



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

October 2, 2007

Mr. Dennis Healey
FMC Biopolymer
P.O. Box 308
Rockland, Maine, 04841

**RE: *Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0000400
Maine Waste Discharge License (WDL) Application #W001999-5R-F-R
Final MEPDES Permit/WDL***

Dear Mr. Healey:

Enclosed, please find a copy of your **final** MEPDES permit and Maine WDL, which was approved by the Department of Environmental Protection. Please read the permit/license and its attached conditions carefully. You must follow the conditions in the order to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State law and is subject to enforcement action.

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 287-7659.

Sincerely,

Bill Hinkel
Division of Water Quality Management
Bureau of Land and Water Quality

Enc.

cc: Jim Crowley, DEP
Lori Mitchell, DEP
Sandy Lao, USEPA
File #1999

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
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PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 760-3143



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

DEPARTMENT ORDER

IN THE MATTER OF

FMC BIOPOLYMER)	MAINE POLLUTANT DISCHARGE
ROCKLAND, KNOX COUNTY)	ELIMINATION SYSTEM PERMIT
COOLING WATERS AND STORM WATER)	AND
#ME0000400)	WASTE DISCHARGE LICENSE
#W001999-5R-F-R APPROVAL)	RENEWAL

Pursuant to the provisions of the *Federal Water Pollution Control Act*, Title 33 USC, §1251, *Water Pollution Control*, 38 M.R.S.A. § 414-A, and applicable regulations, the Maine Department of Environmental Protection (Department) has considered the application of FMC BIOPOLYMER (FMC), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

FMC has applied to the Department for the renewal of Waste Discharge License (WDL) #W001999-5R-E-R / Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0000400, which was issued on August 13, 2002, and expired on August 13, 2007. The 8/13/02 MEPDES permit authorized the discharge of a total of up to 15.5 million gallons per day (MGD) of contact and non-contact cooling waters and storm water via three discrete outfall points to Rockland Harbor, Class SC, in Rockland, Maine.

On November 25, 2002, the Department administratively modified the 8/13/02 MEPDES permit to revise the discharge flow monitoring frequency and sample type.

PERMIT SUMMARY

This permitting action is similar to the 8/13/02 permitting action and 10/25/02 administrative modification in that it is:

1. Carrying forward the daily maximum discharge flow limitations for Outfalls #015A, #016A, and #019A;
2. Carrying forward the daily maximum effluent temperature limitation of 95° Fahrenheit for Outfalls #015A, #016A, and #019A;
3. Carrying forward the daily maximum total residual chlorine concentration limitations for Outfalls #015A and #016A;
4. Carrying forward the monthly average and daily maximum concentration and mass reporting requirements for total suspended solids (TSS) for Outfall #016A and Pipe #00Z (intake waters) during the first twelve months of the effective term of this permit; and
5. Carrying forward the pH range limitation of 6.0 – 8.5 standard units for Outfalls #015A, #016A, and #019A.

This permitting action is different from the 8/13/02 permitting action in that it is:

1. Eliminating the monitoring and reporting requirements for flow, receiving water temperature, and pH for intake waters (designated Intake Pipe #00Z in the 8/13/02 permit);
2. Eliminating the monthly average and daily maximum monitoring and reporting requirements for receiving water temperature, temperature difference between intake and discharge, and thermal discharge for Outfalls #015A, #016A, and #019A, and the daily maximum thermal discharge limit for Outfall #00T;
3. Eliminating the monthly average effluent temperature limit of 95° F for Outfalls #015A and #016A;
4. Establishing a requirement (Special Condition D) to maintain a current a Storm Water Pollution Prevention Plan (SWPPP) for all storm water discharges associated with this industrial site and to conduct quarterly visual examination of a storm water discharge;
5. Eliminating the monthly average and daily maximum concentration and mass reporting requirements for TSS for Outfall #015A;
6. Establishing monthly average and daily maximum concentration and mass reporting requirements for biochemical oxygen demand (BOD₅) for Outfalls #016A and #00Z during the first twelve months of the effective term of this permit; and
7. Establishing a daily maximum total residual chlorine concentration limitation for Outfall #019A.

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated October 1, 2007, 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.A. § 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) The standards of classification of the receiving water body are met or, 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.A. § 414-A(1)(D).

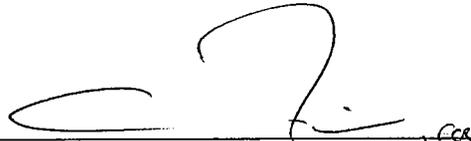
ACTION

THEREFORE, the Department APPROVES the above noted application of FMC BIOPOLYMER to discharge a daily maximum of up to 12.1 million gallons per day (MGD) of contact and non-contact cooling waters and storm water via three discrete outfall points to Rockland Harbor, Class SC, in Rockland, Maine, 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.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. The expiration date of this permit is five (5) years from the date of signature below.

DONE AND DATED AT AUGUSTA, MAINE, THIS 9TH DAY OF OCTOBER, 2007.

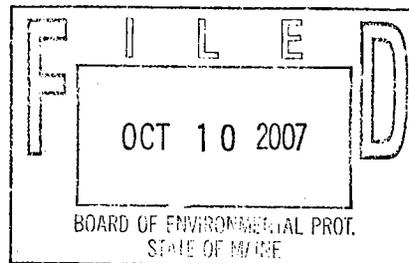
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 

DAVID P. LITTELL, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: July 23, 2007
Date of application acceptance: July 23, 2007



Date filed with Board of Environmental Protection: _____

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee shall monitor intake waters (Permit Compliance System identification #00Z) as specified below⁽¹⁾:

Influent Characteristic	Minimum		Monitoring		Requirements		Sample Type
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	as specified	
Total Suspended Solids [00530]	Report lbs./day [26]	Report lbs./day [26]	Report mg/L [19]	Report mg/L [19]	1/Month ⁽²⁾ [01/30]	as specified	Grab [GR]
Biochemical Oxygen Demand [00310]	Report lbs./day [26]	Report lbs./day [26]	Report mg/L [19]	Report mg/L [19]	1/Month ⁽²⁾ [01/30]	as specified	Grab [GR]

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

FOOTNOTES: See Page 9 of this permit for applicable footnotes.

