



JANET MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

February 17, 2022

Ms. Sarah Rademaker
American Unagi, LLC
P.O. Box 81
Waldoboro, ME. 04861
e-mail: info@americanunagi.com

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0002780
Maine Waste Discharge License #W009202-6E-B-M
Minor Revision

Dear Ms. Rademaker:

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 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 207-287-7693.

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: James Crowley DEP/CMRO
Sandy Mojica, USEPA

Lori Mitchell, DEP/CMRO
Nathan Chien, USEPA

Irene Saumur, DEP/CMRO
Richard Carvalho, 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



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: August 2021

Contact: (207) 314-1458

SUMMARY

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner.

Except as provided below, there are two methods available to an aggrieved person seeking to appeal a licensing decision made by the DEP Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) 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. § 3451\(4\)](#)) or a general permit for an offshore wind energy demonstration project ([38 M.R.S. § 480-HH\(1\)](#)) or a general permit for a tidal energy demonstration project ([38 M.R.S. § 636-A](#)) must be taken to the Supreme Judicial Court sitting as the Law Court.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

A person filing an appeal with the Board should review Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); the Maine Administrative Procedure Act, 5 M.R.S. § [11001](#); and the DEP's [Rule Concerning the Processing of Applications and Other Administrative Matters \(Chapter 2\)](#), 06-096 C.M.R. ch. 2.

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

Not more than 30 days following the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The filing of an appeal with the Board, in care of the Board Clerk, is complete when the Board receives the submission by the close of business on the due date (5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

HOW TO SUBMIT AN APPEAL TO THE BOARD

An appeal to the Board may be submitted via postal mail or electronic mail and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection
c/o Board Clerk
17 State House Station
Augusta, ME 04333-0017
ruth.a.burke@maine.gov

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee; and if a hearing was held on the application, (3) any intervenors in that hearing proceeding. **Please contact the DEP at 207-287-7688 with questions or for contact information regarding a specific licensing decision.**

REQUIRED APPEAL CONTENTS

A complete appeal must contain the following information at the time the appeal is submitted.

1. *Aggrieved status.* The appeal must explain how the appellant has standing to bring the appeal. This requires an explanation of how the appellant 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.* The appeal must identify the specific findings of fact, conclusions of law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing criteria that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license to changes in specific license conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for hearing must be filed as part of the notice of appeal, and it must include an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any witnesses would testify. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed supplemental evidence must be submitted with the appeal. The Board may allow new or additional evidence to be considered in an appeal only under limited circumstances. The proposed supplemental evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Requirements for supplemental evidence are set forth in [Chapter 2 § 24](#).

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, and is made accessible by the DEP. Upon request, the DEP will make application materials available to review and photocopy during normal working hours. There may be 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 the appeal.* DEP staff will provide this information upon request and answer general questions regarding the appeal process.
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. Unless a stay of the decision is requested and granted, a licensee may proceed with a project pending the outcome of an appeal, but the licensee 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 acknowledge receipt of an appeal, and it will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials admitted by the Board as supplementary evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the application, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant, the licensee, and parties of record are notified in advance of the date set for the Board's consideration of an appeal or request for a hearing. The appellant and the licensee will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding the merits of the appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the licensee, and parties of record of its decision on appeal.

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. § 346\(1\)](#); 06-096 C.M.R. ch. 2; [5 M.R.S. § 11001](#); and 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. 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. § 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 Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 bill.hinkel@maine.gov, or for judicial appeals contact the court clerk's office in which the appeal will be filed.

Note: This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. 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.



DEPARTMENT ORDER

IN THE MATTER OF

AMERICAN UNAGI, LLC)	MAINE POLLUTANT DISCHARGE
WALDOBORO, LINCOLN COUNTY, MAINE)	ELIMINATION SYSTEM PERMIT
FISH REARING FACILITY)	AND
ME0002780)	WASTE DISCHARGE LICENSE
W009202-6E-B-M)	MINOR REVISION
APPROVAL)	

In compliance with the applicable provisions of *Pollution Control*, 38 M.R.S. §§ 411 – 424-B, *Water Classification Program*, 38 M.R.S. §§ 464 – 470 and *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, and applicable rules of the Department of Environmental Protection (Department hereinafter), the Department is initiating a minor revision to combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0002780 /Maine Waste Discharge License (WDL) #W009202-6E-A-N issued to AMERICAN UNAGI, LLC (permittee hereinafter), on April 23, 2019. With its supportive data, agency review comments, and other related materials on file, the Department FINDS THE FOLLOWING FACTS:

PERMIT SUMMARY

On April 23, 2019, the Department issued combination MEPDES permit #ME0002780/WDL #W009202-6E-A-N to the permittee for a daily maximum discharge of 96,480 gallons per day (gpd) of treated waste water associated with a fish rearing (American unagi) facility to the Medomak River Class B, in Waldoboro, Maine. The permit established a daily maximum water quality based effluent limitation for total residual chlorine based on an acute dilution factor of 29.5:1. The acute dilution factor was based on the size and location of the outfall pipe in the original application submitted to the Department on December 17, 2018. The Fact Sheet of the April 23, 2019 permit stated “*The final effluent is disinfected via ultraviolet light and discharged to the Medomak River via 6-inch diameter outfall pipe located approximately three feet below the mean low water mark.*”

On November 22, 2021, the permittee submitted information to the Department indicating that during construction of the proposed outfall, the contractor encountered a significant amount of ledge that required the permittee to consider another location for the outfall. The permittee discovered that just to the north of the proposed American Unagi facility, the original 12” steel pipe intake piping for a river water supply for the 1950’s cannery was still intact and could be repurposed to serve as the discharge outfall for the American Unagi facility. There is approximately two feet of water over the crown of the pipe under low flow conditions. American Unagi has secured rights to utilize the exiting steel pipe for the discharge from the proposed production facility. Therefore, pursuant to the criteria established in Special Condition K, *Reopening of Permit For Modifications*, of the April 23, 2019 permit, the April 23, 2019 permit is being modified to establish a more stringent daily maximum water quality based concentration limitation for total residual chlorine.

