019

Date filed with Board of Environmental Protection

**Filed**  
NOV 21, 2022  
State of Maine  
Board of Environmental  
Protection

This Order prepared by Rod Robert, BUREAU OF & WATER QUALITY

## SPECIAL CONDITIONS

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

The permittee is authorized to discharge a year-round, monthly average of 7,600 gpd, lobster and clam processing wastewater from **Outfall #001A** to the Atlantic Ocean at Western Bay, Class SB, Beals. Such discharges must be limited and monitored by the permittee as specified below<sup>(1)</sup>:

**April 1st – November 30th** of each year:

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
<b>Flow</b> [50050]	7,600 gpd [26]	---	Report gpd [07]	---	---	---	1/ Discharge Day <sup>(2)</sup> [01/DD]	Measure [MS]
<b>Production</b> [00145]	Report lbs/day [26]	---	Report lbs/day [26]	---	---	---	1/Month [01/30]	Grab [GR]
<b>TSS</b> [00530]	54 lbs/day [26]	---	177 lbs/day [26]	852 mg/L [19]	---	2792 mg/L [19]	1/Month [01/30]	Grab [GR]
<b>Oil &amp; Grease</b> [00556]	0.69 lbs/day [26]	---	1.8 lbs/day [26]	11 mg/l [19]	---	28 mg/l [19]	1/Month [01/30]	Grab [GR]
<b>Settleable Solids</b> [00545]	---	---	---	---	---	1.0 ml/L [25]	1/Week [01/07]	Grab [GR]
<b>Total Residual Chlorine<sup>(3)</sup></b> [50060]	---	---	---	---	---	0.3 mg/L [19]	1/Month [01/30]	Grab [GR]
<b>pH</b> [00400]	---	---	---	---	---	6.0 – 9.0 SU [12]	1/Month [01/30]	Grab [GR]

Footnotes See Page 5 of this permit for applicable footnotes.

**December 1 – March 31** of each year: The permittee is authorized to discharge process wastewater to an onsite subsurface disposal system. See attachment C of the Fact Sheet specifics of the sub-surface disposal system.

## **SPECIAL CONDITIONS**

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

#### **Footnotes**

1. **Sampling** – All effluent monitoring must be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. Sampling and analysis must be conducted in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services for 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. **Authorized Discharge Period** – The permittee is authorized to discharge only between three (3) hours before to three (3) hours after high tide.
3. **Total Residual Chlorine** – Limitations and monitoring requirements are applicable whenever elemental chlorine or chlorine-based compounds are being used to disinfect the discharge. The permittee must utilize approved test methods that can bracket the TRC limitation in this permit.

### **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 sufficient 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.

## **SPECIAL CONDITIONS**

### **C. NARRATIVE EFFLUENT LIMITATIONS (cont'd)**

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. The discharges must not cause visible discoloration or turbidity in the receiving waters which would impair the usages 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. 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 November 8, 2019; 2) the terms and conditions of this permit; and 3) only from Outfall #001A. Discharges of wastewater from any other point source are not authorized under this permit and must be reported in accordance with Standard Condition D (*Twenty-four hour reporting*) of this permit.

### **E. 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. 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**

### **F. 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's compliance inspector (unless otherwise specified) at the following address:

Department of Environmental Protection  
Eastern Maine Regional Office  
Bureau of Land and Water Quality  
106 Hogan Road  
Bangor, Maine 04401

## **SPECIAL CONDITIONS**

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

This facility must have a current written comprehensive Operation & Maintenance (O&M) Plan. The plan must provide a systematic approach by which the permittee 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 EPA personnel upon request.

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

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

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

### **I. 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 must remain in full force and effect and must be construed and enforced in all aspects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.

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

**FACT SHEET**

**November 18, 2022**

MEPDES PERMIT: **ME0110442**  
WASTE DISCHARGE LICENSE: **W007803-5P-H-R**

NAME AND ADDRESS OF APPLICANT:

**CARVER SHELLFISH INC.  
Attn: Mr. Albert Carver  
P.O Box 187  
Beals, ME. 04611**

COUNTY: **Washington County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:  
**125 Black Duck Cove Rd.  
Beals, Maine 04611**

RECEIVING WATER / CLASSIFICATION: **Atlantic Ocean at Western Bay/Class SB**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Mr. Albert Carver  
(207) 497-2261  
[acarver@acarverinc.com](mailto:acarver@acarverinc.com)**

**1. APPLICATION SUMMARY**

- a. Application: On November 8, 2019 the Department of Environmental Protection (Department) accepted as complete for processing an application from Carver Shellfish, Inc. for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0110442/Maine Waste Discharge License (WDL) #W007803-5P-G-R (permit) which was issued by the Department on February 4, 2019, for a five-year term. The 02/04/2019 permit authorized the year round, monthly average discharge of 7600 gallons per day (GPD) of treated clam processing and clean-up wastewaters (Outfall #001A) to the Atlantic Ocean at Western Bay, Class SB, in Beals, Maine. See **Attachment A** of the Fact Sheet for a location map of the facility.

## 1. APPLICATION SUMMARY (cont'd)

- b. History: This section provides a chronological summary of recent, relevant licensing/permitting actions that have been completed for Carver Shellfish.

January 12, 2001 – The Department received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine, excluding areas of special interest to Maine Indian Tribes. From that point forward, the program has been referred to as the MEPDES program, and MEPDES permit #ME0110442 has been utilized as the primary reference number for Carver Shellfish.

December 27, 2004 – The Department issued MEPDES permit #ME0110442 / WDL #W007803-5P-C-R to Carver Shellfish for a five-year term. The 12/27/04 WDL superseded WDL #W007803-5P-B-R issued on May 5, 1999, and initial WDL #W007803-WA-A-N issued on November 8, 1993.

