



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

June 13, 2014

Jennifer Robinson  
Cooke Aquaculture USA Inc.  
[jennifer.robinson@cookeaqua.com](mailto:jennifer.robinson@cookeaqua.com)

***Sent via electronic mail  
Delivery confirmation requested***

**RE: *Approved Coverage Under General Permit – Net Pen Aquaculture  
MEG130000***

Dear Ms. Robinson:

Attached, please find Department orders approving coverage under Maine Pollutant Discharge Elimination System (MEPDES) General Permit MEG130000 – Net Pen Aquaculture, which was issued by the Department on April 10, 2014 for a five-year term, for the following facilities.

Sand Cove, Beals, #MEG130029  
Spectacle Island, Beals, #MEG130030  
Starboard Island, Machiasport, #MEG130001

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 these approvals please contact me.

Sincerely,

Bill Hinkel  
Division of Water Quality Management  
Bureau of Land and Water Quality  
[bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov)  
ph: 207.485.2281

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

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

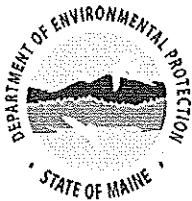
PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143

Letter to Cooke  
June 13, 2014  
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Enc.

cc: Clarissa Trasko, MDEP  
Matthew Young, MDEP  
Lori Mitchell, MDEP  
Cynthia Burke, MDMR  
Diantha Robinson, MDMR  
Sandy Mojica, USEPA



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

COOKE AQUACULTURE USA INC. ) GENERAL PERMIT #MEG130000  
BEALS, WASHINGTON COUNTY, MAINE )  
#W009116-6H-A-N ) NET PEN AQUACULTURE  
#MEG130029 )  
SAND COVE (EASTW SCN) )  
GENERAL PERMIT COVERAGE APPROVAL) NEW

In compliance with the applicable provisions of *Pollution Control*, 38 M.R.S.A. §§ 411 – 424-B, *Water Classification Program*, 38 M.R.S.A. §§ 464 – 470, *Federal Water Pollution Control Act*, Title 33 U.S.C. § 1251, applicable rules of the Maine Department of Environmental Protection (Department), and in consideration of supportive data, agency review comments and other related materials on file, the Department has considered the Notice of Intent submitted by COOKE AQUACULTURE USA INC. (Cooke) for coverage under *General Permit – Net Pen Aquaculture*, #MEG130000, issued by the Department on April 10, 2014, and FINDS THE FOLLOWING FACTS.

APPLICATION SUMMARY AND AUTHORIZED DISCHARGES

On May 5, 2014, the Department accepted, as complete for processing, a Notice of Intent (NOI) form from Cooke for coverage under *General Permit – Net Pen Aquaculture*, #MEG130000. Cooke proposes to discharge certain pollutants resulting from the operation and maintenance of its Sand Cove net pen aquaculture facility to the Atlantic Ocean at Eastern Bay, Class SB, in Beals, Maine.

Cooke proposes to operate a net pen aquaculture facility to produce Atlantic salmon (*Salmo salar*) within its lease (EASTW SCN) provided by the Maine Department of Marine Resources, which expires on July 22, 2017. Net pen aquaculture activities were previously authorized at this site in Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0110361, which was issued to Phoenix Salmon US, Inc. by the Department on June 30, 2009 for a five-year term.

Cooke is authorized to discharge certain pollutants resulting from the operation and maintenance of its Sand Cove net pen aquaculture facility in accordance with the terms and conditions of *General Permit – Net Pen Aquaculture*, #MEG130000, issued on April 10, 2014. This permitting action authorizes the following:

Operating Conditions

1. Maximum number of net pens: 6
2. Maximum biomass of fish for facility: 3,816,000 kg
3. Maximum density of fish per net pen: 30 kg per cubic meter
4. Maximum amount of feed per month: 462,825 lbs.

## APPLICATION SUMMARY AND AUTHORIZED DISCHARGES (cont'd)

### Chemical Use

1. Flex Guard™ – Maximum concentration of 0.13 oz. per square foot of net
2. Netminder® – Maximum dry film thickness of 125 µm
3. Shell iodine – Maximum of 8 oz. diluted into 5 gallons of water; 25 gallons of solution per week
4. Oxygen – No limit; use as needed for fish health

Drugs Use – Drugs specified in this NOI are subject to all terms and conditions set forth in MEG130000, April 10, 2014.

