STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

April 4, 2016

DERECKTOR MAINE LLC.
340 Robinhood Road
Georgetown, Maine 04548
warren@robinhoodmarinecenter.com

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0037087
Maine Waste Discharge License Application # W004947-5C-E-T
**Proposed OBD Permit Transfer**

Dear Mr. Harbison:

Enclosed is a proposed draft for the transfer to DERECKTOR LLC. of the MEPDES permit and Maine WDL (permit hereinafter) which the Department issued to Robinhood Marine on May 6, 2014. The proposed transfer is being made available beginning today for a period of thirty days in order to give interested parties the opportunity to comment on the proposed transfer.

All comments must be received in the Department of Environmental Protection office on or before the close of business **Wednesday, May 4, 2016**. Comments in writing should be submitted to my attention at the following address:

Maine Department of Environmental Protection
Bureau of Water Quality
Division of Water Quality Management
17 State House Station
Augusta, ME 04333.

If you have any questions regarding the matter, please feel free to call me at 446-1875.

Sincerely,

Rodney Robert
Division of Water Quality Management
Bureau of Water Quality

Enc.

cc: William Johnson, DEP/CMRO
Lori Mitchell, DEP/CMRO
Oliver Cox, DMR
Environmental Review, DMR
Environmental Review, DIFW
Kathleen Leyden, DACF
David Webster, USEPA
David Pincumbe, USEPA
Alex Rosenburg, USEPA
Olga Vergara, USEPA
Marelynn Vega, USEPA
Richard Carvalho, USEPA

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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

| | | |
|---|---|---|
| DERECKTOR MAINE LLC. | ) | MAINE POLLUTANT DISCHARGE |
| GEORGETOWN, SAGADAHOC COUNTY, ME | ) | ELIMINATION SYSTEM PERMIT |
| OVERBOARD DISCHARGE | ) | AND |
| ME0037087 | ) | WASTE DISCHARGE LICENSE |
| W004947-5C-E-T **APPROVAL** | ) | **TRANSFER** |

Pursuant to the provisions of 38 M.R.S.A., Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (Department hereinafter) has considered the application of DERECKTOR MAINE LLC. (permittee hereinafter) with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

## APPLICATION SUMMARY

On March 15, 2016 the permittee submitted an application to the Department for the transfer of Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0037087/ Maine Waste Discharge License (WDL) #W004947-5C-D-R, (permit hereinafter) issued on May 6, 2014 to Robinhood Marine LLC. for a five-year term. The permit authorized the discharge of up to 2,400 gpd of secondary treated sanitary waste water to Robinhood Cove, Class SB, in Boothbay, Maine,

The permittee has been duly qualified by the Maine Secretary of State to be in good standing and authorized to conduct business under the laws of the State of Maine as of the date of this transfer. The permittee has submitted information demonstrating that it has legal title, right, and or interest in the facility and has indicated it has the financial capacity and technical ability to operate the facility in compliance with the terms and conditions of the May 6, 2014 permit.

**CONCLUSIONS**

BASED on the findings on page 1 of this Order, 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 MRSA Section 464(4)(F), will be met, in that:

   (a) Existing 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 natural 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 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 discharge will be subject to effluent limitations that require application of best practicable treatment.

**ACTION**

THEREFORE, the Department APPROVES the above noted application of DERECKTOR MAINE LLC, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations including:

1. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits*," revised July 1, 2002, copy attached to MEPDES permit ME0037087/WDL #W004947-5C-D-R, dated May 6, 2014.

2. The terms and conditions of MEPDES permit ME0037087/WDL #W004947-5C-D-R, dated May 6, 2014, copy attached.

3. This permit transfer becomes effective upon the date of signature below and expires at midnight on December 10, 2018. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of the this license, the terms and conditions of this license 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.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (effective April 1, 2003)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS ___ DAY OF _____ , 2016.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:_____
PAUL MERCER, Commissioner

Date of initial receipt of application: March 15, 2016 .

Date of application acceptance: March 15, 2016 .

Date filed with Board of Environmental Protection _____-

This Order prepared by Rod Robert, BUREAU OF WATER QUALITY

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

Mr. Warren Harbison
Robinhood Marine Center
340 Robinhood Road
Georgetown, ME. 04548
warren@robinhoodmarinecenter.com

May 6, 2014

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit ME0037087
Maine Waste Discharge License (WDL) Application #W004947-5C-D-R
Permit

Dear Mr. Harbison:

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

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

If you have any questions regarding the matter, please feel free to call me at 446-1875.

Sincerely,

Rodney Robert
Division of Water Quality Management
Bureau of Land and Water Quality

Enc.

