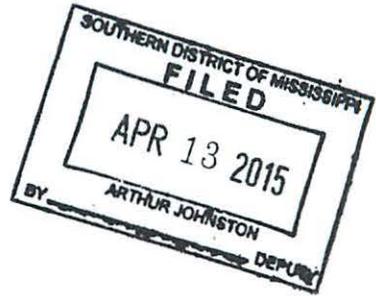


IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION



UNITED STATES OF AMERICA and)
STATE OF MISSISSIPPI, by and through)
the MISSISSIPPI COMMISSION ON)
ENVIRONMENTAL QUALITY,)

Plaintiffs,)

v.)

CAL-MAINE FOODS, INC.,)

Defendant.)

Civil Action No. 3:15cv278HTW-LRA

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”) and the State of Mississippi by and through the Mississippi Department of Environmental Quality (“MDEQ”) on behalf of the Mississippi Commission on Environmental Quality (collectively, “Plaintiffs”) file this complaint and allege as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Clean Water Act (“CWA”) Section 309(b) and (d), 33 U.S.C. § 1319(b) and (d), and the Mississippi Air and Water Pollution Control Law (“MAWPCL”), Miss. Code Ann. §§ 49-17-1 through 49-17-43, against Cal-Maine Foods, Inc. (“Cal-Maine Foods” or “Defendant”). Plaintiffs allege that Defendant or its former subsidiary Cal-Maine Farms, Inc.¹ (“Cal-Maine Farms”) (collectively, “Cal-Maine”) discharged

¹ As of January 1, 2015, Cal-Maine Farms has merged with and into Cal-Maine Foods.

pollutants from a Large Concentrated Animal Feeding Operation (“CAFO”) into navigable waters of the United States and waters of the State of Mississippi without permit authorization in violation of CWA Section 301, 33 U.S.C. § 1311 and Miss. Code Ann. § 49-17-29. *See also* 40 C.F.R. § 122.23(b)(4). Plaintiffs also allege that Cal-Maine was in violation of certain terms, conditions and limitations of a National Pollutant Discharge Elimination System (“NPDES”) Permit issued to Cal-Maine Farms pursuant to CWA Section 402, 33 U.S.C. § 1342 and Miss. Code Ann. §§ 49-17-1 through 49-17-43 (hereafter “2006 NPDES Permit”).

2. Plaintiffs further allege that they have negotiated with Cal-Maine a proposed Consent Decree, to be lodged concurrently with the filing of this Complaint. The proposed Consent Decree includes extensive injunctive relief to address the alleged violations in Paragraph 1.

3. Upon information and belief, Cal-Maine has implemented the injunctive relief specified in the proposed Consent Decree. Plaintiffs allege that had Cal-Maine not implemented the injunctive relief specified in the proposed Consent Decree, Cal-Maine would be in violation of the Multimedia General Pollution Control Permit to Manage Manure/Litter and/or Construct/Operate Air Emissions Equipment and/or Discharge Storm Water in Accordance with the National Pollutant Discharge Elimination System and Mississippi’s Ambient Air Quality Standards issued by MDEQ on August 23, 2010 (Permit No. MSG22), for which Cal-Maine Farms was granted a Certificate of Permit Coverage (Coverage No. MSG220049) on January 9, 2012, (hereafter “General Permit”), and if Defendant does not continue to implement the specified injunctive relief, it will return to noncompliance with the General Permit.

4. Plaintiffs seek permanent injunctive relief as specified in the proposed Consent Decree against Defendant to ensure that Defendant remains in compliance with the General

Permit and prevents the recurrence of its unpermitted discharges of pollutants into the navigable waters of the United States and waters of the State of Mississippi, as authorized by Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and Miss. Code Ann. § 49-17-43(2).

5. Plaintiffs also seek civil penalties against Defendant for Cal-Maine's unpermitted discharges of pollutants into the navigable waters of the United States and waters of the State of Mississippi, as authorized by Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and Miss. Code Ann. § 49-17-43(1).

6. Plaintiffs also seek civil penalties against Defendant for Cal-Maine's violation of certain terms and conditions of the 2006 NPDES Permit, as authorized by Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and Miss. Code Ann. § 49-17-43(1).

JURISDICTION, AUTHORITY AND VENUE

7. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1345, 1355 and 1367, and under CWA Section 309(b), 33 U.S.C. § 1319(b).

8. Authority to commence this action is vested in the Administrator of the EPA pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and authority to bring this action is vested in the Attorney General pursuant to Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

9. Venue is proper in the Southern District of Mississippi pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), as well as CWA Section 309(b), 33 U.S.C. § 1319(b), because it is the judicial district in which the alleged violations of the CWA occurred and is where the Defendant is doing business.

10. As a signatory to this Complaint, the State of Mississippi, by and through MDEQ, has actual notice of the commencement of this action, in accordance with Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

DEFENDANT

11. Cal-Maine Foods is a public corporation formed in the State of Delaware. Its principle place of business is located in Jackson, Mississippi. Its registered agent is located at 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232. Cal-Maine Foods is a “person” within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. Cal-Maine Farms was a Delaware corporation that was wholly-owned by Cal-Maine Foods. Its principle place of business was located in Jackson, Mississippi. It had the same officers and directors and the same registered agent as Cal-Maine Foods. Effective January 1, 2015, Cal-Maine Farms was merged with and into Cal-Maine Foods.

13. The Large CAFO facility at issue is a shell-egg production facility that was owned by Cal-Maine Foods and operated by Cal-Maine Farms. Effective January 1, 2015, it is owned and operated by Cal-Maine Foods. It is located at 2695 Adams Lane, 32° 18’ 17.73” N latitude by 90° 33’ 40.36” W longitude, in Edwards, Hinds County, Mississippi (hereafter the “Facility”). The Facility covers approximately 2,677 contiguous acres and contains multiple poultry confinement structures, lagoons and cropland. As listed in Cal-Maine Farms’ 2013 NPDES CAFO Permit Annual Report for the General Permit (hereafter “2013 Annual Report”), this Facility, as of March 21, 2014, has 48 houses containing approximately 1,611,190 laying hens and 999,000 pullets and breeders (roosters and hens). *See* 40 C.F.R. § 122.23(b)(4)(ix), (xi). The Facility uses both a liquid manure handling system and a dry manure handling system.

