



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF
ENVIRONMENTAL PROTECTION



PAUL MERCER
COMMISSIONER

January 19, 2017

Mr. Daniel Bowker
Environmental Coordinator
Cherryfield Foods Inc.
30 Ridge Road, P.O. Box 128
Cherryfield, ME. 04622
e-mail:dbowker@cherryfieldfoods.com

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit#ME0037222
Maine Waste Discharge License (WDL) Application #W006234-5P-I-M
Minor Revision

Dear Mr. Bowker:

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 minor revision 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 a 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: Nina Caputo, DEP/EMRO
Olga Vergara, USEPA

Lori Mitchell, DEP/CMRO
Sandy Mojica, USEPA
Marelyn Vega, USEPA

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
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312 CANCO ROAD
PORTLAND, MAINE 04103
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1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

CHERRYFIELD FOODS, INC.) MAINE POLLUTANT DISCHARGE
MILBRIDGE AND CHERRYFIELD,) ELIMINATION SYSTEM PERMIT
WASHINGTON COUNTY, MAINE)
SURFACE WASTEWATER DISPOSAL SYSTEM) AND
SURFACE WATER DISCHARGE)
ME0037222) WASTE DISCHARGE LICENSE
W006234-5P-I-M APPROVAL) MINOR REVISION

Pursuant to the provisions of the *Federal Water Pollution Control Act*, Title 33 USC, §1251, *Conditions of licenses*, 38 M.R.S. § 414-A, and applicable regulations, the Department of Environmental Protection (Department hereinafter) is initiating a minor revision of combination Maine Pollutant Discharge Elimination System (MEPDES) permit ME0037222/Maine Waste Discharge License #W006234-5P-H-R, issued to CHERRYFIELD FOODS, INC., (CFI/permittee/licensee hereinafter) on March 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:

MODIFICATION GRANTED

The Department and the permittee both agree the permit should be modified to correct footnote #2 on page 8 of 14 of the MEPDES permit issued on March 2, 2015. More specifically, both parties agree a footnote should be added to the permit to clarify that measuring the freeboard in the storage lagoon is only required during the months of April – November of each year. Footnote #2b has been added to the permit to clarify this timeframe.

CONCLUSIONS

BASED on the findings on page 1 of this minor revision, 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, *Classification of Maine waters*, 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 national 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 38 M.R.S. § 414-A(1)(D).

ACTION

THEREFORE, the Department APPROVES the modification of MEPDES permit ME0037222/WDL #W006234-5P-H-R, issued to CHERRYFIELD FOODS, INC., on March 2, 2015, for a five-year term, SUBJECT TO THE FOLLOWING 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 MEPDES permit ME0037222/WDL #W006234-5P-H-R, issued on March 2, 2015, for a five-year term.
2. The attached Special Conditions, including effluent limitations and monitoring requirements.
3. All terms and conditions in MEPDES permit ME0037222/WDL #W006234-5P-H-R, issued on March 2, 2015, for a five-year term, not modified by this minor revision remain in effect and enforceable.
4. This minor revision and the authorization to discharge become effective upon the date of signature below and expire at midnight on March 2, 2020. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the authorization to discharge and the terms and conditions of this permit and all 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)* (amended October 19, 2015)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 19th DAY OF January 2017.

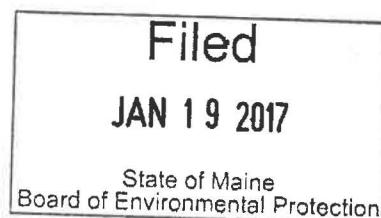
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhn
for PAUL MERCER, Commissioner

Date of initial receipt of application: January 17, 2017

Date of application acceptance: January 17, 2017

Date filed with Board of Environmental Protection _____



This Order prepared by Gregg Wood, BUREAU OF WATER QUALITY
ME0037222 MR 2017
1/18/17

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to operate a surface waste water treatment and disposal system. The **STORAGE LAGOON EFFLUENT (OUTFALL #005A)** shall be limited and monitored as specified below⁽¹⁾.

	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Lagoon Freeboard <i>[82564]</i>	Report (feet) <i>[27]</i>	1/Month <i>[01/30]</i>	Measure <i>[MS]</i>
Biochemical Oxygen Demand <i>[00310]</i>	Report, mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
Nitrate-Nitrogen <i>[00620]</i>	Report, mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
pH (Standard Units) <i>[00400]</i>	Report S.U. <i>[12]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>

The bracketed italicized numeric values in the table above and tables that follow are code numbers that the Department personnel utilize to code the monthly Discharge Monitoring Reports.

Footnotes: See pages 8-9 of this license.

SPECIAL CONDITIONS

A. LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

Footnotes:

1. **Sampling** – All effluent monitoring shall be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. Sampling and analysis must be conducted in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis shall be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services. Samples that are sent to a POTW licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (last amended February 13, 2000).

Storage lagoon effluent shall be sampled (at a point in the lagoon furthest from the influent pipe or at a sampling port on the discharge pipe leading to the spray irrigation area) and shall be representative of what is actually sprayed on the fields. Any change in sampling location must be approved by the Department in writing.
- 2a. **Storage Lagoon freeboard** shall be reported as the mathematical difference between the water level in the lagoon and the lowest elevation point in the top of the lagoon berm. It shall be measured monthly to the nearest one tenth (1/10th) of a foot, with the minimum monthly value reported on the DMR. If site conditions prevent safe or accurate measurements, the licensee shall estimate this value and indicate this to the Department.
- 2b. **Storage Lagoon Freeboard Reporting** – Reporting the minimum monthly freeboard value on the DMR is only required from April – November of each calendar year.
3. **Storage Lagoon Sampling Period** – Lagoon effluent sampling shall be conducted in the months of **April, May, August, and October** of each calendar year in accordance with approved methods for sampling, handling and preservation. The permittee is not required to test for these parameters during a month where no waste water was disposed of via the spray irrigation system.
4. **Spray Application Rate Calculation** – A field's weekly application rate is the total gallons sprayed over the applicable period of time. The permittee shall measure the flow of waste water to the spray irrigation area by the use of a flow measuring device that is checked for calibration at least once per calendar year. Weekly is defined as Sunday through Saturday.
5. **DMR Reporting** – For Discharge Monitoring Report (DMR) reporting purposes, the permittee shall report the highest weekly application rate for the month in the applicable box on the form. Compliance with weekly reporting requirements must be reported for the month in which the calendar week ends.



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.
