



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

JAMES P. BROOKS
ACTING COMMISSIONER

May 31, 2011

Ms. Jennifer Robinson
Compliance Officer
Phoenix Salmon US, Inc.
jennifer.robinson@cookeaqua.com

*Sent via electronic mail
Delivery confirmation requested*

**RE: Atlantic Salmon Aquaculture General Permit #MEG130000
APPROVAL – Notice of Intent for Scrag Island #MEG130024 / W009066-6H-A-N**

Dear Ms. Robinson:

Enclosed, please find a Department Order granting coverage for Phoenix Salmon US Inc.'s ~~Black Island South~~ facility under the Atlantic Salmon Aquaculture General Permit #MEG130000, which was issued on September 22, 2008, and subsequent modification which was issued on March 2, 2011.

Copies of the final (9/22/08) Maine Pollutant Discharge Elimination System (MEPDES) permit #MEG130000 and final (3/2/11) MEPDES permit modification were previously mailed to you. The final permit and permit modification are also available to view and download at:http://www.maine.gov/dep/blwq/docstand/wd/atlantic_salmon_aquaculture/index.htm. Please read the permit and modification and all attached conditions carefully. You must follow the conditions in the order to satisfy the requirements of law.

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."

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

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 04679-2094
(207) 764-0477 FAX: (207) 760-3143

SCRAG
ISLAND
6.1.11
(BR)

Please feel free to call me at 207-485-2281 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Hinkel". The signature is written in a cursive, slightly slanted style.

Bill Hinkel
Division of Water Quality Management
Bureau of Land and Water Quality
bill.hinkel@maine.gov

Enc.

ec: Matt Young and Lori Mitchell, MeDEP
Diantha Robinson and Sylvia Brann, MeDMR
Sandy Mojica, USEPA
File #W9066



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

DEPARTMENT ORDER

IN THE MATTER OF

| | | |
|--|---|-----------------------------|
| PHOENIX SALMON US, INC. |) | ATLANTIC SALMON AQUACULTURE |
| SWANS ISLAND, HANCOCK COUNTY, MAINE |) | GRANTING OF COVERAGE |
| #W009065-6H-A-N #W009066-6H-A-N |) | MEG130000 |
| #MEG130023 #MEG130024 |) | GENERAL PERMIT |
| SCRAG ISLAND (SWAN HS) |) | |
| APPROVAL |) | NEW |

(B#)
6.1.11

The Department of Environmental Protection (Department) has considered the Notice of Intent submitted by PHOENIX SALMON US, INC., with supportive data, agency review comments and other related materials on file for coverage under the Atlantic Salmon Aquaculture General Permit, #MEG130000, issued by the Department on September 22, 2008, and subsequent modification issued on March 2, 2011, and FINDS THE FOLLOWING FACTS.

The applicant proposes to operate an Atlantic salmon aquaculture facility consisting of a maximum of sixteen (16) 100-meter circular net pens in the waters of Harbor Island Gut, Class SB, in Swans Island, Maine. This site was previously operated as an Atlantic salmon aquaculture facility by Island Aquaculture, Inc. under Waste Discharge License #W008167-5Y-A-N. The applicant has certified that it intends to comply with the terms and conditions of the September 22, 2008 Atlantic Salmon Aquaculture General Permit and March 2, 2011 permit modification. The permittee is authorized to discharge only: 1) in accordance with the permittee's Notice of Intent, accepted for processing on May 2, 2011; and 2) in accordance with the terms and conditions of Atlantic Salmon Aquaculture General Permit, #MEG130000 issued on September 22, 2008 Atlantic Salmon Aquaculture General Permit and March 2, 2011 permit modification.

Operated in accordance with the Atlantic Salmon Aquaculture General Permit, #MEG130000, the discharges identified by the applicant will not have a significant adverse effect on water quality or cause or contribute to the violation of the water quality standards of the receiving water.

THEREFORE, the Department GRANTS coverage for PHOENIX SALMON US, INC. under the Atlantic Salmon Aquaculture General Permit, #MEG130000, subject to the terms and conditions therein.

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

This permit is digitally signed by
Teco Brown on behalf of Acting
Commissioner James P.
Brooks. It is digitally signed
pursuant to 10 M.R.S.A. § 9418.
It has been filed with the Board
of Environmental Protection as
of the signature date.
2011.05.31 10:52:59 -04'00'

Public notice of the Notice of Intent was published on or about: April 26, 2011
A Notice of Intent was received by the Department on: April 25, 2011
A Notice of Intent was accepted for processing by the Department on: May 2, 2011
This Order prepared by Bill Hinkel, BUREAU OF LAND & WATER QUALITY



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

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

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

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

HOW TO SUBMIT AN APPEAL TO THE BOARD

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

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

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

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

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

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

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

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

ADDITIONAL INFORMATION

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

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