August 12, 2009 – Carver Shellfish submitted a timely and complete General Application to the Department for renewal of the 12/27/04 MEPDES permit. The application was accepted for processing on August 14, 2009 and was assigned WDL #W007803-5P-D-R / MEPDES #ME0110442.

August 7, 2012 – The Department issued MEPDES permit #ME0110442 / WDL #W007803-5P-E-M as a minor revision to the August 12, 2009 permitting action at the request of the permittee. The Minor Revision increased the monthly average flow limitation from 2000 gpd to 3000 gpd.

August 16, 2013 – The Department issued MEPDES permit #ME0110442 / WDL #W007803-5P-F-M as a minor revision to the August 12, 2009 permitting action at the request of the permittee increasing the monthly average flow limitation to 7,600 gpd.

August 15, 2014 – Carver Shellfish submitted a timely and complete General Application to the Department for renewal of the 08/12/09 MEPDES permit. The application was accepted for processing on August 15, 2014 and was assigned WDL #W007803-5P-G-R / MEPDES #ME0110442.

February 4, 2014 The Department issued MEPDES permit #ME0110442 / WDL #W007803- 5P-G-R for a five year term

November 8, 2019 The Department accepted as complete an application from the permitte to renew MEPDES permit #ME0110442 / WDL #W007803- 5P-G-R

# 1. APPLICATION SUMMARY (cont'd)

- c. Source description: Carver Shellfish Inc. is a clam processing and packaging facility located on Black Duck Cove Road in Beals, Maine. A map showing the location of the facility and Atlantic Ocean at Western Bay is included as **Attachment A** of this fact sheet. Clam processing includes the shucking, cooking, blanching and cooling of the clam product. Cooking, blanching, and cooling water is used in batches and changed on an as-needed basis. No continual flow process is used. Approximately, 3,000 gpd is used in clam processing, including the cooking process, whereas, 2,000 gpd is used for shucking, cooling and cleanup processes during maximum production conditions. The facility uses fresh water from a drilled well. The facility utilizes a chlorinated cleaner for disinfection and cleaning purposes. Carver Shellfish provided the following anticipated production rates for the facility, which is the basis for certain effluent limitations established in the permit.

<u>Product</u>	<u>lbs./ day processed</u>		<u>Processing Period</u>		<u>Daily effluent flows</u>	
	<u>Average</u> <u>lbs./day</u>	<u>Maximum</u> <u>lbs./day</u>	<u>#weeks/year</u>	<u>Months</u> <u>processing</u>	<u>Average</u>	<u>Maximum</u>
Clams	3,000	5,000	52	Jan - Dec	0.0020 MGD	0.0076 MGD

- d. Wastewater treatment: The treatment of wastewater consists of filter fabric that is installed downstream of the outlets from the cooking and cooling vessels on the wastewater collection line. The wastewater is directed to a sump pump that includes a screen filter with a ½ inch mesh. From the sump pump the wastewater is directed to a final screening process using a hydrosieve. The hydrosieve has a screen with a mesh size pore space of 2.5-millimeter diameter. When clean up begins, the processing equipment is washed and cleaned using mild detergents and chlorine-based compounds. The floor is dry swept to remove as many solids as possible. All wastewater is discharged through the grated floor drains and is directed to the screened sump pump and hydrosieve. Wastewater flows from the sump pump through 2-inch diameter PVC pipe 2,250 feet to the shoreline of Western Bay. The outfall discharges the wastewater at a depth of 4 feet below mean low water. The previous permit limited the discharge period to between three (3) hours before to three (3) hours after the high tide in order to satisfy acute ambient water quality considerations. Beginning on or about December 1 of each year the facility disconnects the pump to the Outfall pipe and discharges process water to a leach field. Between December and March of each year production is reduced to less than a third of what it is during the warmer months. Accordingly, the amount of water discharged to the subsurface system is well below the systems design capability. The leach field, constructed, licensed and in operation since 1993 has never overflowed or failed due to excessive discharge of process water. See **Attachment B** of this Fact Sheet for a diagram of the facility's treatment system and **Attachment C** of this Fact Sheet for the specifics of the sub-surface disposal system.

## 2. PERMIT SUMMARY

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

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

## 4. RECEIVING WATER QUALITY STANDARDS

*Classification of Estuarine and Marine Waters*, 38 M.R.S §469(3-A) classifies Western Bay, at the point of discharge, as a Class SB waterbody. Maine law, 38 M.R.S §465-B (2) contains the standards for Class SB water bodies.

## 5. RECEIVING WATER QUALITY CONDITIONS

*The 2020 Integrated Water Quality Monitoring and Assessment Report* published by the Department pursuant to Section 305(b) of the Federal Water Pollution Control Act lists the south end of Cape Split, Addison to Kelley Point, Jonesport (waterbody ID 703), which includes the tidewaters at the point of discharge as “*Category 2: Estuarine and Marine Waters Attaining Some Designated Uses – Insufficient Information for Other Uses.*” The 2012 Report also lists Maine’s marine and estuarine waters as “*Category 5-D: Estuarine and Maine Waters Impaired by Legacy Pollutants.*” Impairment in this context refers to the estuarine and marine waters partially supporting the designated use of fishing and harvesting of shellfish due to elevated levels of PCBs and other persistent bioaccumulating substances in tissues of lobster tomalley. The Department has no information at this time that the discharge from Carver Shellfish, as permitted, causes or contributes to this non-attainment of the receiving water.

