



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS  
GOVERNOR

GERALD D. REID  
COMMISSIONER

June 13, 2019

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

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

Dear Mr. Firpo:

Enclosed is a proposed draft MEPDES permit and Maine WDL (permit hereinafter) which the Department proposes to issue as a final document after opportunity for your review and comment. By transmittal of this letter you are provided with an opportunity to comment on the proposed draft permit and its conditions (special conditions specific to this permit are enclosed; standard conditions applicable to all permits are available upon request). If it contains errors or does not accurately reflect present or proposed conditions, please respond to this Department so that changes can be considered.

By copy of this letter, the Department is requesting comments on the proposed draft permit from various state and federal agencies, as required by our new regulations, and from any other parties who have notified the Department of their interest in this matter. All comments must be received in the Department of Environmental Protection office on or before the close of business **Friday, July 12 2019**. Failure to submit comments in a timely fashion will result in the final document being issued as drafted.

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

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04679  
(207) 764-0477 FAX: (207) 760-3143

If you have any questions regarding the matter, please feel free to call me at 485-2404.

Sincerely,



Irene Saumur  
Division of Water Quality Management  
Bureau of Water Quality

Enc.

cc: William Johnson, DEP/CMRO  
Lori Mitchell, DEP/CMRO  
Shelly Puleo, USEPA,  
Marelyn Vega, USEPA,  
IFWEnvironmentalreview@maine.gov  
EnvironmentalReview.DMR@maine.gov



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

**DEPARTMENT ORDER**

**IN THE MATTER OF**

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

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

**APPLICATION SUMMARY**

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

**PERMIT SUMMARY**

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

1. Establishing seasonal (May 1<sup>st</sup> – October 31<sup>st</sup>) monthly average and daily maximum water quality based limitations and monitoring requirements for enterococcus bacteria along with a compliance schedule to come into compliance with said limitations.
2. For calendar year 2019, increasing the timeframe when fecal coliform bacteria limits are in effect from May 15<sup>th</sup> – September 30<sup>th</sup> to May 1<sup>st</sup> – November 15<sup>th</sup> based on a revision to Maine law, 38 M.R.S. §465(3)(B) effective August 2, 2018.
3. Establishing a 1/Month monitoring and reporting requirement for BOD<sub>5</sub> and TSS percent removal and 1/Year for pH pursuant to 40 CFR §122.44 (i)(2).

## CONCLUSIONS

BASED on the findings in the attached **Proposed Draft** Fact Sheet dated June 13, 2019, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with State law.
3. The provisions of the State's antidegradation policy, 38 M.R.S. §464(4)(F), will be met, in that:
  - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
  - (b) Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
  - (c) Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
  - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
  - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in Maine law, 38 M.R.S. §414-A(1)(D) and 414-A(1-B).
5. The overboard discharge system was in continuing existence for the 12 months preceding June 1, 1987.
6. A non-discharging sub-surface waste water disposal system can not be installed in compliance with the Maine Subsurface Waste Water Disposal Rules at the time the renewal application was accepted for processing by the Department.
7. A publicly owned sewer line is not located on or abutting land owned or controlled by the permittee or is not available for the permittee's use.

**ACTION**

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

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

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
Gerald D. Reid, Commissioner

Date of initial receipt of application: April 19, 2019

Date of application acceptance: April 22, 2019

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

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

**SPECIAL CONDITIONS**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

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

*May 1<sup>st</sup> – November 15<sup>th</sup> of each year.*

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

Footnotes See Pages 5 and 6 of this permit for applicable footnotes.

## SPECIAL CONDITIONS

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

#### Footnotes

1. **Sampling** – All effluent monitoring must be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. Sampling and analysis must be conducted in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services for waste water testing. Samples that are sent to another POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S. § 413 or laboratory facilities that analyze compliance samples in-house are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended December 19, 2018). If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report.
2. **Percent Removal** – The treatment facility must maintain a minimum of 85 percent removal of both BOD<sub>5</sub> and TSS for all flows receiving secondary treatment. If required to do so, the percent removal must be calculated based on influent and effluent concentration values whenever possible. If attainment of influent values is not physically possible, the percent removal must be calculated based on an assumed influent value of 286 mg/L and measured effluent concentration values.
3. **Bacteria Limits** – Fecal coliform bacteria limits and monitoring requirements are in effect between May 1<sup>st</sup> and November 15<sup>th</sup> of each year. The Department reserves the right to require year-round disinfection to protect the health, safety, and welfare of the public.
4. **Bacteria Reporting** – The monthly average fecal coliform and enterococcus bacteria limitations are geometric mean limitations and sample results must be reported as such. Sampling for enterococcus, fecal coliform bacteria and total residual chlorine must be conducted on the same days of the month.
5. **Total residual chlorine (TRC)** – Limitations and monitoring requirements are applicable whenever elemental chlorine or chlorine based compounds are being used to disinfect the discharge. The permittee must utilize approved test methods that are capable of bracketing the TRC limitation in this permit.
6. **2/Month** – There shall be at least 10 days between sampling events when monitoring is on a 2/Month. Sampling for enterococcus, fecal coliform bacteria and total residual chlorine shall be conducted on the same days of the month.