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- The permittee is authorized to discharge non-contact cooling waters and storm water via Outfall #015A to Rockland Harbor at Rockland. Such discharges shall be limited and monitored by the permittee as specified below⁽¹⁾:

Effluent Characteristic	Discharge Limitations			Monitoring Requirements		
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow <i>[50050]</i>	---	0.1 MGD <i>[03]</i>	---	---	Continuous <i>[CN]</i>	Recorder <i>[RC]</i>
Effluent Temperature <i>[00011]</i> <i>June 1 – August 31</i>	---	95°F <i>[15]</i>	---	---	1/Day <i>[01/01]</i>	Measure <i>[MS]</i>
Effluent Temperature <i>[00011]</i> <i>September 1 – May 31</i>	---	95°F <i>[15]</i>	---	---	1/Month <i>[01/30]</i>	Measure <i>[MS]</i>
Total Residual Chlorine <i>[50060]</i>	---	---	---	1.0 mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
pH <i>[00400]</i>	---	6.0 – 8.5 SU <i>[12]</i>	---	---	1/Month <i>[01/30]</i>	Measured <i>[MS]</i>

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

FOOTNOTES: See Page 9 of this permit for applicable footnotes.

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

3. The permittee is authorized to discharge contact cooling waters, non-contact cooling waters, and storm water via Outfall #016A to Rockland Harbor at Rockland. Such discharges shall be limited and monitored by the permittee as specified below⁽¹⁾:

Effluent Characteristic	Discharge Limitations			Monitoring Requirements		
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]	---	11.0 MGD [03]	---	---	Continuous [CN]	Recorder [RC]
Effluent Temperature [00011] <i>June 1 – August 31</i>	---	95°F [15]	---	---	1/Day [01/01]	Measure [MS]
Effluent Temperature [00011] <i>September 1 – May 31</i>	---	95°F [15]	---	---	1/Month [01/30]	Measure [MS]
Total Residual Chlorine [50060]	---	---	---	1.0 mg/L [19]	1/Month [01/30]	Grab [GR]
Total Suspended Solids [00530]	Report lbs./day [26]	Report lbs./day [26]	Report mg/L [19]	Report mg/L [19]	1/Month ⁽²⁾ [01/30]	Grab [GR]
Biochemical Oxygen Demand [00310]	Report lbs./day [26]	Report lbs./day [26]	Report mg/L [19]	Report mg/L [19]	1/Month ⁽²⁾ [01/30]	Grab [GR]
pH [00400]	---	6.0 – 8.5 SU [12]	---	---	1/Month [01/30]	Measured [MS]

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

FOOTNOTES: See Page 9 of this permit for applicable footnotes.

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- The permittee is authorized to discharge non-contact cooling waters via Outfall #019A to Rockland Harbor at Rockland. Such discharges shall be limited and monitored by the permittee as specified below⁽¹⁾:

Effluent Characteristic	Discharge Limitations			Monitoring Requirements	
	Monthly Average	Daily Maximum	Monthly Average	Measurement Frequency	Sample Type
Flow <i>[50050]</i>	---	1.0 MGD <i>[03]</i>	---	Continuous <i>[CN]</i>	Recorder <i>[RC]</i>
Effluent Temperature <i>[00011]</i> <i>June 1 – August 31</i>	---	95°F <i>[15]</i>	---	1/Day <i>[01/01]</i>	Measure <i>[MS]</i>
Effluent Temperature <i>[00011]</i> <i>September 1 – May 31</i>	---	95°F <i>[15]</i>	---	1/Month <i>[01/30]</i>	Measure <i>[MS]</i>
Total Residual Chlorine <i>[50060]</i>	---	---	1.0 mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Grab <i>[GR]</i>
pH <i>[00400]</i>	---	6.0 – 8.5 SU <i>[12]</i>	---	1/Month <i>[01/30]</i>	Measured <i>[MS]</i>

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

FOOTNOTES: See Page 8 of this permit for applicable footnotes.

SPECIAL CONDITIONS

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

FOOTNOTES:

1. **Sampling** – 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.

All detectable analytical test results shall be reported to the Department including results which are detected below the respective reporting limits (RLs) specified by the Department. If a non-detect analytical test result is below the respective RL, the concentration result shall be reported as <Y where Y is the actual detection limit achieved by the laboratory for each respective parameter. Reporting a value of <Y that is greater than an established RL is not acceptable and will be rejected by the Department. For mass, if the analytical result is reported as <Y or if a detectable result is less than a RL, report a <X lbs/day, where X is the parameter specific limitation established in the permit. Compliance with this permit will be evaluated based on whether or not a compound is detected at or above the Department's RL.

2. **Influent and Effluent Monitoring for TSS and BOD₅** – The permittee shall monitor the specified parameters at a minimum frequency of once per month during the first twelve-month period following issuance of this permit only.

B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time which would impair the usages designated by the classification of the receiving waters.
2. The effluent shall not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated by the classification of the receiving waters.
3. The discharge shall not cause visible discoloration or turbidity in the receiving waters, which would impair the usages designated by the classification of the receiving waters.
4. Notwithstanding specific conditions of this permit the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

SPECIAL CONDITIONS

C. AUTHORIZED DISCHARGES

The permittee is authorized to discharge only in accordance with: 1) the permittee's General Application for Waste Discharge Permit, accepted for processing on July 23, 2007; 2) the terms and conditions of this permit; and 3) only from Outfalls #015A, #016A, and #019A. Discharges of wastewater from any other point source that are not authorized under this or another Department permit shall be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

D. STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITY

The permittee shall maintain a current Storm Water Pollution Prevention Plan (SWPPP) for the facility and all storm water outfall points. The SWPPP shall be consistent with the Storm Water Pollution Plan Requirements established in the Maine Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharge Associated with Industrial Activity, dated October 11, 2005. The permittee shall maintain a copy of the SWPPP on-site for Department or USEPA staff inspection.

E. NOTIFICATION REQUIREMENTS

In accordance with Standard Condition D, the permittee shall notify the Department of the following:

1. Any substantial change in the volume or character of pollutants discharged.
2. For the purposes of this section, adequate notice shall include information on:
 - a. The quality and quantity of waste water discharged; and
 - b. Any anticipated impact of the change in the quantity or quality of the waste water to be discharged from the facility.

