



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

March 5, 2015

Ms. Jennifer Robinson
Cooke Aquaculture USA Inc.
P.O. Box 263, 40 Barron Road
Eastport, ME 04631
jennifer.robinson@cookeaqua.com

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

Dear Ms. Robinson:

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

Please read the General Permit and this approval Order and their 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 contact.

Sincerely,

Bill Hinkel
Division of Water Quality Management
Bureau of Land and Water Quality
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 J. Robinson
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Enc.

cc: Clarissa Trasko, MDEP
Matthew Young, MDEP
Lori Mitchell, MDEP
Cynthia Burke, MDMR
Diantha Robinson, MDMR
Sandy Mojica, USEPA
Olga Vergara, USEPA
Marelyn Vega, 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
PERRY, WASHINGTON COUNTY, MAINE)
#W009128-6H-A-N) NET PEN AQUACULTURE
#MEG130031)
BIRCH POINT (COB BP))
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 February 17, 2015, 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 Birch Point net pen aquaculture facility to the Atlantic Ocean at Cobscook Bay, Class SB, in Perry, Maine.

Cooke proposes to operate a net pen aquaculture facility to produce Atlantic salmon (*Salmo salar*) within its lease (COB BP) provided by the Maine Department of Marine Resources, which expires on March 23, 2015 (renewal pending). Net pen aquaculture activities were previously authorized at this site in Maine Pollutant Discharge Elimination System (MEPDES) permit #MEG130019, which was issued to Phoenix Salmon US, Inc. by the Department on April 28, 2009 for a five-year term.

Cooke is authorized to discharge certain pollutants resulting from the operation and maintenance of its Birch Point 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: 15
2. Maximum biomass of fish for facility: 3,052,800 kg
3. Maximum density of fish per net pen: 30 kg per cubic meter
4. Maximum amount of feed per month: 1,481,040 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. Tricaine methanesulfonate (Finquel® or Tricane-S) – Maximum of 330 mg/L as needed in bath treatment
 - b. 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. Formalin (Parasite-S®) – In accordance with label, 250 parts per million as needed in bath treatment
 - b. Oxytetracycline dihydrate (Terramycin® 200 for Fish) – Maximum of 82.5 mg/kg fish body mass as needed in feed
 - c. 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 Birch Point 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 Birch Point 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 Birch Point 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 Birch Point 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 3RD DAY OF March, 2015.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kubus
for PATRICIA W. AHO, Commissioner

Filed
MAR 03 2015
State of Maine Board of Environmental Protection

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: February 3, 2015

Notice of Intent was accepted as complete for processing by the Department on: February 17, 2015

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:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

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

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

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

ADDITIONAL INFORMATION

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

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