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

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

# DEPARTMENT ORDER

## IN THE MATTER OF

| | | |
|---|---|---|
| ROBINHOOD MARINE CENTER, INC. | ) | MAINE POLLUTANT DISCHARGE |
| GEORGETOWN, SAGADAHOC COUNTY, ME | ) | ELIMINATION SYSTEM PERMIT |
| OVERBOARD DISCHARGE | ) | AND |
| ME0037087 | ) | WASTE DISCHARGE LICENSE |
| W004947-5C-D-R **APPROVAL** | ) | **RENEWAL** |

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

## APPLICATION SUMMARY

On February 7, 2014, the Department accepted as complete for processing an application from Robinhood for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0037087/Maine Waste Discharge License (WDL) #W004947-5C-C-R (permit) which was issued by the Department on April 29, 2009, for a five-year term. The 4/29/09 permit authorized the year-round, monthly average discharge of 2,400 gallons per day (GPD) of secondary treated sanitary wastewater (Outfall #001) to Robinhood Cove, Class SB, in Georgetown, Maine.

## PERMIT SUMMARY

This permitting action is carrying forward the terms and conditions of the April 29, 2009, permit.

**CONCLUSIONS**

BASED on the findings in the attached **Fact Sheet** dated May 6, 2014, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.

2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with State law.

3. The provisions of the State's antidegradation policy, 38 M.R.S.A. §464(4)(F), will be met, in that:

   (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;

   (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;

   (c) Where the standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;

   (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and

   (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.

4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in Maine law, 38 M.R.S.A., §414-A(1)(D).

5. The overboard discharge system was in continuing existence for the 12 months preceding June 1, 1987.

6. A non-discharging sub-surface waste water disposal system could not be installed in compliance with the Maine Subsurface Waste Water Disposal Rules at the time the renewal application was accepted for processing by the Department.

7. A publicly-owned sewer line is not located on or abutting land owned or controlled by the permittee or is not available for the permittee's use.

8. The discharge is not located within the boundaries of a sanitary district or sewer district.

**ACTION**

THEREFORE, the Department APPROVES the application of ROBINHOOD MARINE CENTER, INC., to discharge a monthly average of 2,400 gallons per day of secondary treated sanitary waste water (Outfall #001) to ROBINHOOD COVE, Class SB, in Georgetown, 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.A. §10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (amended August 25, 2013)]

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 6th DAY OF May, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Patricia W. Aho
PATRICIA W. AHO, Commissioner

Filed
MAY 07 2014
State of Maine
Board of Environmental Protection

Date of initial receipt of application: February 7, 2014

Date of application acceptance: February 7, 2014

Date filed with Board of Environmental Protection _____.

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

## SPECIAL CONDITIONS

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

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

| Effluent Characteristic | Discharge Limitations | | | | | | Minimum Monitoring Requirements | |
|---|---|---|---|---|---|---|---|---|
| | Monthly Average | Weekly Average | Daily Maximum | Monthly Average | Weekly Average | Daily Maximum | Measurement Frequency | Sample Type |
| **Flow** *[50050]* | 2,400 gpd *[07]* | --- | Report (gpd) *[07]* | --- | --- | --- | 1/Month *[01/30]* | Metered *[MT]* |
| **$BOD_5$** *[00310]* | 0.6 lbs/day *[26]* | 0.9 lbs/day *[26]* | 1.0 lbs/day *[26]* | 30 mg/L *[19]* | 45 mg/L *[19]* | 50 mg/L *[19]* | 1/ Month *[01/30]* | Grab *[GR]* |
| **$BOD_5$ Percent Removal[2]** *[81010]* | --- | --- | --- | 85% *[23]* | --- | --- | ----- | ---- |
| **TSS** *[00530]* | 0.6 lbs/day *[26]* | 0.9 lbs/day *[26]* | 1.0 lbs/day *[26]* | 30 mg/L *[19]* | 45 mg/L *[19]* | 50 mg/L *[19]* | 1/ Month *[01/30]* | Grab *[GR]* |
| **TSS Percent Removal[2]** *[81011]* | --- | --- | --- | 85% *[23]* | --- | --- | ---- | ---- |
| **Settleable Solids** *[00545]* | --- | --- | --- | --- | --- | 0.3 mL/L *[25]* | 2/ Week *[02/07]* | Grab *[GR]* |
| **Fecal Coliform (year round) Bacteria[3]** *[31616]* | --- | --- | --- | 15/100 mL[3] *[13]* | --- | 50/100 mL *[13]* | 2/ Month *[02/30]* | Grab *[GR]* |
| **Total Residual Chlorine[4]** *[50060]* | --- | --- | --- | --- | --- | 0.3 mg/L *[19]* | 2/Week *[02/07]* | Grab *[GR]* |
| **pH** *[00400]* | --- | --- | --- | --- | --- | 6.0 – 9.0 SU *[12]* | --- | Grab *[GR]* |

Footnotes **See Page 5 of this permit for applicable footnotes.**

## SPECIAL CONDITIONS

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

**Footnotes**

1. **Sampling** – Sampling shall be conducted after the last treatment process such that samples are representative of what is actually being discharged to the receiving waters. Sampling shall be conducted in accordance with federally approved methods for sampling, handling and preservation. Samples shall be analyzed by a laboratory certified by the State of Maine's Department of Human Services and in accordance with methods approved in Title 40, *Code of Federal Regulations* (CFR) Part 136. Samples that are sent to a waste water treatment plant licensed pursuant to *Waste Discharge Licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000).

