

**TOWN OF SEARSPORT)
PUBLICLY OWNED TREATMENT WORKS,)
APPLICATION FOR SECTION 301(h) TO)
VARIANCE FROM THE SECONDARY)
TREATMENT REQUIREMENTS OF THE)
CLEAN WATER ACT)**

**TENTATIVE DECISION
OF THE REGIONAL
ADMINISTRATOR PURSUANT
40 C.F.R. § 125, SUBPART G**

The Town of Searsport (Searsport or permittee), owns and operates a publicly owned treatment works (POTW) located in the Town of Searsport, Maine that discharges treated wastewater to Penobscot Bay, a Class SB water. Such discharges are prohibited unless authorized by a National Pollution Discharge Elimination System (NPDES) permit under the Clean Water Act, 33 U.S.C. §§1251 *et seq.* (CWA). While POTW’s typically must satisfy permit requirements based on “secondary treatment,” they may instead obtain modified permit conditions based on a waiver from secondary treatment requirements if they can satisfy the criteria specified in Section 301(h) of the CWA, as amended by the Water Quality Act (WQA) of 1987.

In applying to the United States Environmental Protection Agency (EPA) for an NPDES permit, Searsport sought a waiver from secondary treatment requirements under Section 301(h) of the CWA. On May 14, 1985, EPA tentatively approved Searsport’s application for a Section 301(h) waiver. EPA issued a final NPDES permit with limits based on “primary treatment” on February 12, 1986. The permit was reissued with limits based on the 301(h) waiver on June 12, 2002 and November 12, 2008. The State of Maine has been authorized (since 2001) to administer the NPDES program in Maine, with the exception of the 301(h) waiver program which may not be delegated. As a result, the 301(h) program continues to be administered by EPA.

On May 6, 2013, Searsport submitted a 301(h) reapplication for a 301(h) waiver to EPA. EPA reviewed the merits of Searsport’s application for a waiver and issued a Tentative Approval of the Waiver, along with a Draft Permit, on December 27, 2018. Searsport submitted comments on the Tentative Approval of the Waiver Request and Draft Permit on January 30, 2019 stating that it could not meet the proposed enterococci bacteria limits in the Draft Permit. As discussed below, based on this information, EPA is proposing to tentatively deny Searsport’s request for a 301(h) waiver.

Section 301(h) of the CWA states that in order to receive a modification from secondary treatment requirements, the discharge of any pollutant from a publicly owned treatment works into marine waters must not:

interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water.

33 U.S.C. § 301(h)(2).

In order to ensure attainment of water quality standards, the Draft Permit includes water quality-based limits for enterococci bacteria and fecal coliform bacteria. The applicable Maine Water Quality Standards, *see* Maine law 38 M.R.S. §§465-B(2)(B),(C), state:

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 shall be no new discharge to Class SB waters which would cause closure of open shellfish areas by the Department of Marine Resources.

Maine water quality standards use enterococci bacteria as indicator organisms for protection of estuarine and marine recreational waters. Because contact recreation occurs largely in the summer months, the enterococci bacteria criteria are applied seasonally. (38 M.R.S. § 465-B(2)(B)). The 2008 Permit does not have enterococci bacteria limits, however, the 2018 Draft Permit included enterococci limits based on the reasonable potential of the treated effluent to cause or contribute to an exceedance of the state bacterial water quality standards. Thus, the limits that were proposed in the Draft Permit included a monthly geometric mean of 8 CFU/100 ml and a maximum daily limit of 54 CFU.100 ml.

In its January 30, 2019 comments on the 2018 Tentative Waiver Decision and Draft Permit, Searsport stated that the only way it can meet the bacteria water quality limits is to implement secondary treatment at the waste water treatment facility. Specifically, Searsport stated:

The proposed Enterococcus Limits will pose a significant burden on the Town. The proposed limit of 8CFU/100mL will require both the addition of Secondary and Tertiary Treatment at the Town's WWTF in order to meet this limit. This will add considerable cost to the Town both with respect to up-front upgrades as well as on going [sic] operation and maintenance costs. This level of an Enterococcus limit is one that is representative of reuse level water quality and requires advanced treatment in order to reliably achieve permit compliance.

