

ALBERT SIROIS – RESIDENTIAL OVERBOARD DISCHARGE PERMIT RENEWAL  
DEP APPROVAL #W-003648-5A-D-R (appeal submitted by Herman Turndorf)

- Department Permit Under Appeal



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

DEPARTMENT ORDER

IN THE MATTER OF

ALBERT SIROIS	)	PROTECTION AND IMPROVEMENT
BOOTHBAY, LINCOLN COUNTY, MAINE	)	OF WATERS
RESIDENTIAL OVERBOARD DISCHARGE	)	WASTE DISCHARGE LICENSE
#W003648-5A-D-R	)	<b>RENEWAL</b>
<b>APPROVAL</b>	)	

Pursuant to *Conditions of licenses*, 38 M.R.S.A. § 414-A, and applicable regulations, the Maine Department of Environmental Protection (Department) has considered the application of ALBERT SIROIS (applicant or licensee), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**APPLICATION SUMMARY**

The applicant has applied to the Department for renewal of Waste Discharge License (WDL) #W003648-5A-D-R, which was issued to the applicant on May 11, 1994, and expired on May 11, 2004. The 5/11/94 WDL authorized the year-round, daily maximum discharge of up to 300 gallons per day (GPD) of secondary treated sanitary wastewater generated by a one-bedroom single-family dwelling (at 33 Tecumseh Trail) and treated with a sandfilter wastewater treatment system to the Little River, Class SB, in Boothbay, Maine.

**LICENSE SUMMARY**

Information contained in the administrative record objectively demonstrates that, based on documentation from a licensed site evaluator experienced in designing replacement systems for overboard discharges, there are currently 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 result in elimination of the overboard discharge. *Overboard discharges: licenses and abandonment*, 06-096 CMR 596(6)(B)(2) (last amended November 27, 2004) requires that the licensed discharge volume be limited to the lesser of the volume limit of the previous license or the volume equal to the actual or estimated volume produced by the facility connected to the overboard discharge system during the 12 months prior to June 1, 1987. The estimated wastewater volume generated by a one-bedroom, single-family dwelling is 180 GPD according to *Maine Subsurface Waste Water Disposal Rules*, 10-144 CMR 241, Table 501.1. However, the Department has developed policy to establish a minimum volume limitation of 300 GPD for single-family dwellings, which is being carried forward in this licensing action as a daily maximum discharge flow limitation. The applicant has certified that public notice of the application was provided.

## CONCLUSIONS

BASED on the findings of fact in the administrative record and subject to the Conditions listed below, the Department makes the following conclusions:

1. The licensee has objectively demonstrated to the Department's satisfaction that all of the licensing criteria specified at 06-096 CMR 596 have been met.
2. The discharge, either individually or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
3. The discharge, either individually 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.
4. The provisions of the State's antidegradation policy, *Classification of Maine waters*, 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) 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.
5. The discharge will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S.A. § 414-A(1)(D).

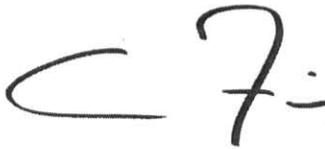
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**ACTION**

THEREFORE, the Department APPROVES the above noted application of ALBERT SIROIS to discharge a daily maximum of up to **300 gallons per day** of secondary treated sanitary wastewater from a residential single-family dwelling on a **year-round basis** to the Little River, Class SB, in Boothbay, Maine, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. *Maine Department of Environmental Protection's Standard License Conditions for Overboard Discharges of Less Than 2,000 Gallons per Day*, revised October 2004, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. The expiration date of this permit is five (5) years from the date of signature below.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES



This permit is digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date. 2010.02.03 09:22:23 -05'00'

Date of initial receipt of application: January 13, 2010  
Date of application acceptance: January 13, 2010  
This Order prepared by William F. Hinkel, BUREAU OF LAND & WATER QUALITY

**SPECIAL CONDITIONS****A. 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 by 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 by the classification of the receiving waters.
3. The discharge shall not cause visible discoloration or turbidity in the receiving waters, which would impair the usages designated by the classification of the receiving waters.
4. Notwithstanding specific conditions of this license, 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.

