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**Testimony in Opposition to LD 401
("An Act to Support Removal of Overboard Discharge Systems")**

J. Andrew Cashman on behalf of the Maine Association of REALTORS®

February 24, 2025

Senator Tepler, Representative Doudera and members of the Joint Select Committee on Environment and Natural Resources, my name is Andy Cashman. I am the Founder of Resolve Government Relations. We represent the Maine Association of REALTORS®, a professional trade association established in 1936 with over 6,500 members statewide. REALTORS® protect private property rights, build Maine communities, and grow our state's economy. Our members represent buyers and sellers involved in both residential and commercial real estate transactions. Our membership also includes industry affiliates, such as lenders, closing agents, title agents, appraisers, building inspectors, surveyors, etc. The Maine Association is chartered by the National Association of REALTORS® (NAR), the largest trade association in the country.

The Maine Association of REALTORS® opposes portions of LD 401. The bill, in part, would require sellers of residential property to disclose the presence of an overboard discharge system and a summary of the statutory transfer requirements for the system. We oppose these parts of the bill because existing seller disclosure law already requires disclosure of the "type" of waste disposal system, which includes overboard discharge systems.

Furthermore, the far-reaching demand of this proposal surpasses the need for change in statute. Per the Maine Department of Environmental Protection website, there are 650 Overboard Discharge Systems (OBD) in use in Maine and the number continues to decrease each year. These systems are highly regulated and the Department already has knowledge of each system location and property owner. An additional disclosure in statute would not address the concern nor achieve the goal of removing the remaining systems from use. Most of these properties are coastal seasonal camps that likely remain within families for years. In addition, it is highly probable that many of the properties still using OBD systems will not be sold or transferred in the near future or with the assistance of a real estate professional when they do. We believe existing disclosure laws around OBDs are sufficient.

If passed, LD 401 would duplicate existing efforts at the time of transaction to upgrade the system. This push is already happening as DEP requires mandatory annual inspections and 5-year licensing renewals of existing OBDs to determine if there is an available means to upgrade. Additional disclosure as mentioned will not achieve the measured success needed to sunset the use of OBDs. We believe that potential purchasers should be informed and educated about all aspects of the property they are considering, to include any resources



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made available by DEP to educate buyers on these systems. MAR supports increased consumer choice and awareness through education. We support and encourage property owners to take advantage of grant funding availability.

We do support the Department's efforts in the bill to increase accessibility to grant funding as an incentive to replace these costly and challenging systems. We agree, this a good sense approach to incentivizing the retirement of OBDs. By providing materials and financial support, this is a move in the right direction for property owners to meet the demands of the state's push to modernize and achieve more environmentally conscious methods of wastewater management that balance the unique uses of Maine's coastal waters and preserve its natural resources.

We believe that well-informed buyers are fully capable of making the best decision regarding their potential purchase. For buyers or sellers that are using a REALTOR® to guide them in the transaction, we feel confident that OBDs are being disclosed, and buyers are well informed around the system and the requirements in statute.

For these reasons, we oppose the duplicative disclosure provisions in LD 401 and respectfully urge you to consider an amendment to remove the disclosure requirements. Thank you for your time and consideration.

DEP ISSUE PROFILE

Overboard Discharges (OBDs)

Updated: February 2018

Contact: (207) 287-7688

What is an overboard discharge?

An overboard discharge (OBD) is a discharge to surface waters of the State of domestic pollutants (sanitary wastes or wastewater from household activities generated at residential or commercial locations) that are not conveyed to municipal or quasi-municipal sewerage treatment facilities. Most OBDs in Maine are associated with residential dwellings and small commercial operations along the coast. Treated wastewater from the OBD system is discharged directly into Maine's rivers, streams and the ocean. The Department of Environmental Protection (DEP) has regulated OBDs since the 1970s when most direct discharges of untreated waste (*i.e.*, straight pipes) were banned. By the late 1980s, most of the "straight pipe" discharges were connected to municipal wastewater treatment systems or were replaced with subsurface leachfield systems. Certain properties were not within the reach of a public sewer line and did not have suitable soils for the installation of a subsurface treatment system. In these cases, OBDs were installed. There were approximately 1,500 licensed OBDs remaining in Maine as of October 2010, which is less than half the number of OBDs documented to be in existence in 1987. In 2023 there were approximately 750 OBDs remaining. With advances in wastewater disposal technologies and revisions to Maine laws and rules, the number of OBDs in Maine continues to decrease each year.

How does my overboard discharge system work?

OBDs provide a secondary level of wastewater treatment followed by effluent disinfection and discharge to the receiving water. OBDs generally provide an equivalent level of treatment to what a large municipal wastewater treatment facility provides, except on a much smaller scale. Secondary treatment standards are mandated by State and Federal law. Secondary treatment is a biological process accomplished by two general types of systems in Maine: passive sandfilters and active mechanical OBDs.

