STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

IN THE MATTER OF

| | | |
|---|---|---|
| TOWN OF BAR HARBOR<br>BAR HARBOR, HANCOCK COUNTY<br>MAINE | )<br>)<br>) | ADMINISTRATIVE CONSENT<br>AGREEMENT<br>AND ENFORCEMENT ORDER |

This Agreement by and among the Town of Bar Harbor ("Bar Harbor"), the Maine Board of Environmental Protection, (the "Board"), and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

1. Bar Harbor is a municipal corporation which is organized and exists under the laws of the State of Maine, and which operates a sewerage collection and treatment system in Bar Harbor (Hulls Cove), Maine.

2. The Department has regulatory authority over the activities described herein.

3. Bar Harbor has Maine Pollutant Discharge Elimination System ("MEPDES") Permit ME0102466 and Maine Waste Discharge License #W002590, issued by the Department on November 21, 2005, for the discharge of treated domestic wastewater to Hulls Cove, Frenchman Bay, Class SB, Maine. Bar Harbor's Hulls Cove collection system includes 1.2 miles of sewers, with only one pumping station, and one CSO point licensed as outfall 008.

4. The Hulls Cove pump station has a wet well bypass which discharges to Frenchman Bay in the event of an electrical or mechanical failure. Bypasses are not authorized and constitute a violation of Special Condition H of the waste discharge license which states in part, "***The permittee is authorized to discharge only in accordance with the terms and conditions of this permit and only from Outfall #001A (secondary treated wastewater)"*** **and** ***" one (1) combined sewer overflow outfall (Outfall #008) listed in Special Condition K. Discharges of wastewater from any other point source are not authorized under this permit…***" Bypasses are also a violation of 38 M.R.S.A. § 413(1), which states in part, "no person may…discharge or cause to be discharged any pollutant without first obtaining a license…."

5. On April 7, 2009, the Hulls Cove Pump Station overflowed to Frenchman Bay, Class SB, due to failure of the pumps during a high flow event. After the initial pump alarm notification to wastewater personnel, town dispatch personnel failed to continue notifying wastewater personnel of subsequent alarms. Based on pumping records, an estimated 75,000 gallons of untreated waste water were discharged to Frenchman Bay, Class SB, from the Hulls Cove Pump Station during this event. In response to the discharge event,

existing protocols were reinforced to dispatch personnel that town Dispatch personnel would notify wastewater personnel of all alarms received, regardless of previous notifications.

6. On April 22, 2009, the Hulls Cove Pump Station overflowed to Frenchman Bay, Class SB, due to failure of the pumps during a high flow event. After wastewater personnel were notified of an intermittent alarm at the Hulls Cove Pump Station, the wastewater Superintendent reported back to dispatch that he had found no problem and was headed home. Due to an apparent miscommunication, dispatch personnel took this statement to mean that they were to cease notifying wastewater personnel of subsequent alarms at the Hulls Cove Pump Station, because the high volume of rain expected for the remainder of the night would cause the location to alarm continuously. In an attempt to silence the audible alarm tones, dispatch personnel temporarily disconnected the entire alarm system. Realizing their mistake, dispatch personnel reconnected the system within minutes. Service was restored and dispatch started receiving alarms again. Inspection of the system the next morning revealed that the alarm system lost connection later during the night, since reconnection of the alarm was not completed properly, causing it to become loose. Based on pumping records, an estimated 75,000 gallons of untreated wastewater were discharged to Frenchman Bay, Class SB, from the Hulls Cove Pump Station during this event.

7. The actions described in paragraphs 5 and 6, above, are violations of Special Condition H of the Bar Harbor waste discharge license and 38 M.R.S.A. §§ 413 and 414(5).

8. On August 12, 2009, The Department issued a Notice of Violation to Bar Harbor regarding the violations identified in paragraphs 5 and 6 above.

9. This Agreement shall become effective only if it is approved by the Board and Office of the Attorney General.

10. To resolve the violations referred to in paragraphs 5 through 7, above, Bar Harbor agrees to:

    A. Prior to April 15, 2010, submit to the Department for review and approval, plans and a schedule for temporary and permanent upgrades or replacement of the existing alarm system as necessary to prevent or minimize overflows from the Hulls Cove Pump Station.

    B. Pay to the Treasurer, State of Maine, the sum of One Thousand One Hundred Seventy-five Dollars ($1,175.00) as a civil monetary penalty, due immediately upon signing this Agreement.

11. On December 15, 2009, the Bar Harbor Town Council voted to authorize the Town Manager to sign this Agreement on behalf of the Town.

| | | |
|---|---|---|
| TOWN OF BAR HARBOR<br>BAR HARBOR, HANCOCK COUNTY<br>MAINE | 3)<br>)<br>) | ADMINISTRATIVE CONSENT AGREEMENT AND ENFORCEMENT ORDER |

12. The Department and Office of the Attorney General grant the Town of Bar Harbor a release of their causes of action for the specific violations listed in paragraphs 5 through 7 of this Agreement, on the express condition that all actions called for in paragraph 10, above, are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective unless and until the above condition is satisfied.

13. Non-compliance with this Agreement voids the release set forth in Paragraph 12 of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S.A. §§ 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies.

14. Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all applicable local, state, and federal laws, rules, laws, and orders including but not limited to licensing requirements.

15. The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.

IN WITNESS WHEREOF the parties have executed the Agreement consisting of three (3) pages.

TOWN OF BAR HARBOR

BY:_____ DATE: 1-6-10
DANA J. REED, TOWN MANAGER

BOARD OF ENVIRONMENTAL PROTECTION

BY:_____ DATE: _____
SUSAN LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY:_____ DATE: _____
JANET M. MCCLINTOCK, ASSISTANT ATTORNEY GENERAL