**B. SITE EVALUATION FOR TRANSFERRED AND RENEWED LICENSES**

Upon renewal or transfer of this license, the licensee shall objectively demonstrate to the satisfaction of the Department whether there is a technologically-proven alternative method 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. If a technologically-proven alternative form of wastewater disposal is identified for the site, the licensee shall install the alternative system if required pursuant to 38 M.R.S.A. § 414-A(1-B) or *Waste discharge licenses*, 38 M.R.S.A. § 413(3).

**C. PAYMENT OF FEES**

*Annual waste discharge license fees*, 38 M.R.S.A. § 353-B requires the licensee to pay an applicable annual fee for discharges authorized by this license. The Department may pursue enforcement, including, but not limited to, penalties pursuant to *Organization and powers*, 38 M.R.S.A. § 349, and suspension or revocation pursuant to *Board Responsibilities and Duties*, 38 M.R.S.A. § 341-D(3), for the failure of a licensee to pay any portion of licensing fees owed by the date due.

**D. REOPENING OF LICENSE FOR MODIFICATION**

Upon evaluation of new site-specific information obtained during the term of this license, the Department may, at any time and with notice to the licensee, modify this license to: 1) include effluent limits necessary to control specific pollutants where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded; 2) require additional monitoring if results on file are inconclusive; or 3) change monitoring requirements or limitations based on new information.

**E. SEVERABILITY**

In the event that any provision, or part thereof, of this license is declared to be unlawful by a reviewing court, the remainder of the license 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.

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APPENDIX A - MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STANDARD LICENSE CONDITIONS FOR OVERBOARD DISCHARGES  
OF LESS THAN 2,000 GALLONS PER DAY

I. GENERAL COMPLIANCE

- A. The licensee shall comply with all terms and conditions of this license. Any noncompliance is a violation of State law and the Clean Water Act and is grounds for enforcement action; for license termination, revocation and reissuance, or modification; or denial of a license renewal application. 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, license, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.
- B. The discharge must be consistent with the terms and conditions of this license. **Changes that increase the estimated discharge volume are prohibited.** Any planned or actual facility modifications that may result in an increased discharge amount or change the discharge characteristics must be reported to the Department of Environmental Protection (hereinafter: the Department). Determinations of volume design flow must be based on the wastewater design flows described in CMR Chapter 241 Section 7, the Subsurface Waste Water Disposal Rules (the "Plumbing Code").

Facility modifications that may increase the volume or otherwise affect the characteristics of the discharge include but are not limited to:

1. Residential sources: The construction of additional bedrooms, bunkhouses or dwellings; the conversion of accessory structures to such uses, the creation of waste discharge connections from mobile homes or recreational vehicles, or an increase in the duration of the discharge beyond that authorized in this license.
2. Commercial sources: Construction or renovations that would increase restaurant seating, room capacity or other modifications or changes of use which could reasonably be expected to result in an increase in discharge volume, duration or characteristic.

**Changes that increase the estimated discharge volume are a violation of the terms and conditions of this license and are therefore prohibited.** Changes or modifications to discharge characteristics without prior Department approval are also a violation of this license.

- C. The licensee shall grant Department staff right of entry to the regulated wastewater treatment facility at reasonable times. The licensee shall grant staff unobstructed access to the treatment system and appurtenances (its controls, monitoring and testing equipment) for the purposes of verifying compliance, examining records, sampling the effluent, and inspecting the treatment system and appurtenances. Disinfection unit and sampling ports must be accessible at all times.