F. MONITORING AND REPORTING

Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report (DMR) forms provided by the Department and **postmarked on or before the thirteenth (13th) day of the month or hand-delivered to the Department's Regional Office such that the DMR's are received by the Department on or before the fifteenth (15th) day of the month** following the completed reporting period. A signed copy of the DMR and all other reports required herein shall be submitted to the Department assigned inspector (unless otherwise specified by the Department) at the following address:

Department of Environmental Protection
Bureau of Land and Water Quality
Division of Water Quality Management
17 State House Station
Augusta, Maine 04333-0017

SPECIAL CONDITIONS

G. OPERATIONS AND MAINTENANCE (O&M) PLAN

This facility shall have a current written comprehensive Operation & Maintenance (O&M) Plan. The plan shall provide a systematic approach by which the permittee shall at all times, properly operate and maintain all facilities and systems related to the discharge of wastewater that are installed or used by the permittee to achieve compliance with the conditions of this permit.

By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades, the permittee shall evaluate and modify the O&M Plan to ensure that it is up-to-date. The O&M Plan shall be kept on-site at all times and made available to Department and EPA personnel upon request.

Within 90 days of completion of new and or substantial upgrades of the waste water system, the permittee shall submit the updated O&M Plan to their Department inspector for review and comment.

H. REOPENING OF PERMIT FOR MODIFICATION

Upon evaluation of the tests results in the Special Conditions of this permitting action, new site specific information, or any other pertinent test results or information obtained during the term of this permit, the Department may, at anytime and with notice to the permittee, modify this permit to: (1) include effluent limits necessary to control specific pollutants or whole effluent toxicity where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded; (2) require additional monitoring if results on file are inconclusive; or (3) change monitoring requirements or limitations based on new information.

I. SEVERABILITY

In the event that any provision, or part thereof, of this permit is declared to be unlawful by a reviewing court, the remainder of the permit shall remain in full force and effect, and shall be construed and enforced in all aspects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court.

**MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
MAINE WASTE DISCHARGE LICENSE**

FACT SHEET

DATE: OCTOBER 1, 2007

**PERMIT NUMBER: #ME0000400
WASTE DISCHARGE LICENSE: #W001999-5R-F-R**

NAME AND ADDRESS OF APPLICANT:

**FMC BIOPOLYMER
P.O. BOX 308
ROCKLAND, MAINE 04841**

COUNTY: KNOX

NAME AND ADDRESS WHERE DISCHARGE(S) OCCUR(S):

**FMC BIOPOLYMER
CROCKETTS POINT
ROCKLAND, MAINE 04841**

RECEIVING WATER/CLASSIFICATION: ROCKLAND HARBOR/CLASS SC

**COGNIZANT OFFICIAL AND TELEPHONE NUMBER: MR. KIERAN J. O'DWYER
(207) 226-3225**

1. APPLICATION SUMMARY

Application: FMC Biopolymer (FMC) has applied to the Department of Environmental Protection (Department) for the renewal of Waste Discharge License (WDL) FMC has applied to the Department for the renewal of Waste Discharge License (WDL) #W001999-5R-E-R / Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0000400, which was issued on August 13, 2002, and expired on August 13, 2007. The 8/13/02 MEPDES permit authorized the discharge of a total of up to 15.5 million gallons per day (MGD) of contact and non-contact cooling waters and storm water via three discrete outfall points to Rockland Harbor, Class SC, in Rockland, Maine.

On November 25, 2002, the Department administratively modified the 8/13/02 MEPDES permit to revise the discharge flow monitoring frequency and sample type.

2. PERMIT SUMMARY

a. **Terms and Conditions: This permitting action is similar to the 8/13/02 permitting action in that it is:**

1. Carrying forward the daily maximum discharge flow limitations for Outfalls #015A, #016A, and #019A;
2. Carrying forward the daily maximum effluent temperature limitation of 95° Fahrenheit for Outfalls #015A, #016A, and #019A;
3. Carrying forward the daily maximum total residual chlorine concentration limitations for Outfalls #015A and #016A;
4. Carrying forward the monthly average and daily maximum concentration and mass reporting requirements for total suspended solids (TSS) for Outfalls #016A and Pipe #00Z (intake waters) during the first twelve months of the effective term of this permit; and
5. Carrying forward the pH range limitation of 6.0 – 8.5 standard units for Outfalls #015A, #016A, and #019A.

This permitting action is different from the 8/13/02 permitting action in that it is:

1. Eliminating the monitoring and reporting requirements for flow, receiving water temperature, and pH for intake waters (designated Intake Pipe #00Z in the 8/13/02 permit);
2. Eliminating the monthly average and daily maximum monitoring and reporting requirements for receiving water temperature, temperature difference between intake and discharge, and thermal discharge for Outfalls #015A, #016A, and #019A, and the daily maximum thermal discharge limit for Outfall #00T;
3. Eliminating the monthly average effluent temperature limit of 95° F for Outfalls #015A and #016A;
4. Establishing a requirement (Special Condition D) to maintain a current a Storm Water Pollution Prevention Plan (SWPPP) for all storm water discharges associated with this industrial site and to conduct quarterly visual examination of a storm water discharge;
5. Eliminating the monthly average and daily maximum concentration and mass reporting requirements for TSS for Outfall #015A;
6. Establishing monthly average and daily maximum concentration and mass reporting requirements for biochemical oxygen demand (BOD₅) for Outfalls #016A and #00Z during the first twelve months of the effective term of this permit; and
7. Establishing a daily maximum total residual chlorine concentration limitation for Outfall #019A.

2. PERMIT SUMMARY (cont'd)

- b. History: This section provides a summary of significant licensing/permitting actions and milestones that have been completed for FMC.

May 16, 1974 – The USEPA issued National Pollutant Discharge Elimination System (NPDES) permit #ME0000400 to FMC Biopolymer for a five-year term.

January 12, 2001 – The Department received authorization from the U.S. Environmental Protection Agency (USEPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine, excluding areas of special interest to Maine Indian Tribes. From that point forward, the program has been referred to as the Maine Pollutant Discharge Elimination System (MEPDES) program.

October 30, 2001 – The USEPA issued the Multi-Sector General Permit for Storm Water for a five-year term. FMC received coverage for storm water discharges under this general permit through permit #MER05A851.