Sandfilter OBD. A typical sandfilter OBD consists of a septic tank, sandfilter bed and chlorination chamber. Wastewater flows from the facility to a septic tank for solids settling. This is referred to as primary treatment and results in approximately 30-50% pollutant reduction from raw wastewater levels. Primary treated wastewater flows to a sandfilter bed, which consists of (from top to bottom) distribution pipes, layers of stone and filter sand, collection pipes and a plastic liner, for additional biological treatment and filtration. This is referred to as secondary treatment and results in approximately 85% or greater pollutant reduction from raw wastewater levels. The treated, filtered wastewater is then collected at the bottom of the filter bed and conveyed to a disinfection unit, which is typically a chlorination chamber. The wastewater flows in contact with chlorine tablets (in some cases a UV light is used at this point in the process) for effluent disinfection and compliance with the State's bacteria standards before being discharged as final effluent to the receiving waterbody. Passive systems are typically maintained by the OBD owner. Maintenance generally consists of placing chlorine tablets in the disinfection unit (usually twice monthly) and pumping the septic tank every 3-5 years.

Mechanical OBD. A typical mechanical OBD consists of a septic tank, one or more tanks with pumps or paddles to break up solids, an aeration chamber and a chlorination chamber. Wastewater flows from the facility to a septic tank for solids settling. Primary treated wastewater flows to a package mechanical OBD system, which vary in technology based on manufacturer but generally consist of an aeration tank to enhance aerobic biological treatment and a quiescent zone or "rest" period for additional settling and wastewater clarification. This process also provides a secondary level of treatment and results in approximately 85% or greater pollutant reduction from raw wastewater levels. The treated wastewater is then conveyed to a disinfection unit, which is typically a

chlorination chamber as described above for sandfilter and discharged to the receiving water as final effluent. DEP rule requires all mechanical treatment systems to have an operating alarm system; to maintain a current service contract with a licensed service contractor; and to attach a service tag on or near the treatment system that provides the service contractor's name and the last date of service. All mechanical systems require power, so be sure that power is supplied to the unit and that it is turned on 7 days a week during the season of use.

How do I maintain my overboard discharge treatment system?

These are a few general tips that will help to extend the life of your OBD and promote high quality effluent.

- Some household chemicals kill the microorganisms that digest the wastes in your treatment system and may pass through to the receiving waterbody. Toxic chemicals, harsh cleaners, paint, pharmaceuticals, and non-biodegradable materials should not be disposed of by dumping or pouring down the drain.
- Using low-flow toilets and water-saving showerheads will prolong the life of your system.
- Septic tanks should be pumped at least once every three years. Depending on how much the OBD facility is used, you may want to increase the septic pumping frequency or decrease it to once every five years if it receives very little use.
- Trees, shrubs and woody perennials should be cleared away from system components. Sandfilter surfaces should be mowed at least once per year. If a wet spot appears on or near the sandfilter bed notify the DEP inspector.
- Mechanical systems operate best if they are used at a consistent rate and may malfunction or produce poor quality effluent if overloaded on the weekend and "starved" during the week. Try to manage laundry, cleaning, and showers so that the load is spread out as evenly as possible. Leave a mechanical OBD operating as recommended by your service contractor at all times during the season of use.
- Check the chlorine level at least every two weeks and keep fresh chlorine in contact with the treated wastewater. Don't overfill the chlorinator tubes; only the bottom two or three inches of the tubes should have chlorine. Old, brown or mushy chlorine does not properly disinfect and must be replaced. Take care to remove old chlorine from your chlorinator rather than washing it out to the waterbody.
- Ensure that the outfall pipe extends to below the low water mark of the receiving waterbody. In extenuating circumstances, a specific waiver to this requirement may be granted by the Department.
- Treated wastewater should be clear and without a strong septic or chlorine odor. If wastewater in the disinfection unit is not nearly clear, smells like rotten eggs, raw sewage, or smells strongly of chlorine, call your service contractor or notify the DEP inspector.

Why do the Maine DEP and the Maine Legislature want to eliminate OBDs?

Maine waters must be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish – these are called designated uses. The Maine Department of Marine Resources (DMR) restricts or closes shellfish harvesting areas where there are pollution threats, such as unacceptable bacteria levels, potential pollution sources from point source discharges, or poor water quality. As a precautionary measure, the DMR prohibits shellfish harvesting in the immediate vicinity of OBD outfall pipes because they have the potential to discharge harmful bacteria and other pathogens if they fail or are not properly maintained.

The Maine Legislature has declared that it is the State's objective to restore and maintain the chemical, physical and biological integrity of the State's waters and to preserve certain pristine state waters. In order to achieve this objective, the State's goals are: that the discharge of pollutants into the waters of the State be eliminated where appropriate; that no pollutants be discharged into any waters of the State without first being given the degree of treatment necessary to allow those waters to attain their classification; and that water quality be sufficient to provide for the protection and propagation of fish,

shellfish and wildlife and provide for recreation in and on the water. These objectives are consistent with those set forth in the Federal Clean Water Act.

