



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

June 2, 2017

Mr. Jeffrey Saucier
McCain Foods USA, Inc.
319 Richardson Road
Easton, Maine 04740
e-mail: jeffrey.saucier@mccain.com

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0036218
Maine Waste Discharge License (WDL) Application #W008085-5N-H-M
Minor Revision

Dear Mr. Saucier:

Enclosed please find a copy of your **final** MEPDES permit and Maine WDL **minor revision** which was approved by the Department of Environmental Protection. Please read this permit/license and its attached conditions carefully. Compliance with this permit/license will protect water quality.

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled "*Appealing a Commissioner's Licensing Decision.*"

If you have any questions regarding the matter, please feel free to call me at 287-7693. Your Department compliance inspector copied below is also a resource that can assist you with compliance. Please do not hesitate to contact them with any questions.

Thank you for your efforts to protect and improve the waters of the great state of Maine!

Sincerely,

Gregg Wood
Division of Water Quality Management
Bureau of Water Quality

Enc.

cc: William Sheehan, DEP/NMRO Lori Mitchell, DEP/CMRO
Sandy Mojica, USEPA Marelyn Vega, USEPA Olga Vergara, USEPA

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 04769
(207) 764-0477 FAX: (207) 760-3143



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

DEPARTMENT ORDER

IN THE MATTER OF

MCCAIN FOODS USA, INC.	)	MAINE POLLUTANT DISCHARGE
PRESQUE ISLE, AROOSTOOK COUNTY	)	ELIMINATION SYSTEM PERMIT
FOOD PROCESSING FACILITY	)	AND
ME0036218	)	WASTE DISCHARGE LICENSE
W008085-5N-H-M	)	MINOR REVISION
APPROVAL		

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, §1251, *et seq.*, and Maine law, 38 M.R.S., §414-A *et seq.*, and applicable regulations, the Maine Department of Environmental Protection (Department hereinafter) is initiating a minor revision of combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0036218/Maine Waste Discharge License (WDL) W008085-5N-F-R issued to MCCAIN FOODS USA, INC. (McCain/permittee hereinafter) on June 2, 2015, for a five-year term. With its supportive data, agency review comments, and other related materials on file, the Department FINDS THE FOLLOWING FACTS:

MINOR REVISION SUMMARY

The June 2, 2015, permit established a monthly average water quality based mass limitation for total phosphorus based on information obtained from a 2012 ambient water quality survey conducted by the Department. The survey indicated the discharge of total phosphorus from the McCain facility was contributing pH violations in the Aroostook River.

On June 1, 2017, the Department issued a final MEPDES permit/WDL renewal for the discharge from the Presque Isle Utility District (PIUD), just upstream of the McCain discharge. The Fact Sheet of the PIUD permit contains the following language as it pertains to total phosphorus:

Given the close proximity of the discharges from the McCain Foods facility and Presque Isle Utility District (approximately 1.0 miles apart) the Department is evaluating the impact of total phosphorus discharged from the two facilities collectively. The calculations are as follows:

Given

Flow limit = 4.81 MGD (2.5 MGD McCain + 2.31 MGD PIUD)

7Q10 at PIUD = 160 cfs or 103.4 MGD

Background concentration of Total P = 0.01 mg/L

Critical Total P threshold = 0.10 mg/L

Chronic dilution factor = 22.5:1

MINOR REVISION SUMMARY

Outfall #001C – Secondary treated waste water

Find:

1. Does the combined discharge have a reasonable potential to exceed the threshold of 0.10 mg/L?
2. Allowable discharge of Total P mass from McCain and PIUD combined.
3. Total P mass limit for each facility.

Solution:

1. Reasonable potential

What is remaining assimilative capacity: $0.100 \text{ mg/L} - 0.01 \text{ mg/L} = 0.090 \text{ mg/L}$

What is the weighted average concentration of Total P being discharged?

$$\frac{\text{McCain (2.5 MGD)(4.9 mg/L)} + \text{PIUD (2.31 MGD)(0.33 mg/L)}}{4.81 \text{ MGD}} = 2.7 \text{ mg/L}$$

What is the resultant instream concentration after rapid and complete mixing?

$$\frac{2.7 \text{ mg/L}}{22.5} = 0.12 \text{ mg/L}$$

Reasonable potential? Yes, as $0.12 \text{ mg/L} >$ than assimilative capacity of 0.090 mg/L