II. LIMITATIONS OF LICENSE

- A. This license does not preclude obtaining other required Federal, State or Municipal licenses
- B. The licensee shall comply with all Federal Statutes, regulations, and conditions of licenses applicable to its discharge of wastewater, including but not limited to those requiring the installation of pretreatment facilities or establishment of pretreatment programs.
- C. Apart from the installation, maintenance and replacement of the approved or existing treatment system and its appurtenances (waste collection, system controls, monitoring equipment, etc.), this license does not authorize or approve the construction of any facilities or physical structures within the shoreland zone or below the normal high water mark of any waterbody.
- D. This license does not authorize any infringement of any other body of law, be it Federal, State or local, nor does it relieve the licensee from civil or criminal penalties for non-compliance.
- E. The issuance of this license does not convey any property rights, authorize injury to public or private property or infringement upon another's personal rights.

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**III. TREATMENT**

- A. The licensee shall maintain the wastewater treatment system including its appurtenances in good working order and operate the system at maximum efficiency at all times.
- B. The wastewater treatment system including its appurtenances must be installed according to Department specifications and be operational prior to the discharge of wastewater.
- C. The effluent from the wastewater treatment system must not exceed the following limits:

Effluent Characteristic	Discharge Limitations	
	Monthly <u>Average</u>	Daily <u>Maximum</u>
Flow	---	as licensed
5-Day Biochemical Oxygen Demand (BOD)	30 mg/L	50 mg/L
Total Suspended Solids (TSS)	30 mg/L	50 mg/L
Settleable Solids	---	0.3 ml/L
Fecal coliform Bacteria (for marine, estuarine discharges)	15col/100ml	50 col/100ml
Escherichia coli Bacteria (for freshwater discharges)	Class B: 64 col/100ml Class C: 142 col./100ml	427 col/100 ml 949 col./100 ml
Total Residual Chlorine	1.0 mg/L	
pH	The pH of the effluent shall not be less than 6.0 or greater than 9.0	

- D. Chlorination or ultraviolet units must be used as a means of disinfection. A minimum detention time of 20 minutes in an approved contact chamber must be provided at all times for chlorinators. The total chlorine residual in the effluent must at no time cause any demonstrable harm to aquatic life in the receiving water. The total chlorine residual of the effluent may not exceed 1.0 mg/L at any time.
- E. The final effluent pipe must be placed in the receiving waters in such a manner that mixing and effective dispersion of the wastewater will be achieved and that contact with the effluent will be minimized.
- F. The licensee shall not discharge or cause to be discharged any materials designated as hazardous or toxic under the provision of Section 12, Federal Water Pollution Control Act, as amended, 33 U.S.C. 1162 (1971) or by the Department or which are known by the licensee to be hazardous or toxic.
- G. The discharge must not have a visible oil sheen, contain foam or floating solids.
- H. The discharge may not contain materials in concentrations or combinations that are hazardous or toxic to aquatic life; nor may it cause turbidity or visible discoloration in the receiving waters to exceed control values measured upstream of the discharge point.
- I. Notwithstanding specific conditions of this license the effluent may not lower that water quality standards or impair the uses designated by the classification of the receiving waters.

**IV. NONCOMPLIANCE NOTIFICATION**

- A. It is the obligation of the licensee to notify Department staff immediately of any malfunction in any component of the wastewater treatment system. In the event the wastewater treatment system malfunctions, the wastewater discharge is to cease within 24 hours unless authorization to the contrary is obtained from the staff of the Department.

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**V. MONITORING AND REPORTING**

- A. The licensee shall operate and maintain the facility in accordance with Department specifications and the terms and conditions of this license. The licensee shall install supplementary monitoring, metering or testing equipment at any time during the operation of the treatment facilities as the Department may reasonably require to ensure compliance with license conditions. Metering, monitoring, testing or sampling equipment must be of a design approved by the Department. Disinfection unit and sampling port covers must be accessible at all times.
- B. The licensee shall complete, sign, certify and submit to the staff of the Department any reports, in such form and containing such information as the Department may require.