   All analytical test results shall be reported to the Department including results which are detected below the respective reporting limits (RLs) specified by the Department or as specified by other approved test methods. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the RL achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL or reporting an estimated value ("J" flagged) is not acceptable and will be rejected by the Department. Reporting analytical data and its use in calculations must follow established Department guidelines specified in this permit or in available Department guidance documents.

2. **Percent Removal** – The treatment facility shall maintain a minimum of 85 percent removal of both $BOD_5$ and TSS for all flows receiving secondary treatment. If the permittee is required to calculate percent removals but does not have access to an influent sampling location, the permittee shall use an assumed influent value of 286 mg/L and measured effluent concentration values.

3. **Bacteria Reporting** – The monthly average fecal coliform bacteria limitation is a geometric mean limitation and test results shall be reported as such.

4. **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 shall utilize approved test methods that are capable of bracketing the TRC limitation in this permit.

## SPECIAL CONDITIONS

### A. ANNUAL DISCHARGE FEES

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

### B. NARRATIVE EFFLUENT LIMITATIONS

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

### C. TREATMENT PLANT OPERATOR

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

### D. AUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing February 7, 2014; 2) the terms and conditions of this permit; and 3) only from Outfall #001. Discharges of waste water from any other point source are not authorized under this permit, and shall be reported in accordance with Standard Condition B(5)(*Bypass*) of this permit.

## SPECIAL CONDITIONS

### E. NOTIFICATION REQUIREMENT

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

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

   (a) the quality and quantity of wastewater introduced to the wastewater collection and treatment system; and

   (b) any anticipated impact caused by the change in the quantity or quality of the wastewater to be discharged from the treatment system.

### F. SITE EVALUATION FOR TRANSFERRED AND RENEWED PERMITS

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

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

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

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

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

## SPECIAL CONDITIONS

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

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

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

### H. MONITORING AND REPORTING

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

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

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

## SPECIAL CONDITIONS

### I. REOPENING OF PERMIT FOR MODIFICATIONS

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

### J. SEVERABILITY

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

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

**FACT SHEET**

**May 06, 2014**

MEPDES PERMIT: **ME0037087**
WASTE DISCHARGE LICENSE: **W004947-5C-D-R**

NAME AND ADDRESS OF APPLICANT:

**ROBINHOOD MARINE CENTER, INC.**
**340 Robinhood Road**
**Georgetown, Maine 04530**

COUNTY: **Sagadahoc County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

**ROBINHOOD MARINE CENTER INC.**
**340 Robinhood Road**
**Georgetown, Maine 04530**

RECEIVING WATER / CLASSIFICATION: **Robinhood Cove/Class SB**

COGNIZANT OFFICIAL AND TELEPHONE NUMBER: **Warren Harbison**
**(207) 371-2525**

CONTRACT OPERATOR: **Coastal Wastewater Service**
**P.O. Box 92**
**Thomaston, ME 04861**
**(207) 354-6359, (207) 975-3370**

## 1. APPLICATION SUMMARY

a. Application: On February 7, 2014, the Department accepted as complete for processing an application from Robinhood Marine Center, Inc. for the renewal of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0037087/Maine Waste Discharge License (WDL) #W004947-5C-C-R (permit) which was issued by the Department on April 29, 2009, for a five-year term. The 4/29/09 permit authorized the year-round monthly average discharge of 2,400 gallons per day (GPD) of secondary treated sanitary wastewater (Outfall #001) to the Robinhood Cove, Class SB, in Georgetown, Maine. See **Attachment A** for a location map of the facility.

## 1. APPLICATION SUMMARY (cont'd)

b. Source description: The discharge is from a 5.5 acre, year-round marina complex that includes a 70-seat restaurant and lounge, two showers, two restrooms, one office with ½ bath; one work bay and restroom, one two-bedroom apartment with ¾ bath and one washing machine. The restaurant serves lunch and dinner.

c. Waste water treatment: The mechanical waste water treatment system is designed to treat a combined maximum daily flow of 3,000 gallons. It serves only the RMC and is entirely on its property. The waste water treatment system consists of a mechanical "Cromaglass CA-30" system that was added in the spring of 2008. The major treatment components are: preliminary treatment/pre-aeration, Cromaglass CA-30, chlorination/detention and dechlorination. The treated effluent is discharged to Robinhood Cove via a 4-inch outfall pipe with no diffuser at a depth of 1 foot below mean low water. RMC has a contract with Coastal Wastewater Service for the maintenance, servicing, testing and inspection of the wastewater treatment system.

d. Replacement Options: In May of 2003, the Maine State Legislature adopted several amendments to the licensing of overboard discharges and the Department revised its rule, Chapter 596, *Overboard Discharges: Licensing and Abandonment*, accordingly. One of the amendments in the revised rule requires OBD owners who are applying to the Department to renew their OBD licenses to hire a licensed site evaluator (LSE) to determine whether or not it is technologically feasible to replace the existing waste water treatment system prior to license renewal and install a replacement system within 180 days if grant money is offered by the Department.