2. Allowable discharge of Total P mass from McCain and PIUD combined.

$\text{EOP concentration} = [\text{Dilution factor} \times 0.90 \times \text{AWQ goal}] + [0.10 \times \text{AWQC goal}]$

$\text{EOP concentration} = [(22.5 \times 0.90 \times 0.100 \text{ mg/L}) + (0.1 \times 0.100 \text{ mg/L})] = 2.04 \text{ mg/L}$

Monthly average mass limit: $(4.81 \text{ MGD})(8.34 \text{ lbs/gal})(2.04 \text{ mg/L}) = 82 \text{ lbs/day}$

3. Total P mass limit for each facility

Based on the allocation established in the previous permitting actions for McCain and PIUD, the facilities were limited to a total of 110 lbs/day, 91 lbs/day for McCain and 19 lbs/day for PIUD. That apportions to 83% of the allocation to McCain and 17% of the allocation to PIUD. To be consistent with previous allocations, this permitting action is establishing monthly average water quality based mass limitations for each facility as follows:

McCain: $82 \text{ lbs/day}(0.83) = 68 \text{ lbs/day}$ resulting in a 31% reduction from the previous permit.

PIUD: $82 \text{ lbs/day}(0.17) = 14 \text{ lbs/day}$ resulting in a 32% reduction from the previous permit.

MINOR REVISION SUMMARY

Therefore, this minor revision is being initiated by the Department to correct the monthly average mass limit for total phosphorus for the McCain facility based on the more current waste load allocation calculations on the previous page. The monthly average mass limit for the McCain facility is being increased from 63 lbs/day to 68 lbs/day.

ANTI-BACKSLIDING

Federal regulation 40 CFR, §122(l) contains the criteria for what is often referred to as the anti-backsliding provisions of the Federal Water Pollution Control Act (Clean Water Act). In general, the regulation states that except for provisions specified in the regulation, effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards or conditions in the previous permit. Applicable exceptions include (1) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation, 2) technical mistakes or mistaken interpretations of the law were made in issuing the permit under CWA section 402(a)(1)(b), and (3) information is available which was not available at the time of the permit issuance (other than revised regulations, guidance or test methods) and which would justify the application of less stringent effluent limitations at the time of permit issuance.

This permitting action is establishing a less stringent monthly average water quality based mass for total phosphorus based new information which was not available at the time of the permit issuance which would justify the application of less stringent effluent limitations at the time of permit issuance. The Department has made the determination that authorizing this less stringent limitation is necessary to correct the waste load allocation for total phosphorus on the Aroostook River.

ANTI-DEGRADATION - IMPACT ON RECEIVING WATER QUALITY

Maine's anti-degradation policy is included in 38 M.R.S.A., Section 464(4)(F) and addressed in the *Conclusions* section of this permit. Pursuant to the policy, where a new or increased discharge is proposed, the Department shall determine whether the discharge will result in a significant lowering of existing water quality. Increased discharge means a discharge that would add one or more new pollutants to an existing effluent, increase existing levels of pollutants in an effluent, or cause an effluent to exceed one or more of its current licensed discharge flow or effluent limits, after the application of applicable best practicable treatment technology.

This permitting action revises previously established effluent limitations for total phosphorus. The rationale and calculations are provided above. Based on this information, the Department has made the determination that the discharge approved by this permit will not result in a significant lowering of water quality. As permitted, the Department has determined the existing and designated water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the Aroostook River to meet standards for Class C classification.

CONCLUSIONS

BASED on the findings above, 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 natural 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 discharge 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).

ACTION

THEREFORE, the Department APPROVES the minor revision to increase the monthly average water quality based mass limitation for total phosphorus in MEPDES permit #ME0036218/WDL W008085-5N-F-R, last issued to MCCAIN FOODS USA, INC. on June 2, 2015, for a five-year term. The permittee is SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits," revised July 1, 2002, copy attached to MEPDES permit #ME0036218/WDL W008085-5N-F-R, last issued on June 2, 2015, for a five-year term.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit #ME0036218/WDL W008085-5N-F-R, last issued on June 2, 2015, for a five-year term, not modified by this minor remain in effect and enforceable.
4. This minor revision becomes effective upon the date of signature below and expires at midnight on June 2, 2020. 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.A. § 10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (effective October 9, 2015)].

DONE AND DATED AT AUGUSTA, MAINE, THIS 5th DAY OF June, 2017.

