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ENVIR. APPEALS BOARD

December 8, 2009

United States Environmental Protection Agency  
Environmental Appeals Board (MC-1103B)  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

RE: Notice of Appeal and Petition for Review  
NPDES Permit: PR0026361 – Snapperfarm, Inc.

Our office represents Snapperfarm, Inc., (the permittee) during this permit process. During the draft permit review period, our client, Mr. Brian O'Hanlon, was working abroad and was generally inaccessible via e-mail or phone. His absence made the permit review extremely difficult. We consider his comments as an essential and necessary part of the process due to his experience and knowledge of the operation in the Culebra area. Thus, we were delayed in the completion of the revision and issuance of comments.

Once completed, our comments were erroneously submitted via e-mail to Mr. Edward Schlueter on September 30, 2009 (see copy of message in Appendix A) understanding this was a correct way to submit these, rather than further delaying delivery via regular mail. These, however, were apparently not considered prior to issuing the final permit.

In light of these events, we respectfully request consideration of our comments. Particularly, our client finds some imposed conditions are unreasonable. Our comments are included in the pages included in Appendix B.

Should you require any additional information, feel free to contact our office at the address or number listed below. You may also contact me at my email address, [mguzman@vhapr.com](mailto:mguzman@vhapr.com).

Sincerely,

Vincenty, Heres & Asociados

Mildred Guzmán, P.E.  
Environmental Engineer

Attachments

C: Mr. Partick J. Harvey

## Appendix A

**Mildred Guzman**

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**From:** Schlueter.Edward@epamail.epa.gov  
**Sent:** Thursday, October 08, 2009 9:48 AM  
**To:** Mildred Guzman  
**Cc:** brian@brianohanlon.com; 'Brian O'Hanlon'; Josilo.Michelle@epamail.epa.gov  
**Subject:** Re: Snapperfarm comments

Hello Mildred - I am acknowledging receipt of your comments as requested in your attached e-mail, your followup 10/2/09 e-mail and your 10/7/09 voice message. I didn't have a chance to respond until now.

Edward Schlueter  
NPDES Section  
U.S. EPA Region 2  
290 Broadway, 24th Floor  
New York, NY 10007  
Ph: (212) 637-3834 Fax: (212) 637-3887  
▼ "Mildred Guzman" <mguzman@vhapr.com>

**"Mildred Guzman"**  
**<mguzman@vhapr.com>**

ToEdward Schlueter/R2/USEPA/US@EPA  
cc"Brian O'Hanlon"  
<brian@openblueseafarms.com>,  
<brian@brianohanlon.com>

09/30/2009 04:06 PM

SubjectSnapperfarm comments

Enclosed are some comments to the Snapperfarm NPDES permit.

Please acknowledge receipt of this information with a reply message.

Thanks,

Mildred Guzmán, P.E.  
PMB 717  
89 Ave De Diego, Suite 105  
San Juan, PR 00927  
Teléfono: (787) 300-2083, 300-2084  
Fax: (787) 753-7200

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12/8/2009

## Appendix B

Comments by Snapperfarm, Inc.  
NPDES Permit PR0026361

**A. Special conditions 7. g.**

“Fifteen (15) months alter the EDP – Effective Date of the Permit - the permittee shall submit a report of the first year of the monitoring program...”

Comment:

During the review period of the Water Quality Certificate with the Environmental Quality Board (EQB) we indicated that the “beginning of operation in the production area” would better represent the start of the permit coverage. This was done because currently the operations have been suspended at the site and, depending on economic and administrative aspects of the project, the renewal of operations may take more than a few months. This means that if the EDP is utilized, the first report may include periods in which no activity was performed at the site.

We recommend that the EPA review its position and establish an EDP which coincides with the beginning of operations in the production area. This should be established in the best interest of obtaining data that is representative of the operations at the site, which is part of the goals of establishing the permit requirements.

**E. Additional Requirements 1. f.**

“The permittee will notify EPA, NMFS and the appropriate local authorities within two weeks of occurrence of all mortality events of unknown cause that result in 0.10% or greater mortality for three consecutive days.”

Comment:

This is considered to be operating information, and Snapperfarm assumes a very aggressive approach and required that fish mortality be evaluated immediately. Snapperfarm requests that EPA clarify the reasoning for including this requirement in the permit.

This condition states that Snapperfarm will notify EPA, NMFS and other local authorities should a mortality of 0.1% or greater for three consecutive days occurs. Snapperfarm's experience indicates that 0.1% mortality may be considered a normal occurrence. Thus, the proposed rate would not be a good indication of health problems in the fish. Instead, Snapperfarm proposes 10% mortality for a weekly period as an alert limit. Based on this comment, Snapperfarm respectfully suggest the EPA to reconsider modification of this measure/practice.

#### **E. Additional Requirements 1. h.**

“The permittee will develop an adaptive management plan. This plan should include a matrix detailing potential impacts on the benthic community and water quality and possible responses to observed detrimental changes. EPA, NMFS, PREQB and the Puerto Rico Department of Natural and Environmental Resources should be part of preparing the initial matrix. An adaptive management plan should be reflective of and responsive to actual occurrences and conditions.”

Comment:

The permit requires an “adaptive management plan” which should be developed with the EPA, NMFS, PREQB and PRDRNA.

We find it unreasonable to request participation of so many agencies. We suggest that Snapperfarm develop the matrix and receive comments from the agencies. Such a matrix was prepared at the request of the NMFS and is included in the Environmental Management Plan. We will use this matrix as the basis for this request.

#### **F. Additional Requirements 1. c. v.**

“A comprehensive Snapperfarm Benthic Invertebrate Community Monitoring Program to assess the stability condition of the benthic community as a result of the permitted discharge, must be proposed by the permittee which follows the guidelines in the “Outline of the Snapperfarm Benthic Invertebrate Community Monitoring Program” shown below.”

Comment:

From the wording of the permit and the “403( C ) Ocean Discharge Criteria Decision for Snapperfarm Inc.”, it seems the agency has established this permit period as an investigation and research period. Snapperfarm has developed significant research regarding the impact of the operation of its two cages to the benthic community during the 2002-2008 period. This was established by the company as its development and demonstrative phase, leading to the conclusion that the operation of the cages, in a staggered production schedule and with reasonable controls would be of little to no impact on the environment. These activities were conducted as research program with NOAA and other agencies.

Snapperfarm strongly suggest that the EPA reconsider its decision to require this monitoring program. As an alternative, a summary of findings to date may be issued by a qualified professional to compliment information the agency has and to further expand the knowledge of the site and the practices implemented.

**General comment**

The permit, as is, requires the development or continued implementation of the following plans and monitoring programs:

1. Environmental Monitoring Plan (for sediment monitoring)
2. Quality Assurance Project Plan
3. Adaptive Management Plan
4. Best Management Practices Plan
5. NPDES monitoring and reporting parameters
6. Photos/videos of bottom of the cages

We find the development and implementation of such plans to be an unreasonable burden to the permittee. Snapperfarm proposes including within the Environmental Monitoring Plan (EMP) (item 1), developed under the guidance of the NMFS, items 3, 4 and 6. This plan will be available for the agency for review and revision; however Snapperfarm may limit its contents in order to protect proprietary procedures and methods developed by the company.