STATUTORY AND REGULATORY REQUIREMENTS

14. This action arises under the federal Clean Water Act, 33 U.S.C. §§ 1311-1387, as amended, and the regulations promulgated thereunder, as well as the federally enforceable provisions of the Mississippi Air and Water Pollution Control Law, as amended, Miss. Code Ann. §§ 49-17-1 through 49-17-43, and the regulations promulgated thereunder, that are aimed at protecting water quality by controlling the discharge of pollutants to waters of the United States and/or waters of the State of Mississippi.

15. The CWA is designed “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

16. To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” to waters of the United States, except, *inter alia*, in compliance with an NPDES permit issued by EPA or an authorized state pursuant to CWA Section 402, 33 U.S.C. § 1342. *See also* Miss. Code Ann. § 49-17-29(2)(a) (prohibiting “pollution of any waters of the state,” as well as the placement of “wastes” in a position likely to cause “pollution of any waters of the state”).

17. Section 502(12) of the CWA defines “discharge of a pollutant” to mean, among other things, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). *See also* Miss. Code Ann. § 49-17-5(1)(a) (defining “pollution” to include the “discharge” of substances “into any waters of the state” that cause “contamination, or other alteration of the physical, chemical or biological properties of any waters of the state.”)

18. The CWA’s definition of “pollutant” in Section 502(6) of the CWA, 33 U.S.C. § 1362(6), specifically identifies “biological materials . . . and agricultural waste discharged into

water” as pollutants. The MAWPCL similarly defines “wastes” to include all “substances which may pollute or tend to pollute any waters of the state.” Miss. Code Ann. § 40-17-5(1)(b).

19. Section 502(7) of the CWA defines navigable waters to be “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). EPA regulations promulgated pursuant to the CWA define the term “waters of the United States” to include, among other things: (1) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (2) all interstate waters; (3) all other waters such as intrastate lakes, rivers and streams (including intermittent streams), the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; (4) tributaries of waters of the United States; and (5) certain wetlands (including wetlands adjacent to these waters). 40 C.F.R. § 122.2.

20. The term “waters of the state” is defined even more broadly by the MAWPCL and encompasses:

all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, situated wholly or partly within or bordering upon the state, and such coastal waters as are within the jurisdiction of the state, except lakes, ponds or other surface waters which are wholly landlocked and privately owned, and which are not regulated under the Federal Clean Water Act.

Miss. Code Ann. § 49-17-5(1)(f) (citing (33 U.S.C. 1251 *et seq.*)).

21. The term “point source” is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), as “any discernible, confined and discrete conveyance, including but not limited to any . . . concentrated animal feeding operation . . . from which pollutants are or may be discharged.”

22. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that EPA may issue to “persons” NPDES permits that authorize the discharge of any pollutant to navigable waters, but only in compliance with Section 301 of the CWA, 33 U.S.C. § 1311, and such terms and conditions as EPA determines are necessary to carry out the provisions of the CWA. *See also* Miss. Code Ann. § 49-17-29(2)-(4).

23. Section 402 of the CWA, 33 U.S.C. § 1342, further directs the Administrator to prescribe conditions for NPDES permits to assure compliance with the requirements of the CWA, including conditions on data and information collection, reporting and other such requirements as the Administrator deems appropriate.

24. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that if a state so requests, and the Administrator determines that the state complies with certain requirements, the Administrator may approve a state to administer the NPDES program if the state meets certain requirements. Pursuant to Section 402(b), the State of Mississippi has been authorized by the EPA to administer its NPDES program since May 1, 1974.

25. If a state NPDES program is approved pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), the Administrator of the EPA retains the authority to take enforcement action under CWA Section 309, 33 U.S.C. § 1319. CWA Section 402(i), 33 U.S.C. § 1342(i).

26. Federal regulations set forth a list of general conditions that all facilities issued NPDES permits under state NPDES permitting programs must meet. Pursuant to 40 C.F.R. § 122.41(d), a permittee has a duty to “take all reasonable steps to minimize or prevent any discharge . . . which has a reasonable likelihood of adversely affecting human health or the environment.” The monitoring and reporting requirements for an NPDES permit are dictated in 40 C.F.R. §§ 122.41(j)-(l).

27. The term “facility” is defined in the regulations as “any NPDES ‘point source’ [such as a concentrated animal feeding operation] or any other facility . . . (including land or appurtenances thereto) that is subject to regulation under the NPDES program.” 40 C.F.R. § 122.2; 33 U.S.C. § 1362(14).

28. Effluent limitations, as defined in CWA Section 502(11), 33 U.S.C. § 1362(11), are restrictions on quantity, rate and concentration of chemical, physical, biological and other constituents which are discharged from point sources. Effluent limitations are among the conditions and limitations prescribed in NPDES permits issued under CWA Section 402(a), 33 U.S.C. § 1342(a).

29. CWA Section 309(b), 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of CWA Section 301, 33 U.S.C. §§ 1311, or is in violation of any NPDES permit condition or limitation in an NPDES permit issued under CWA Section 402, 33 U.S.C. § 1342.

30. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009; and not to exceed \$37,500 per day for each violation which takes place after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134). See 40

C.F.R. Part 19; 69 Fed. Reg. 7,121 (Feb. 13, 2004); 73 Fed. Reg. 75346 (Dec. 11, 2008); and 78 Fed. Reg. 66643-01 (Dec. 6, 2013).

31. Miss. Code Ann. § 49-17-43(1) provides for the imposition of civil penalties not to exceed \$25,000 per day for each violation.

