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October 19, 2020

VIA CERTIFIED MAIL AND E-MAIL

Office of Legal Affairs
Attention: Rulemaking Petitions
Department of Environmental Protection
Mail Code 401-04L
401 East State Street, 4th Floor
P.O. Box 402
Trenton, New Jersey 08625-0402
RulePetitions@dep.nj.gov

RE: Petition for Rulemaking Pursuant to N.J.S.A. 52:14B-4(f), N.J.A.C 1:30-4.1 and N.J.A.C. 7:1D-1.1 to Amend N.J.S.A. 7:7-4.16, Permit-by-Rule 16 (placement of land-based upwellers and raceways for aquaculture activities) to include the placement of all facilities necessary for hatchery-related aquaculture activities.

Dear Sir/Madam:

This firm represents Petitioner, Luke Williams, owner and operator of BaySide Shellfish Co. ("BaySide") at 788 Stone Harbor, Blvd., Cape May Court House, NJ 08210 (hereinafter the "Property"), in connection with the below. Pursuant to N.J.S.A. 52:14B-4(f), N.J.A.C 1:30-4.1 and N.J.A.C. 7:1D-1.1, Petitioner submits this Petition for Rulemaking to the New Jersey Department of Environmental Protection ("The Department") to amend N.J.S.A. 7:7-4.16 Permit-by-rule 16 (placement of land-based upwellers and raceways for aquaculture activities) to include the placement of all facilities necessary for hatchery-related aquaculture activities in combination with a single-family dwelling unit.

I. The Reasons for the Request

Luke Williams owns and operates BaySide Shellfish Co. ("BaySide") at 788 Stone Harbor, Blvd., Cape May Court House, NJ 08210 (hereinafter the "Property"). BaySide is a "green," sustainable shellfish aquaculture business which benefits not only the shore community, but the State of New Jersey through its raising of various forms of shellfish including clams and oysters. BaySide, like any other successful shellfish aquaculture business, specifically consists of two necessary symbiotic operations, a hatchery and a nursery; one without the other would not make for a financially or economically viable operation.



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The current nature of N.J.S.A. 7:7-4.16, Permit-By-Rule 16, restricts any newly established (i.e. any aquaculture business not predating CAFRA, like BaySide) or aspiring shellfish businesses from being able to operate a financially viable business because Permit-By-Rule 16 only encompasses nursery operations. Therefore, these shellfish operations, including BaySide, must inexplicably undergo the extensive and expensive process of applying for CAFRA Individual Permits for the hatchery portion of the shellfish business. Mr. Williams is a young, passionate, entrepreneurial individual who has developed a business which will only continue to benefit the shore community and the State of New Jersey; however, the current state of the rules pertaining to shellfish aquaculture operations and their application specifically to Mr. Williams and BaySide are severely hindering Mr. Williams' ability to continue to grow his business and contribute further to the economy of the State of New Jersey.

The language of N.J.S.A. 7:7-4.16 Permit-by-rule 16 (placement of land-based upwellers and raceways for aquaculture activities) authorizes the placement of land-based upwellers and raceways, including intakes and discharges, for shellfish aquaculture activities. The shellfish aquaculture activities on the Property must comply with each of the following conditions required by permit-by-rule 16:

- (1) The structures are located on the upland portion of the lot with a legally existing, functioning bulkhead;
- (2) No grading, excavation, filling or placement of a structure was undertaken on a beach, dune, or wetland; and
- (3) The discharge from the aquaculture activities is to a body of water and not directly into a wetland.

N.J.S.A. 7:7-4.16 Permit-by-rule 16. Mr. Williams has been informed by the Department that his upwellers and raceways used for the nursery portion of his aquaculture business legally operate on the Property under permit-by-rule 16. The hatchery portion of BaySide's operation, the second portion of the symbiotic processes required for a successful shellfish operation, is not currently encompassed by permit-by-rule 16. BaySide's hatchery operation consists of two (2) large (12 x 25) sheds, two (2) small sheds (8 x 10) and one 5000-gallon water tank. Despite these structures being integral to operating a sustainable, efficient and productive aquaculture business, Mr. Williams has been informed by the Department that he must apply for CAFRA Individual Permits for all of these structures.

