



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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January 30, 2018

Mr. Kevin Bright, Aquaculture Permit Coordinator
Cooke Aquaculture Pacific, LLC
PO Box 669
Anacortes, WA 98221

Notice of Penalty Docket #	15669
Site Location	Deepwater Bay, Bellingham Channel
Penalty Amount	\$332,000.00
Due Date	Within 30 days after receiving this Notice of Penalty.

Re: Notice of Penalty

Dear Mr. Bright:

The Department of Ecology (Ecology) has issued the enclosed Notice of Penalty to Cooke Aquaculture Pacific, LLC for violating provisions of:

- Chapter 90.48.080 Revised Code of Washington (RCW) - Discharge of polluting matter in waters prohibited.
- Chapter 173-220 Washington Administrative Code (WAC) - National Pollutant Discharge Elimination System permit program.
- National Pollutant Discharge Elimination System Permit WA0031577.

Please read the enclosed Notice of Penalty describing the violation(s) and options for responding to the penalty.



Notice of Penalty Docket # 15669

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If you have questions please contact Kessina Lee at kessina.lee@ecy.wa.gov or (360) 407-7666 or contact Marc Pacifico at marc.pacifico@ecy.wa.gov or (360) 407-6282.

Sincerely,

A handwritten signature in black ink that reads "Heather R. Bartlett". The signature is fluid and cursive, with the first name "Heather" and last name "Bartlett" clearly legible.

Heather R. Bartlett,
Water Quality Program Manager

Enclosure: Notice of Penalty Docket #15669

cc: Rich Doenges, Ecology
Kessina Lee, Ecology
Mike Lynch, Ecology
Marc Pacifico, Ecology
Fiscal-Penalty Desk, Ecology

By certified mail: 91 7199 9991 7037 7474 5312

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF PENALTY)	NOTICE OF PENALTY
ASSESSMENT AGAINST)	INCURRED AND DUE
Cooke Aquaculture Pacific, LLC)	PENALTY DOCKET #15669
Kevin Bright)	

To: Kevin Bright, Aquaculture Permit Coordinator
Cooke Aquaculture Pacific, LLC
P.O. Box 669
Anacortes, WA 98221

Notice of Penalty Docket #	15669
Site Location	Deepwater Bay, Bellingham Channel
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Due Date	Within 30 days after receiving this Notice of Penalty.

The Department of Ecology (Ecology) has assessed a penalty against Cooke Aquaculture Pacific, LLC in the amount of \$332,000.00 for violating provisions of:

- Chapter 90.48.080 Revised Code of Washington (RCW) - Discharge of polluting matter in waters prohibited.
- Chapter 173-220 Washington Administrative Code (WAC) - National Pollutant Discharge Elimination System permit program.
- National Pollutant Discharge Elimination System Permit WA0031577.

Ecology has authority to issue this penalty under RCW 90.48.144 and is basing the penalties on the violations listed in this notice.

DETERMINATION OF VIOLATION(S)

Ecology's determination that violations have occurred is based on the violations listed below:

Cooke Aquaculture LLC operates several Atlantic salmon farms in Washington State waters. One of those farms, Cooke Aquaculture LLC, Deepwater Bay, Site 2 is covered by National Pollutant Discharge Elimination System (NPDES) permit WA0031577. Discharges from Cooke Aquaculture LLC, Deepwater Bay, Site 2 are subject to the limits, terms, and conditions of the NPDES Permit. On August 19, 2017, Cooke Aquaculture LLC experienced a failure of its Deepwater Bay, Site 2, Atlantic salmon farm's net pen structure and pens. This allowed the release of a minimum of 242,959 Atlantic salmon, as well as an undetermined amount of fish feed, to Puget Sound, Washington State waters.

Three state agencies have regulatory and proprietary responsibilities over net pen operations: Department of Ecology (water quality), Department of Fish & Wildlife (fish health), and Department of Natural Resources (land leasing). These agencies formed an Incident Investigation Review Panel which investigated the failure. The Panel's findings are documented in the 2017 Cypress Island Atlantic Salmon Net Pen Failure: An investigation and review document.

The 2017 Cypress Island Atlantic Salmon Net Pen Failure: An investigation and review document determined: "***The probable cause of both the July incident and the August failure was the failure of Cooke to adequately clean the nets containing the fish.***"

- Insufficient cleaning, termed "net hygiene," led to excessive biofouling by mussels and other marine organisms.
- Breakdowns in the net cleaning machines contributed to this condition.
- The excessive biofouling significantly increased the drag (force) on the net pen array from tidal currents.
- The increased drag exceeded the holding power of the mooring system in both the July incident and August failure.
- On July 24-25, the mooring system experienced both anchor dragging and breaking of attachment points between the moorings and the net pen.
- On August 19, some combination of anchor dragging, failure of mooring attachment points, and failure of structural members of the net pen framing resulted in the collapse of the net pen.
- Failure to address the biofouling effectively after the July incident directly contributed to the August failure.

Based on these findings the Department of Ecology determined that Cooke Aquaculture LLC's August 2017 net pen failure violated the following conditions of NPDES permit WA0031577:

- Permit condition S1. States: "The intentional or negligent release of Atlantic salmon to the receiving waters beyond the confines of the net pens is prohibited." The release of Atlantic salmon was the result of Cooke's negligent maintenance of its net pen facility.
- Permit condition S6.B. Requires Cooke Aquaculture to prepare and submit a Pollution Prevention Plan that in part must address: "How net cleaning will be conducted in order to minimize the discharge of accumulated solids and attached marine growth." Cooke Aquaculture did not follow their Pollution Prevention Plan (updated April 2017) which states that "Nets will be frequently rinsed..." This was not taking place when the net washers were down.
- Permit condition S6.F. requires: "The Permittee shall routinely, at least weekly, conduct visual inspections of exposed surface lines, shackles, and mooring points. Any defective

components are to be repaired or replaced promptly. At least once per year, conduct an inspection of the main cage structure and anchoring components above and below the water line. Document any problems and maintain all components to prevent failure that could lead to fish escapements.

The Permittee shall conduct inspections after any major storm event or physical accident involving the pen structures or moorings, and make any repairs necessary". This was not taking place for anchors located in water greater than 100 feet deep.

- Permit condition G8. Requires Reduced Production for Compliance. "The Permittee, in order to maintain compliance with its permit, shall control production and/or all discharges upon reduction, loss, failure, or bypass of the treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails." Cooke Aquaculture did not reduce production from its Deepwater Bay Site 2 farm after the mooring failure in July. Instead the decision was made to continue feeding the fish until the planned harvest date later in the year.

Cooke Aquaculture LLC also violated Chapter 173-201A-260(20(b) of the Washington Administrative Code (WAC) which states "Aesthetic values must not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste..." The presence of spilled fish feed and Atlantic salmon in Waters of the State is a violation of aesthetic values.

ELIGIBILITY FOR PAPERWORK VIOLATION WAIVER AND OPPORTUNITY TO CORRECT

Under RCW 34.05.110, small businesses are eligible for a waiver of a first-time paperwork violation and an opportunity to correct other violations. We have made no determination as to whether you meet the definition of a "small business" under this section. However, we have determined that the requirements of RCW 34.05.110 do not apply to the violation(s) due to a conflict with federal law or program requirements, including federal requirements that are a prescribed condition to the allocation of federal funds to the state.

FAILURE TO COMPLY WITH THIS NOTICE OF PENALTY

Continued failure to correct the violations listed in this Notice of Penalty may result in additional, escalated penalties.

OPTIONS FOR RESPONDING TO A NOTICE OF PENALTY

Option 1: Pay the penalty within 30 days after receiving the Notice of Penalty.

Make your payment payable to the *Department of Ecology*. Please include the penalty docket number on your payment.

Mail payment to:

Department of Ecology
Cashiering Unit
PO Box 47611
Olympia, WA 98504-7611

Note: Ecology may take legal action to collect the penalty if you have not paid 30 days after receiving the Notice of Penalty, and have not appealed.

Option 2: Appeal to the PCHB and serve Ecology within 30 days after the date of receipt of the Notice of Penalty.

The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days after the date of receipt of this Notice of Penalty:

- File your appeal and a copy of this Notice of Penalty with the Pollution Control Hearings Board (PCHB) during regular business hours.
- Serve a copy of your appeal and this Notice of Penalty on Ecology in paper form, by mail or in person. E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Notice of Penalty to:

Kessina Lee
Department of Ecology
Southwest Regional Office
Water Quality Program
P.O. Box 47775
Olympia, WA 98504-7775

Phone: 360-407-7666
Email: kessina.lee@ecy.wa.gov

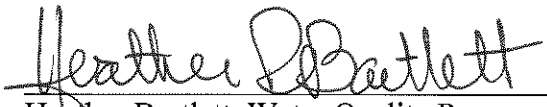
Marc Pacifico
Department of Ecology
Southwest Regional Office
Water Quality Program
P.O. Box 47775
Olympia, WA 98504-7775

Phone: 360-407-6282
Email: marc.pacifico@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board:**
www.eho.wa.gov/Boards_PCHB.aspx
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice and Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>

SIGNATURE



Heather Bartlett, Water Quality Program Manager
Department of Ecology



Date