## **SPECIAL CONDITIONS**

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

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

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

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

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

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

## **SPECIAL CONDITIONS**

### **E. AUTHORIZED DISCHARGES**

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on April 22, 2019; 2) the terms and conditions of this permit; and 3) only from Outfall #001. Discharges of waste water from any other point source are not authorized under this permit, and must be reported in accordance with Standard Condition D(1)(F), *Twenty-four hour reporting*, of this permit.

### **F. NOTIFICATION REQUIREMENT**

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

1. Any substantial change or proposed change in the volume or character of pollutants being introduced into the wastewater collection and treatment system by a source introducing pollutants into the system at the time of permit issuance.
2. For the purposes of this section, notice regarding substantial change must include information on:
  - (a) the quality and quantity of wastewater introduced to the wastewater collection and treatment system; and
  - (b) any anticipated impact caused by the change in the quantity or quality of the wastewater to be discharged from the treatment system.

### **G. REQUIREMENTS TO ELIMINATE OVERBOARD DISCHARGES**

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

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

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

## SPECIAL CONDITIONS

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

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

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

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

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

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

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

## **SPECIAL CONDITIONS**

### **I. SEPTIC TANKS**

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

### **J. MONITORING AND REPORTING**

#### Electronic Reporting

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

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

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

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

## **SPECIAL CONDITIONS**

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

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

### **L. SEVERABILITY**

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

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

**PROPOSED DRAFT FACT SHEET**

Date: **June 13, 2019**

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

NAME AND ADDRESS OF APPLICANT:

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

COUNTY: **Lincoln County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:

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

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

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

**1. APPLICATION SUMMARY**

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

## 1. APPLICATION SUMMARY (cont'd)

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

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

## 2. PERMIT SUMMARY

- a. Terms and Conditions – This permitting action is carrying forward all the terms and conditions of the 1/17/14 permit except that this permitting action is;
  1. Establishing seasonal (May 1<sup>st</sup> – October 31<sup>st</sup>) monthly average and daily maximum water quality based limitations and monitoring requirements for enterococcus bacteria along with a compliance schedule to come into compliance with said limitations.
  2. For calendar year 2019, increasing the timeframe when fecal coliform bacteria limits are in effect from May 15 – September 30 to May 1<sup>st</sup> – November 15<sup>th</sup> based on a revision to Maine law, 38 M.R.S. §465(3)(B) effective August 2, 2018.
  3. Establishing a 1/Month monitoring and reporting requirement for BOD<sub>5</sub> and TSS percent removal and 1/Year for pH pursuant to 40 CFR §122.44 (i)(2).

## 2. PERMIT SUMMARY (cont'd)

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

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

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

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

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

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

## 3. CONDITIONS OF PERMIT

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

## 4. RECEIVING WATER QUALITY STANDARDS

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

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

#### **4. RECEIVING WATER QUALITY STANDARDS (cont'd)**

*The dissolved oxygen content of Class SB waters may not be less than 85% of saturation. Between April 15th and October 31st, the number of enterococcus bacteria in these waters may not exceed a geometric mean of 8 CFU per 100 milliliters in any 90-day interval or 54 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval. The number of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration.*

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

#### **5. RECEIVING WATER QUALITY CONDITIONS**

The 2016 Integrated Water Quality Monitoring and Assessment Report published by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act lists the East point of Sagadahoc Bay, Georgetown to Ocean Point, Boothbay as

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

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

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

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

Department rule Chapter 519, *Interim Effluent Limitations and Controls for the Discharge of Mercury*, establishes controls on the discharge of mercury to the surface waters of the State through interim effluent limits and implementation of pollution prevention plans. However, Section 1(A)(1) of the Chapter 519 rule states in part:

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

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

## 6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

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

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

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

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

**Flow (DMRs = 15)**

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

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

Acute = 250:1                  Chronic = 730:1                  Harmonic mean = 2190<sup>(1)</sup>