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

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. Flow: The previous permitting action established a monthly average discharge flow limitation of 0.0076 MGD for Outfall #001A with a monitoring and reporting requirement to maintain consistency with other permitted facility limitations and to provide operational flexibility to the permittee. Carver Shellfish Inc. has indicated in its application that the anticipated wastewater flows discharged from the clam processing and facility cleaning activities is an average of 2,000 gallons per day, with seasonal increases in production raising the level in excess of 5,000 gallons per day. **Therefore, this permitting action is carrying forward the seasonal (April 1 – November 30<sup>th</sup>) monthly average discharge flow limitation of 0.0076 MGD for Outfall #001A.**
- b. 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 Outfall #001A with a discharge flow limit of 0.0076 MGD (same as 7,600 GPD), and the Department’s best professional judgment, the dilution factors associated with the discharge are as follows:

Acute = 25:1

Chronic = 391:1

Harmonic Mean= 1173:1

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

- c. Production: The previous permitting action established, and this permitting action is carrying forward, monthly average and daily maximum production rate reporting requirements. A summary of production data as reported on the monthly DMRs for the period of March 2014 – August 2021 is as follows:

Production	Minimum	Maximum	Arithmetic Mean	# DMRs
Monthly Average	626 lbs/day	9,335 lbs/day	4661.7 lbs/day	45
Daily Maximum	1557 lbs/day	26,631 lbs/day	12,114.5 lbs/day	45

- d. Total Suspended Solids (TSS): The previous permitting action established monthly average concentration and mass limitations of 36 lbs./day and 2,158 mg/L, respectively, and daily maximum concentration and mass limitations of 118 lbs./day and 7,074 mg/L, respectively, for TSS. These limits were derived in accordance with the BPT-based guidelines at 40 CFR 408.232 and based on production rates at that time.

The BPT-based effluent guidelines at 40 CFR Part 408.232 express TSS limits as a monthly average of 18 pounds per 1,000 pounds of production and a daily maximum of 59 pounds per 1,000 pounds production.

Monthly average and daily maximum end-of-pipe effluent TSS limitations are calculated utilizing a production value of 3,000 lbs. /day, monthly average and daily maximum technology-based mass limits can be calculated as follows. , This permitting action is utilizing the average production value (3000 lbs/day) and average wastewater flow (7,600 GPD) in the technology-based limit calculation based on reports from the permittee. The difference between the average and maximum effluent guideline limitations accounts for variability in effluent quality discharged from the facility.

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

### TSS Mass Limitations:

$$\text{Monthly Average: } \frac{(3,000 \text{ lbs/day})(18 \text{ lbs})}{1,000 \text{ lbs}} = \mathbf{54 \text{ lbs./day}}$$

$$\text{Daily Maximum: } \frac{(3,000 \text{ lbs/day})(59 \text{ lbs})}{1,000 \text{ lbs}} = \mathbf{177 \text{ lbs./day}}$$

Concentration limits for TSS may be back-calculated utilizing the applicable mass limitations calculated above, a flow of 0.0076 million gallons per day (MGD) (same as 7,600 gpd) and a conversion factor of 8.34 lbs/gallon of water. Concentration limits are calculated as follows:

### TSS Concentration Limitations:

$$\text{Monthly Average: } \frac{(54 \text{ lbs/day})}{(0.0076 \text{ MGD})(8.34 \text{ lbs/gal})} = \mathbf{852 \text{ mg/L}}$$

$$\text{Daily Maximum: } \frac{(177 \text{ lbs/day})}{(0.0076 \text{ MGD})(8.34 \text{ lbs/gal})} = \mathbf{2,792 \text{ mg/L}}$$

A summary of the effluent TSS data as reported on the DMRs submitted to the Department for the period March 2014 – August 2021 is as follows:

TSS	Minimum	Maximum	Arithmetic Mean	# DMRs
Monthly Average	0.4 lbs./day 5.8 mg/L	3.6 lbs./day 264 mg/L	1.5 lbs./day 90.4 mg/L	45
Daily Maximum	0.4 lbs./day 5.8 mg/L	3.6 lbs./day 264 mg/L	1.5 lbs./day 90.4 mg/L	45

This permitting action is carrying forward the minimum monitoring frequency requirement of once per week based on best professional judgment.

- e. Oil & Grease (O&G): The previous permitting action established monthly average concentration and mass limitations of 0.63 lbs./day and 15 mg/L, respectively, and daily maximum concentration and mass limitations of 2.8 lbs./day and 67 mg/L, respectively, for O&G. These limits were derived in accordance with the BPT-based guidelines at 40 CFR 408.232 and based on production rates at that time.

The BPT-based effluent guidelines at 40 CFR Part 408.232 express O&G limits as a monthly average of 0.23 pounds per 1,000 pounds of production and a daily maximum of 0.6 pounds per 1,000 pounds production.

**6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)****Revised O&G Mass Limitations:**

$$\text{Monthly Average: } \frac{(3,000 \text{ lbs/day})(0.23 \text{ lbs})}{1,000 \text{ lbs}} = \mathbf{0.69 \text{ lbs./day}}$$

$$\text{Daily Maximum: } \frac{(3,000 \text{ lbs/day})(0.60 \text{ lbs})}{1,000 \text{ lbs}} = \mathbf{1.8 \text{ lbs./day}}$$

Concentration limits for O&G may be back-calculated utilizing the applicable mass limitations calculated above, a flow of 0.0076 million gallons per day (MGD) (same as 7,600 gpd) and a conversion factor of 8.34 lbs/gallon of water. Concentration limits are calculated as follows:

**Revised O&G Concentration Limitations:**

$$\text{Monthly Average: } \frac{(0.69 \text{ lbs/day})}{(0.0076 \text{ MGD})(8.34 \text{ lbs/gal})} = \mathbf{10.8 \text{ mg/L}}$$

$$\text{Daily Maximum: } \frac{(1.8 \text{ lbs/day})}{(0.0076 \text{ MGD})(8.34 \text{ lbs/gal})} = \mathbf{28.4 \text{ mg/L}}$$

A summary of the effluent O&G data as reported on the DMRs submitted to the Department for the period March 2014 – August 2021 is as follows:

O&G	Minimum	Maximum	Arithmetic Mean	# DMRs
Monthly Average	0.0 lbs./day 5.0 mg/L	0.47 lbs./day 14.0 mg/L	0.13 lbs./day 6.79 mg/L	45
Daily Maximum	0.02 lbs./day 4.1 mg/L	0.47 lbs./day 14.0 mg/L	0.13 lbs./day 6.78 mg/L	45

This permitting action is carrying forward the minimum monitoring frequency requirement of once per week based on best professional judgment.

