



STATE OF MAINE
Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patricia W. Aho
COMMISSIONER

Mr. Gary Picard
Mountain Springs Trout Farm
6 Picard Street
P.O. Box 32
Frenchville, Maine 04745
e-mail: mtsprings@roadrunner.com

November 6, 2014

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0110451
Maine Waste Discharge License (WDL) #W008125-6F-G-M
Minor Revision

Dear Mr. Picard:

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

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled "*Appealing a Commissioner's Licensing Decision.*"

If you have any questions regarding the matter, please feel free to call me at 287-7693.

Sincerely,

Gregg Wood
Division of Water Quality Management
Bureau of Land and Water Quality

Enc.

cc: William Sheehan, DEP/NMRO
Sandy Mojica, USEPA

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-3901 FAX: (207) 287-3435
RAY BLDG., HOSPITAL ST.

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

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

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1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-6477 FAX: (207) 764-1507



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

DEPARTMENT ORDER

IN THE MATTER OF

MOUNTAIN SPRINGS TROUT FARM	)	MAINE POLLUTANT DISCHARGE
FRENCHVILLE, AROOSTOOK CTY, MAINE	)	ELIMINATION SYSTEM PERMIT
FISH HATCHERY	)	AND
ME0110451	)	WASTE DISCHARGE LICENSE
W008125-6F-G-M	)	MINOR REVISION
APPROVAL		

Pursuant to the provisions of Maine Law 38 M.R.S.A., Section 414-A et seq., and applicable regulations, the Department of Environmental Protection (hereinafter Department) has considered a request by the MOUNTAIN SPRINGS TROUT FARM (hereinafter permittee) to modify MEPDES Permit ME0110451/WDL#W008125-6F-E-R which was issued by the Department on May 17, 2010, with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

MODIFICATION REQUESTED

The permittee is requesting removal of the monitoring and reporting requirements for biochemical oxygen demand (BOD) in combination MEPDES Permit ME0110451/WDL#W008125-6F-E-R, issued by the Department on May 17, 2010, to be consistent with the monitoring reporting requirements in other like MEPDES permits for fish rearing facilities.

MODIFICATION REQUEST GRANTED

The Department's Division of Environmental Assessment (DEA) has reviewed hatchery information in consideration of using TSS as a surrogate for BOD₅. It should be noted that TSS is more closely related to problems most commonly encountered at aquatic animal facilities such as phosphorous enrichment and solids control. After reviewing approximately 6 years of TSS and BOD₅ data, the Department concluded that the results of the two parameters showed a strong correlation. Therefore, the Department concluded that TSS could be relied upon to reflect BOD₅ conditions. Consequently, this permitting action is carrying forward the mass and concentration limits for TSS. This permit is carrying forward with the previously established monitoring frequency of 1/Month for TSS.

MODIFICATION REQUEST GRANTED

BOD can cause depressed DO in the receiving waters and increased carbon levels may create a favorable environment for nuisance bacterial/fungal growth such as *Sphaerotilus natans* that may result in non-attainment of narrative water quality standards. The Department has not observed nuisance bacterial/fungal growth below discharges from the Mt. Springs Trout Farm hatchery in quantities that would constitute a violation of narrative water quality standards, and the historical data indicate DO levels that attain Class B standards. Therefore, the Department concludes that the St. John River does not exhibit BOD-related impacts.

Given that 1) hatchery operations and processes are not likely to change; 2) that the Department has a statistically significant BOD₅ data set from this and multiple similar hatcheries; 3) that neither the USEPA nor Department have promulgated numeric effluent guidelines for BOD₅ for Concentrated Aquatic Animal Production (CAAPs) facilities (including fish hatcheries); and 4) that in the best professional judgment of the Department's Division of Environmental Assessment effluent limitations for BOD₅ are not necessary to ensure compliance with water quality standards, this minor revision is eliminating the effluent limitations and monitoring requirements for BOD₅ based on this new information that was not available at the time the previous permit was issued.