August 13, 2002 – The Department issued WDL #W001999-5R-E-R / MEPDES permit #ME0000400 to FMC for a five year term. The 8/13/02 permit superseded WDL #W001999-57-D-R issued on February 7, 1996, WDL #W001999-57-B-R issued on May 23, 1990, WDL #1999 issued on May 11, 1983, and WDL #1999 issued on February 22, 1978 (earliest Order on file with the Department).

November 17, 2005 – The Department approved FMC's Notice of Intent (NOI) to Comply with the Maine Multi-Sector General Permit (MSGP) for Storm Water Discharges Associated with Industrial Activity. The NOI was assigned #MER05B129.

July 23, 2007 – FMC Biopolymer submitted a timely and complete General Application to the Department for renewal of the 8/13/02 MEPDES permit. The application was accepted for processing on July 23, 2007, and was assigned WDL #W001999-5R-F-R / MEPDES #ME0000400.

- c. Source Description: FMC Biopolymer is engaged in the extraction and refining of natural hydrocolloids from seaweed to produce suspension aids for food grade products. FMC extracts and/or refines several different hydrocolloids including, but not limited to, carrageenans, clarified locus bean gum, Konjac and agarose. The food and pharmacological industries are the principal user of FMC's finished products.

FMC utilizes approximately 1 million gallons per day of potable (municipal) water and 7.5 MGD of salt water from Rockland Harbor for production related processes and cooling waters. Based on Aqua Maine, Inc.'s 2005 Consumer Confidence Report, the potable water supplier treats raw water to a maximum chlorine concentration of 1.1 mg/L. FMC adds approximately five (5) pounds of calcium hypochlorite per day as bleaching agents to their seawater intake to discourage the growth and attachment of marine life in the piping.

2. PERMIT SUMMARY (cont'd)

A map created by the Department showing the location of the facility is included as Attachment A of this fact sheet. A schematic provided by FMC entitles, "FMC Food Ingredients Division Water Intake and Outfalls" is included as Attachment B of this fact sheet and identifies the locations of the raw water (Rockland Harbor) intake structure and the three outfall points (Outfall #015A, #016A, and #019A).

The sources of wastewater conveyed to Outfall #015A are non-contact cooling water generated by a product dryer condenser, tank jackets and heat exchangers; and storm water runoff from a 0.5-acres of impervious area.

The sources of wastewater conveyed to Outfall #016A are contact cooling waters from three (3) barometric condensers, non-contact cooling waters from various heat exchangers; and storm water runoff from a 1.46-acre impervious area.

The sources of wastewater conveyed to Outfall #019A consist solely of non-contact cooling waters from heat exchangers and a series of tank cooling jackets.

All manufacturing process and sanitary waste waters generated at FMC are conveyed to the City of Rockland Water Pollution Control Facility.

- d. Wastewater Treatment: FMC does not provide a formal level of treatment to the waste waters. Rather, best practicable treatment (BPT) for this facility consists of operational constraints for contact and non-contact cooling waters and best management practices for storm water. These controls ensure compliance with the effluent limitations established in this permit. Waste waters are conveyed for discharge to the tidewaters of Rockland via Outfalls #015A, #016A, and #019A.

3. CONDITIONS OF PERMIT

Conditions of licenses, 38 M.R.S.A. § 414-A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, *Certain deposits and discharges prohibited*, 38 M.R.S.A. § 420 and *Surface Water Toxics Control Program*, 06-096 CMR 530 (effective October 9, 2005), require the regulation of toxic substances not to exceed levels set forth in *Surface Water Quality Criteria for Toxic Pollutants*, 06-096 CMR 584 (effective October 9, 2005), and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected.

4. RECEIVING WATER QUALITY STANDARDS

Classifications of estuarine and marine waters, 38 M.R.S.A. §469(3)(C)(1) classifies the Atlantic Ocean at Rockland Harbor as Class SC waters. *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. §465-B(3) describes the standards for Class SC waters.

5. RECEIVING WATER QUALITY CONDITIONS

The State of Maine 2004 Integrated Water Quality Monitoring and Assessment Report, prepared by the Department pursuant to Sections 303(d) and 305(b) of the Federal Water Pollution Control Act, lists the estuarine and marine waters at Rockland as, “*Category 4-B-2: Estuarine and Marine Waters Impaired by Bacteria From Combined Sewer Overflows (TMDL Required Only if Control Plans are Insufficient)*” (Waterbody ID#722-40). The Report also lists the receiving waters as, “*Category 5-B-1: Estuarine and Marine Waters Impaired only by Bacteria (TMDL) Required*” (Waterbody ID #722-8) and lists sources causing impairment as discharges from sewage treatment plants, overboard discharge systems, boats, storm water, and non-point source pollution. The Department has not scheduled a total maximum daily load (TMDL) study for Rockland Harbor at this time. The Department will identify sources contributing to the non-attainment status of the receiving waters and will allocate waste loads to point source dischargers as necessary once a TMDL has been completed for this waterbody.

The City of Rockland has developed and implemented a combined sewer overflow (CSO) master plan for the elimination of all CSO points associated with the Rockland Water Pollution Control Facility. The Department acknowledges that elimination of all CSO points is a costly and long-term project. As the City of Rockland’s treatment plant and sewer collection system are upgraded and maintained in according to the CSO Master Plan and Nine Minimum Controls, there should be reductions in the frequency and volume of CSO and primary treatment activities and, over time, improvement in the quality of the wastewater discharged to the receiving waters.

In addition, all estuarine and marine waters of the State are listed as, “*Category 4-B-3: Estuarine and Marine Waters Impaired by Atmospheric Deposition of Mercury*” and “*Category 5-D: Estuarine and Maine Waters Impaired by Legacy Pollutants.*” Impairment in this context refers to the estuarine and marine waters partially supporting the designated use of fishing and harvesting of shellfish due to elevated levels of mercury, PCBs, dioxin, and other persistent bioaccumulating substances in tissues of some fish and in lobster tomalley. Pursuant to 38 M.R.S.A. § 420(1-B)(B), “*a facility is not in violation of the ambient criteria for mercury if the facility is in compliance with an interim discharge limit established by the Department pursuant to section 413 subsection 11.*” The Department has not established interim mercury limits for this facility pursuant to *Interim Effluent Limitations and Controls for the Discharge of Mercury*, 06-096 CMR 519 (last amended October 6, 2001), as the Department does not suspect the facility contributes detectable levels of mercury above the raw water intake concentrations.