- f Total Residual Chlorine (TRC): The previous permitting action carried forward a technology-based, daily maximum effluent limitation of 1.0 mg/L for TRC. The limit was established to ensure protection of receiving water quality from effluents containing residual chlorine from facility clean-up water. Limitations on TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either the water quality-based or technology-based based limits.

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

With acute and chronic dilution factors associated with the discharge, water quality-based concentration thresholds the discharge may be calculated as follows:

Acute (A) Criterion	Chronic (C) Criterion	A & C Dilution Factors	Calculated	
			Acute Threshold	Chronic Threshold
0.013 mg/L	0.0075 mg/L	25:1 (A) 391:1 (C)	0.3 mg/L	2.93 mg/L

The water quality-based effluent limit of 0.3 mg/L calculated above is more stringent than the previously established technology-based threshold and is therefore being established in this permitting action.

g. Settleable Solids: The previous permitting action carried forward daily maximum, settleable solids limitation of 1.0 ml/L and minimum monitoring frequency requirement of once per week based on best professional judgment. The Department has established a daily maximum effluent limit of 1.0 ml/L for several seafood processing facilities as best professional judgment of best practicable treatment. This permitting action is also carrying forward the daily maximum settleable solids limitation of 1.0 ml/L.

h. pH: The previous permitting action established, and this permitting action is carrying forward, a daily maximum pH range limitation of 6.0 – 9.0 standard units (SU) based on 40 CFR Part 408.232, which is consistent with the range considered by the Department to be BPT for discharges from seafood processing facilities in Maine.

A summary of pH data as reported on the monthly DMRs for the period of March 2014 – August 2021 (# DMRs = 46) indicates the facility has had zero excursions below the lower pH range limit of 6.0 SU and has ranged from 6.95 – 7. SU.

This permitting action is carrying forward the minimum monitoring frequency requirement of once per month based on best professional judgment.

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

- i. Nitrogen – The permittee has not been conducting total nitrogen testing on its discharge to date. However, the USEPA requested the Department evaluate the reasonable potential for the discharge of total nitrogen to cause or contribute to non-attainment of applicable water quality standards, namely algal blooms, in marine waters. As of the date of this permitting action, the State of Maine has not promulgated numeric ambient water quality criteria for any of the nitrogen compounds. The Department has 50 total nitrogen data results with an arithmetic mean total nitrogen discharge concentration of 14.3 mg/L collected on effluent from five municipally-owned treatment works and one industrial facility that discharge to Casco Bay which the Department is considering to be considered representative of discharges in the absence of facility specific data. With an arithmetic mean total nitrogen

discharge concentration of 14.3 mg/L or and a near field chronic dilution factor of 391:1 for the Carver facility, an in-stream concentration can be calculated as follows:

Total nitrogen concentrations in effluent = 14.3 mg/L  
Chronic dilution factor = 391:1

In-stream concentration after dilution:  $\frac{14.3 \text{ mg/L}}{391} = 0.04 \text{ mg/L}$

Because nitrogen is not acutely toxic, the Department is considering a far-field dilution to be more appropriate when evaluating impacts of total nitrogen to a marine environment. Far field dilutions are significantly higher than the near-field dilution, ranging from 100 – 10,000 times higher depending on the location of the outfall pipe. With outfalls located in protected coves or embayments without significant flushing, the far field dilutions factors would tend to be on the order of 100 – 1,000 times higher. With open ocean discharges, far field dilutions would tend to be 1,000 – 10,000 times higher.

The discharge from the permittee's facility to Western Bay would be considered a discharge to the open ocean thus, the far field dilution would likely be on the lower end of the 1,000 – 10,000 range. As a result, the far-field dilution may be as high as 391,000:1, thereby limiting the increase in the ambient total nitrogen by 0.0004 mg/L based on the following calculation:

Total nitrogen concentrations in effluent = 14.3 mg/L  
Chronic dilution factor = 391,000:1

In-stream concentration after dilution:  $\frac{14.3 \text{ mg/L}}{127,600} = 0.00004 \text{ mg/L}$

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

The Department has been collecting ambient total nitrogen data in close proximity to the Maine coastline to support an effort to develop statewide nutrient criteria for marine waters. For the Carver facility, the Department calculated a mean background concentration of 0.29 mg/l based on ambient data collected in the general vicinity of the discharge. As a result, after reasonable opportunity for far field mixing, the increase in the concentration of total nitrogen in the receiving water due to the discharge from the permittee's facility will not be measurable thus, the instream concentration of total nitrogen will remain at 0.29 mg/L. This concentration is lower than the Department's and EPA's best professional judgment of a critical threshold of 0.45 mg/L to protect aquatic life in marine waters using dissolved oxygen as the indicator. Therefore, the Department is making a best professional judgment determination that the discharge of total nitrogen from the permittee's facility does not exhibit a reasonable potential to exceed applicable water quality standards for Class SB waters.