GENERAL ALLEGATIONS

32. At all relevant times, through and including December 31, 2014, Cal-Maine Foods has owned, and Cal-Maine Farms has operated, a shell-egg production facility located at 2695 Adams Lane, 32° 18' 17.73" N latitude by 90° 33' 40.36" W longitude, in Edwards, Hinds County, Mississippi. As of January 1, 2015, Cal-Maine Foods owns and operates the Facility. The Facility covers approximately 2,677 contiguous acres and contains multiple poultry confinement structures, lagoons and cropland. As listed in Cal-Maine Farms' 2013 Annual Report, as of March 21, 2014, this Facility has 48 houses containing approximately 1,611,190 laying hens and 999,000 pullets and breeders (roosters and hens). The Facility uses both a liquid manure handling system and a dry manure handling system.

33. In addition to egg production, this Facility includes fields which Cal-Maine Farms plants with crops such alfalfa, barley, corn, soybeans, sorghum and wheat.

34. At all relevant times, Cal-Maine Farms followed a practice of land-applying manure and process wastewater generated at the facility on-site, to the surrounding fields.

35. The Facility at issue in this Complaint qualifies, or qualified at a time relevant to this Complaint, as a "concentrated animal feeding operation" as that term is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.23(b)(2).

36. The Facility at issue in this Complaint further qualifies, or qualified at a time relevant to this Complaint, as a “large concentrated animal feeding operation” as that term is defined in 40 C.F.R. § 122.23(b)(4)(ix), (xi).

37. On September 11, 2006, MDEQ issued Cal-Maine² an NPDES Permit (Permit No. MS0058467) (the “2006 NPDES Permit”) to discharge wastewater in accordance with certain effluent limitations, monitoring requirements, and best management practices (“BMPs”) set forth in the permit. *See* CWA Section 402(b), 33 U.S.C. § 1342(b), and Miss. Code Ann. §§ 49-17-1 through 40-17-43.

38. The 2006 NPDES Permit required Cal-Maine to develop and implement a NMP which must include BMPs and appropriate application rates for the amount of nitrogen and phosphorous which could be applied to certain fields at the Facility (the “Land Application Areas”), thereby establishing the effluent limitations that Cal-Maine must comply with when applying manure, litter and/or process wastewater to the Land Application Areas. The permit allowed Cal-Maine to apply wastewater effluent to the Land Application Areas beginning in April and ending in October in compliance with the application rates established in the NMP. The permit also included BMP buffer setback requirements for Land Application Areas, sampling requirements for storm water runoff and records retention requirements.

39. The 2006 NPDES Permit prohibited Cal-Maine from discharging manure, litter or process wastewater pollutants into waters of the United States from production areas, which included animal confinement areas, manure storage areas, raw materials storage areas and waste containment, except whenever “precipitation causes an overflow of manure, litter, or process

² Although the 2006 NPDES Permit was issued to “Cal-Maine Farms,” the permit also identifies both Cal-Maine Foods and Cal-Maine Farms as alternative names.

wastewater, pollutants in the overflow may be discharged” into waters of the United States if the production area is “designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event” and operated in accordance with additional measures required by 40 C.F.R. § 412.37(a) and (b).

40. Specifically, the 2006 NPDES Permit included the following conditions:
 - a. Permit Condition AI17252, No. S-1 on page 4 of the permit required Cal-Maine to submit a discharge monitoring report to MDEQ on the 28th day of the month following each reporting period. Permit condition S-1 on page 35 of the permit required Cal-Maine to submit an annual discharge monitoring report to MDEQ on January 28th of each year.
 - b. Permit Condition RPNT1, No. S-1 on page 35 of the permit required Cal-Maine to collect samples of storm water runoff events during the second, third and fourth quarter of each calendar year.
 - c. Permit Condition AI17252, No. T-65 on page 22 of the permit required Cal-Maine to:

develop and implement a nutrient management plan [(“NMP”)] that incorporates the requirements of Condition [CAFO3,] No. S-2 found on page 25 based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters.

Pursuant to 40 C.F.R. § 122.42(e), the approved NMP and all approved modifications thereto become an enforceable part of the permit.

- d. Permit Condition CAFO3, No. S-2 on page 25 of the permit further set forth the requirements to develop an NMP. Among these conditions were the requirements to: “[i]dentify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the state;” and “[e]stablish protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in manure, litter, or process wastewater”
- e. Permit Condition CAFO4, No. T-5 on page 32 of the permit set forth the setback requirements for land application. Pursuant to this permit condition, Cal-Maine was required to maintain a 100-foot buffer between where Cal-Maine land-applied manure, litter and process wastewater and “any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters.” However, Cal-Maine was permitted to “substitute the 100-foot setback with a 35-foot wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited” or “[a]s a compliance alternative, [Cal-Maine] may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant

reductions equivalent or better than the reductions that would be achieved by the 100-foot setback.”

- f. Permit Condition CAFO3, No. T-5 on page 27 prohibited land application of lagoon effluent (*i.e.* manure, litter and/or process wastewater) between November 1 and March 31. Permit Condition CAFO4, No. T-8 on page 33 of the permit prohibited wastewater application “when the ground is frozen or saturated or during rainfall events.”
- g. Permit Condition CAFO4, No. R-1 on page 30, in conjunction with 40 C.F.R. § 122.42(e)(2), required Cal-Maine to maintain records “on-site for a period of five years from the date they are created” and make such records available to MDEQ upon request, which provide the “[t]otal amount of nitrogen and phosphorus actually applied to each field, including sources other than manure, litter, or process wastewater,” and documentation of the “[c]alculations showing the total nitrogen and phosphorous applied to each field,” in addition to other information such as expected crop yields, the dates of land application, the method of land application, and the weather conditions before, during and after land application.³

41. The 2006 NPDES Permit had an expiration date of August 31, 2011.

42. On August 23, 2010, MDEQ issued the General Permit, in accordance with the provisions of the MAWPCL, Miss. Code Ann. §§ 49-17-1 through 49-17-43, and the regulations

³ Cal-Maine developed Standard Operating Procedures (“SOPs”) and included these in Section 4 of their Pollution Prevention Plan contained in its 2006 NMP. Pursuant to these SOPs, the information required pursuant to Condition CAFO4, No. R-1 on page 30 of the 2006 NPDES Permit would be provided on certain forms (Forms 400, 401 and 403).

and standards adopted and promulgated thereunder, and under authority granted pursuant to Section 402(b) of the CWA. The General Permit expires on July 31, 2015.