The Maine Department of Marine Resources (DMR) assesses information on shellfish growing areas to ensure that shellfish harvested are safe for consumption. The DMR has authority to close shellfish harvesting areas wherever there is a pollution source, a potential pollution threat, or poor water quality. The DMR traditionally closes shellfish harvesting areas if there are known sources of discharges with unacceptable bacteria levels (instream thresholds established in the National Shellfish Sanitation Program) or maintains shellfish harvesting closure areas due to lack of updated information regarding ambient water quality conditions. In addition, the DMR prohibits shellfish harvesting in the immediate vicinity of

5. RECEIVING WATER QUALITY CONDITIONS (cont'd)

all wastewater treatment outfall pipes as a precautionary measure in the event of a failure in the treatment plant's disinfection system. Thus, shellfish harvesting area #C29 is closed to the harvesting of shellfish due to insufficient or limited ambient water quality data to determine that the area meets the standards in the National Shellfish Sanitation Program. The shellfish closure area is identified on the map included as Attachment A of this fact sheet. The Department is making the determination that implementation of best management practices for storm water associated with this industrial site ensure that the discharges from FMC will not cause or contribute to the failure of the receiving waters to meet the standards of its designated classification.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

- a. **Flow:** The previous permitting action established daily maximum discharge flow limitations of 1.5 million gallons per day (MGD) for Outfall #015A, 13.0 MGD for Outfall #016A, and 1.0 MGD for Outfall #019A. It is noted that this permitting action is utilizing an alphanumeric outfall identifier for the three discharge points (adding the letter "A" to the outfall number) to follow the identification conventions of the permit compliance system (PCS).

A summary of the most recent 60 months of available daily maximum discharge flow data as reported on the monthly Discharge Monitoring Reports (DMRs) and which has been entered into the Department's compliance tracking system database as of May 2007 (available data from May 2002 – December 2006 evaluated) is as follows:

Daily Maximum Discharge Flow	Minimum	Maximum	Arithmetic Mean	# DMRs
Outfall #015A	0.002 MGD	1.5 MGD	0.05 MGD	49
Outfall #016A	2.80 MGD	9.6 MGD	6.45 MGD	54
Outfall #019A	0.2 MGD	0.58 MGD	0.40 MGD	53

This permitting action is revising the daily maximum discharge flow limits for Outfall #015A from 1.5 MGD to 0.1 MGD and for Outfall #016A from 13.0 MGD to 11.0 MGD based on past demonstrated performance (PDP) which is considered representative of the discharges via these outfall points. This permitting action is carrying for the daily maximum discharge flow limit of 1.0 MGD for Outfall #019A based on PDP.

The previous permitting action established a daily maximum intake flow monitoring and reporting requirement (designated Intake Pipe 00Z). The fact sheet associated with the 8/13/02 permit does not discuss or otherwise justify this monitoring requirement. A summary of available daily maximum intake flow data which has been entered into the Department's compliance tracking system database as of May 2007 (available data from November 2002 – December 2006 evaluated) indicates the intake water rate has ranged from 2.84 MGD to 8.89 MGD with an arithmetic mean of 6.14 MGD (# DMRs = 49). The Department has reconsidered the value of continued intake (seawater influent) water monitoring and has determined that this monitoring requirement is not necessary to determine compliance with the effluent limitations associated with this permit or for

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

assessment of receiving water quality conditions. Therefore, this permitting action is eliminating the intake flow monitoring requirement associated with Intake Pipe #00Z in the 8/13/02 permit. The intake flow information has been provided to the Department's Division of Environmental Assessment so that it may be considered where water withdrawals from Rockland Harbor are relevant.

- b. Dilution Factors: This permitting action does not establish water quality-based effluent limitations based on available dilution of the effluents with the receiving waters. Therefore, acute, chronic and harmonic mean dilution factors associated with the discharges have not been established in this permitting action.
- c. Temperature: The previous permitting action established monthly average and daily maximum effluent temperature limitations of 95 degrees Fahrenheit (°F) for Outfalls #015A and #016A, and a daily maximum effluent temperature limit of 95 °F for Outfall #019A to ensure that the discharges conform to the requirements of *Regulations Relating to Temperature*, 06-096 CMR 582 (last amended February 18, 1989). These limitations were initially established in the February 7, 1996 WDL and have been carried forward in all subsequent licensing/permitting actions. For marine discharges, 06-096 CMR 582 states,

No discharge of pollutants shall cause the monthly mean of the daily maximum ambient temperatures in any tidal body of water, as measured outside the mixing zone, to be raised more than 4 degrees Fahrenheit, nor more than 1.5 degrees Fahrenheit from June 1 to September 1. In no event shall any discharge cause the temperature of any tidal waters to exceed 85 degrees Fahrenheit at any point outside a mixing zone established by the Board.

A summary of the most recent 60 months of available daily maximum effluent temperature data as reported on monthly DMRs and which has been entered into the Department's compliance tracking system database as of May 2007 (available data from May 2002 – December 2006 evaluated) is as follows:

Daily Maximum Effluent Temperature	Minimum	Maximum	Arithmetic Mean	# DMRs
Outfall #015A	38 °F	76 °F	57 °F	49
Outfall #016A	37 °F	96 °F	70 °F	56
Outfall #019A	35 °F	88 °F	65 °F	56

This permitting action is carrying forward the daily maximum effluent temperature limitations of 95 °F from the previous permitting action based on best professional judgment of the limitations necessary to ensure compliance with the temperature requirements of 06-096 CMR 582. This permitting action is eliminating the monthly average temperature limitations based on best professional judgment in consideration of the daily maximum limits being carried forward.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

This permitting action is carrying forward the minimum monitoring frequency requirement for effluent temperature of once per day between June 1 and August 31 and once per month between September 1 and May 31 of each year based on Department best professional judgment and for consistency with the monitoring requirements established for similar discharges.

The previous permitting action established monthly average and daily maximum monitoring and reporting requirements for receiving water temperature, temperature difference between intake water and effluent, and thermal discharge for Outfalls #015A, #016A, and #019A. Additionally, the previous permitting action established a daily maximum thermal discharge limitation of 2.175×10^9 British Thermal Units (BTUs) (administrative outfall identification #00T), which was initially established in the February 7, 1996 WDL and carried forward in the 8/13/02 MEPDES permit. The Department has since reconsidered the value of these monitoring requirements/effluent limitations and has determined that the daily maximum temperature limitations established in this permitting action provide reasonable assurance that the discharges from FMC will comply with the requirements of 06-096 CMR 582. Therefore, this permitting action is eliminating the monthly average and daily maximum monitoring and reporting requirements for receiving water temperature, temperature difference between intake water and effluent, and thermal discharge for Outfalls #015A, #016A, and #019A, and the daily maximum thermal discharge limitation for Outfall 00T.