1. FDA-approved drugs used in accordance with label – See Special Condition N.2 of MEG130000, April 10, 2014.
  - a. Formalin (Parasite-S®) – In accordance with label, 250 parts per million as needed in bath treatment
  - b. Tricaine methanesulfonate (Finquel® or Tricane-S) – Maximum of 330 mg/L as needed in bath treatment
  - c. Florfenicol (Aquaflor®) – Maximum of 10 mg/kg fish/day as needed in feed
2. Extralabel drug use – See Special Condition N.3 of MEG130000, April 10, 2014.
  - a. Oxytetracycline dehydrate (Terramycin® 200 for Fish) – Maximum of 82.5 mg/kg fish body mass as needed in feed
  - b. Hydrogen peroxide 35%, (PEROX-AID®) – Maximum of 1,800 parts per million as needed by bath / immersion treatment
3. Investigational New Animal Drug (INAD) drug use – See Special Condition N.4 of MEG130000, April 10, 2014
  - a. Emamectin benzoate (Slice®) – Maximum of 0.05 mg/kg fish body mass as needed in feed
  - b. Hydrogen peroxide 50%, (Paramove®) – Maximum of 1,800 parts per million as needed by bath / immersion treatment
  - c. Azamethiphos (Salmosan®) – Maximum of 0.01 parts per million as needed in bath treatment
4. Drugs not identified on the NOI– See Special Condition N.2.b. of MEG130000, April 10, 2014.

## CONCLUSIONS

1. The discharge of pollutants resulting from the operation and maintenance of Cooke's Sand Cove net pen aquaculture facility in accordance with this Department decision and all terms and conditions of General Permit #MEG130000, 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 of pollutants resulting from the operation and maintenance of Cooke's Sand Cove net pen aquaculture facility in accordance with this Department decision and all terms and conditions of General Permit #MEG130000, either by itself or in combination with other

### CONCLUSIONS (cont'd)

- 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.
  4. The discharge of pollutants resulting from the operation and maintenance of Cooke's Sand Cove net pen aquaculture facility in accordance with this Department decision and all terms and conditions of General Permit #MEG130000 is subject to effluent limitations that require application of best practicable treatment as defined in *Conditions of licenses*, 38 M.R.S.A. § 414-A(1)(D).

### ACTION

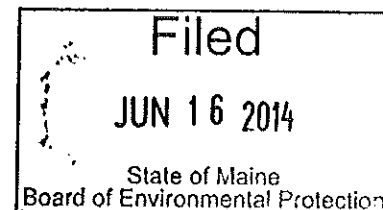
Based on the findings and conclusions as stated above, the Department APPROVES Cooke Aquaculture USA Inc. to discharge certain pollutants resulting from the operation and maintenance of its Sand Cove net pen aquaculture facility in accordance with *General Permit – Net Pen Aquaculture*, #MEG130000, April 10, 2014, subject to the terms and conditions therein and of this approval.

Authorization to discharge under this approval becomes effective upon the date of signature below and expires at midnight on April 10, 2019, concurrent with the expiration date of #MEG130000. Prior to expiration of General Permit #MEG130000, the Department must make a determination if it is to be renewed, and, if so, must commence renewal proceedings. If the General Permit is to be renewed, the General Permit and this approval under it shall remain in effect until the Department takes final action on the renewal. [Maine Administrative Procedure Act, 5 M.R.S.A. § 10002, *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (last amended August 25, 2013), and *General Permits for Certain Wastewater Discharges*, 06-096 CMR 529(3)(c) (last amended June 27, 2007)]

DONE AND DATED AT AUGUSTA, MAINE THIS 13<sup>th</sup> DAY OF June, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhns  
for PATRICIA W. AHO, Commissioner



Date filed with Board of Environmental Protection \_\_\_\_\_

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Notice of Intent was received by the Department on: May 2, 2014

Notice of Intent was accepted as complete for processing by the Department on: May 5, 2014

This Order prepared by Bill Hinkel, BUREAU OF LAND & WATER QUALITY



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

### SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

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

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

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### **LEGAL REFERENCES**

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

#### **HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD**

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

#### **WHAT YOUR APPEAL PAPERWORK MUST CONTAIN**

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

## II. JUDICIAL APPEALS

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

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

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

### ADDITIONAL INFORMATION

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

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**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.

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