43. On February 24, 2011, more than 180 days prior to the expiration of the 2006 NPDES Permit, Cal-Maine Foods submitted a Notice of Intent for Coverage under the Multimedia General Permit Including NPDES Requirements for Concentrated Animal Feeding Operations General Permit Number MSG220049 (the NOI), and coverage was extended under the 2006 NPDES Permit through January 9, 2012.

44. On January 9, 2012, MDEQ granted Cal-Maine Farms a Certificate of Permit Coverage under the General Permit, Coverage No. MSG220049. Coverage under the General Permit expires on July 31, 2015.

45. The General Permit requires an NMP, which must include BMPs, and appropriate application rates for the amount of nitrogen and phosphorous which could be applied to Land Application Areas at the Facility, and establishes effluent limitations that Cal-Maine must comply with when applying manure, litter and/or process wastewater to the Land Application Areas. The permit allows Cal-Maine to apply wastewater effluent to the Land Application Areas from April through October in compliance with the application rates established in the NMP. On April 2, 2014, MDEQ approved an amended NMP, which became an enforceable part of the permit pursuant to 40 C.F.R. § 122.42(e), which allows for land application during the winter months as well (*i.e.* November through March), except that, pursuant to Permit Condition L-7 on page 11 of the permit, “[w]astewater shall not be applied when the ground is frozen, saturated, or during rainfall events.” The permit also includes BMP buffer setback requirements for Land Application Areas, sampling requirements for storm water runoff and records retention requirements.

46. The General Permit prohibits Cal-Maine from discharging manure, litter or process wastewater pollutants into waters of the United States from production areas, which include animal confinement areas, manure storage areas, raw materials storage areas and waste containment, except whenever “precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged” into waters of the United States if the production area is “designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event” and operated in accordance with additional measures required by 40 C.F.R. § 412.15, 412.25, 412.31(a)(1) and 412.43(a).

47. Specifically, the General Permit includes the following conditions:

- a. Permit Condition ACT6, No. S-2 on page 16 of the permit requires Cal-Maine to submit an annual DMR to MDEQ on January 28th of each year.
- b. Permit Condition ACT6, No. S-2 on page 16 of the permit further requires that “[s]amples shall be taken during rainfalls which will result in any runoff amount and at the frequency described in the ‘Effluent Limitations and Monitoring Requirements’ table.” This information shall also be reported annually on the DMR on January 28th of each year.
- c. Permit Condition ACT2, No. S-1 on page 2 of the permit requires Cal-Maine to “develop, sign, implement, and submit a Nutrient Management Plan (NMP).” Pursuant to Permit Condition ACT7, No. T-2 on page 17 of the permit “[t]he approved NMP and all approved modification thereto become an enforceable part of the permit.” *See also* 40 C.F.R. § 122.42(e).

- d. ACT7 (CAFO GP) Nutrient Management Plan Content and BMPs, which includes Permit Condition Nos. T-1 through T-4 on pages 17-19 of the permit, further outlines the required terms of the NMP. Pursuant to Permit Condition ACT7, No. T-1 on page 17 of the permit, Cal-Maine must:

develop, implement, maintain on site or locally available for a period of five years from the development date, and upon request make available to the Permit Board an approved NMP that at a minimum includes best management practices and procedures necessary to meet the [stated] requirements . . . and applicable effluent limitations and standards, including those specified in 40 CFR part 412.

This includes “[i]dentify[ing] appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices to control runoff of pollutants to waters of the United States;” and “[e]stablish[ing] protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater”

- e. As specified in Permit Condition ACT7, No. T-2 on page 17 of the permit, the NMP must incorporate certain other permit conditions, including Permit Condition ACT7, No. T-3 on page 18,

based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters.

- f. Permit Condition ACT7, No. T-3 on page 18 of the permit requires that “[a]pplication rates for manure, litter, and other process wastewater applied to land . . . must minimize phosphorus and nitrogen transport from the field to surface waters in compliance with the technical standards for nutrient management established by [Cal-Maine].”
- g. Permit Condition ACT4, No. L-3 on page 10 of the permit sets forth the setback requirements for land application of manure, litter and/or process wastewater. Pursuant to this permit condition, Cal-Maine is required to maintain a 100-foot buffer between where Cal-Maine land-applies manure, litter and/or process wastewater and “any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters.” However, Cal-Maine “may substitute the 100-foot setback with a 35-foot wide vegetated buffer where applications of manure, litter or process wastewater are prohibited” or “[a]s a compliance alternative, [Cal-Maine] may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than reductions that would be achieved by the 100-foot setback.”
- h. Permit Condition ACT5, No. R-2 on page 12 of the permit and 40 C.F.R. § 122.42(e)(2) require Cal-Maine to maintain records “on site or locally available for a period of five years from the date they are created,” and make such records available to MDEQ upon request, which provide the “total nitrogen and phosphorus to be applied to each field, including sources other

than manure, litter, or process wastewater; [the] [t]otal amount of nitrogen and phosphorus actually applied to each field, including document of calculations for the total amount applied;” and the “[c]alculations showing the total nitrogen to be allied to each field,” in addition to other information such as expected crop yields, the dates of land application, the method of land application , and the weather conditions before, during and after land application.

48. Based on inspections conducted by Plaintiffs at Cal-Maine’s Facility on each day from July 12 to July 16, 2010, and on September 14, 2010, Plaintiffs observed unpermitted discharges of pollutants at the Facility to waters of the United States, including nitrogen, phosphorous, E. coli and fecal coliform. During these time periods, Plaintiffs observed water from spray cooling operations from the Complex #2 production area commingled with manure, litter, and/or process wastewater flowing into a pipe located directly above an unnamed tributary to Bakers Creek, which flows into Bakers Creek, which flows into Fourteen Mile Creek, and then flows into Big Black River, a traditional navigable water. During the July 2010 inspection, samples were taken from the discharge coming from the pipe immediately prior to it flowing into the unnamed tributary which flows to Bakers Creek. Sampling results revealed the presence of the following pollutants: nitrate/nitrite, ammonia, total phosphorous, E. Coli and fecal coliform.