- d. Total Suspended Solids (TSS): The previous permitting action established monthly average and daily maximum concentration and mass monitoring and reporting requirements for TSS for Outfalls #015A and #016A at a minimum frequency of once per calendar quarter, and identical monitoring and reporting requirements for intake waters (designated Intake Pipe 00Z).

A summary of the most recent 60 months of available monthly average and daily maximum TSS data as reported on the monthly DMRs and which has been entered into the Department's compliance tracking system database as of May 2007 (available data from December 2002 – December 2006 evaluated) is as follows. It is noted that the monthly average and daily maximum values are equivalent as monitoring was required at a frequency of once per quarter.

TSS	Outfall ID	Minimum	Maximum	Arithmetic Mean	# DMRs
Monthly Average / Daily Maximum	Outfall #015A	4.0 mg/L	88 mg/L	25 mg/L	12
		1.0 lbs./day	22 lbs./day	6 lbs./day	12
Monthly Average / Daily Maximum	Outfall #016A	4.0 mg/L	88 mg/L	25 mg/L	14
		1,017 lbs./day	5,776 lbs./day	3,316 lbs./day	14

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

The fact sheet associated with the previous permitting action stated,

This permit establishes TSS monitoring on a quarterly basis at Outfalls #015 and 016 and for intake waters to provide a comparison of the pollutant loading. The outfalls will be monitored by collecting storm water samples at 4 collection points in accordance with its Storm Water Pollution Prevention Plan referenced in the EPA Storm Water General Permit Program. Composite samples will be prepared and a rainfall volume calculated which will enable derivation of the pounds of TSS in the storm water runoff. To determine the TSS mass discharge from cooling water (no rain), TSS concentration values will be collected at outfall #016 and used to calculate pounds of TSS in cooling water discharges. The difference between the stormwater and cooling water TSS discharges will be reported on the monthly DMR forms based on the flow through each outfall. After 12 months of monitoring results are submitted, the Department will consider the data, reevaluate the monitoring requirements, and possibly reopen the permit to modify monitoring requirements.

The previous permitting action contained a footnote in Special Condition A for TSS stating that "TSS shall be sampled to be representative of first flush stormwater solid concentrations and estimated according to section 5 of the Fact Sheet." The Department has reconsidered the TSS sampling protocol and methodology for estimating the effluent TSS loadings as specified in the previous permit and concludes that this technique does not provide results that are representative of the discharge. The effluent TSS values reported to the Department for the outfalls listed above include TSS present in the intake waters (Outfall #00Z in the previous permit). For the period of December 2002 through December 2007, the daily maximum influent TSS concentration has ranged from 34 mg/L to 109 mg/L with an arithmetic mean of 75 mg/L while that of Outfalls #015A and #016A (combined) has ranged from 4 mg/L to 102 mg/L with an arithmetic mean of 52 mg/L.

The Department has determined that additional effluent and influent monitoring for TSS at Outfall #016A and Pipe #00Z are necessary to adequately determine this facility's contribution of this pollutant to the effluent. Therefore, this permitting action is carrying forward monthly average and daily maximum concentration and mass monitoring and reporting requirements for TSS for Outfalls #016A and #00Z (intake waters) for the twelve-month period following issuance of this permit. The Department will evaluate these test results to determine if it is appropriate to reopen this permit to establish additional monitoring requirements or limitations to protect receiving water quality.

In this permitting action, the Department is establishing a requirement (Special Condition D) for the facility maintain a current a Storm Water Pollution Prevention Plan (SWPPP) in accordance with the Department's Multi-Sector General Permit for Storm Water Associated with Industrial Activity for all discharges of storm water to Rockland

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

Harbor as best practicable treatment for the discharges of storm water from this facility. Maintenance of a SWPPP at this site is intended and anticipated to result in minimizing the presence of pollutants, including suspended solids, in storm water discharges.

- e. Biochemical Oxygen Demand (BOD₅): The previous permitting action did not establish influent or effluent monitoring requirements for BOD₅. The Department has determined that limited influent and effluent monitoring for this parameter is appropriate to assess this facility's contribution of BOD₅ to the effluent. Therefore, this permitting action is establishing monthly average and daily maximum influent and effluent monitoring requirement requirements for BOD for the twelve-month period following issuance of this permit. The Department will evaluate these test results to determine if it is appropriate to reopen this permit to establish additional monitoring requirements or limitations to protect receiving water quality.
- f. Total Residual Chlorine (TRC): The previous permitting action established technology-based daily maximum concentration limit of 1.0 mg/L for TRC for Outfalls #015A and #016A, which are being carried forward in this permitting action based on a Department best professional judgment determination that the discharges receive adequate dilution with the receiving waters such that water quality-based limitations are not warranted. Limitations on TRC are specified to ensure that ambient water quality standards are maintained and that BPT technology is being applied to the discharge. FMC utilizes potable water from Aqua Maine, Inc., which has been treated to a maximum chlorine concentration of 1.1 mg/L, and treats intake sea water with calcium hypochlorite. Based on the potential for TRC in the effluent from Outfall #019A, this permitting action is establishing a daily maximum concentration limit of 1.0 mg/L for this outfall based on Department best professional judgment of best practicable treatment.

A summary of the most recent 60 months of effluent TRC data as reported on the monthly DMRs and which has been entered into the Department's compliance tracking system database as of May 2007 (available data from November 2002 – December 2006) is as follows:

TRC	Minimum	Median	Maximum	Arithmetic Mean	# DMRs
Outfall #015A	0.01 mg/L	0.05 mg/L	0.8 mg/L	0.09 mg/L	43
Outfall #016A	0.02 mg/L	0.02 mg/L	0.2 mg/L	0.03 mg/L	42

- g. pH: The previous permitting action established a pH range limitation of 6.0 – 8.5 standard units (SU) for Outfalls #015A, #016A, and #019A, which is considered by the Department as a best practicable treatment standard. The pH range limitation is being carried forward for Outfalls #015A, #016A, and #019A. This permitting action is eliminating all intake water monitoring requirements (Outfall #00Z), including pH monitoring and reporting, and is being carried forward in this permitting action. This permitting action is carrying forward the minimum monitoring frequency requirement of once per month for pH for Outfalls #015A, #016A, and #019A.

6. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS (cont'd)

A summary of the most recent 60 months of available pH data as reported on the monthly DMRs and which has been entered into the Department's compliance tracking system database as of May 2007 (available data from May 2002 – December 2006) indicates that FMC has been in compliance with the 6.0-8.5 SU pH range limitations 100% of the time during said reporting period for all outfall points.

- h. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing: 38 M.R.S.A. § 414-A and 38 M.R.S.A. § 420, prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. 06-096 CMR 530 sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected and narrative and numeric water quality criteria are met. 06-096 CMR 584 sets forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

06-096 CMR 530(2)(A) specifies the dischargers subject to the rule as, "*all licensed dischargers of industrial process wastewater or domestic wastes discharging to surface waters of the State must meet the testing requirements of this section. Dischargers of other types of wastewater are subject to this subsection when and if the Department determines that toxicity of effluents may have reasonable potential to cause or contribute to exceedences of narrative or numerical water quality criteria.*" FMC is not authorized to discharge process waste waters or domestic wastes and the Department is making a best professional judgment determination that toxicity of the effluents does not have reasonable potential to cause or contribute to exceedences of narrative or numerical water quality criteria. Therefore, this permitting action is not establishing WET, priority pollutant, or analytical chemistry testing requirements for the discharges via Outfalls #015A, #016A or #019A.

7. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the water body to meet standards for Class SC classification.

8. PUBLIC COMMENTS

Public notice of this application was made in the *Courier Gazette* newspaper on or about June 26, 2007. The Department receives public comments on an application until the date a final agency action is taken on the application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001).

9. DEPARTMENT CONTACTS

Additional information concerning this permitting action may be obtained from, and written comments sent to:

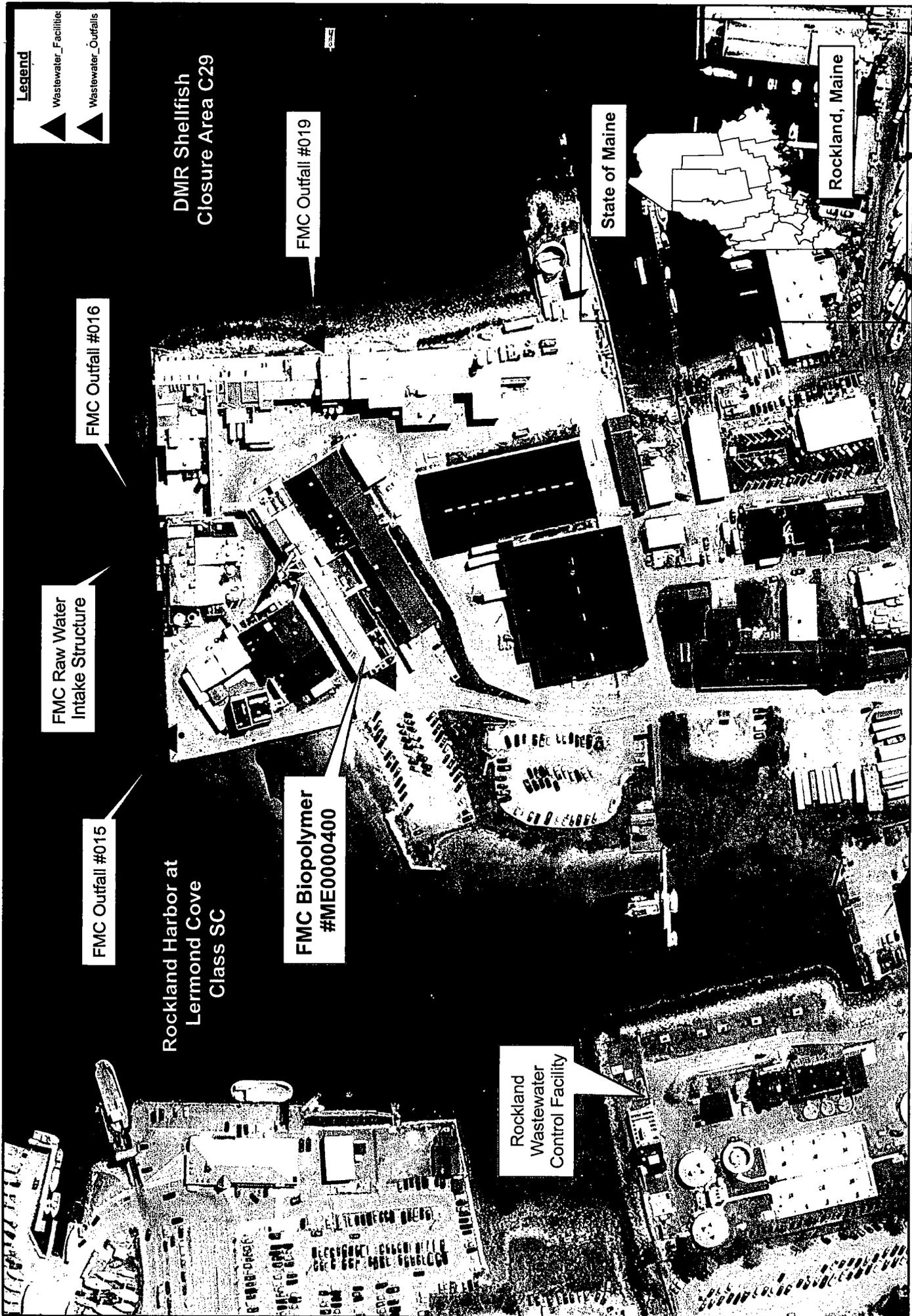
William F. Hinkel
Division of Water Quality Management
Bureau of Land & Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017 Telephone: (207) 287-7659 Fax: (207) 287-3435
e-mail: bill.hinkel@maine.gov

10. RESPONSE TO COMMENTS

During the period of July 30, 2007 through August 29, 2007, the Department solicited comments on the proposed draft Maine Pollutant Discharge Elimination System Permit to be issued to FMC Biopolymer. The Department received one significant comment from the Department's Division of Water Quality Management Enforcement Unit Supervisor regarding the need for additional monitoring data for total suspended solids (TSS) and biochemical oxygen demand (BOD₅).