## 2. PERMIT SUMMARY

This permitting action is carrying forward the terms and conditions of the April 29, 2009, permit.

## 3. CONDITIONS OF PERMIT

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

## 4. RECEIVING WATER QUALITY STANDARDS

Maine law, 38 M.R.S.A. §469 classifies the Robinhood Cove at the point of discharge as a Class SB waterbody. Maine law, 38 M.R.S.A. §465-B(2) establishes classification standards for Class SB waters as follows:

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

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

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

## 5. RECEIVING WATER QUALITY CONDITIONS

*The State of Maine 2012 Integrated Water Quality Monitoring and Assessment Report* published by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists the location of the discharge as Waterbody ID 730-2 (including DMR Legal Notice Closed Area 20-E) in a table entitled, *Category 2: Estuarine and Marine Waters Attaining Some Designated Uses—Insufficient Information for Other Uses.* The report lists reasons for the DMR Closure as overboard discharge systems and a marina.

The Maine Department of Marine Resources (DMR) assesses information on shellfish growing areas to ensure that shellfish harvested are safe for consumption. The DMR has authority to close shellfish harvesting areas wherever there is a pollution source, a potential pollution threat, or poor water quality. The DMR traditionally closes shellfish harvesting areas if there are known sources of discharges with unacceptable bacteria levels (in-stream thresholds established in the National Shellfish Sanitation Program) or maintains shellfish harvesting closure areas due to lack of updated information regarding ambient water quality conditions. On February 26, 2013, the Maine DMR made a classification change to Area No. 21-E, Hockomock Bay to Robinhood Cove (Woolwich to Georgetown): This change reduces the size of the prohibited area in Knubble Bay due to the removal of an OBD, and reclassifies Riggs Cove to "Conditionally Approved" due to the presence of a marina. All existing pollution and red tide/psp closures remain in effect.

Thus, Shellfish Harvesting Area 21-E in the vicinity of the permittee's facility remains closed to the harvesting of shellfish due to poor water quality. See **Attachment B** of this Fact Sheet for a map of Area 21-E.

Compliance with the seasonal fecal coliform bacteria limits in this permitting action will ensure that the discharge from the permittee's facility will not cause or contribute to the shellfish harvesting closure.

The 2012 303(d),305(b) report also lists all estuarine and marine waters in a category entitled, *Category 5-D: Estuarine and Marine Waters Impaired by Legacy Pollutants.* The waters are listed as partially supporting fishing ("shellfish consumption") due to elevated levels of PCB's and other persistent, bioaccumulating substances in lobster tomalley.

Department rule Chapter 519, *Interim Effluent Limitations and Controls for the Discharge of Mercury,* establishes controls on the discharge of mercury to the surface waters of the State through interim effluent limits and implementation of pollution prevention plans.

However, Section 1(A)(1) of the Chapter 519 rule states, in part:

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

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

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

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

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

(1) A publicly owned sewer line is not located on or abutting land owned or controlled by the applicant or is not available for the applicant's use.

(2) A subsurface wastewater disposal system cannot be installed in compliance with the Subsurface Rules, 10-144 CMR 241, on land owned or controlled by the applicant. Or, a subsurface wastewater disposal system can be installed on land owned or controlled by the applicant and the applicant is eligible for grant funding pursuant to 38 M.R.S.A § 411-A but no funding is available.

(3) The discharge is not located within the boundaries of a sanitary or sewer district and the district has not agreed to service and maintain a holding tank at an annual fee that does not exceed those fees charged to other similar users of the district's services who are physically connected to the sewers of the district.

(4) For a school, the volume or quantity of waste water that is discharged does not exceed;

(a) the limit imposed by the previous license.

(b) the actual or estimated flow at the time of current application if a license volume increase is necessary.

(5) The receiving water is not:

(a) A Class GPA, AA, A, or SA water;

(b) A tributary to Class GPA water; or

(c) A waterbody with a drainage area of less than 10 square miles.

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

(6) The discharge meets the requirements of *Maine's Pollution Control Laws* 38 M.R.S.A. §414-A, and Maine's *Water Classification Laws* 38 M.R.S.A. §§ 464 to 469.

(7) The discharge receives best practicable treatment consistent with requirements in Section 9 of Department rule Chapter 596.

The discharge from the RMC facility has met all the above criteria. It is noted that the application for license renewal includes a letter dated 1/19/09 from a licensed site evaluator who stated that a replacement subsurface waste water disposal system cannot be installed in compliance with the Subsurface Rules, 10-144 CMR 241, on land owned or controlled by the applicant.

b. Flow: The previous permitting action established a monthly average flow limitation of 2,400 gallons per day (gpd) and a daily maximum reporting requirement along with a 1/Month measurement frequency. Both are carried forward in this permitting action.