The seasonal nature of the hatchery portion of BaySide and every other shellfish aquaculture business' operation clearly illustrates that requiring shellfish businesses to apply for CAFRA permits for the hatchery operation is wholly unnecessary. The hatchery portion of a shellfish aquaculture business operates for approximately three (3) months out of a 12-month calendar year. Therefore, it is not financially viable to require a shellfish aquaculture business to



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apply for a completely separate CAFRA IP for the hatchery portion of the operation, particularly because the hatchery is only active for a mere quarter of the calendar year. Similarly, it does not follow that a single-family dwelling unit cannot be combined with the shellfish aquaculture business. If the NJDEP were to require each and every shellfish aquaculture business in New Jersey to relocate their aquaculture hatchery operations to a site other than where the single-family home is located, then the business would be compelled to purchase an off-site location for the hatchery operations for only three months out of the calendar year. This requirement would again severely hinder BaySide, and any other shellfish business' ability to operate a successful business.

The DEP's current position regarding the applicability of Permit-by-Rule 16 to combined hatchery and nursery operations as well as the fact that those operations which predated CAFRA regulations are permitted to operate as they are (i.e. with hatchery and nursery operations being located together on a property with a single-family dwelling unit) is untenable and discourages the development of "green" sustainable shellfish operations in New Jersey's coastal regions.

II. The Substance or Nature of the Rulemaking which is Requested

Petitioner requests that N.J.S.A. 7:7-4.16 Permit-by-rule 16 (placement of land-based upwellers and raceways for aquaculture activities) be amended to include the placement of all structures necessary for hatchery-related aquaculture activities, as follows (with proposed amendments underlined):

7:7-4.16 Permit-by-rule 16- placement of land-based upwellers, and raceways and structures necessary for aquaculture activities including hatchery and nursery related operations.

(a) This permit-by-rule authorizes the placement of land-based upwellers, and raceways and structures necessary for aquaculture activities including hatchery and nursery related operations combined with a single-family dwelling unit. Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et. seq. The aquaculture activities shall comply with the following:

- (1) The structures are located on the upland portion of the lot with a legally existing, functioning bulkhead;
- (2) No grading, excavation, filling or placement of a structure was undertaken on a beach, dune, or wetland; and
- (3) The discharge from the aquaculture activities is to a body of water and not directly into a wetland.



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III. The Full Name and Address of the Petitioner

BaySide Shellfish Co. (“BaySide”)
788 Stone Harbor, Blvd.
Cape May Court House, NJ 08210

IV. The Petitioner’s Interest in the Request, Including Any Relevant Organization Affiliation or Economic Interest

BaySide is a shellfish aquaculture business which consists of both a hatchery and nursery operation used for the raising of various forms of shellfish including clams and oysters, which are then distributed, namely to restaurants and other businesses throughout the State of New Jersey. Luke Williams, the owner of BaySide, is a young, passionate, entrepreneurial individual who has developed a sustainable, “green,” business; the very type of business development which should not only be encouraged, but also supported by the State of New Jersey and its regulations. As stated above, the current regulations require new or existing shellfish operations which didn’t exist pre-CAFRA, to expend time and money to apply for CAFRA permits for the hatchery portion of their operation which is essential to running a symbiotic, financially viable operation. Furthermore, if these CAFRA applications (which it should not have to apply-for in the first place) are denied, BaySide will have to secure a separate property for its hatchery operations which will likely put BaySide out-of-business.

BaySide and other similarly situated businesses which will only continue to benefit the shore community and the State of New Jersey; however, the current state of the rules pertaining to shellfish aquaculture operations and their application specifically to BaySide and other aquaculture operations are severely hindering Mr. Williams’ ability to continue to grow his business and contribute further to the economy of the State of New Jersey. Therefore, BaySide, other similarly situated aquaculture businesses and the State of New Jersey have a significant economic interest in accepting this petition for rulemaking.