The Department has determined that additional monitoring for TSS and BOD₅ at Outfall #016A for the twelve-month period following issuance of this permit is appropriate to clearly determine whether this facility is contributing these pollutants to the final effluent. Therefore, this permitting action is carrying forward daily maximum effluent concentration and mass reporting requirements and is establishing daily maximum concentration and mass reporting requirements for TSS for Outfall #016A for the twelve-month period following issuance of this permit. This permitting action is establishing monthly average and daily maximum concentration and mass monitoring and reporting requirements for BOD₅ for Outfall #016A for the twelve-month period following issuance of this permit. This permitting action is also establishing daily maximum concentration and mass reporting requirements for the intake waters (Pipe #00Z) in order to compare the TSS and BOD₅ levels in the intake waters (Rockland Harbor) to the effluent levels. The Department will evaluate the test results upon completion of this monitoring requirement to determine if additional monitoring or effluent limitations must be established in order to protect receiving water quality.

ATTACHMENT A



Legend

Wastewater_Facilities

Wastewater_Outfalls

DMR Shellfish Closure Area C29

FMC Outfall #016

FMC Raw Water Intake Structure

FMC Outfall #015

Rockland Harbor at Lermont Cove Class SC

FMC Biopolymer #ME0000400

Rockland Wastewater Control Facility

State of Maine

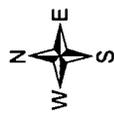
Rockland, Maine

1,200 Feet

600

300

0

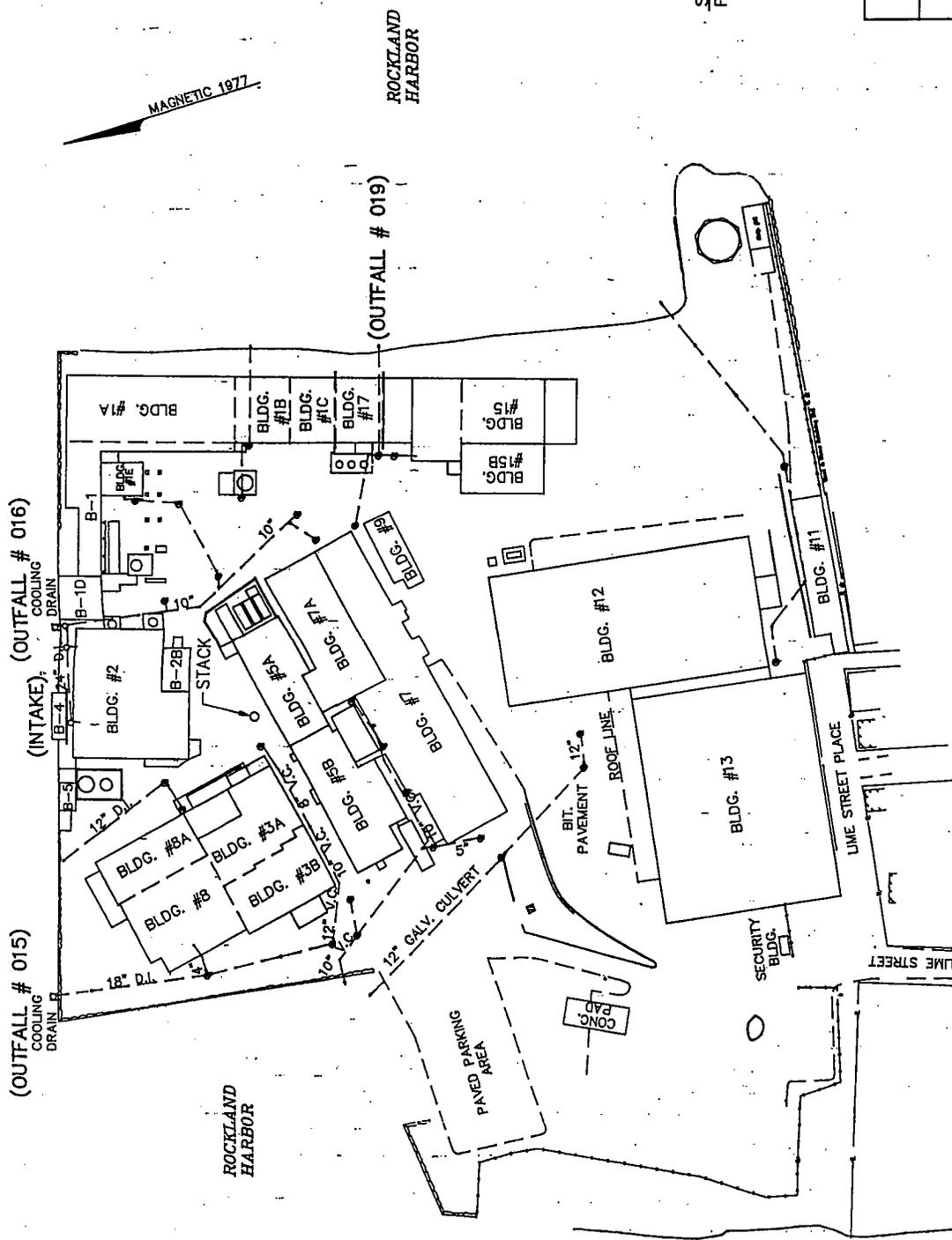


Map created by Maine DEP
May 18, 2007

FMC Biopolymer at Rockland, Maine

ATTACHMENT B

FMC - FOOD INGREDIENTS DIVISION
 WATER INTAKE AND OUTFALLS



SOURCE: FMC CORPORATION
 FOOD INGREDIENTS DIVISION

EPA FORM 1
 ITEM XI-B

FMC CORPORATION ROCKLAND, MAINE
WATER INTAKE AND OUTFALLS
ACHERON ENGINEERING SERVICES 40 MAIN STREET NEWPORT, MAINE
JOB NO. 17312-08 DWG NO. B-468

PLAN
 SCALE: 1" = 100'±



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

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. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days 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 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 and the applicant a copy of the documents. All 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

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by 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 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 as part of an appeal only when 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 show 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, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information 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.* An applicant proceeding with a project pending the outcome of an appeal 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 initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final 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. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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.