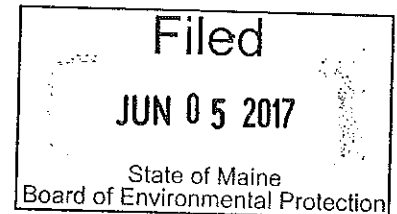
COMMISSIONER OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhn
for Paul Mercer, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application May 29, 2017.
Date of application acceptance May 29, 2017.

Date filed with Board of Environmental Protection _____



This Order prepared by Gregg Wood, BUREAU OF WATER QUALITY

ME0036218 MR 2017

6/2/17

SPECIAL CONDITIONS
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. **TIER #1** The permittee is authorized to discharge **treated process and secondary treated sanitary waste waters from Outfall #001** to the Aroostook River in Presque Isle. Such discharges shall be limited and monitored by the permittee as specified below⁽¹⁾:

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Flow [50050]	2.5 MGD [03]	---	Report MGD [03]	---	---	---	Continuous [99/99]	Recorder [RC]
BOD₅ [00310]	497 lbs./day [26]	---	994 lbs./day [26]	36 mg/L [19]	---	72 mg/L [19]	1/Week [01/07]	24-Hour Composite [24]
TSS [00530]	1,608 lbs./day [26]	---	3,216 lbs./day [26]	116 mg/L [19]	---	231 mg/L [19]	1/Week [01/07]	24-Hour Composite [24]
Settleable Solids [00545]	---	---	---	---	---	0.3 ml/L [25]	1/Week [01/07]	Grab [GR]
Total Residual Chlorine⁽²⁾ [50060]	---	---	---	0.1 mg/L [19]	---	0.3 mg/L [19]	3/Week [03/07]	Grab [GR]
Total Phosphorus⁽³⁾ (June 1 – Sept. 30) [00665]	68 lbs./day [26]	Report lbs./day [26]	Report lbs./day [26]	Report mg/L [19]	Report mg/L [19]	Report mg/L [19]	3/Week [03/07]	24-Hour Composite [24]
pH [00400]	---	---	---	---	---	6.0 – 9.0 SU [12]	3/Week [03/07]	Grab [GR]

The italicized numeric values bracketed in the table above and the tables that follow are not limitations but code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports.

Footnotes: See Pages 13 through 16 of this permit for applicable footnotes.

SPECIAL CONDITIONS

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

2. **TIER #2** The permittee is authorized to discharge **treated process and secondary treated sanitary waste waters from Outfall #002** to the Aroostook River at Presque Isle. Such discharges shall be limited and monitored by the permittee as specified below⁽¹⁾. Tier #2 limits shall become effective upon written approval by the Department following notification by the permittee that Tier #2 production levels are scheduled to commence to a monthly average value exceeding 2.9 million pounds per day.

Effluent Characteristic	Discharge Limitations					Minimum Monitoring Requirements		
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Flow [50050]	4.0 MGD [03]	---	Report MGD [03]	---	---	---	Continuous [99/99]	Recorder [RC]
BOD₅ [00310]	794 lbs./day [26]	---	1,588 lbs./day [26]	36 mg/L [19]	---	71 mg/L [19]	3/Week [03/07]	24-Hour Composite [24]
TSS [00530]	2,569 lbs./day [26]	---	5,137 lbs./day [26]	116 mg/L [19]	---	231 mg/L [19]	3/Week [03/07]	24-Hour Composite [24]
Settleable Solids [00545]	---	---	---	---	---	0.3 ml/L [25]	3/Week [03/07]	Grab [GR]
Total Residual Chlorine⁽²⁾ [50060]	---	---	---	0.1 mg/L [19]	---	0.3 mg/L [19]	3/Week [03/07]	Grab [GR]
Total Phosphorus⁽³⁾ (June 1 – Sept. 30) [00665]	68 lbs./day [26]	Report lbs./day [26]	Report lbs./day [26]	Report mg/L [19]	Report mg/L [19]	Report mg/L [19]	3/Week [03/07]	24-Hour Composite [24]
pH [00400]	---	---	---	---	---	6.0 – 9.0 SU [12]	3/Week [03/07]	Grab [GR]

Footnotes: See Pages 13 through 16 of this permit for applicable footnotes.



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

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. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board 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 the Board's 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 a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of 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

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of 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 on the appeal 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, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that 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 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.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, 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.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder 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 receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the 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 or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P. 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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.
