



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101

WATER DIVISION

February 3, 2023

Ms. Anne Weaver
Alaska Department of Environmental Conservation
Division of Water
Wastewater Discharge Authorization Program
555 Cordova Street
Anchorage, AK 99501
(Sent via email to: anne.weaver@alaska.gov)

Re: USEPA Comments on the draft National Pollutant Discharge Elimination System (NPDES)
General Permit for Aquaculture Facilities in Alaska [AKG31000]

Dear Ms. Weaver:

EPA appreciates the opportunity to review and provide comments on the draft Alaska Pollutant Discharge Elimination System (APDES) general permit and fact sheet for aquaculture facilities in Alaska [AKG13000]. EPA conducted this review in accordance with the oversight procedures outlined in the October 2008 National Pollutant Discharge Elimination System (NPDES) Memorandum of Agreement (MOA) between the State of Alaska and EPA Region 10. Please find our comments below.

Part 1.1.4, Coverage and Eligibility

Part 1.1.4 of the draft general permit for aquaculture facilities in Alaska, Coverage and Eligibility, provides that facilities below the concentrated aquatic animal production (CAAP) thresholds may voluntarily submit a Notice of Intent and request coverage under the renewed general permit. Similar language is included in EPA's NPDES General Permit for Federal Aquaculture Facilities and Aquaculture Facilities Located in Indian Country in Washington State (2016 WA GP). The 2016 WA GP allows facilities below the CAAP thresholds that were not designated CAAPs pursuant to 40 CFR 122.24 the option of submitting a NOI for coverage under the permit. These non-CAAP facilities (i.e., facilities that fall below the CAAP thresholds), however, were not required to apply for NPDES permit coverage.

Subsequently, in 2018, the Ninth Circuit issued a decision in *Olympic Forest Coalition v. Coast Seafoods Co.*, 884 F.3d 901 (9th Cir. 2018) which held that non-CAAP facilities that have "pipes, ditches and channels that discharge pollutants" are point sources that require a NPDES permit. *Id.* at 907. Pursuant to this court decision, non-CAAP facilities that have a pipe, ditch, channel, etc. into a water of the U.S. are point sources under the Clean Water Act and will need to determine whether they require a NPDES permit.

EPA is currently working to renew the 2016 WA GP; the public comment period on the draft WA GP recently closed. The draft WA GP has been revised to remove the threshold eligibility language and now includes different tiers of requirements for CAAP and non-CAAP facilities. The draft WA GP can be

found here under *Proposed Permit*: <https://www.epa.gov/npdes-permits/npdes-general-permit-federal-aquaculture-facilities-and-aquaculture-facilities>

The current language in the draft GP for aquaculture facilities in Alaska implies that obtaining permit coverage for all small facilities is voluntary. The Alaska Department of Environmental Conservation (ADEC) should consider revising the permit to make clear that obtaining coverage is not voluntary for non-CAAP facilities who determine they are point sources of pollution to waters of the United States. Alternatively, ADEC should explain in the fact sheet that these non-CAAP facilities need to apply for NPDES permit coverage.

Diquat Use under FIFRA

Diquat is a disease control drug used in aquaculture under the Investigational New Animal Drug (INAD) program. It recently came to the attention of EPA that, currently, Diquat is not appropriately labeled as an aquaculture drug – it is sold as a registered herbicide under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). Accordingly, in the draft WA GP, language is included to ensure that aquaculture drug and chemical use be in conformance with FIFRA. ADEC should consider revising the permit to make clear that the use of drugs and chemicals must be in conformance with FIFRA. Example language can be found in Part IV.B.2 of EPA's draft WA GP.

Sincerely,

Susan Poulson, Section Manager
NPDES Permitting Section

cc: Earl Crapps, ADEC
Gene McCabe, ADEC