49. Cal-Maine’s operations generated manure, litter and process wastewater at the Facility, and Cal-Maine land-applied that manure, litter and process wastewater on site, often at greater than the application rates established by the NMP, including during prohibited months. This manure, litter and process wastewater contains both nitrogen and phosphorous. This manure, litter and process wastewater, when land-applied at greater than application rates during

prohibited months, is an “agricultural waste,” which is a “pollutant” within the meaning of 33 U.S.C. § 1362(6), and “pollution” and “waste” within the meaning of Miss. Code Ann. § 49-17-5(1)(a) and (b).

50. Cal-Maine’s operations also generated process wastewater from the Complex #2 production area flowing into a pipe, and then into an unnamed tributary to Bakers Creek. During the July 2010 inspection, samples were taken from the discharge coming from the pipe immediately prior to it flowing into the unnamed tributary which flows to Bakers Creek. Sampling results revealed the presence of the following pollutants: nitrate/nitrite, ammonia, total phosphorous, E. Coli and fecal coliform. This process wastewater is an “agricultural waste,” which is a “pollutant” within the meaning of 33 U.S.C. § 1362(6), and “pollution” and “waste” within the meaning of Miss. Code Ann. § 49-17-5(1)(a) and (b).

51. On numerous occasions since July 12, 2010, Cal-Maine has discharged “pollutants,” “pollution” and “waste” within the meaning of 33 U.S.C. § 1362(6) and Miss. Code Ann. § 49-17-5(1)(a) and (b) into an unnamed tributary to Bakers Creek, which flows into Fourteen Mile Creek, and then flows into Big Black River, a traditional navigable water.

52. There are numerous water bodies, including Bakers Creek and Big Black River, into which the Facility has discharged pollution that are included on the State of Mississippi’s reports under CWA Section 303(d), 33 U.S.C. § 1313(d), which list water bodies that do not meet or are not expected to meet the water quality standards for fecal coliform, nutrients, organic enrichment and low dissolved oxygen.

53. Upon information and belief, as a result of Cal-Maine’s spray-cooling operations in the Complex #2 production area, unauthorized discharges of wastewater containing pollutants from the Facility entered “navigable waters,” within the meaning of CWA Section 502(7), 33

U.S.C. § 1362(7), or into waters of the State, within the meaning of Miss. Code Ann. § 49-17-5(1)(f).

54. Upon information and belief, as a result of Cal-Maine's discharge of process wastewater from the Complex #2 production area, unauthorized discharges of wastewater containing pollutants from the Facility entered "navigable waters," within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7), or into waters of the State, within the meaning of Miss. Code Ann. § 49-17-5(1)(f).

55. Upon information and belief, Cal-Maine discharged pollutants into a water of the United States without permit authorization, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a), and discharged pollution and wastes into waters of the State in violation of Miss. Code Ann. § 49-17-29(2)(a), each day from July 12, 2010 to September 14, 2010, for a total of 65 violations.

56. Cal-Maine also failed to comply with the requirements set forth in its 2006 NPDES Permit, including failure to conduct quarterly storm water sampling, failure to timely submit annual discharge monitoring reports ("DMRs") to MDEQ, failure to comply with BMP buffer setback requirements, application of manure, litter and/or process wastewater to land application fields during prohibited periods, failure to maintain land application records, and application of nitrogen to land application fields in exceedance of the application rates established by the NMP. Each of these permit violations, as described below, is in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

- a. Between January 28, 2008 and August 12, 2011, Cal-Maine failed to conduct quarterly storm water sampling 6 times, for a total of 6 violations of Condition RPNT1 (MS0058567), No. S-1 on page 35 of the 2006 NPDES Permit.

- b. Between January 28, 2008 and August 12, 2011, Cal-Maine failed to timely submit annual discharge monitoring reports to MDEQ for the 2007 and 2008 calendar years. Each report was due on January 28th of the following year, or on January 28, 2008 and January 28, 2009, respectively. Cal-Maine did not submit both of these DMRs until March 1, 2009. These untimely submittals resulted in a total of 2 violations of Condition AI17252, S-1 of page 4 and Condition RPNT1 (MS0058567), No. S-1 of page 35 of the 2006 NPDES Permit.
- c. Between April 13, 2008 and August 9, 2011, Cal-Maine violated the BMP buffer setback requirements in three land application fields by land-applying manure, litter and/or process wastewater within prohibited buffer setback areas located in these fields⁴ at least 311 times, for a minimum of 311 violations of Condition CAFO4, No. T-5 on page 32 of the 2006 NPDES Permit.
- d. Between November 3, 2008 and March 20, 2010, Cal-Maine land-applied process wastewater to land application fields at least 64 times, in violation of Condition CAFO3, No. T-5 on page 27 of the 2006 NPDES Permit

⁴ There are eight Land Application Areas at the facility, identified as P-2, P-3, P-4, P-5, P-6, P-7, Floyd and Breeder Complex. These Land Application Areas receive lagoon process wastewater through a center pivot system in which irrigation equipment rotates around a pivot and crops are watered in a circular pattern across the fields with sprinklers. In Land Application Areas P-2, P-4 and P-5, ditches and/or streams run through the paths of the irrigation systems, and as a result, process wastewater being applied to these fields through the center pivot system is being applied directly to the ditches and/or streams that are in the pathways of the pivots in these fields. Upon information and belief, Cal-Maine applied process wastewater within the prohibited buffer setback area in Land Application Area P-2 134 times between April 15, 2008 and August 9, 2010; Cal-Maine applied process wastewater within the prohibited buffer setback in Land Application Area P-4 98 times between June 15, 2008 and October 30, 2010; and Cal-Maine applied process wastewater within the prohibited buffer setback area in Land Application Area P-5 79 times between April 13, 2008 and August 5, 2011.

prohibiting land application during these months, for a minimum of 64 violations.

