

POLLUTION CONTROL HEARINGS BOARD

STATE OF WASHINGTON

COOKE AQUACULTURE PACIFIC,
LLC,

Appellant,

v.

WASHINGTON STATE DEPARTMENT
OF ECOLOGY,

Respondent.

PCHB No. 18-018

CONSENT DECREE

On January 29, 2018, the Washington State Department of Ecology ("Ecology") issued Penalty No. 15669 (the "Penalty") to Appellant Cooke Aquaculture Pacific, LLC ("Cooke") in the amount of \$332,000. The Penalty was related to the collapse of Cooke's Deepwater Bay Site 2 Facility, and alleged violations of Cooke's NPDES Permit No. WA0031577, Ecology's National Pollutant Discharge Elimination System permit program (Chapter 173-220 WAC), and Chapter 90.48.080 Revised Code of Washington (RCW). Cooke appealed the Penalty to the Board on March 1, 2018. Ecology and Cooke have agreed to resolve the appeal of the Penalty through the Consent Decree below.

Cooke and Ecology (the "Parties") recognize, and the Board by entering the Consent Decree finds, that the Consent Decree has been negotiated by the parties in good faith and will

1 avoid continued litigation between the parties, and that the Consent Decree is fair, reasonable,
2 and in the public interest.

3 NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED as follows:

4 **I. JURISDICTION**

5 The Board has jurisdiction over the subject matter of this action pursuant to
6 RCW 43.21B.110.

7 **II. SCOPE**

8 The Consent Decree constitutes the entire agreement between the Parties, and it settles all
9 issues raised by this appeal.

10 **III. APPLICABILITY**

11 The obligations of the Consent Decree apply to and are binding upon both Parties, and
12 their successors, assigns, or other entities or persons otherwise bound by law.

13 **IV. CIVIL PENALTY**

14 Cooke agrees to make a penalty payment to Ecology of \$332,000, which will be divided
15 into two penalty payments.

16 a. Cash Payment of \$66,400. The first penalty payment of \$66,400, shall be by U.S.
17 Mail or Federal Express, postage prepaid to Ecology and be postmarked within 60 calendar days
18 of the date the Board enters this Consent Decree and thereby dismisses Cooke's appeal. Cooke
19 shall make the payment by check or money order directly payable to "Department of Ecology,"
20 make reference to Penalty No. 15669, and shall send the payment to:

21 Department of Ecology
22 Attn: Cashiering Unit
23 P.O. Box 47611
24 Olympia, WA 98504-7611

1 If Cooke's payment of \$66,400 is not sent within 60 calendar days of the Board's dismissal
2 of this appeal, the full penalty amount of \$332,000 will become immediately due and payable
3 without further right of administrative or judicial review, except as provided in Paragraph VII of
4 this Agreement.

5 b. Supplemental Environmental Project (SEP) payment of \$265,600. Cooke agrees
6 to contribute \$265,600 to fund a supplemental environmental project that will benefit water
7 quality by providing regional fisheries enhancement and/or habitat restoration in the north Puget
8 Sound region.

9 Cooke shall submit a project proposal to Ecology for review and approval within one year
10 of the date the Board dismisses this appeal. Cooke shall send a payment by U.S. Mail or Federal
11 Express in the amount of \$265,600 to the project proponent(s) of the approved project(s) within
12 30 calendar days of Ecology's approval and provide a copy of the check(s) to Ecology.

13 If Cooke identifies and Ecology approves a SEP prior to one year from the date the Board
14 dismisses this appeal, Cooke may pay the \$265,600 in installments to implement the SEP,
15 provided that Cooke send Ecology proof of such payments. The total amount due shall be due for
16 the SEP by one year from the date the Board dismisses this appeal.

17 If Cooke fails to complete the payment requirements of this provision within the timelines
18 specified, the balance of the \$332,000 penalty not already paid to Ecology will become
19 immediately due and payable to Ecology without further right of administrative or judicial review,
20 except as provided in Paragraph VII of this Agreement.

21 **V. WAIVER OF APPEAL RIGHTS**

22 Cooke understands that it has the right to contest the Penalty by presenting evidence at a
23 Board hearing, and voluntarily waives its right to a hearing upon signature of this Consent Decree
24 by representatives for Cooke and Ecology.

25 **VI. EFFECT OF SETTLEMENT**

26 The parties consent to the submission of this Consent Decree to the Board and request that,

1 based upon a full and final settlement having been reached, the Board dismiss this appeal with
2 prejudice. Both parties further agree to bear their own costs and attorneys' fees associated with
3 this appeal.

4 **VII. DISPUTE RESOLUTION AND REMEDIES**

5 In the event that Cooke violates the terms of this Consent Decree, Ecology may pursue all
6 remedies available by law. By entering into this Consent Decree, Cooke shall have waived its right
7 of administrative or judicial review on the underlying merits of the Penalty. However, Cooke does
8 not waive the right to contest whether violations of this Consent Decree have occurred. In any
9 action to enforce the terms of this agreement, the prevailing party shall be entitled to an award of
10 its reasonable costs and attorneys' fees incurred.

11 **VIII. VENUE**

12 Cooke agrees that the venue for any judicial action to enforce this Agreement and/or to
13 collect the Penalty, or any portion thereof, shall be in Thurston County Superior Court.

14 **IX. FINAL ORDER**

15 Upon approval and entry of the Consent Decree by the Board, the Consent Decree shall
16 constitute a final order of the Board as to the Parties.

17 **X. PRESS RELEASES AND OTHER DOCUMENTS**

18 Any press release or other public statement issued by Cooke regarding performance of any
19 term of this Consent Decree shall identify the same as resulting from a settlement with Ecology.
20 In addition, any sum paid to a third party, not a party to this Consent Decree, as a result of this
21 Consent Decree, shall be identified as resulting from a settlement with Ecology in any public
22 statement.

23 **XI. SIGNATORIES AUTHORIZED**

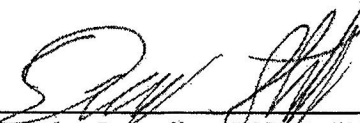
24 The undersigned representatives for Ecology and Cooke certify that they are fully
25 authorized by the party whom they represent to enter into the terms and conditions of this Consent
26 Decree and to legally bind such party thereto.

1 **XII. EXECUTION**

2 This document may be executed in counterparts and may be executed by facsimile and/or
3 electronically, and each executed counterpart shall have the same force and effect as the original
4 instrument.

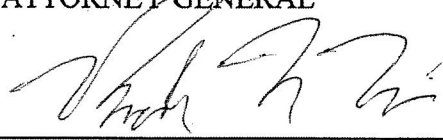
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6 DATED this 23rd day of April, 2019.

8 NORTHWEST RESOURCE LAW PLLC

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10 
11 Douglas J. Steding, WSBA #37020
12 dsteding@nwresource.com
13 206.971.1567
14 Diane M. Meyers, WSBA #40729
15 dmeyers@nwresource.com
16 206.971.1568
17 Madeline Engel, WSBA #43884
18 mengel@nwresource.com
19 206.971.1569

20 *Attorneys for Appellant Cooke Aquaculture*
21 *Pacific, LLC*

22 ROBERT W. FERGUSON
23 ATTORNEY GENERAL

24 
25 Ronald L. Lavigne, WSBA #18550
26 ronaldl@atg.wa.gov
 360-586-6751

Attorneys for Respondent State of Washington
 Department of Ecology

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DECLARATION OF SERVICE

I declare that I caused this original and a copy of CONSENT DECREE to be filed at the Environmental and Land Use Hearings Office, on April 24, 2019 at the following address:

Environmental and Land Use Hearings Office
Attn: Pollution Control Hearings Board
1111 Israel Rd. SW, Suite 301
Tumwater, WA 98501

Copies were also emailed to the following addresses:

eluho@eluho.wa.gov

Ronald L. Lavigne
RonaldL@ATG.WA.GOV
DonnaF@ATG.WA.GOV
Counsel for Respondent Washington State Department of Ecology

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge.

DATED this 24th day of April, 2019, in Seattle, Washington.


Eliza Hinkes, Paralegal