

October 20, 2010

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Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158  
Seattle, Washington 98101

HEARINGS CLERK  
EPA--REGION 10

**Re: Answer to Complaint  
Docket No. CWA-10-2010-0239**

On September 24, 2010 we received a Complaint from EPA for numerous alleged violations of the Clean Water Act for the past 5-year period. The following is the Answer to the Complaint on behalf of myself and ARK Fisheries, Inc. As set forth in the Complaint, you requested I admit or deny all factual allegations.

Regarding Count 1, I would note that ARK Fisheries, Inc. ("ARK") is the named Permittee for NPDES Permit No. IDG 130040 and therefore, question why Lynn Babington is named as a Respondent in paragraph 3.1 and throughout the Complaint. It appears that the allegations in paragraphs 3.2 through 3.7 are legal conclusions and not factual allegations, and therefore do not require a response. To the extent there are factual allegations in these paragraphs, we admit that ARK discharges phosphorous and total suspended solids to Pospesel drain via Outfall 001, but are without knowledge to admit or deny any of the other factual allegations. Regarding the factual allegations in paragraphs 3.9 through 3.12, the transfer of the facility by Silver Creek Farms to ARK did not formally occur until October 25, 2005, therefore, we believe ARK did submit the required 60-day notice and therefore did not violate the Permit.

Regarding Count 2, we admit that timely submission of the certifications and DMRs were not provided. However, the DMRs do not indicate any pollution above permitted limits to the receiving waters. ARK has provided data on DMR's that when analyzed will support this contention.

Regarding Count 3, we believe timely notice was provided to EPA, as the formal transfer of the facility to ARK from Silver Creek Farms did not occur until October 25, 2005. Therefore, we deny ARK was operating without a Permit from 2005-2007.

Regarding Count 4, paragraph 3.28, we admit the October 2008 4.41 lbs. average monthly T.P. was reported by ARK. This amount was over stated due to an error in using Total Flow instead of the Flow discharged from the "C" section at the end of our facility. The Twin Falls Canal Company ("TFCC") diverts water from our facility between our "B" and "C" section for irrigation. By subtracting the TFCC diversion from the total flow of Pospesel drain the average monthly T.P. does not exceed 3.3 lbs. Since ARK did not violate the T.P. limits, we do not believe a notice of violation was required as contended in paragraph 3.29. We admit that ARK did not provide timely DMRs as set forth in paragraphs 3.30-3.32. However the DMR's did not indicate any violations of the

Permit and we therefore question why EPA would seek any monetary penalties for this type of violation.

Regarding paragraph 3.33, I thought the annual reports for 2008 and 2009 were either mailed in or given to Carla Fromm. If not I apologize and I am enclosing them with the other Annual Reports and NOIs going to Chris Gebhardt in EPA's office of Compliance and enforcement.

Regarding paragraph 3.34, we admit January 2010 4.6 lbs. net average monthly T.P. was reported by ARK. We don't have a definitive answer for the much higher than normal concentration of T.P. in the effluent. Possible explanations are; excessive number of ducks in settling pond, run-off from neighboring farms, and disturbance of fish in raceways due to driving by them. Since the January sample was clearly not representative of historical day-to-day operations, we deny that this constituted 31 violations.

ARK obtained ownership of Tunnel October 25, 2005. If we could have had a little more than a years' history of operating this facility it is probable that we would have requested a seasonal allocation of T.P. since the effluent flows have fluctuated from 2.0 c.f.s. to 13.7 c.f.s. annually over the past 3 years. A seasonal allocation for TMDL would have prevented the January 2010 T.P. problem. Analysis of the flow, T.P. concentrations, and T.P. allocation on an annual basis for 2008, 2009, and 2010 to date shows an unused surplus of T.P.:

|                |             |             |
|----------------|-------------|-------------|
|                | 2008 = 461# | 38% surplus |
|                | 2009 = 448# | 37% surplus |
| thru September | 2010 = 278# | 31% surplus |

At this time ARK would like to participate in the Seasonal allocation option, but we don't see any provision in the current permit to apply for this option.

August 9, 2010 ARK submitted updated N.O.I. information for permit No. ID-G13-0040 and ID-G13-0098 in the same format as the 2007 permit was applied for and issued under. At the same time I reported that the other 11 facilities N.O.I. information was viable. In my and ARK's defense I claim that I have not violated the intent of the CWA and have not exceeded the TMDL for T.P. if a seasonal allocation is applied.

Regarding Count 5, We admit on July 23, 2010 EPA requested information pursuant to section 308 of the CWA. We submitted DMR's as requested. Certification of annual reports were submitted.

Missing Production Data. Over the past 5-10 years I have repeatedly argued to IDEQ and EPA in writing, verbally at public meetings, and verbally one on one with IDEQ & EPA staff that EPA's definition of Production and Harvestable weight is not appropriate for all aquaculture facilities. When using EPA's definitions, 12 of the 13 facilities we operate would be overstating our "production/gain" by 24 to 50 percent. EPA's definition of production seems to be for gross production, not net production. To avoid

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U.S. EPA REGION 10  
OFFICE OF REGIONAL COUNSEL

Date: October 20, 2010

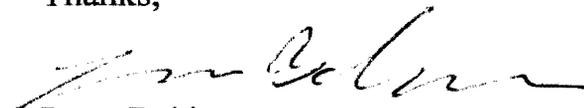
To: Jessica Barkas, Assistant Regional Counsel  
U.S. EPA, Region 10  
1200 Sixth Ave., Suite 900, Mail Stop ORC-158  
Seattle, Wa. 98101

From: ARk Fisheries, Lynn Babington

RE: Docket No. CWA-10-2010-0239  
Informal Settlement Conference

I would like to request an informal settlement conference to discuss the facts, proposed penalty, and possibility of settling the case referred to above.

Thanks,

  
Lynn Babington