The Discharge Monitoring Report (DMR) data for the period October 2009 – August 2013 indicates values have been reported as follows:

**Flow (DMRs = 47)**

| Value | Limit (gpd) | Range (gpd) | Mean (gpd) |
|---|---|---|---|
| Monthly Average | 2,400 | 66 – 1,649 | 500 |
| Daily Maximum | Report | 82 – 1,649 | 586 |

c. Dilution Factors – Department rule 06-096 CMR, Chapter 530, *Surface Water Toxics Control Program*, §4(A)(2) states,

*(2) For estuaries where tidal flow is dominant and marine discharges, dilution factors are calculated as follows. These methods may be supplemented with additional information such as current studies or dye studies:.*

*(a) 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.*

*(b) For discharges to estuaries, dilution must be calculated using a method such as MERGE, CORMIX or another predictive model determined by the Department to be appropriate for the site conditions.*

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

*(c) In the case of discharges to estuaries where tidal flow is dominant and marine waters, the human health criteria must be analyzed using a dilution equal to three times the chronic dilution factor.*

With a permitted flow of 2,400 gpd and based on the location and configuration of the outfall structure, the Department has made a best professional judgment that dilution factors are follows:

Acute = 50:1 Chronic = 150:1 Harmonic Mean[(1)] = 450:1

Footnote:

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

d. Biochemical Oxygen Demand ($BOD_5$) and Total Suspended Solids (TSS): The previous permitting action established technology based monthly average, weekly average and daily maximum $BOD_5$ and TSS concentration limits of 30 mg/L, 45 mg/L and 50 mg/L, respectively. The monthly average and weekly average concentration limits are based on secondary treatment requirements as defined in Department rule, 06-096 CMR Chapter 525(3)(III) and the daily maximum concentration limit of 50 mg/L is based on a best professional judgment by the Department of best practicable treatment (BPT). **This permitting action is carrying forward all three technology-based concentration limits.**

This permitting action is carrying forward the technology based monthly average, weekly average and daily maximum $BOD_5$ and TSS mass limitations based on calculations using the daily maximum permitted flow limitation for the facility of 2,400 gpd (0.0024 MGD) and the applicable concentration limits as follows:

Monthly Average Mass Limit: (30 mg/L)(8.34 lbs/gallon)( 0.0024 MGD) = 0.6 lbs/day

Weekly Average Mass Limit: (45 mg/L)(8.34 lbs/gallon)( 0.0024 MGD) = 0.9 lbs/day

Daily Maximum Mass Limit: (50 mg/L)(8.34 lbs/gallon)( 0.0024 MGD) = 1.0 lbs/day

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

The previous permitting action established a minimum monitoring frequency requirement of once every month (1/ Month) for $BOD_5$ and TSS that is being carried forward in this permitting action. A review of the discharge data as reported on the permittee's DMRs submitted to the Department for the period October 2009 – August 2013 indicate values have been reported as follows:

**BOD concentration (DMRs = 47)**

| Value | Limit (mg/L) | Range (mg/L) | Average (mg/L) |
|---|---|---|---|
| Monthly Average | 30 | <2 – 22 | 7 |
| Weekly Average | 45 | <2 – 22 | 7 |
| Daily Maximum | 50 | <2 – 38 | 9 |

**TSS concentration (DMRs = 47)**

| Value | Limit (mg/L) | Range (mg/L) | Average (mg/L) |
|---|---|---|---|
| Monthly Average | 30 | <2.5 - 92 | 25 |
| Weekly Average | 45 | <2.5 - 92 | 25 |
| Daily Maximum | 50 | <2.5 - 153 | 34 |

**BOD Mass (DMRs = 47)**

| Value | Limit (lbs/day) | Range (lbs/day) | Average (lbs/day) |
|---|---|---|---|
| Monthly Average | 0.6 | 0.01 – 0.63 | 0.02 – 0.16 |
| Weekly Average | 0.9 | 0.01 – 0.63 | 0.02 – 0.16 |
| Daily Maximum | 1.0 | 0.2 – 0.87 | 0.02 – 0.32 |

**TSS Mass (DMRs = 47)**

| Value | Limit (lbs/day) | Range (lbs/day) | Average (lbs/day) |
|---|---|---|---|
| Monthly Average | 0.6 | 0.01 – 0.63 | 0.09 |
| Weekly Average | 0.9 | 0.01 – 0.63 | 0.09 |
| Daily Maximum | 1.0 | 0.2 – 0.87 | 0.12 |

This permitting action is carrying forward the requirement for a minimum of 85% removal of BOD5 and TSS pursuant to 06-096 CMR Chapter 525(3)(III)(a)(3) and (b)(3) of the Department's rules.

e. Settleable Solids: The previous permit established a daily maximum BPT concentration limit 0.3 ml/L along with a monitoring requirement of 2/week. A review of the discharge data as reported on the permittee's DMRs submitted to the Department for the period October 2009 – August 2013 indicate values have been reported as follows:

**SS concentration (DMRs = 47)**

| Value | Limit (ml/L) | Range (ml/L) | Average (ml/L) |
|---|---|---|---|
| Daily Maximum | 0.3 | <0.1 – 0.3 | 0.01 |

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

f. Fecal coliform bacteria: The previous permitting action established a water quality-based monthly average (geometric mean) fecal coliform concentration limitation of 15 colonies/100 mL and a daily maximum (instantaneous level) limitation of 50 colonies/100 mL that are consistent with the limits associated with the National Shellfish Sanitation Program. This permitting action is carrying forward the year-round fecal coliform monthly average and daily maximum limitation s based on requested by the Maine Department of Marine Resources.