## **7. DISCHARGE- IMPACT ON RECEIVING WATER QUALITY**

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

## **9. PUBLIC COMMENTS**

Public notice of this application was made in *The Machias Valley News* newspaper on or about October 29, 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 Chapter 522 of the Department's rules.

## **10. DEPARTMENT CONTACTS**

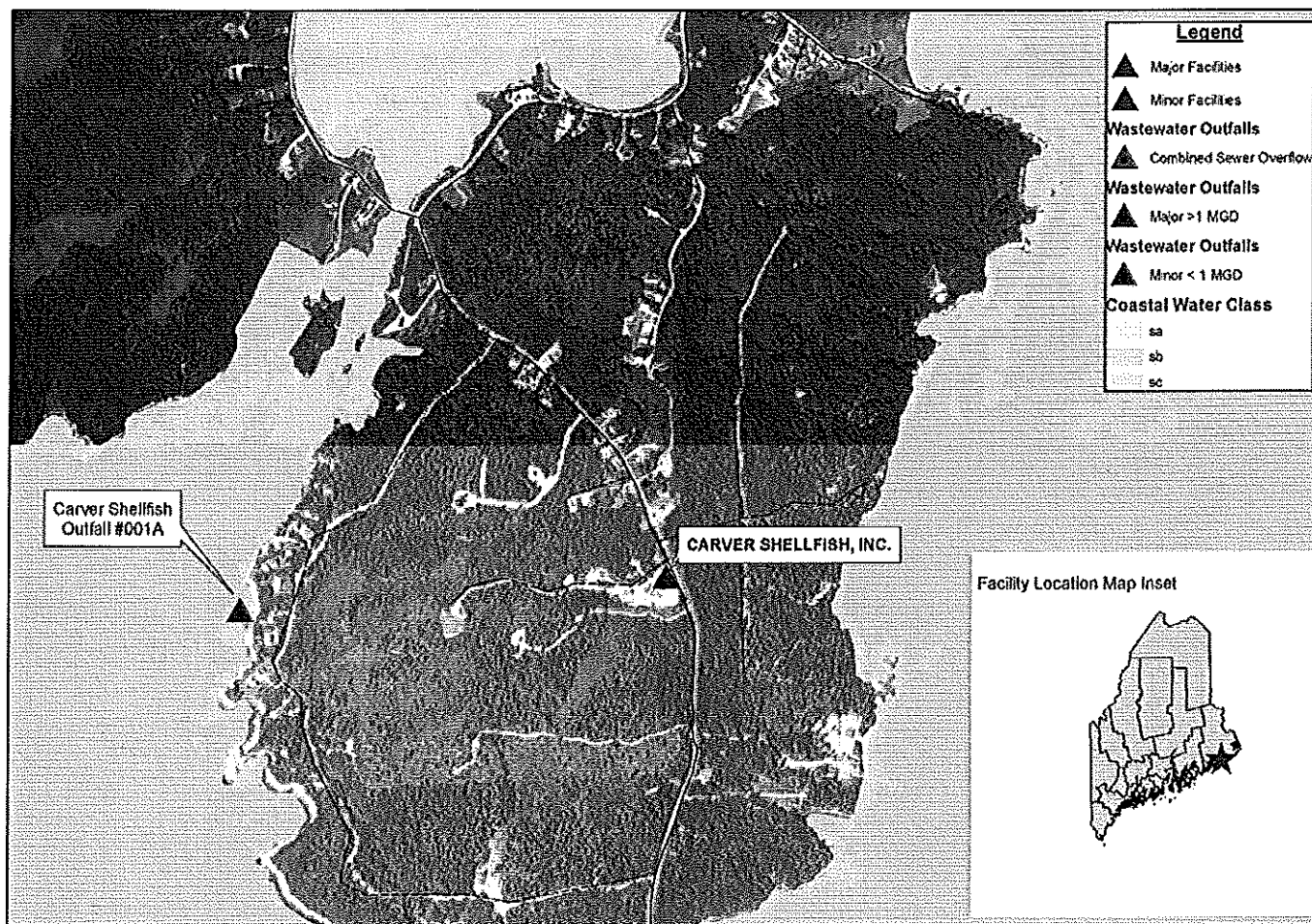
Additional information concerning this permitting action may be obtained from, and written comments sent to:

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

## **12. RESPONSE TO COMMENTS**

The Department did not receive comments from interested parties regarding the permit. Therefore, a formal Response to Comment has not been prepared.