V. The Statutory Authority Under Which the Department of Environmental Protection may take the Requested Action

Coastal Zone Management Rules, N.J.S.A. 7:7-1.3

Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.



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VI. Existing Federal or State Statutes and Rules Which the Petitioner Believes May Be Pertinent to the Request

Coastal Zone Management Rules, N.J.S.A. 7:7-1.3

N.J.S.A. 7:7-4.16, Permit-By-Rule 16 (placement of land-based upwellers and raceways for aquaculture activities)

N.J.A.C. 7:12-9.14 (Permit for a Hatchery to Produce and Grow Seed or for a Nursery to Grow Seed) and N.J.A.C. 7:12-9.15 (Commercial Shellfish Aquaculture Permit) – both statutes show that the Department has previously contemplated and implemented regulations which encompassed both hatchery and nursery shellfish operations.

VII. Supporting Organizations/Businesses

Attached to this Petition as “Attachment A” is a list of organizations and businesses, and individuals from those respective organizations and businesses, who not only support the proposed rule-change, but also whole-heartedly support Mr. Williams’ company, BaySide Shellfish Company. Some of the listed organizations and business have provide a brief statement in support of the Petition for the Department’s consideration.

Conclusion

For the reasons set forth above, Petitioner requests that the New Jersey Department of Environmental Protection amend N.J.S.A. 7:7-4.16, Permit-By-Rule 16, to allow hatchery operations to exist under the statute along with nursery operations located on a site with a single-family dwelling unit. BaySide reminds the DEP this this submission is not only made for BaySide, but also on behalf of the many other similarly situated aquaculture businesses who will need guidance as to the uncertainties provided by the current language of N.J.S.A. 7:7-4.16, Permit-By-Rule 16. BaySide is committed to working with the NJDEP to help draft language for the proposed rulemaking as needed to ensure that the regulations are operationally feasible for the NJDEP. Please act upon this petition in the time provided by N.J.A.C. 7:1D-1.1(f) and N.J.A.C. 1:30-4.2(a).

Respectfully Submitted,

/s/ Michael E. Camastra

Michael E. Camastra, Esq.

of LIEBERMAN BLECHER & SINKEVICH, P.C.

ATTACHMENT "A"

Organizations and Businesses in Support of BaySide Shellfish Company's Petition

Garrett Hoff – Dock Street Seafood Edward Gaine – Bay Ridge Oyster

Matthew Williams – South Bay Shellfish Co.

Brian Harman – Cape May Salt Oyster Farms

Marc Zitter – Northern Cape Sea Farms

Fahong Ni – Red Coast USA

“The archaic laws and regulations can fit for new aquaculture due to seafood resource decreasing sharply all over the world.”

Tom Glenn – Glenn Shellfish

Joseph Moro – Joseph Moro Oyster Farm

Donald Burke – Sloop Point Oyster Co

“Luke Williams of BaySide Shellfish Co. is on the cutting edge of a budding aquaculture industry in New Jersey that benefits from his nursery/hatchery operations. Indeed, in that aquaculture benefits the environment by establishing habitat and cleansing massive amounts of water, all New Jersey citizens benefit from Luke’s nursery/hatchery operations. I have read Luke’s application and I urge the NJDEP to permit Luke Williams’ operation. My reading of NJAC 7:7-4.16 Permit-by-rule 16 is that Luke’s operation is covered, and he does not need a CAFRA permit. If my reading is wrong, I encourage the NJDEP to implement the rule change Luke has requested. The common thread of the permit by rule categories in the beneficial use and shellfish nursery/hatchery operations is that description. Thank you.”

Thomas Burke – Sloop Point Oyster Co

“I’m signing this petition because I support Luke Williams in his efforts to produce high quality New Jersey shellfish, a practice that benefits New Jersey waters and New Jersey consumers.”

Richard Cash – Dias Creek Oyster LLC

Nancy Sittineri – Middle Township Director of Economic Development

“This business is vital to our community. Luke Williams and his family have worked tirelessly to bring their vision to fruition. I see this as a bright spot and whole heartedly support it.”