A review of the monthly average and daily maximum data as reported on the DMRs submitted to the Department for the period October 2009 – August 2013 indicates monthly average and daily maximum fecal coliform bacteria counts have been reported as follows:

**Fecal coliform bacteria (DMRS = 47**

| Value | Limit (col/100 ml) | Range (col/100 ml) | Mean (col/100 ml) |
|---|---|---|---|
| Monthly Average | 15 | 0 – 142 | 10 |
| Daily Maximum | 50 | 0 – 2,000 | 97 |

g. Total Residual Chlorine (TRC): The previous permitting action established a daily maximum TRC technology-based concentration limit of 1.0 mg/L and a monitoring frequency of twice per week (2/Week). Limitations on TRC are specified to ensure that ambient water quality standards are maintained at all times of the year and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either a water quality-based or BPT-based limit.

With dilution factors as determined in Section 6C of this fact sheet, end-of-pipe (EOP) water quality-based concentration thresholds for TRC may be calculated as follows:

| Acute (A) Criterion | Chronic (C) Criterion | A & C Dilution Factors | Calculated Acute Limit | Calculated Chronic Limit |
|---|---|---|---|---|
| 0.013 mg/L | 0.0075 mg/L | (A) 50:1<br>(C) 150:1 | 0.65 mg/L | 1.12 mg/L |

Example: Acute Limit Calculation: (0.013 mg/L)(50) = 0.65 mg/L

The Department has established a daily maximum BPT limitation of 1.0 mg/L for facilities that disinfect their effluent with elemental chlorine or chlorine-based compounds. For facilities that need to dechlorinate the discharge in order to meet water quality-based thresholds, the Department has established daily maximum and monthly average BPT limits of 0.3 mg/L and 0.1 mg/L, respectively. Based on the calculated acute and chronic total residual chlorine limits, the RMC facility is required to dechlorinate the effluent prior to discharge in order to consistently achieve compliance with the calculated water quality-based thresholds. This permitting action is revising the technology-based daily

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

maximum TRC concentration limitation from1.0 mg/L to 0.3 mg/L and is carrying forward the 2/Week TRC monitoring frequency requirement from the previous permitting action based on Department guidance.

A review of the daily maximum data as reported on the DMRs submitted to the Department for the period October 2009 - August 2013 indicates TRC values have been reported as follows:

**Total residual chlorine**

| Value | Limit (mg/L) | Range (mg/L) | Mean (mg/L) |
|---|---|---|---|
| Daily Maximum | 0.3 | 0.1 – 0.1 | 0.1 |

h. pH: Pursuant to Department rule found at 06-096 CMR Chapter 525(3)(III)(c), the pH range limitation established in the previous permitting action was 6.0 – 9.0 SU, which is considered BPT for secondary treated domestic like waste water. This permitting action is not establishing a regular monitoring frequency to determine compliance on an on-going basis but the limitations are in effect and enforceable at all times.

i. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing: Maine law, 38 M.R.S.A., §414-A and §420, prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. Department rule, 06-096 CMR Chapter 530, *Surface Water Toxics Control Program* (toxics rule) sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected and narrative and numeric water quality criteria are met. Department rule 06-096 CMR Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*, sets forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

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

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

*(1) Discharges from individual discharge points licensed to discharge less than 50,000 gallons per day of solely domestic wastewater and with a chronic dilution factor of at least 50 to 1, provided no holding tank wastes containing chemicals are accepted by the facility;*

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

*(2) Discharges from residential overboard discharge systems; or*

*(3) Discharges from combined sewer overflow discharge points, provided the owner of the sewerage system is conducting or participating in a discharge abatement program.*

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

## 7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

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

## 8. PUBLIC COMMENTS

Public notice of this application was made in *The Times Record* newspaper on or about February 6, 2014. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

## 9. DEPARTMENT CONTACTS

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

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

## 10. RESPONSE TO COMMENTS

During the period of March 6, 2014 through the issuance date of the permit/license, the Department solicited comments on the proposed draft permit/license to be issued for the discharge from Washington County Community College. The Department did not receive comments from the permittee, state or federal agencies, or interested parties that resulted in any substantive change(s) in the terms and conditions of the permit. Therefore, the Department has not prepared a Response to Comments.