**VI. LICENSE ADMINISTRATION**

- A. The permittee shall maintain this license as current, submitting complete applications with all required exhibits for renewals and/or modifications as may be necessary.
- B. The licensee shall pay an annual fee to the Department for the administration of the Overboard Discharge Program and inspection of the applicant's OBD system. Payment of the fee is due within 30 days of receiving a bill from the Department.
- C. Prior to the transfer the ownership of the property, or the facility thereon, a site evaluation must be performed by a licensed site evaluator with experience in designing systems for the replacement of overboard discharges, if one has not been conducted in the previous five years. Should a practicable alternative be identified by the LSE, that system must be installed within 90 days of transfer, season and weather permitting.
- D. In the event that the named licensee transfers ownership of the facility without application by the new owner and subsequent Department approval of a transfer of the associated license, the license granted by the Department continues to authorize a discharge within the limits and subject to the terms and conditions stated in the license, and the parties to the transfer are jointly and severally liable for any violation thereof until such time as the Department approves transfer of issuance of a waste discharge license to the new owner. The Department may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.
- E. All wastewater will be consigned to a municipal treatment system when said municipal system becomes available. This waste discharge license will automatically expire 90 days after a municipal facility becomes available unless the Board, in writing, for good cause shown extends this time.
- F. The Department reserves the right to make appropriate revisions to this license in order to establish any appropriate effluent limitations, schedule of compliance or other provisions which may be authorized under 38 M.R.S.A., §414-A(5)

**SPECIAL CONDITIONS FOR SAND FILTER SYSTEMS**

- S-1. At least three days prior to the construction or replacement of the sand filter, the licensee shall contact the Department staff in order that an inspection of the construction may be made.
- S-2. The licensee shall ensure that the septic tank is pumped at least once every three years and that periodic cleaning of the disinfection unit housing chamber is performed as may be necessary for proper disinfection and discharge of treated sanitary wastewater.

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SPECIAL CONDITIONS FOR MECHANICAL TREATMENT SYSTEMS

- M-1. The licensee shall maintain a service contract for any and all treatment equipment and facilities with a service organization acceptable to the Department. A signed copy of the service contract must be forwarded or presented to the Department staff upon request.
- M-2. A tag, provided by the service contractor, must be attached to the treatment system or displayed near the treatment system in an accessible manner. The tag must show the name of the service contractor, the date of the most recent visit by the service contractor and the initials of the person conducting the service.
- M-3. The installed mechanical system must have an alarm system of a design approved by the Department.

**DEFINITIONS** - FOR THE PURPOSE OF THIS LICENSE, THE FOLLOWING DEFINITIONS APPLY:

- A. Daily Maximum for Concentration: The maximum value not to be exceeded by any composite or grab samples.
- B. Monthly Average for Concentration: The total discharge by weight during a calendar month divided by the number of tests in the month that the facility was operating. Where less than daily sampling is required by this license, the monthly average discharge shall be determined by the summation of all the measured daily discharges by weight divided by the number of days during the calendar month when the measurements were made.
- C. Licensee: The person identified in the findings of fact as being granted the license by the Department.
- D. Facility: "Facility" includes the waste discharge system, its appurtenances, and all connected structures that produce wastewater discharge volumes according to this license. Facility shall include unplumbed structures accessory to connected structures (bunkhouses, etc.) which would logically result in an increased discharge volume or change in effluent character.
- E. Sanitary Wastewater: Domestic effluent, having received the licensed level of treatment and disinfection.



# DEP INFORMATION SHEET

## Appealing a Commissioner's Licensing Decision

Dated: May 2004

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. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

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

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days 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 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 and the applicant a copy of the documents. All 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

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by 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 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 as part of an appeal only when 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 show 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, Section 24(B)(5).

**OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

- 1. *Be familiar with all relevant material in the DEP record.* A license file is public information 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.* An applicant proceeding with a project pending the outcome of an appeal 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 initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final 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. The Board will notify parties to an appeal and interested persons of its decision.

**II. APPEALS TO MAINE SUPERIOR COURT**

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

**ADDITIONAL INFORMATION**

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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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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