



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF
ENVIRONMENTAL PROTECTION



PAUL MERCER
COMMISSIONER

November 17, 2017

Mr. Gary Picard
Mountain Springs Trout Farm
P.O. Box 32
Frenchville, ME 04040
didon@myfairpoint.net

RE: *Maine Pollutant Discharge Elimination System (MEPDES) Permit # ME0110451*
Maine Waste Discharge License (WDL) Application # W-008125-6F-I-M
Finalized Minor Revision

Dear Gary Picard:

Enclosed please find a copy of your **final minor revision** for Maine permit/WDL *ME0110451/W-008125-6F-H-R* issued on September 21, 2015. Please read this permit/license minor revision and its attached conditions carefully. Compliance with this permit/license will protect water quality.

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, or your Department compliance inspector copied below is also a resource that can assist you with compliance. Please do not hesitate to contact them with any questions.

Thank you for your efforts to protect and improve the waters of the great state of Maine!

Sincerely,

Aaron Dumont
Division of Water Quality Management
Bureau of Water Quality

Enc.

cc: Bill Sheehan, DEP/NMRO, Lori Mitchell, DEP/CMRO, David Webster, USEPA,
Ogla Vergara, USEPA, Marelyn Vega, USEPA, Sandy Mojica, USEPA Richard Carvalho,
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1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
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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
W-008125-6F-I-M) **APPROVAL**) **MINOR REVISION**

Pursuant to the provisions of the *Federal Water Pollution Control Act*, Title 33 USC, §1251, *Conditions of licenses*, 38 M.R.S. § 414-A, and applicable regulations, the Department of Environmental Protection (Department) has considered a request by MOUNTAIN SPRINGS TROUT FARM (permittee) to modify combination Maine Pollutant Discharge Elimination System (MEPDES) permit # ME0110451/Maine Waste Discharge License (WDL) W-008125-6F-H-R issued by the Department on September 21, 2015, for a five-year term. With its supportive data, agency review comments, and other related materials on file and other related materials on file, the Department FINDS THE FOLLOWING FACTS:

REVISION REQUESTED

The permittee has requested that the September 21, 2015 permit be revised to include an exemption from submitting Discharge Monitoring Reports (DMRs) when the facility is not in operation and there are no fish on station.

REVISION GRANTED/DENIED

The Department acknowledges that previous permitting action does not contain a mechanism to exempt the permittee from reporting when the facility is not in operation and no fish are located on station. Therefore, the permittee's request is acceptable to the Department. Table A.1. *Effluent Limitations and Monitoring Requirements* for Outfall #001A along with the corresponding footnotes are being revised as attached in this Minor Revision.

CONCLUSIONS

BASED on the findings on page 1 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 M.R.S. §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 national 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 water 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 as defined in 38 M.R.S. § 414-A(1)(D).

ACTION

THEREFORE, the Department APPROVES the previously noted request by MOUNTAIN SPRINGS TROUT FARM to revise combination MEPDES permit # ME0110451/WDL W-008125-6F-H-R last issued by the Department on September 21, 2015, for a five-year term to amend language on Table A.1. and Effluent Limitations and Monitoring Requirements and corresponding footnotes to exempt DMR reporting when the facility is not in operation and there are no fish on station, 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, copy attached to MEPDES permit ME0110451/WDL W-008125-6F-H-R last issued by the Department on September 21, 2015, for a five-year term.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit ME0110451/WDL W-008125-6F-H-R last issued by the Department on September 21, 2015, for a five-year term, not modified by this minor revision remain in effect and enforceable.
4. This minor revision and the authorization to discharge become effective upon the date of signature below and expire at midnight on September 21, 2020. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this minor revision, the authorization to discharge and the terms and conditions of this minor revision and all 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. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (effective October 19, 2015)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DONE AND DATED AT AUGUSTA, MAINE, THIS 15th DAY OF November 2017.