- e. On July 8, 2011, EPA issued to Cal-Maine a request for information pursuant to CWA Section 308, 33 U.S.C. § 1318, requesting information regarding the Facility, including all applicable NPDES permits and permit-related documents, Cal-Maine's land application records and equipment specification records, documents evidencing compliance with all federal, state and local environmental laws and regulations, and documents relating to land application buffer setback BMPs. On October 19, 2011, Cal-Maine submitted some information responsive to these requests, but the documents by which Cal-Maine recorded its land application information did not contain the information required to be retained and produced to the State and EPA pursuant to Condition CAFO4, No. R-1 on page 30 of the 2006 NPDES Permit. On March 29, 2012, EPA again requested this information. On May 2, 2012, Cal-Maine responded to EPA's supplemental request for information pursuant to CWA Section 308, 33 U.S.C. § 1318. However, Cal-Maine failed to produce the information required to be retained and produced pursuant to Condition CAFO4, No. R-1 on page 30 of the 2006 NPDES Permit, and Cal-Maine stated that other than the information provided, it had no other responsive documents. In total, Cal-Maine failed to maintain land application records from March 30, 2008 through August 12, 2011, resulting in at least 708 violations of Condition CAFO4, No. R-1 of the 2006 NPDES Permit.

- f. Between May 28, 2010 and August 12, 2011, Cal-Maine land applied manure, litter and/or process wastewater containing nitrogen exceeding the application rate of 225 lbs per acre per year – as specified in Cal-Maine’s NMP developed pursuant to Condition AI17252, No. T-65 on page 22 and Condition CAFO3, No. S-2 on page 25 of the 2006 NPDES Permit – on Land Application Areas P-3, P-4, P-5 and P-6 during a total of 149 days, in violation of these permit conditions. At minimum, Cal-Maine overapplied nitrogen in each Land Application Area in the following amounts:

<u>Year</u>	<u>Field</u>	<u>Minimum number of lbs of Nitrogen Overapplied</u>
2010	P-3	20,440 lbs
2010	P-4	37,950 lbs
2010	P-5	55,800 lbs
2010	P-6	16,380 lbs
2011	P-3	16,840 lbs
TOTAL		147,410 lbs

- g. In sum, Cal-Maine violated its 2006 NPDES Permit at least 1,305 times between January 28, 2008 and August 12, 2011.

57. In addition, Cal-Maine’s unpermitted land application of manure, litter and/or process wastewater which did not result in “pollutants” reaching waters of the United States or the State of Mississippi are nonetheless in violation of Mississippi State law because State law prohibits not only actual discharges of “pollution” or “wastes” to waters of the State but also placement of wastes in a position “likely to cause pollution of waters of the state.” *See* Miss. Code Ann. § 49-17-29(2).

FIRST CLAIM FOR RELIEF
UNAUTHORIZED DISCHARGES OF POLLUTANTS

58. Paragraphs 1 through 57 above are realleged and incorporated herein.

59. At all relevant times, Cal-Maine had coverage under the 2006 NPDES Permit and later the General Permit.

60. On knowledge, information and belief, Cal-Maine discharged pollutants from the Facility into a “navigable water” from July 12, 2010 through September 14, 2010 within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7). These discharges were not authorized by the 2006 NPDES Permit, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

61. Each day of each unpermitted discharge by Cal-Maine which reached waters of the United States is a separate violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

62. On knowledge, information and belief, had Cal-Maine not implemented the injunctive relief outlined in the proposed Consent Decree, lodged concurrently herewith, Cal-Maine would have continued to discharge pollutants from the Facility into a “navigable water” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7). These discharges would not have been authorized by the General Permit, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

63. On knowledge, information and belief, if Defendant does not continue to implement the injunctive relief outlined in the proposed Consent Decree, Defendant will once again discharge pollutants from the Facility into a “navigable water” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7). These discharges would not be authorized by the General Permit, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

64. The discharge of pollutants without permit authorization violated CWA Section 301 and, pursuant to CWA Sections 309(b) and (d), 33 U.S.C. § 1319(b) and (d), Cal-Maine is subject to the imposition of injunctive relief and civil penalties not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009, and \$37,500 per day thereafter.

65. Cal-Maine is liable for civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended.

66. Each day of each unpermitted discharge by Cal-Maine which reach waters of the State is a separate violation of Miss. Code Ann. § 49-17-29(2).

67. Cal-Maine is liable for civil penalties under Miss. Code Ann. § 49-17-43(1).

SECOND CLAIM FOR RELIEF
FAILURE TO COMPLY WITH NPDES PERMIT CONDITION:
FAILURE TO CONDUCT QUARTERLY STORM WATER MONITORING

68. Paragraphs 1 through 67 above are realleged and incorporated herein.

69. On numerous occasions during the relevant time period, Cal-Maine failed to comply with Condition RPNT1 (MS0058467), No. S-1 on page 35 of the 2006 NPDES Permit by failing to conduct quarterly storm water monitoring, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

70. Each day of this permit violation is a separate violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

71. On knowledge, information and belief, had Cal-Maine not implemented the injunctive relief outlined in the proposed Consent Decree, lodged concurrently herewith, Cal-Maine would have been in violation of Condition ACT6 (CAFO GP), No. S-2 set forth on page

16 of the General Permit by failing to conduct the required storm water monitoring required by the General Permit, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

72. On knowledge, information and belief, if Defendant does not continue to implement the injunctive relief outlined in the proposed Consent Decree, Defendant will once again fail to conduct the required storm water monitoring required by Condition ACT6 (CAFO GP), No. S-2 set forth on page 16 of the General Permit, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

73. Cal-Maine's violation of Condition RPNT1 (MS0058467), No. S-1 set forth on page 35 of the 2006 NPDES Permit violated CWA Section 301 and, pursuant to CWA Sections 309(b) and (d), 33 U.S.C. §§ 1319(b) and (d), Cal-Maine is subject to the imposition of injunctive relief and civil penalties not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009, and \$37,500 per day thereafter.

74. Cal-Maine is liable for civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended.

75. Each day that Cal-Maine violated Condition RPNT1 (MS0058467), No. S-2 set forth on page 35 of the 2006 NPDES Permit is a separate violation of Miss. Code Ann. § 49-17-29(2).