Simply stated, eliminating OBDs results in overall higher water quality and the reopening of more shellfish growing and harvesting areas.

What are the significant highlights from Maine's laws and rules pertaining to OBDs?

- OBD owner(s) must maintain a current Waste Discharge License for each OBD. Failure to submit an application for renewal before the expiration date of the current license may result a lapse in legal coverage to discharge wastewater. Waste Discharge Licenses are typically issued for a five-year term.
- The licensee is required to pay an applicable annual fee for discharges authorized by this license. The Department may pursue enforcement, including, but not limited to, penalties and suspension or revocation of a license for the failure to pay any portion of licensing fees.
- There may be no new or expanded OBD discharges to Maine waters. New sources include wastewater that was not licensed as of June 1, 1987 and increases in the volume (such as by increasing the number of bedrooms associated with the dwellings connected to the OBD) or duration (number of months per year) of the discharge.
- OBD owners must demonstrate to the Department whether a technologically proven alternative to the OBD is practicable on land owned or controlled by the OBD owner(s). This documentation must be available at the time of property transfer and license renewal.
- A grant program is available to assist certain OBD owners with the cost of OBD replacement. Transfer applicants and non-primary residence OBDs do not qualify for grant assistance.
- DEP must inspect all licensed OBDs. The cost of the inspections is assessed as part of the annual license fee.
- **Prior to transfer of ownership of property** containing an OBD, the parties to the transfer shall determine the feasibility of technologically proven alternatives to the overboard discharge that are consistent with Maine plumbing standards. The evaluation must be based on documentation from a licensed site evaluator who has demonstrated experience in designing replacement systems for OBDs. If an alternative to the overboard discharge is identified, the alternative system must be installed within 180 days of property transfer. Grant assistance is generally not available for OBD removal costs associated with a property transfer. Transfer is a change in the legal entity that owns a property, facility or structure that is the subject of a license issued by the Department. Deeding a property to your children or to a trust, for example, DOES constitute a transfer of ownership. Questions regarding the requirements of Maine law and rule should be directed to DEP staff before finalizing any agreements on property transfers involving OBDs.

What is the OBD Removal Grant Program?

State contribution to residential overboard discharge replacement projects, 38 M.R.S. § 411-A provides, subject to the availability of funds, that the Maine DEP shall pay a portion of the expense of a technologically feasible alternative that results in the elimination of an OBD. There are two significant changes to this law:

1. The DEP may not provide grant funding to a residential OBD owner unless the residence is the owner's primary residence.
2. The DEP may not provide grant funding to an OBD owner with an annual income of more than \$125,000.

OBD owners who *are* eligible for grant funding are not required to eliminate the OBD until such time that a technologically proven, subsurface alternative system is identified, and the DEP offers a grant. If a technologically proven, subsurface alternative system has been identified, residential and commercial **OBD owners who *are not* eligible for grant funding because the OBD serves a secondary residence or have an annual income of more than \$125,000 will be required to eliminate the OBD after July 2, 2012**. If you have an alternative and believe you are not eligible for a grant, the Department strongly encourages you to contact us before your license expires to discuss these requirements in greater detail.

Who do I call or e-mail at DEP?

DEP staff information for various OBD program areas is provided below. Please do not hesitate to contact the DEP with any questions you have regarding an OBD.

For more information:	Contact	Telephone	Email
OBD System Compliance, Inspections, and Reports	William Johnson	(207) 287-7684	william.johnson@maine.gov
OBD Licensing, General Program Inquiries	Irene Saumur	(207) 485-2404	irene.saumur@maine.gov
OBD Fees	Chris Everett	(207) 287-7862	christopher.everett@maine.gov

Contact us:

Maine Department of Environmental Protection
State House Station 17
Augusta, ME 04333-0017

DEP Home: maine.gov/dep

DEP's OBD Page: <http://www.maine.gov/dep/water/wd/OBD/index.html>

Additional OBD Removal Funding Possibilities

USDA Rural Development offers various funding programs that may be used to fund wastewater treatment projects in eligible rural communities. For more information visit www.rd.usda.gov/me or call (207) 990-9100.

1. The USDA RD **Water and Waste Disposal Grant and Loan Program** helps fund sewage and solid waste disposal and storm water drainage. Municipalities, nonprofits, and federally-recognized tribes may apply. For more information, visit: <http://tinyurl.com/csjsm8f7>
2. USDA's **Single Family Housing Repair Grant and Loan Program** offers low-interest loans available to homeowners with very low income. Homeowners apply directly. For more information, visit: <http://tinyurl.com/mpwев87t>
3. USDA's **Rural Decentralized Water Systems Grant Program** provides grants to qualified nonprofits and tribes to provide revolving loans to low-income households to install septic systems. Typically opens annually in the spring. Nonprofits and tribes may apply. For more information, visit: <http://tinyurl.com/2p6k55yn>