BY: Michael Keenan
Paul Mercer, Commissioner

Date filed with Board of Environmental Protection _____

Date of initial receipt of application: _____

Date of application acceptance: _____

October 31, 2017

October 31, 2017

Filed
NOV 15 2017
State of Maine Board of Environmental Protection

This Order prepared by Aaron Dumont, BUREAU OF WATER QUALITY

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⁽¹⁾⁽⁴⁾.

Effluent Characteristic	Discharge Limitations		Minimum Monitoring Requirements			
	<u>Monthly Average</u>	<u>Daily Maximum</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Flow <i>[50050]</i>	0.65 MGD <i>[07]</i>	---	---	---	Daily <i>[01/01]</i>	Measure <i>[MS]</i>
TSS <i>[00530]</i>	33 lbs./day <i>[26]</i>	54 lbs./day <i>[26]</i>	6 mg/L <i>[19]</i>	10 mg/L <i>[19]</i>	1/Month <i>[01/30]</i>	Composite ² <i>[CP]</i>
Fish on Hand <i>[45604]</i>	---	Report lbs./day <i>[26]</i>	---	---	2/Month <i>[02/30]</i>	Calculated <i>[CA]</i>
Formalin⁽³⁾ <i>[51064]</i>	Report lbs./day <i>[26]</i>	7.6 lbs./day <i>[26]</i>	Report mg/L <i>[19]</i>	---	Once per occurrence <i>[1/OC]</i>	Calculated <i>[CA]</i>

The italicized numeric values bracketed in the table and in subsequent text are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports.

FOOTNOTES: See Pages 5-6 of this permit for applicable footnotes.

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

Footnotes

1. **Sampling** – All effluent monitoring must be conducted at a location following the last treatment unit in the treatment process, as to be representative of end-of-pipe effluent characteristics. Any change in sampling location must be approved by the Department in writing. The permittee must conduct sampling and analysis in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Health and Human Services for wastewater. Samples that are sent to a publicly owned treatment works (POTW) licensed pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413 are subject to the provisions and restrictions of *Maine Comprehensive and Limited Environmental Laboratory Certification Rules*, 10-144 CMR 263 (effective date April 1, 2010). If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR).
2. **Composite Samples** – Samples must consist of 24-hour composites collected with an automatic composite sampler. Alternatively, when weather conditions and/or equipment prevents automatic compositing and upon Department approval, the permittee may manually composite a minimum of four grab samples collected at two-hour intervals during the working day at the facility. The permittee must indicate the type of sample collected on the DMR.
3. **Formalin** – Formalin monitoring must be conducted when in use at the facility and must consist of a calculated effluent mass value. Therefore, the following calculation must be applied to assess the total mass of formalin discharged per occurrence (lbs./day):
Formalin applied (gallons) x 9.03¹ (lbs./gallon) = Total formalin in effluent (lbs./day)

The permittee must provide this information and calculations to the Department in a document accompanying the monthly DMR. The formalin limit corresponds to two types of treatments:

1. One hour per day treatment typical of hatchery and rearing facility discharges; and
2. Maximum of up to 24 hours of treatment and discharge for addressing emergency conditions at the facility.

¹ Per Material Safety Data Sheet, Parasite-S has a specific gravity of 1.0775-1.0865 giving it an average density of 9.03 lbs./gallon.

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont'd)

Formalin discharges lasting longer than 1-hour in duration must be conducted no more frequently than once every four days. The permittee must provide a list of dates on which treatments greater than 1-hour were performed, and the length of time of each such treatment, with each monthly DMR.

For instances when a permittee has not used formalin for an entire reporting period, the permittee must report "NODI-9" for this parameter on the monthly DMR or "N9" if the submittal is an electronic DMR.

4. **Commencement of Operations** – The permittee is not required to conduct monthly DMR reporting when the facility is not operating and there are no fish on station. Should the permittee or a new owner propose to resume the operation of the facility, the permittee or new owner/operator must meet with the Department's permitting and compliance inspection staff **a minimum of forty-five (45) days prior to commencing production/operations** at the facility to review the applicability of the permit limitations, monitoring requirements, and reporting requirements.



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.