# ATTACHMENT A

## Attachment A – Location of Robinhood Marine Center

# ATTACHMENT B

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PAUL R. LEPAGE
GOVERNOR

PATRICK C. KELIHER
COMMISSIONER

**Shellfish Harvesting Area Classification-Notification of Changes**

February 26, 2013

Ladies and Gentlemen:

Under the authority of Maine statute 12 M.R.S.A., Chapter 607, Section 6172; the Commissioner has made the following classification change to Area No. 21-E, Hockomock Bay to Robinhood Cove (Woolwich to Georgetown): This change reduces the size of the prohibited area in Knubble Bay due to the removal of an OBD, and reclassifies Riggs Cove to "Conditionally Approved" due to the presence of a marina. All existing pollution and red tide/psp closures remain in effect.

The boundary descriptions of the area are as follows (struck text is being removed and underlined text is being added):

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

1. Sasanoa and Back Rivers: South and east of a line drawn across the Sasanoa River at the green #23 day marker at Upper Hell Gate; AND east of a line beginning at the south tip of Hockomock Point (Woolwich), then running southeast to the northern tip of Flying Point (Georgetown); AND north of a line formed by the Five Islands Road bridge from Arrowsic to Georgetown.

2. Knubble Bay: South of a line beginning at the southern tip of Beal Island then running due west to the opposite shore; AND west of a line beginning at the southern tip of Beal Island then running southwest to a red painted post located on the northern tip of a prominent point of land due east of Seidmen Ledges Road. ~~AND east of a line beginning at the southeastern tip of Beal Island then running southeast to the northern tip of Lowe Point (Georgetown); AND north of a line beginning at a red painted post located on the west shore of Robinhood Cove, approximately 1200 yards southwest of Lowe Point, then running west to a red painted post on the eastern shore of Robinhood Cove.~~

3. Tarbox Cove (Westport): inside and shoreward of a line beginning at the south tip of Willis Point, then running southeast to the south tip of Pea Point.

4. Bailey Cove (Westport): inside and shoreward of a line beginning at the south tip of Bailey Point, running southeast to the south tip of Round Cove Point.

5. Riggs Cove (Georgetown): South of a line beginning at a red painted post located on a prominent point of land north of Robinhood Marina and running southeast to the northern tip of Lowe Point; AND north of a line beginning at the northern tip of Lowe Point then running due west to a red painted post located on the opposite shore.

OFFICES AT 2 BEECH ST., BAKER BUILDING, HALLOWELL, MAINE
http://www.Maine.gov/dmr
PHONE: (207) 624-6550 FAX: (207) 624-6024

6. ~~5.~~ Southwest lobe of Robinhood Cove (Georgetown), south of the Route 127 bridge AND north of a line beginning at the east end of the bridge, running southwest to the old stone dam, located approx. 50 yards south of the west end of the bridge.

7. ~~6.~~ Southeast lobe of Robinhood Cove (Georgetown), south of a line beginning 100 feet north of the Route 127 bridge and running northeast to a red painted post on the eastern shore of Robinhood Cove AND north of a line beginning at a red painted post located on the east shore, approx. 400 yards south of the bridge, running due west across the cove to the opposite shore.

B. Hockomock Bay: south of a line beginning at the tip of Hockomock Point (Woolwich), then running northeast to the southwestern-most tip of Phipps Point (Woolwich), then running southeast to the south tip of Hubbard Point (Westport Island); AND east of a line starting at the south tip of Hockomock Point (Woolwich), then running southeast to the northern-most tip of Flying Point (Georgetown), AND north and east of a line running from the southernmost tip of Beal Island due west to the opposite shore, AND west of a line beginning at the southern tip of Willis Point (Westport Island), then running in a southerly direction to a red painted located on Beal Island. This area is classified "Restricted," and requires a special MDMR permit.

C. Effective immediately, because of intermittent seasonal pollution due to the presence of a marina, the shores, flats, and waters in the following areas:

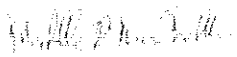
1. West of a line beginning at the eastern tip of "The Knubble" and running southeast to the northern tip of Lowe Point; AND north of a line beginning at the northern tip of Lowe Point and running northwest to a red painted post located on a prominent point of land north of Robinhood Marina. This area has been classified as "Conditionally Approved", and shall be closed to the harvest of clams, quahogs, oysters and mussels from May 1 through November 15.

2. South of a line beginning at the northern tip of Lowe Point and running west to a red painted post on the opposite shore; AND north of a line beginning at a red painted post located at the southern tip of a prominent point of land approximately 400 yards due south of the end of Stone Bridge Lane and running due east to a red painted post on the opposite shore. This area has been classified as "Conditionally Approved", and shall be closed to the harvest of clams, quahogs, oysters and mussels from May 1 through November 15.

If you have questions, please contact Kohl Kanwit, Department of Marine Resources, 194 McKown Point Road, West Boothbay Harbor, Maine 04575-0008, Tel: (207) 633-9535, Email: Kohl.Kanwit@maine.gov or Michelle Mason Webber, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021, Tel: (207) 624-6570, Email: Michelle.Mason@maine.gov.