Searsport Comments, pgs 2-3.

Because the permittee is not able to meet the Maine Water Quality standards for enterococci bacteria without the addition of secondary treatment at its waste water treatment facility, it is my tentative decision that the Town of Searsport be denied a 301(h) waiver from secondary treatment standards.

Pursuant to the procedures of the NPDES Permit Regulations, 40 C.F.R. Part 124, a public notice will be issued including the comment procedures that are available to persons interested in this decision.

Date: June 10, 2019

Signed: /S/SIGNATURE ON FILE

Deborah A. Szaro
Acting Regional Administrator
U.S. Environmental Protection Agency
Region I

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WATER DIVISION
5 POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109-3912

PUBLIC NOTICE OF A TENTATIVE DECISION BY THE EPA REGION I ADMINISTRATOR TO DENY AN APPLICATION FOR A SECTION 301(h) VARIANCE FROM THE SECONDARY TREATMENT REQUIREMENTS OF THE CLEAN WATER ACT (THE "ACT"), AS AMENDED, FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT PROGRAM

DATE OF NOTICE: **July 19, 2019**

PERMIT NUMBER: **ME010966**

PUBLIC NOTICE NUMBER: **ME-011-19**

NAME AND MAILING ADDRESS OF APPLICANT:

**Town of Searsport
P.O. Box 499
Searsport, Maine 04947**

NAME AND ADDRESS OF THE FACILITY WHERE DISCHARGE OCCURS:

**Town of Searsport
Waste Water Treatment Plant
45 Navy Street
Searsport, Maine 04974**

RECEIVING WATER: Penobscot - Class SB

PREPARATION OF THE TENTATIVE DECISION:

Section 301(h)(2) of the Clean Water Act states that in order to receive a modification from secondary treatment requirements, the discharge of any pollutant from a publicly owned treatment works into marine waters must not:

interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water.

In order to ensure attainment of water quality standards, the Draft Permit includes Maine Water quality-based limits for enterococci and fecal coliform bacteria. In its January 2019 comments on the Draft Permit and Tentative Waiver Decision documents, Searsport stated that the only way it could meet the bacteria water quality limits is to implement secondary treatment at its waste water treatment facility. Because Searsport is not able to meet the Maine Water Quality standards for enterococci bacteria without the addition of secondary treatment to its waste water treatment facility, the EPA Regional

Administrator has made a tentative decision to deny the 301(h) waiver.

INFORMATION ABOUT THE TENTATIVE DECISION:

The Tentative Decision Document may be obtained at no cost at <https://www.epa.gov/npdes-permits/maine-draft-individual-npdes-permits> or by contacting:

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The administrative record containing all documents relating to this Tentative Decision, including all data submitted by the applicant, may be inspected at the EPA Boston Office mentioned above between 9:00 a.m. and 5:00 p.m., Monday through Friday, except holidays.

PUBLIC COMMENT AND REQUEST FOR PUBLIC HEARING:

All persons, including applicants, who believe any condition of this Tentative Decision is inappropriate, must raise all issues and submit all available arguments and all supporting material for their arguments in full by **August 19, 2019** to the address listed above.

Any person, prior to such date, may submit a request in writing to EPA for a public hearing to consider this Tentative Decision. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held after at least thirty days public notice whenever the Regional Administrator finds that the response to this notice indicates significant public interest.

FINAL TENTATIVE DECISION:

Following the close of the comment period, and after a public hearing, if such hearing is held, the Regional Administrator will issue a Tentative Decision, and forward a copy to the applicant and each person who has submitted written comments or requested notice. Within thirty (30) days following the notice of the Final Tentative Decision, any interested person may submit petition to the Environmental Appeals Board to reconsider or contest the final decision.

KEN MORAFF, DIRECTOR
WATER DIVISION
ENVIRONMENTAL PROTECTION AGENCY
REGION I