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

- d. Biochemical Oxygen Demand (BOD<sub>5</sub>) and Total Suspended Solids (TSS): This permitting action carries forward the technology based monthly average, weekly average and daily maximum BOD<sub>5</sub> and TSS concentration limits of 30 milligrams per liter (mg/L), 45 mg/L and 50 mg/L, respectively along with a minimum monitoring frequency requirement of 1/Month. The monthly average and weekly average concentration limits are based on secondary treatment requirements as defined in Department rule, 06-096 CMR Chapter 525(3)(III) and the daily maximum concentration limit of 50 mg/L is based on a best professional judgment by the Department of best practicable treatment (BPT).

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

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

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

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

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

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

**BOD concentration (DMRs = 14)**

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

**TSS concentration (DMRs = 15)**

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

**BOD Mass (DMRs = 14)**

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

**TSS Mass (DMRs = 15)**

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

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

This permitting action carries forward the requirement for a minimum of 85% removal of BOD<sub>5</sub> and TSS pursuant to Chapter 525(3)(III)(a)(3) and (b)(3) of the Department’s rules and 40 CFR §122.44 (i)(2), which states in part; requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. Therefore, this permitting action is establishing a 1/Month monitoring and reporting requirement for BOD<sub>5</sub> and TSS percent removal to be consistent with monitoring and reporting frequencies for BOD<sub>5</sub> & TSS.

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

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

**SS concentration (DMRs = 15)**

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

- f. Fecal coliform bacteria: The previous permitting action established seasonal (May 15<sup>th</sup> – September 30<sup>th</sup>) water quality based monthly average concentration limit for fecal coliform bacteria of 15 colony form units (CFU)/100 ml (geometric mean) and a daily maximum of 50 CFU/100mL (instantaneous level) along with a 2/Month monitoring frequency. The water quality based limits were consistent with the limits associated with the 2003 National Shellfish Sanitation Program (NSSP). This permitting action is expanding the timeframe when fecal coliform bacteria limits are in effect from May 15 – September 30 to April 15 – October 31 for the calendar year 2019, based on a revision to Maine law 38 M.R.S. §465(3)(B) effective August 2, 2018. In addition, this permit is reducing the limits to 14 CFU/100 ml as a monthly and 34 CFU/100ml as a daily maximum to be consistent with the 2017 revisions to the NSSP. Based on comments received from the USEPA, fecal coliform limitations need to be imposed on a year-round basis to protect the designated use of shellfish harvesting, a year-round use. The Department understands that this facility is limited to seasonal discharge only and not subject to year-round monitoring and reporting.

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

**Fecal coliform. Bacteria (DMRs = 13)**

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

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

- g. Enterococcus bacteria – The previous permit did not establish limitations or monitoring requirements for enterococcus bacteria. Based on comments received from the USEPA, enterococcus bacteria limitations are necessary to protect the designation use of recreation in and on the water, a seasonal use. Pursuant to Maine law 38 M.R.S. §465(3)(B) effective August 2, 2018, monthly and daily maximum water quality based limits of 8 CFU/100 ml and 54 CFU/100ml, respectively. The limitations are seasonal and apply from April 15<sup>th</sup> – October 31<sup>st</sup> of each year and the monitoring frequency is being established at 2/Month to be consistent with the monitoring frequency for fecal coliform bacteria. The Department is granting the permittee a schedule of compliance until April 15, 2021, to come into compliance with these requirements and understands the facility is restricted to seasonal discharge only between May 1<sup>st</sup>– November 15<sup>th</sup> and not subject to year-round monitoring and reporting.
  
- h. Total Residual Chlorine (TRC): This permitting action carries forward the daily maximum technology based concentration limit of 1.0 mg/L for TRC with 2/Month monitoring requirement. Limitations on TRC are specified to ensure that ambient water quality standards are maintained at all times of the year and that BPT technology is being applied to the discharge. Department permitting actions impose the more stringent of either a water quality-based or BPT-based limit. With dilution factors as determined in section 6(c) of this fact Sheet, end-of-pipe (EOP) water quality-based concentration thresholds for TRC may be calculated as follows:

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

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

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

**Total residual chlorine (13)**

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

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

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

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

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

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

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

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

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

## **8. PUBLIC COMMENTS**

Public notice of this application was made in the Boothbay Register newspaper on or about April 15, 2019. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

## **9. DEPARTMENT CONTACTS**

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

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

## **10. RESPONSE TO COMMENTS**

*Reserved until the close of the formal 30-day public comment period.*