PERMIT SUMMARY (cont'd)

Engineers in the Department's water quality assessment unit have modeled the discharge at the new location and made the determination that the discharge does not receive rapid and complete mixing under 1Q10 low flow conditions. Pursuant to Department rule 06-096 CMR Chapter 530 §4(B)(1), ¼ of 1Q10 must be utilized to calculate the acute dilution factor when rapid and complete mixing is not achieved. The acute dilution factor for the new outfall location can be calculated as follows:

Permitted flow 0.09648 MGD
1Q10 = 4.25 cfs
¼ of 1Q10 = 1.06 cfs

Modified acute dilution factor: $\frac{(1.06 \text{ cfs})(0.6464) + 0.096480 \text{ MGD}}{0.096480 \text{ MGD}} = 8.1:1$

The only limitation in the permit that is affected by the revised dilution factor is the daily maximum water quality based limitation for total residual chlorine. The April 23, 2019 permit established a daily maximum limitation of 0.56 mg/L based on the following calculation

Acute dilution factor = 29.5:1 (based on the full 1Q10)
Acute ambient water quality criteria = 0.019 mg/L

$0.019 \text{ mg/L}(29.5) = 0.56 \text{ mg/L}$

With a modified acute dilution factor, the revised daily maximum limitation is 0.15 mg/L based on the following calculation:

Modified acute dilution factor = 8.1:1 (based on ¼ of the 1Q10)
Acute ambient water quality criteria = 0.019 mg/L

$0.019 \text{ mg/L}(8.1) = 0.15 \text{ mg/L}$

The table in Special Condition A, *Effluent Limitations and Monitoring Requirements*, of the permit has been modified accordingly.

CONCLUSIONS

Based on the findings summarized in this minor revision, and subject to the special and standard conditions that follow, 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 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 discharges will be subject to effluent limitations that require application of best practicable treatment as defined in *Conditions of Licenses*, 38 M.R.S. § 414-A(1)(D).

ACTION

Based on the findings and conclusions as stated above, the Department APPROVES the minor revision to MEPDES permit #ME0002780 /Maine Waste WDL #W009202-6E-A-N issued by the Department on April 23, 2019, 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 #ME0002780 /Maine Waste WDL #W009202-6E-A-N issued by the Department on April 23, 2019.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit #ME0002780 /Maine Waste WDL #W009202-6E-A-N issued by the Department on April 23, 2019, 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 expires on midnight, April 23, 2024. 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. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (amended June 9, 2018)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

DONE AND DATED AT AUGUSTA, MAINE, THIS 16 DAY OF February 2022.

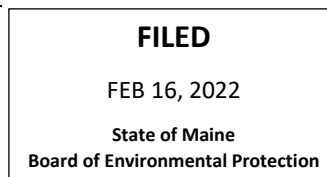
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 

for Melanie Loyzim, Commissioner

Date of initial receipt of application: February 15, 2022

Date of application acceptance: February 15, 2022



This Order prepared by Gregg Wood, BUREAU OF WATER QUALITY

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge treated process waste water to the Medomak River via **Outfall #001A**. Such discharges are limited and must be monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations			Minimum Monitoring Requirements		
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]		96,480 gpd [07]		---	Continuous [99/99]	Meter [MT]
Biochemical Oxygen Demand) _[00310]	24 lbs./day [26]	40 lbs./day [26]	30 mg/L [19]	50 mg/L [19]	2/Month [02/30]	Composite [24]
Total Suspended Solids (TSS) _[00530]	24 lbs./day [26]	40 lbs./day [26]	30 mg/L [19]	50 mg/L [19]	2/Month [02/30]	Composite [24]
pH [00400]	---	---	---	6.0 – 9.0 SU [12]	2/Month [02/30]	Grab [GR]
Total Residual Chlorine ⁽¹⁾ [50060]	---	---	0.38 mg/L [19]	0.15 mg/L [19]	1/Week [01/07]	Grab [GR]
Total Phosphorus ⁽²⁾ _[00665] (May – Oct) Beginning calendar year 2020	0.43 lbs/day _[26]	Report lbs/day _[26]	Report mg/L _[19]	Report mg/L _[19]	2/Month _[02/30]	Composite _[24]
Total Kjeldahl Nitrogen (as N) _[00625] (May – Oct) Beginning calendar year 2020	Report lbs/day _[26]	Report lbs/day _[26]	Report mg/L _[19]	Report mg/L _[19]	2/Month _[02/30]	Composite _[24]
Nitrate + Nitrite Nitrogen (as N) _[00630] (May – Oct) Beginning calendar year 2020	Report lbs/day _[26]	Report lbs/day _[26]	Report mg/L _[19]	Report mg/L _[19]	2/Month _[02/30]	Composite _[24]
Total Nitrogen (as N) ⁽³⁾ _[00600] (May – Oct) Beginning calendar year 2020	Report lbs/day _[26]	Report lbs/day _[26]	Report mg/L _[19]	Report mg/L _[19]	1/Month _[01/30]	Calculate _[CA]
Total Nitrogen (as N) ⁽⁴⁾ _[00600] DMR for the month of October	Report lbs/day _[26]	---	---	---	1/Season _[01/SN]	Calculate _[CA]

Footnotes: For applicable footnotes, see MEPDES permit #ME0002780 /Maine Waste WDL #W009202-6E-A-N issued by the Department on April 23, 2019.