This notice can be viewed on the Department's website at:
http://www.maine.gov/dmr/rm/public_health/closures/closedarea.htm
This information is also recorded on our HOTLINE (207-624-7727 OR 1-800-232-4733)

Sincerely,



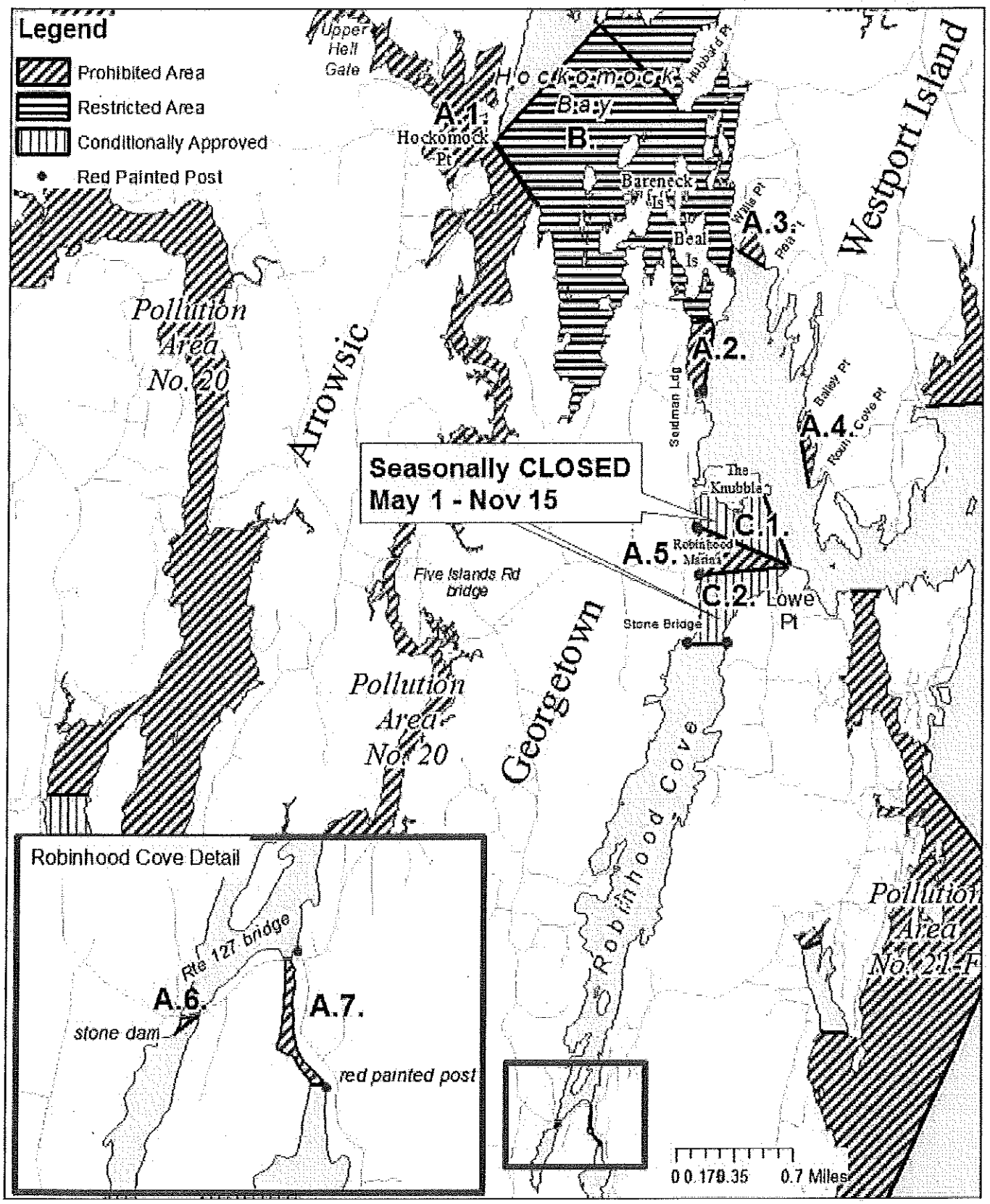
Michelle Mason Webber
Commissioner's Designee – Shellfish Program Coordinator

1:58 PM
(*Effective Time*)

# Maine Department of Marine Resources

## *Pollution Area No. 21-E*

Hockomock Bay to Robinhood Cove (Woolwich to Georgetown) 2/26/2013



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).

**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 if 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 MAINTENACE 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

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.

(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.

## 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.

## 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

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).

(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.

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

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

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

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

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

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

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

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

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

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

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

**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.

**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: March 2012** **Contact: (207) 287-2811**


## SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

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

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


## I. ADMINISTRATIVE APPEALS TO THE BOARD

### LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

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

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

### HOW TO SUBMIT AN APPEAL TO THE BOARD

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

### WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

## OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

## II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

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

## ADDITIONAL INFORMATION

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

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

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