# ATTACHMENT A



0 0.125 0.25 0.5 Miles



Map created by Maine DEP  
October, 2009



Carver Shellfish, Beals, Maine

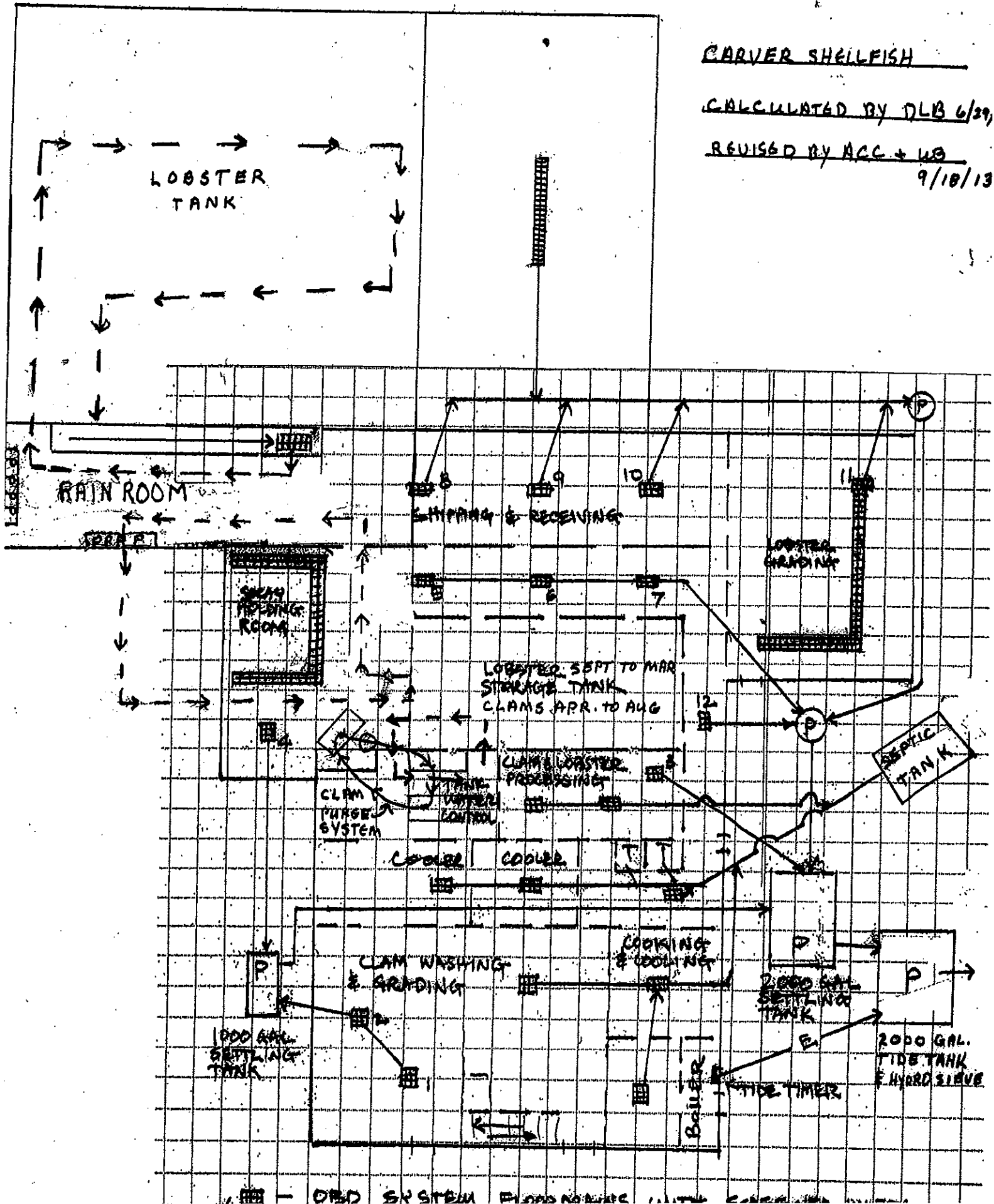
## ATTACHMENT B

CARVER SHELLFISH

CALCULATED BY DLB 6/29,

REVISED BY ACC + UB

9/10/13



## ATTACHMENT C

# SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Department of Human Services  
Division of Health Engineering  
(207)289-3826

## PROPERTY ADDRESS

Town Or Plantation	BEALS
Street Subdivision Lot #	BLACK DUCK COVE RD
PROPERTY OWNERS NAME	
Last:	CARVER STELLFISH INC.
Applicant Name:	ALBERT CARVER
Mailing Address of Owner/Applicant (If Different)	BEALS, ME. 04611

### Caution: Permit Required

The Subsurface Wastewater Disposal System shall not be installed until a Permit is attached here by the Local Plumbing Inspector. The Permit shall authorize the owner or installer to install the disposal system in accordance with this application and the Maine Subsurface Wastewater Disposal Rules.

### Owner/Applicant Statement

I certify that the information submitted is correct to the best of my knowledge and understand that any falsification is reason for the Local Plumbing Inspector to deny a Permit.

### Caution: Inspection Required

I have inspected the installation authorized above and found it to be in compliance with the Subsurface Wastewater Disposal Rules.

Signature of Owner/Applicant

Date

Local Plumbing Inspector Signature

Date Approved

## PERMIT INFORMATION

### THIS APPLICATION IS FOR:

- ☐ NEW SYSTEM
- ☐ REPLACEMENT SYSTEM
- ☒ EXPANDED SYSTEM
- ☐ EXPERIMENTAL SYSTEM

### SEASONAL CONVERSION

to be completed by the LPI

- ☐ SYSTEM COMPLIES WITH RULES
- ☐ CONNECTED TO SANITARY SEWER
- ☐ SYSTEM INSTALLED - P#
- ☐ SYSTEM DESIGN RECORDED AND ATTACHED

### IF REPLACEMENT SYSTEM:

YEAR FAILING SYSTEM INSTALLED

### THE FAILING SYSTEM IS:

- ☐ BED
- ☐ CHAMBER
- ☐ TRENCH
- ☐ OTHER:

### SIZE OF PROPERTY

1.5 AC

### ZONING

NONE

### THIS APPLICATION REQUIRES:

- ☒ NO RULE VARIANCE
- ☐ NEW SYSTEM VARIANCE  
Attach New System Variance Form
- ☐ REPLACEMENT SYSTEM VARIANCE  
Attach Replacement System Variance Form
  - ☐ Requiring Local Plumbing Inspector Approval
  - ☐ Requires State and Local Plumbing Inspector Approval
- ☐ MINIMUM LOT SIZE VARIANCE

### DISPOSAL SYSTEM TO SERVE:

- ☐ SINGLE FAMILY DWELLING
- ☐ MODULAR OR MOBILE HOME
- ☐ MULTIPLE FAMILY DWELLING
- ☒ OTHER LOBSTER PROCESSING  
SPECIFY FACILITY