76. Cal-Maine is liable for civil penalties under Miss. Code Ann. § 49-17-43(1).

THIRD CLAIM FOR RELIEF
FAILURE TO COMPLY WITH NPDES PERMIT CONDITION:
FAILURE TO TIMELY SUBMIT ANNUAL DISCHARGE MONITORING REPORTS

77. Paragraphs 1 through 76 above are realleged and incorporated herein.

78. On numerous occasions during the relevant time period, Cal-Maine failed to comply with Condition RPNT1 (MS0058467), No. S-1 on page 35 of the 2006 NPDES Permit

by failing to timely submit annual discharge monitoring reports, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

79. Each day of this permit violation is a separate violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

80. On knowledge, information and belief, had Cal-Maine not implemented the injunctive relief outlined in the proposed Consent Decree, lodged concurrently herewith, Cal-Maine would have been in violation of Condition ACT6 (CAFO GP), No. S-2 set forth on page 16 of the General Permit, which requires Cal-Maine to submit annual DMRs by January 28th of each year, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

81. On knowledge, information and belief, if Defendant does not continue to implement the injunctive relief outlined in the proposed Consent Decree, Defendant will once again fail to submit annual DMRs by January 28th of each year, as required by Condition ACT6 (CAFO GP), No. S-2 set forth on page 16 of the General Permit, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

82. Cal-Maine's violation of Condition RPNT1 (MS0058467), No. S-1 set forth on page 35 of the 2006 NPDES Permit violated CWA Section 301 and, pursuant to CWA Sections 309(b) and (d), 33 U.S.C. §§ 1319(b) and (d), Cal-Maine is subject to the imposition of injunctive relief and civil penalties not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009, and \$37,500 per day thereafter.

83. Cal-Maine is liable for civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended.

84. Each day that Cal-Maine violated Condition RPNT1 (MS0058467), No. S-1 set forth on page 35 of the 2006 NPDES Permit is a separate violation of Miss. Code Ann. § 49-17-29(2).

85. Cal-Maine is liable for civil penalties under Miss. Code Ann. § 49-17-43(1).

FOURTH CLAIM FOR RELIEF
FAILURE TO COMPLY WITH NPDES PERMIT CONDITION:
VIOLATION OF BUFFER SETBACK REQUIREMENTS FOR APPLICATION OF
MANURE, LITTER AND/OR WASTEWATER TO FIELDS

86. Paragraphs 1 through 85 above are realleged and incorporated herein.

87. On numerous occasions during the relevant time period, Cal-Maine failed to comply with Condition CAFO4, No. T-5 on page 32 of the 2006 NPDES Permit by failing to comply with the buffer setback requirements for application of manure, litter and/or wastewater to fields, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

88. Each day of this permit violation is a separate violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

89. On knowledge, information and belief, had Cal-Maine not implemented the injunctive relief outlined in the proposed Consent Decree, lodged concurrently herewith, Cal-Maine would have been in violation of Permit Condition ACT4 (CAFO GP), No. L-3 on page 10 of the General Permit, which requires Cal-Maine to comply with land application buffer setback requirements, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

90. On knowledge, information and belief, if Defendant does not continue to implement the injunctive relief outlined in the proposed Consent Decree, Defendant will once again fail to comply with land application buffer setback requirements, as required by Permit

Condition ACT4 (CAFO GP), No. L-3 on page 10 of the General Permit, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

91. Cal-Maine's violation of Condition CAFO4, No. T-5 set forth on page 32 of the 2006 NPDES Permit violated CWA Section 301 and, pursuant to CWA Sections 309(b) and (d), 33 U.S.C. §§ 1319(b) and (d), Cal-Maine is subject to the imposition of injunctive relief and civil penalties not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009, and \$37,500 per day thereafter.

92. Cal-Maine is liable for civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended.

93. Each day that Cal-Maine violated Condition CAFO4, No. T-5 set forth on page 32 of the 2006 NPDES Permit is a separate violation of Miss. Code Ann. § 49-17-29(2).

94. Cal-Maine is liable for civil penalties under Miss. Code Ann. § 49-17-43(1).

FIFTH CLAIM FOR RELIEF
FAILURE TO COMPLY WITH NPDES PERMIT CONDITION:
APPLICATION OF MANURE, LITTER AND/OR PROCESS WASTEWATER DURING
PROHIBITED PERIODS

95. Paragraphs 1 through 94 above are realleged and incorporated herein.

96. On numerous occasions during the relevant time period, Cal-Maine failed to comply with Condition CAFO3, No. T-5 on page 27 of the 2006 NPDES Permit by applying manure, litter and/or process wastewater to fields during prohibited winter months, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

97. Each day of this permit violation is a separate violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

98. Cal-Maine's violation of Condition CAFO3, No. T-5 set forth on page 27 of the 2006 NPDES Permit violated CWA Section 301 and, pursuant to CWA Sections 309(d), 33 U.S.C. §§ 1319(d), Cal-Maine is subject to the imposition of civil penalties not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009, and \$37,500 per day thereafter.

99. Cal-Maine is liable for civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended.

100. Each day that Cal-Maine violated Condition CAFO3, No. T-5 set forth on page 27 of the 2006 NPDES Permit is a separate violation of Miss. Code Ann. § 49-17-29(2).

101. Cal-Maine is liable for civil penalties under Miss. Code Ann. § 49-17-43(1).

SIXTH CLAIM FOR RELIEF
FAILURE TO COMPLY WITH NPDES PERMIT CONDITION:
FAILURE TO MAINTAIN LAND APPLICATION RECORDS

102. Paragraphs 1 through 101 above are realleged and incorporated herein.

103. On numerous occasions during the relevant time period, Cal-Maine failed to comply with Condition CAFO4 (Land Application Area), No. R-1 on page 30 of the 2006 NPDES Permit by failing to maintain required land application records, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

104. Each day of this permit violation is a separate violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

105. On knowledge, information and belief, had Cal-Maine not implemented the injunctive relief outlined in the proposed Consent Decree, lodged concurrently herewith, Cal-Maine would have been in violation of Permit Condition ACT5 (CAFO GP), No. R-2 on page 12

of the General Permit, which requires Cal-Maine to maintain certain required land application records, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

106. On knowledge, information and belief, if Defendant does not continue to implement the injunctive relief outlined in the proposed Consent Decree, Defendant will once again fail to maintain certain required land application records, as required by Permit Condition ACT5 (CAFO GP), No. R-2 on page 12 of the General Permit, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

107. Cal-Maine's violation of Condition CAFO4 (Land Application Area), No. R-1 set forth on page 30 of the 2006 NPDES Permit violated CWA Section 301 and, pursuant to CWA Sections 309(b) and (d), 33 U.S.C. §§ 1319(b) and (d), Cal-Maine is subject to the imposition of injunctive relief and civil penalties not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009, and \$37,500 per day thereafter.