Section 402(o) of the Clean Water Act contains prohibitions for anti-backsliding. Generally, anti-backsliding prohibits the issuance of a renewed permit with less stringent limitations than were established in the previous permit. The Clean Water Act contains certain exceptions to anti-backsliding at Section 402(o)(2). In the case of Mt. Springs Trout Farm facility and the concentration and mass limitations for BOD₅, the Department has determined that these limitations would not have been established at the time the previous permit was issued based on the new information that has been obtained since issuance of the 2006 permit. Section 402(o)(2)(B)(i) of the Clean Water Act contains an exception to anti-backsliding for information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance. Therefore, this permitting action is eliminating the limitations for BOD₅. [It is noted that anti-backsliding prohibitions and exceptions are mirrored in Chapter 523 of the Department's rules at 40 CFR 122.44(l)(2)(i)(B)(1).]

Based on the discussion above, the Department is granting the permittee's request to remove the monitoring and reporting requirements for BOD in combination MEPDES Permit ME0110451/WDL#W008125-6F-E-R in order to be consistent with similar permits.

CONCLUSIONS

BASED on the findings on pages 1 and 2 of this minor revision, and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharge, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, 38 MRSA Section 464(4)(F), will be met, in that:
 - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - (b) Where high quality waters of the State constitute an outstanding natural resource, that water quality will be maintained and protected;
 - (c) Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected;
and
 - (e) Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharge will be subject to effluent limitations that require application of best practicable treatment.

ACTION

THEREFORE, the Department APPROVES the request by MOUNTAIN SPRINGS TROUT FARM to eliminate the monitoring and reporting requirements for BOD in combination MEPDES Permit ME0110451/WDL #W008125-6F-E-R, which was issued by the Department on May 17, 2010, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. "Maine Pollutant Discharge Elimination System Permit Standard Conditions applicable To All Permits," revised July 1, 2002, attached to combination MEPDES Permit ME0110451/WDL W008125-6F-E-R, issued by the Department on May 17, 2010.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit #ME0110451/WDL #W008125-6F-E-R, issued by the Department on May 17, 2010, not modified by this permitting action remain in effect and enforceable.
4. This minor revision becomes effective upon the date of signature below and expires on May 17, 2015, concurrent with ME0110451/WDL#000721-6F-E-R, issued by the Department on May 17, 2010. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of this permit and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [Maine Administrative Procedure Act, 5 M.R.S.A. § 10002 and Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR 2(21)(A) (effective April 1, 2003)]

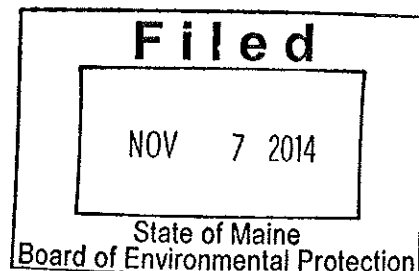
DONE AND DATED AT AUGUSTA, MAINE, THIS 6th DAY OF November, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kuhn
For Patricia W. Aho, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial request November 4, 2014
Date of acceptance November 4, 2014



Date filed with Board of Environmental Protection _____

This Order prepared by Gregg Wood, BUREAU OF LAND & WATER QUALITY
ME0110451 MR 2014 11/5/14

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge fish hatchery and rearing facility wastewater from Outfall #001A to the St. John River. Such discharges shall be limited and monitored by the permittee as specified below. The italicized numeric values bracketed in the table above and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports (DMRs). Footnotes are found on Pages 5 and 6.

Effluent Characteristic	Discharge Limitations			Minimum Monitoring Requirements		
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type
Flow [50050]	as specified 0.65 MGD [03]	as specified 2.0 MGD [03]	as specified ---	as specified ---	as specified Daily [01/01]	as specified Measured [MS]
TSS [00530]	33 lbs/day [26]	54 lbs/day [26]	6 mg/L [19]	10 mg/L [19]	1 / Month [01/30]	Composite ¹ [CP]
Fish on Hand [45604]	report lbs/day [26]	report lbs/day [26]	---	---	2 / month [02/30]	Calculated [CA]
Formalin ² 1-Hour Treatment Maximum [51064]	report lbs/day [26]	7.6 lbs/day [26]	report mg/L [19]	1,667 mg/L [19]	Once per occurrence [01/OC]	Calculated [CA]
Formalin ² 24-Hour Treatment Maximum [51064]	report lbs/day [26]	7.6 lbs/day [26]	report mg/L [19]	1,570 mg/L [19]	Once per occurrence [01/OC]	Calculated [CA]
pH [00400]	---	---	---	6.0-8.5 S.U. [12]	---	Grab [GR]



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.