### INSTALLATION IS:

#### COMPLETE SYSTEM

- ☒ NON-ENGINEERED SYSTEM
- ☐ PRIMITIVE SYSTEM  
(Includes Alternative Toilet)
- ☐ ENGINEERED (+ 2000 gpd)

#### INDIVIDUALLY INSTALLED COMPONENTS:

- ☐ TREATMENT TANK (ONLY)
- ☐ HOLDING TANK \_\_\_\_\_ GAL
- ☐ ALTERNATIVE TOILET (ONLY)
- ☐ NON-ENGINEERED DISPOSAL AREA (ONLY)
- ☐ ENGINEERED DISPOSAL AREA (ONLY)
- ☐ SEPARATED LAUNDRY SYSTEM

### TYPE OF WATER SUPPLY

EXISTING DRILLED WELL

## DESIGN DETAILS (SYSTEM LAYOUT SHOWN ON PAGE 3)

### TREATMENT TANK

- ☒ SEPTIC: ☒ Regular  
☐ Low Profile
- ☐ AEROBIC

SIZE: \_\_\_\_\_ GALS.

### WATER CONSERVATION

- ☒ NONE
- ☐ LOW VOLUME TOILET
- ☐ SEPARATED LAUNDRY SYSTEM
- ☐ ALTERNATIVE TOILET

SPECIFY: \_\_\_\_\_

### PUMPING

- ☒ NOT REQUIRED
- ☐ MAY BE REQUIRED  
(DEPENDENT ON TREATMENT TANK LOCATION AND ELEVATION)
- ☐ REQUIRED

DOSE: \_\_\_\_\_ GALS.

### SOIL CONDITIONS USED FOR DESIGN PURPOSES

PROFILE CONDITION

2

A

DEPTH TO LIMITING FACTOR

30"

### SIZE RATINGS USED FOR DESIGN PURPOSES

- ☐ SMALL
- ☐ MEDIUM
- ☒ MEDIUM-LARGE
- ☐ LARGE
- ☐ EXTRA LARGE

### DISPOSAL AREA TYPE/SIZE

- ☒ BED 1500 Sq. Ft.
- ☐ CHAMBER \_\_\_\_\_ Sq. Ft.  
☐ REGULAR ☐ H-20
- ☐ TRENCH \_\_\_\_\_ Linear Ft.
- ☐ OTHER: \_\_\_\_\_

CRITERIA USED FOR DESIGN FLOW (BEDROOMS, SEATING, EMPLOYEES, WATER RECORDS, ETC.)

EXPANSION OF EXISTING SYSTEM BY 450 GPD CAPACITY, TO A TOTAL OF 900 GPD. WATER IS APPROX 30% SANITARY AND 70% PROCESS

DESIGN FLOW: 900

(GALLONS/DAY)

## SITE EVALUATOR STATEMENT

On 6/2/93 (date) I conducted a site evaluation for this project and certify that the data reported is accurate. The system I propose is in accordance with the Subsurface Wastewater Disposal Rules.

Deane L Bradshaw

#159

6/15/93

Site Evaluator Signature

SE#

Date

(Local Plumbing Inspector's Signature)

Department of Human Services  
Division of Health Engineering

BEALS

Street, Road, Subdivision

BLACK DUCK COVE RD

**Owners Name**

Scale 1" = 100 Ft.

**SITE LOCATION PLAN (Attach Map from Maine Atlas for New System Variance)**

ALLEN'S  
RAM

## OVERLAY

BLACK DUCK CO. & CO.

Lot

DWIGHT  
\$ LYNN ALLEY  
(HOUSE)

HERBERT  
COFFIN (TRAILER)

BLACK DUCK CREEK ROAD

(Location of Observation Holes Shown Above)

1" HUMUS - Depth of Organic Horizon Above Mineral Soil

\* Depth of Organic Horizon Above Mineral Soil

	Texture	Consistency	Color	Mottling
0				
8	FINE SANDY LOAM	FRAGILE	RED BROWN	NONE
10				
15				
20				
30	1/2" /	1 1/2" /	1 1/2" /	FEW PAINT
40	REFUSAL ON LODGE			
50				

4.000

11

DEPTH BELOW MINERAL SOIL SURFACE (Inches)

	Texture	Consistency	Color	Mottling
0				
6				
10				
15				
20				
30				
40				
50				

**Source:** *U.S. Census Bureau, Current Population Reports, 1990*

**□ 2014年12月**

Deane Bradshaw

#159

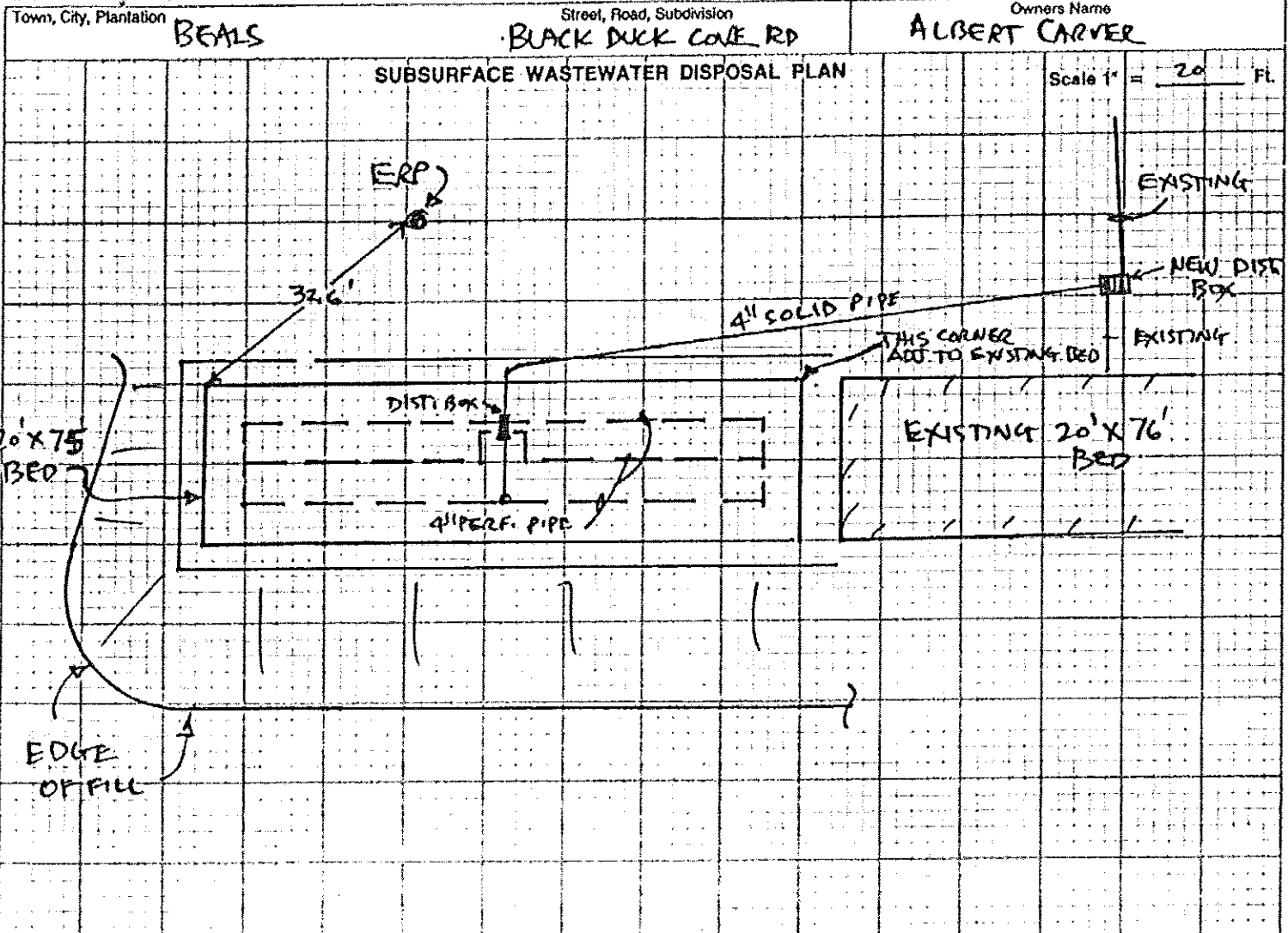
6/17/93

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HHE-200 Rev. 1/84

# SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Department of Human Services  
Division of Health Engineering



**FILL REQUIREMENTS**  
Depth of Fill (Upslope) **21"**  
Depth of Fill (Downslope) **39"**

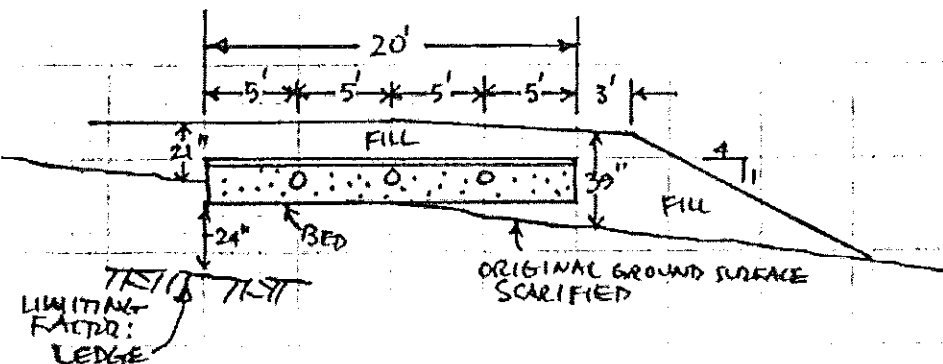
**CONSTRUCTION ELEVATIONS**  
Reference Elevation is **00"**  
Bottom of Disposal Area **-51"**  
Top of Distribution Lines or Chambers **-40"**

**ELEVATION REFERENCE POINT LOCATION & DESCRIPTION**  
FLAGGED NAIL ON BIRCH TREE (IN LOCATION SHOWN)

## DISPOSAL AREA CROSS SECTION

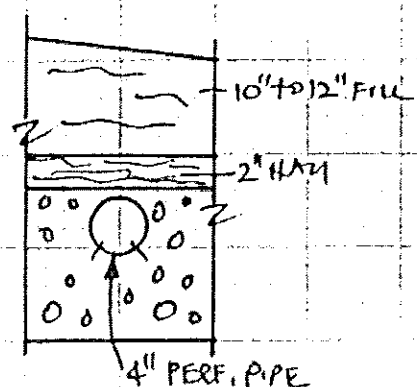
Scale:  
Vertical: 1 inch = 5' Ft.  
Horizontal: 1 inch = 10' Ft.

## CROSS SECTION



**NOTES** FILL TO BE SHARP LOAMY SAND OR COARSE SCARIFY UNDER BED AND FILL EXTENSION

## SECTION ENLARGED (NOT TO SCALE)



Dean U. Bradshaw

#159

6/17/93

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).

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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

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

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

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

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

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

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

## **B. OPERATION AND MAINTENANCE OF FACILITIES**

### **1. General facility requirements.**

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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.

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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).

## MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

### STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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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## STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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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.

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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

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

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

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

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

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

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

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

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

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

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

# MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

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

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

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

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

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

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

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

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

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



# 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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