108. Cal-Maine is liable for civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended.

109. Each day that Cal-Maine violated Condition CAFO4 (Land Application Area), No. R-1 set forth on page 30 of the 2006 NPDES Permit is a separate violation of Miss. Code Ann. § 49-17-29(2).

110. Cal-Maine is liable for civil penalties under Miss. Code Ann. § 49-17-43(1).

SEVENTH CLAIM FOR RELIEF
FAILURE TO COMPLY WITH NPDES PERMIT CONDITION:
EXCEEDANCE OF THE APPLICATION RATE FOR NITROGEN APPLICATION

111. Paragraphs 1 through 110 above are realleged and incorporated herein.

112. On numerous occasions during the relevant time period, Cal-Maine failed to comply with Condition AI17252, No. T-65 on page 22 and Condition CAFO2, No. S-2 on page

25 of the 2006 NPDES Permit by applying manure, litter and/or process wastewater containing nitrogen to fields in exceedance of the application rates contained in the NMP, an enforceable component of the Permit, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

113. Each day of these permit violation is a separate violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

114. On knowledge, information and belief, had Cal-Maine not implemented the injunctive relief outlined in the proposed Consent Decree, lodged concurrently herewith, Cal-Maine would have been in violation of Section ACT7 (CAFO GP) Nutrient Management Plan Content and BMPs, which includes Permit Condition Nos. T-1 through T-4 on pages 17-19 of the General Permit, which set forth limits for nitrogen and phosphorus application, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

115. On knowledge, information and belief, if Defendant does not continue to implement the injunctive relief outlined in the proposed Consent Decree, Defendant will once again fail to comply with Section ACT7 (CAFO GP) Nutrient Management Plan Content and BMPs, which includes Permit Condition Nos. T-1 through T-4 on pages 17-19 of the General Permit, which set forth limits for nitrogen and phosphorus application, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

116. Cal-Maine's violation of Condition AI17252, No. T-65 on page 22 and Condition CAFO3, No. S-2 on page 25 of the 2006 NPDES Permit violated CWA Section 301 and, pursuant to CWA Sections 309(b) and (d), 33 U.S.C. §§ 1319(b) and (d), Cal-Maine is subject to the imposition of injunctive relief and civil penalties not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009, and \$37,500 per day thereafter.

117. Cal-Maine is liable for civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended.

118. Each day that Cal-Maine violated Condition AI17252, No. T-65 on page 22 and Condition CAFO3, No. S-2 on page 25 of the 2006 NPDES Permit is a separate violation of Miss. Code Ann. § 49-17-29(2).

119. Cal-Maine is liable for civil penalties under Miss. Code Ann. § 49-17-43(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, United States of America and the State of Mississippi, request that this Court enter judgment on behalf of the United States and the State against Cal-Maine as follows:

1. Order Defendant, pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), to continue to implement a program which includes the injunctive relief specified in the proposed Consent Decree, lodged concurrently herewith, to achieve permanent and consistent compliance with all terms and conditions of the General Permit, the MAWPCL, the CWA, and the regulations promulgated thereunder;

2. Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), assess civil penalties against Cal-Maine of up to \$32,500 for each day of each violation that occurred before and through January 12, 2009, and \$37,500 per day for each day of violation that occurred after that date, for each violation of the applicable NPDES permits, the CWA, and the regulations promulgated thereunder;

3. Pursuant to Miss. Code Ann. § 49-17-43(1), assess civil penalties against Cal-Maine of up to \$25,000 for each day of each violation of the applicable NPDES permits, the MAWPCL, and the regulations promulgated thereunder;

4. Award the United States and the State of Mississippi their costs in this action;
5. Grant the United States and the State of Mississippi such other relief as this Court deems appropriate.

ATTORNEYS FOR UNITED STATES OF AMERICA:

Respectfully submitted,



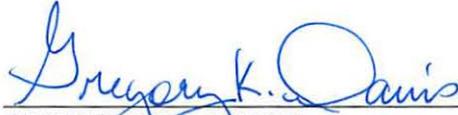
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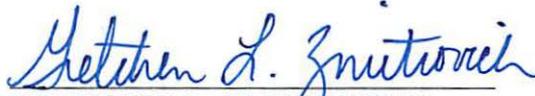
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ATTORNEY FOR THE STATE OF MISSISSIPPI:

Respectfully submitted,

A handwritten signature in blue ink that reads "Gretchen L. Zmitrovich". The signature is written in a cursive style and is positioned above a horizontal line.

GRETCHEN L. ZMITROVICH

MS Bar No. 101470

Senior Attorney

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3:15cv278 HTW-LRA

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America and State of Mississippi
Mississippi Commission on Environmental Quality

DEFENDANTS

Cal Maine Foods, Inc.

FILED
APR 13 2015
ARTHUR JOHNSTON DEPUTY CLERK OF COURT
DISTRICT OF MISSISSIPPI

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Hinds
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Rachael Amy Kamons, U.S. Dept. of Justice, ENRD/EES, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044-7611, (202) 514-5260

Attorneys (If Known)

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 33 U.S.C. §§ 1319(b) and (d); Miss. Code Ann. §§ 49-17-1 through 49-17-43
Brief description of cause: Civil action for penalties and injunctive relief for unpermitted discharges of pollutants & violations of NPDES permit

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

4/8/15 [Signature]

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE